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WHEN: Tuesday, February 22, 2011
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Doc. No. AMS–FV–10–0067; FV10–915–1 FIR]

Avocados Grown in South Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that increased the assessment rate established for the Avocado Administrative Committee (Committee), for the 2010–11 and subsequent fiscal periods from $0.27 to $0.37 per 55-pound bushel container of Florida avocados handled. The Committee locally administers the marketing order which regulates the handling of avocados grown in South Florida. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* Effective February 10, 2011.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or E-mail: *Doris.Jamieson@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.*

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide;* or by contacting Antoinette Carter, 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: *Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 915, as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, 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."

USDA is issuing this rule in conformance with Executive Order 12866.

Under the order, Florida avocado handlers are subject to assessments, which provide funds to administer the order. Assessment rates issued under the order are intended to be applicable to all assessable avocados for the entire fiscal period, and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period begins on April 1, and ends on March 31.

In an interim rule published in the **Federal Register** on September 15, 2010, and effective on September 16, 2010 (75 FR 55942, Doc. No. AMS–FV–10–0067; FV10–915–1 IR), § 915.235 was amended by increasing the assessment rate established for the Committee for the 2010–11 and subsequent fiscal periods from $0.27 to $0.37 per 55-pound container or equivalent of Florida avocados. The increase in the per-unit assessment rate was necessary to fund research to find an insecticide that will kill or control the Red Bay Ambrosia beetle.

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 rule 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 approximately 30 handlers of Florida avocados subject to regulation under the order and approximately 300 producers of avocados in the production area. Small agricultural service firms, which include avocado handlers, are defined by the Small Business Administration (SBA) as those whose annual receipts are less than $7,000,000, and small agricultural producers are defined as those having annual receipts less than $750,000 (13 CFR 121.201).

According to Committee data and information from the National Agricultural Statistical Service, the average price for Florida avocados during the 2009–10 season was around $16.50 per 55-pound bushel container and total shipments were near 900,000 55-pound bushels. Using the average price and shipment information provided by the Committee, the majority of avocado handlers could be considered small businesses under SBA's definition. In addition, based on avocado production, producer prices, and the total number of Florida avocado producers, the average annual producer revenue is less than $750,000. Consequently, the majority of avocado handlers and producers may be classified as small entities.

This rule continues in effect the action that increased the assessment rate established for the Committee and collected from handlers for the 2010–11 and subsequent fiscal periods from $0.27 to $0.37 per 55-pound bushel container of Florida avocados. The Committee unanimously recommended 2010–11 expenditures of $351,502 and an assessment rate of $0.37 per 55-pound bushel container. The assessment rate of $0.37 is $0.10 higher than the 2009–10 rate. The quantity of assessable Florida avocados for the 2010–11 season is estimated at 1,000,000. Thus, the $0.37 rate should provide $370,000 in assessment income and be adequate to meet this year's expenses. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve fund will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2010–11 year include $110,000 for research, $98,732 for salaries, $48,000 for employee benefits, and $25,300 for insurance and bonds. Budgeted expenses for these items in 2009–10 were $25,000, $94,030, $48,000, and $25,300, respectively.

The increase in assessment rate is needed to fund research to find an insecticide that will kill or control the Red Bay Ambrosia beetle. The beetle carries the Laurel Wilt fungus which can infect and kill avocado trees. Research into the beetle and fungus had been funded by the University of Florida. However, the Committee was informed that funding ceased on August 1, 2010. Without funding, researchers would have been unable to continue testing to determine which insecticides work best to kill/control the beetle and at what application rate. The Committee believes it is essential for the industry that the research continues. Therefore, they voted to increase the assessment rate to provide the additional research money.

Prior to arriving at this budget, alternative expenditure levels were discussed based upon the relative value of various research projects to the Florida avocado industry. The assessment rate of $0.37 per 55-pound bushel container of assessable Florida avocados was then determined by dividing the total recommended budget by the quantity of assessable avocados, estimated at 1,000,000 55-pound bushel containers for the 2010–11 season. Considering income from assessments and interest, total income will be approximately $18,400 above the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 2010–11 season could range between $9.00 and $66.00 per 55-pound bushel container of avocados. Therefore, the estimated assessment revenue for the 2010–11 season as a percentage of total grower revenue could range between .6 and 4 percent.

This rule continues in effect the action that increased 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 by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 22, 2010, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large Florida avocado 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.

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

Comments on the interim rule were required to be received on or before November 15, 2010. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change. To view the interim rule, go to *http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480b4f5ec.*

This action also affirms information contained in the interim rule concerning the Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (75 FR 55942, September 15, 2010) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 915

Avocados, Reporting and recordkeeping requirements.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

■ Accordingly, the interim rule amending 7 CFR part 915, which was published at 75 FR 55942 on September 15, 2010, is adopted as a final rule, without change.

Dated: February 3, 2011.

David R. Shipman,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2011–2888 Filed 2–8–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 996

[Doc. No. AMS–FV–10–0030; FV10–996–610 Review]

Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Confirmation of regulations.

SUMMARY: This action summarizes the results under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA), of an Agricultural Marketing Service (AMS) review of the Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States contained in 7 CFR part 996 (Standards). AMS has determined that the Standards should be continued.

ADDRESSES: Interested persons may obtain a copy of the review. Requests for copies should be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or E-mail: *moab.docketclerk@usda.gov.* A copy of the review may also be obtained via the Internet at: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737; Telephone: (301) 734–5243; Fax: (301) 734–5275; or E-mail: *Kenneth.Johnson@usda.gov;* or Martin Engeler, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey St., Fresno, California 93721; Telephone: (559) 487–5110; Fax: (559) 487–5906; or E-mail: *Martin.Engeler@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: The Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States (Standards), as amended (7 CFR part 996), were established at 7 U.S.C. 7958 pursuant to Public Law 107–171, the Farm Security and Rural Investment Act of 2002 (Act). The Standards regulate the quality and handling of domestic and imported peanuts marketed in the United States.

The Act also provided for establishment of the Peanut Standards Board (Board) to advise the Secretary of Agriculture (Secretary) in establishing the Standards. The Board is comprised of 18 members. Nine of the members are peanut producers representing three producing regions, and nine are peanut industry representatives that also represent the three producing regions. Board members are nominated by the industry and selected by the Department of Agriculture (USDA). The Board is responsible for advising the USDA regarding the quality and handling requirements under the Standards. USDA is required by the Act to consult with the Board prior to making any change to the Standards.

Currently, it is estimated that there are 8,500 peanut producers in the U.S. There are approximately 70 shelling plants operated by approximately 55 shelling entities in the industry, and an estimated 25 importers of peanuts. The Small Business Administration (SBA) defines small farms as those having annual receipts of less than $750,000. Small agricultural service firms are defined by the SBA as those whose annual receipts are less than $7,000,000. It is estimated that approximately 90 percent of the peanut producers in the U.S. can be considered small businesses under this definition. It is also estimated that approximately two-thirds of U.S. peanut handlers can be considered small businesses, and nearly all of the importers. The regulations implemented under the Standards are applied uniformly to small and large entities, and are not intended to have differential impacts based on size.

AMS published in the **Federal Register** on February 18, 1999 (64 FR 8014), a plan to review certain regulations under criteria contained in section 610 of the RFA (5 U.S.C. 601–612). Updated plans were published in the **Federal Register** on January 4, 2002 (67 FR 525), August 14, 2003 (68 FR 48574), and again on March 24, 2006 (71 FR 14827). Accordingly, AMS published a notice of review and request for written comments on the Standards in the April 28, 2010, issue of the **Federal Register** (75 FR 22213). The deadline for comments ended June 28, 2010. Several comments were received in response to the notice, and are discussed later in this document.

The review was undertaken to determine whether the Standards should be continued without being changed, amended, or rescinded to minimize the impacts on small entities. In conducting this review, AMS considered the following factors: (1) The continued need for the Standards; (2) the nature of complaints or comments received from the public concerning the Standards; (3) the complexity of the Standards; (4) the extent to which the Standards overlap, duplicate, or conflict with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the Standards have been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the Standards.

The Standards establish minimum incoming and outgoing quality requirements for domestic and imported peanuts marketed in the U.S. Mandatory inspection is required to ensure the quality regulations are met. The Standards also require positive lot identification (PLI) of peanuts so they can be identified and tracked during processing and disposition. Finally, the Standards require reporting and recordkeeping by handlers and importers.

The quality and inspection requirements have helped ensure that domestic and imported peanuts meet an acceptable quality level before being shipped for human consumption. Ensuring a good quality product contributes to consumer confidence. The PLI requirements help to maintain the identity of peanuts throughout the handling process, thus maintaining the integrity of lots being shipped to human consumption outlets, lots that are subjected to the reconditioning process, and lots that are disposed of to non-human consumption outlets. This helps to ensure that nuts certified for human consumption are not commingled with lower quality nuts. In addition, the PLI requirements are a useful tool in product traceability. The reporting and recordkeeping requirements substantiate handler and importer compliance with the Standards.

Regarding complaints or comments received from the public concerning the order, AMS received five comments in response to the notice of review published in the **Federal Register** on April 28, 2010 (75 FR 22213). In addition, nine letters were received from congressional representatives after the comment period was closed. All of the comments expressed support for outgoing quality requirements shipped to human consumption outlets. Three comments received from peanut shellers and sheller associations stated that while they support the quality requirements, they do not support the PLI and recordkeeping requirements associated with reconditioned peanuts. They expressed the belief that these requirements result in inefficiencies and unnecessary costs to shellers, and that the goal of ensuring peanuts meet minimum quality requirements can be achieved without these requirements. They further contend that foreign peanut shellers are not subject to the same requirements. At least one of the comments pointed out that the Board, which is responsible for advising USDA in regard to the Standards, has not met in at least two years.

Two comments from grower associations support the program as it currently exists. They support not only the quality standards in place, but also the PLI procedures and recordkeeping requirements. These comments stated that it is important to track lots of peanuts that fail to meet the quality standards to ensure those nuts are disposed of properly to protect consumers from poor quality product and to prevent potential related problems or issues for the peanut industry. The comments cite recent adverse events in the peanut industry as an example of the importance of an effective quality control program.

The nine congressional letters essentially reiterate the comments submitted by the peanut shellers and sheller associations. They support food quality and safety, but do not support the PLI requirements for the same reasons cited above.

However, as previously discussed, the PLI requirements help to maintain the identity of peanuts throughout the handling process and are a useful tool in product traceability, and the reporting and recordkeeping requirements substantiate compliance with the Standards.

In considering the complexity of the Standards, AMS has determined that they are not unduly complex.

During the review, the Standards were checked for duplication and overlap with other regulations. AMS did not identify any relevant Federal rules, or State and local regulations that duplicate, overlap, or conflict with the Standards.

The Standards were established in 2002 and have been revised two times, with the last revision occurring in 2005. Since the Standards have been in effect, AMS and the U.S. peanut industry have monitored their implementation and operation. Changes in regulations have been implemented to reflect current industry operating practices, and to solve problems as they occur. The goal of periodic evaluations is to ensure that the Standards continue to fit the needs of the industry and are consistent with the Act.

The Board meets periodically to discuss issues and to determine if, or

what, changes may be necessary to reflect current industry practices. As a result, regulatory changes have been made to the Standards to reflect current industry operations and procedures, and continue to meet the industry's needs.

Based upon our review, AMS has determined that the Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States should be continued. However, USDA believes that a meeting with the Board would be beneficial to discuss any potential improvements to the program. As required by the Act, The Secretary of Agriculture must consult with the Board prior to making any changes to the Standards. Any changes to the Standards would then be made by notice and comment rulemaking by USDA. All comments would be considered in the decision making process by the Board and USDA before recommendations are implemented.

AMS will continue to work with the peanut industry to maintain useful and effective quality and handling standards, and in accordance with the Act will consult with the Board, as appropriate.

Dated: February 3, 2011.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2011–2879 Filed 2–8–11; 8:45 am]

BILLING CODE 3410–02–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 120 and 121

[Docket No. SBA–2010–0015]

Dealer Floor Plan Pilot Program

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Program implementation with request for comments.

SUMMARY: SBA is introducing a new Dealer Floor Plan Pilot Program to make available 7(a) loan guaranties for lines of credit that provide floor plan financing. This new Dealer Floor Plan Pilot Program was created in the Small Business Jobs Act of 2010. Under the new Dealer Floor Plan Pilot Program, which will be available through September 30, 2013, SBA will guarantee 75 percent of a floor plan line of credit between $500,000 and $5,000,000 to eligible dealers of new and used titleable inventory, including but not limited to automobiles, motorcycles, boats (including boat trailers), recreational vehicles and manufactured housing (mobile homes).

DATES: *Effective Date:* The Dealer Floor Plan Pilot Program will be effective on February 9, 2011, and will remain in effect through September 30, 2013.

Comment Date: Comments must be received on or before March 11, 2011.

ADDRESSES: You may submit comments, identified by SBA docket number SBA–2010–0015 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Dealer Floor Plan Pilot Program Comments—Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Suite 8300, Washington, DC 20416.
- *Hand Delivery/Courier:* Patrick Kelley, Senior Advisor to the Associate Administrator, Office of Capital Access, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

SBA will post all comments on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov,* please submit the information to Patrick Kelley, Senior Advisor to the Associate Administrator, Office of Capital Access, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, or send an e-mail to *dealerfloorplancomments@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Patrick Kelley, Senior Advisor to the Associate Administrator, Office of Capital Access, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; (202) 205–0067; *patrick.kelley@sba.gov.*

SUPPLEMENTARY INFORMATION: On September 27, 2010, President Obama signed the Small Business Jobs Act of 2010 ("Small Business Jobs Act") (Pub. L. 111–240). Section 1133(a) of the Small Business Jobs Act authorized a new, expanded Dealer Floor Plan (DFP) Pilot Program, which will remain available until September 30, 2013.

1. Comments

Although the new DFP Pilot will be effective February 9, 2011, comments are solicited from interested members of the public on all aspects of the new DFP Pilot. These comments must be submitted on or before the deadline for comments listed in the DATES section. The SBA will consider these comments and the need for making any revisions as a result of these comments.

2. Dealer Floor Plan Pilot Program

Overview

Under the DFP Pilot, SBA is implementing a 7(a) loan guaranty product targeted to retail dealers of new and used titleable inventory, including but not limited to automobiles, motorcycles, boats (including boat trailers), recreational vehicles and manufactured housing (mobile homes). Key features of the new DFP Pilot are set forth below. More detailed guidance on the new DFP Pilot will be provided in a procedural guide ("DFP Procedural Guide") that will be available on SBA's Web site.

Eligibility

In addition to standard 7(a) eligibility requirements set forth in 13 CFR part 120 and SBA's Standard Operating Procedure (SOP) 50 10 5(C), Subpart B, Chapter 2, the eligibility of applicants for a floor plan line of credit guaranteed under the DFP Pilot will be limited to retail dealers of titleable inventory (both new and used) that is required to be licensed and/or registered in at least one State after acquisition. The inventory does not need to be licensed and/or registered in the State where it is sold, but it does need to be a type of inventory that could be licensed and/or registered in at least one State of the United States, as "State" is defined in the Small Business Act.

SBA sets size standards that establish which businesses are considered small for certain government programs. Size standards have been established for types of economic activity or industry and, depending on the type of industry, are based on number of employees or revenues. In addition, SBA has established an alternative size standard based on the applicant's tangible net worth and net income. The Small Business Jobs Act established a temporary alternative size standard of a maximum tangible net worth of the applicant of not more than $15,000,000 *and* an average net income after Federal income taxes (excluding any carry-over losses) of the applicant for the 2 full fiscal years before the date of the application that is not more than $5,000,000. SBA's size regulations, including those pertaining to affiliation, are set out in 13 CFR part 121 and apply to the DFP Pilot. The applicant can qualify for a DFP line of credit using either the industry-based size standards

(set forth in 13 CFR 121.201) or the alternative size standard set forth in the Small Business Jobs Act.

Maximum Advance Rates and Guaranty Percentage

Lenders will be allowed a maximum advance rate of 100% on new or used inventory. The maximum SBA guaranty will be no more than 75% of 100% of the cost (manufacturer's invoice) for new inventory and 75% of 100% of the cost or industry based wholesale book value, whichever is less, for used inventory.

Loan Amount and Maturity

Loans under the DFP Pilot will have a minimum loan amount of $500,000 and a maximum loan amount outstanding at any one time of $5,000,000.

The minimum maturity on DFP lines of credit will be 1 year. The maximum maturity on lines of credit approved under the DFP Pilot will be limited to five (5) years. The DFP Pilot is scheduled to expire on September 30, 2013. The expiration of the Pilot will have no effect on any DFP line of credit approved by SBA on or before September 30, 2013.

Use of Proceeds and Repayment

Floor plan lines of credit guaranteed by SBA will be revolving lines of credit. The proceeds may be used for the acquisition of titleable inventory for retail sales, to refinance existing floor plan lines of credit with another lender or to replace existing floor plan lines of credit with the participating lender. Proceeds also may be used to pay the guaranty fee. Proceeds may not be used for any other purpose. If proceeds are used to replace a same institution floor plan line of credit and the borrower defaults on the SBA-guaranteed DFP line of credit within 90 days of initial disbursement, SBA may deny liability on its guaranty of the DFP line.

Repayment of these lines will occur as the acquired inventory is sold. The payment of interest will be due monthly.

Interest Rates

DFP lines of credit may have either a fixed or variable interest rate. The maximum interest rates for loans under the DFP Pilot are the same as those allowed by 13 CFR 120.213–120.214 for the standard 7(a) loan program.

Collateral

Collateral must be secured by a first lien on all titleable inventory acquired with proceeds of the DFP line of credit. This lien may be perfected by obtaining either (i) the title to the inventory reflecting no prior liens, or (ii) a first perfected security interest in all titleable inventory acquired with any portion of the proceeds from the SBA-guaranteed floor plan line of credit. The floor plan line of credit which SBA guarantees does not have to be the sole floor plan line. However, if more than one floor plan line exists to any one dealer, then the inventory supported by each line is to be separately accounted for and the sale proceeds of any inventory acquired with any portion of the floor plan line guaranteed by SBA must be used to directly reduce the balance on that line. In addition, dealers with multiple floor plan lines for multiple product lines (manufacturers or new/used) with multiple floor plan creditors will be required to have appropriate delineated inter-creditor agreements to enable proper security interest perfection. The lender may take additional collateral in accordance with its policies and procedures governing its similarly-sized, non-SBA guaranteed floor plan lines of credit.

Allowable Fees

The SBA guaranty fee and the lender's annual service fee set forth in 13 CFR 120.220 apply to loans approved under this pilot program. For loans approved under the DFP Pilot, lenders may charge the borrower the same fees allowed under SBA's 7(a) loan program with the exception of the extraordinary servicing fee.

For loans approved under the DFP Pilot, SBA will allow lenders to charge an extraordinary servicing fee that is higher than the 2 percent allowed in 13 CFR 120.221(b), provided that the fee charged is reasonable and prudent based on the level of extraordinary effort required to adequately service the floor plan line. In addition, if the lender currently provides floor plan financing to its customers, the lender may not charge higher fees for its SBA-guaranteed floor plan lines of credit than it charges for its similarly-sized, non-SBA guaranteed floor plan lines of credit. SBA's guaranty does not extend to extraordinary servicing fees and, at time of guaranty purchase, SBA will not pay any portion of such fees.

Secondary Market and Participating Lender Financings or Other Conveyances

SBA loan guaranties made under the DFP Pilot may not be sold under Agency regulations at 13 CFR part 120, Subpart F—Secondary Market.

SBA loan guaranties approved under the DFP Pilot may be included in any participating lender financings or other conveyances, including securitizations, participations and pledges, provided the lender complies with 13 CFR 120.420 through 120.435.

Eligible Lenders

All SBA lenders with an executed Loan Guaranty Agreement (SBA Form 750) may participate in the DFP Pilot. Any delegated authority the lender has as a 7(a) lender, such as Preferred Lender Program (PLP) or SBA Express authority, will not apply to the DFP Pilot.

If a lender has at least $1 billion in floor plan lines of credit in its current portfolio, the lender may qualify for delegated authority under the DFP Pilot. The process for requesting delegated authority will be set forth in the DFP Procedural Guide. Lenders that are approved for delegated authority under the DFP Pilot will be required to execute a separate Supplemental Guaranty Agreement. Lenders with delegated authority must have existing policies and procedures governing floor plan financing, including risk management policies and procedures, and must administer their SBA-guaranteed floor plan lines of credit in conformance with the existing policies and procedures used for their similarly-sized, non-SBA guaranteed floor plan lines.

Lenders who have not participated in floor plan financing must develop policies and procedures specific to floor plan financing, including risk management policies and procedures. When developing policies and procedures specific to floor plan financing, lenders may follow guidance provided by their primary Federal regulator or, if none is available, lenders may follow the guidance on floor plan financing provided by the Office of the Comptroller of the Currency (OCC) in Section 210 of its Examiner's Handbook. (The OCC Examiner's Handbook can be found at *http://www.occ.gov/static/publications/handbook/floorplan1.pdf*.)

Lenders participating in the pilot initiative must have trained and/or experienced personnel who are responsible for making, servicing and liquidating floor plan lines of credit.

Application Forms, Authorization and Reporting Requirements

Each lender participating in the DFP Pilot must submit its first application under the pilot following Standard 7(a) procedures to the LGPC. SBA will begin accepting applications under the DFP Pilot on February 9, 2011.

After the initial application under the DFP Pilot is approved by the LGPC, a lender with delegated authority may submit subsequent applications for DFP

lines of credit using its delegated authority. After OCRM has approved the lender's policies and procedures governing floor plan financing, non-delegated lenders may submit subsequent applications for DFP lines of credit to the LGPC. SBA will provide instructions for lenders on how to complete existing SBA application forms to include floor plan lines of credit in the DFP Procedural Guide.

SBA will incorporate into the Standard 7(a) Authorization Boilerplate applicable provisions related to floor plan financing. Lenders with delegated authority may use the Standard 7(a) Authorization Boilerplate or the Authorization for SBA Express and Patriot Express loans. If the delegated lender uses the Authorization for SBA Express and Patriot Express loans, the lender is responsible for ensuring all applicable provisions related to floor plan financing are included in the Authorization.

In addition to SBA's servicing and liquidation requirements set forth in 13 CFR 120.535 and 120.536 and SOPs 50 50 and 50 51, lenders will be required to service any floor plan line of credit guaranteed by SBA with the requirement that as any item of inventory acquired with the line is sold the proceeds from the sale must be submitted to the lender to reduce the balance on the line pursuant to the sold inventory item. (SOPs 50 50 and 50 51 can be found at *http://www.sba.gov/about-sba-services/7481*.)

In addition to their 1502 reporting on all SBA-guaranteed loans, lenders will be required to report quarterly on disbursement and collection activity on DFP lines of credit using SBA Form 1502R. (SBA Form 1502R can be found at *http://archive.sba.gov/idc/groups/public/documents/sba_homepage/lender_creditresol_form1502.pdf*.) OCRM will review these reports as part of its regular oversight of lenders participating in the DFP Pilot.

Guaranty Purchase

Under the DFP Pilot, SBA will allow the lender to make demand on SBA to honor its guaranty if the borrower is in default on any financial covenant for more than 30 calendar days and the default has not been cured. Also, under the DFP Pilot, if a lender discovers that the borrower is in a sold out of trust (SOT) situation, the lender may request that SBA honor its guaranty 30 calendar days after discovery of an SOT situation that has not been cured during the 30 day period. In addition, if a lender discovers an adverse change in the financial condition, organization, management, operation, or assets of the Borrower, the lender may request that SBA honor its guaranty 30 calendar days after discovery of the adverse change if it has not been remedied during the 30 day period. While non-compliance with any non-financial loan covenant other than SOT situations could trigger the lender discontinuing disbursements and placing the account into a payment only status, non-compliance with such non-financial covenants will not trigger SBA's obligation to purchase the guaranteed portion of the DFP line of credit.

In order to be consistent with industry practice, liquidation of all business personal property, while preferred, will not be required prior to the lender making demand on SBA to honor its guaranty. Prior to making demand on SBA to honor its guaranty, the titleable inventory securing the DFP lines of credit must be fully accounted for and liquidated, with all net proceeds applied to net balance of the loan in accordance with SOP 50 51 3. If any additional collateral has been taken to secure the DFP line, the lender will not necessarily have to fully liquidate such collateral prior to making demand on SBA, but the lender will be required to obtain all necessary valuations and make a determination as to whether the additional collateral will be liquidated or, with proper justification, abandoned.

In addition to the standard purchase documentation required by SBA, with any guaranty purchase request under the DFP Pilot lenders will be required to provide copies of the floor check reports, the monthly manufacturer's dealership financial statements (for dealers of new inventory) or monthly financial statements (for dealers of used inventory), and the monthly reconciliations of lender's floor plan inspection reports with the dealer's financials for the twelve (12) months prior to default. Delegated lenders also will need to provide a copy of the lender's credit memo with any purchase request. Also, as part of the guaranty purchase review, SBA will review the lender's compliance with its existing policies and procedures governing floor plan financing. In addition to the grounds set forth in 13 CFR 120.524, the lender's failure to comply with its policies and procedures or the terms and procedures set forth in this **Federal Register** notice or the DFP Procedural Guide may result in denial of SBA's guaranty on the loan, in full or in part. Also, if proceeds of a DFP line of credit are used to replace a same institution floor plan line and the borrower defaults on the DFP line within 90 days of initial disbursement, SBA may deny liability on its guaranty of the DFP line.

Lender Oversight

As part of its ongoing lender oversight activities, OCRM will review, evaluate and approve the floor plan lending policies and procedures of each lender participating in the DFP Pilot. The timing of the review of the lender's policies and procedures will be set forth in the DFP Procedural Guide.

Additionally, for lenders participating in the DFP Pilot, OCRM will follow its typical oversight practices utilizing a combination of off-site monitoring and on-site reviews depending on the size and risk assessment of the lender's DFP portfolio. OCRM also will monitor the usage and performance of lender DFP loan portfolios which may include reviews of lender loan files and reports provided to SBA by the lender on its dealer floor plan activities to monitor and assess how lenders are managing their DFP portfolios.

Regulatory Waivers

Pursuant to the authority provided to SBA under 13 CFR 120.3 to suspend, waive or modify certain regulations in establishing and testing pilot loan initiatives for a limited period of time, SBA will waive or modify, as appropriate, the following regulations, which otherwise apply to 7(a) loans, for the DFP Pilot only: (1) 13 CFR 120.221(b), which limits extraordinary servicing fees to 2% of the outstanding balance on an annual basis, is being waived so lenders can charge more than 2% on loans approved under this pilot initiative as long as the fees are not higher than those charged on the lender's similarly-sized, non-SBA guaranteed floor plan lines of credit and as long as the fees are reasonable and prudent based on the level of extraordinary effort required to adequately service the floor plan line; (2) 13 CFR part 120, Subpart F—Secondary Market, is being waived because loans approved under the DFP Pilot cannot be sold on the secondary market; (3) 13 CFR 120.520(a) is being waived to allow lenders to make demand on SBA to honor its guaranty on a DFP line of credit if the borrower is in default on any financial covenant for more than 30 calendar days and the default has not been cured, if a borrower is in an SOT situation which has not been cured for more than 30 calendar days after lender discovers it, and if a borrower experiences an adverse change in its financial condition, organization, management, operation, or assets which has not been remedied for more than 30 calendar days after lender discovers it; and (4) 13 CFR 120.524, which describes when SBA is released from

liability on its guaranty, is being modified because, in addition to the grounds stated in this regulation, the lender's failure to comply with its policies and procedures governing floor plan financing or the terms and procedures set forth in this **Federal Register** notice or the DFP Procedural Guide may result in denial of SBA's guaranty on the loan, in full or in part. In addition, if the proceeds of the DFP line of credit are used to replace a same institution floor plan line and the borrower defaults on the DFP line of credit within 90 days of initial disbursement, SBA may deny liability on its guaranty of the DFP line. The regulation at 13 CFR 120.520(a) is also being waived to allow lenders to make demand on SBA to honor its guaranty in the above situations without being required to liquidate all business personal property securing the line of credit first.

The statutory language creating this DFP Pilot overrides the regulatory prohibition against floor plan financing or other revolving line credit (except under 120.390) found in 13 CFR 120.130(c).

All other provisions of the Small Business Act applicable to the 7(a) loan program apply to loans made under the DFP Pilot. Unless waived or modified by this Notice, all the regulations applicable to the 7(a) loan program apply to loans made under the DFP Pilot. All standard operating procedures applicable to the 7(a) loan program that are not superseded by any provision of this Notice or the DFP Procedural Guide apply to loans made under this pilot.

Lenders must use prudent lending practices in the making, servicing and liquidating of SBA-guaranteed floor plan lines of credit and must comply with all SBA Loan Program Requirements that are not superseded by any provisions of this Notice or the DFP Procedural Guide.

SBA will provide more detailed guidance in the form of a procedural guide which will be available on SBA's Web site, *http://www.sba.gov.* SBA may also provide additional guidance, if needed, through SBA notices, which will also be published on SBA's Web site, *http://www.sba.gov.*

Questions on the DFP Pilot may be directed to the Lender Relations Specialist in the local SBA district office. The local SBA district office may be found at *http://www.sba.gov/localresources/index.html.*

Authority: 15 U.S.C. 636(a)(34) and 13 CFR 120.3.

Dated: February 3, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–2836 Filed 2–8–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0113; Directorate Identifier 2008–NE–25–AD; Amendment 39–16602; AD 2011–04–02]

RIN 2120–AA64

Airworthiness Directives; Hamilton Sundstrand Propellers Model 247F Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires removing affected propeller blades from service. This AD was prompted by reports of blades with corrosion pits in the tulip area of the blades. We are issuing this AD to prevent cracks from developing in the tulip area of the blade, which could result in separation of the blade and possible loss of airplane control.

DATES: This AD is effective March 16, 2011.

ADDRESSES:

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 (phone: 800–647–5527) is 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: Michael Schwetz, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7761; fax (781) 238–7170; e-mail: *michael.schwetz@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That SNPRM published in the **Federal Register** on October 8, 2010 (75 FR 62333). That SNPRM proposed to require removing affected propeller blades from service.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the SNPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed except for minor changes to the compliance date for certain serial number (S/N) propeller blades. The SNPRM proposed to require removing propeller blades part number (P/N) 817370–1, S/Ns FR2449 to FR2958 inclusive, FR20010710 to FR20010722 inclusive, and FR20010723RT to FR20020127RT inclusive, before December 31, 2010. We determined that those S/N propeller blades should be removed within the same compliance time as propeller blades P/N 817370–1, S/Ns FR2018, FR2103, FR2108, FR2109, FR2111, FR2123, FR2183, FR2187, FR2262, FR2276 through FR2279 inclusive, and FR2398. We have determined that these minor changes:

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

Costs of Compliance

We estimate that this AD will affect 10 propellers installed on airplanes of U.S. registry. We also estimate that it will take about 16 work-hours per propeller to perform the required actions, and that the average labor rate is $85 per work-hour. Required parts will cost about $50 per propeller. Based on these figures, we estimate the total cost of this AD to U.S. operators to be $14,100.

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),

(3) Will not affect intrastate aviation in Alaska, and

(4) 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.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2011–04–02 Hamilton Sundstrand Corporation: Amendment 39–16602; Docket No. FAA–2009–0113; Directorate Identifier 2008–NE–25–AD.

Effective Date

(a) This AD is effective March 16, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Hamilton Sundstrand model 247F series propellers with blades part number (P/N) 817370–1, serial numbers (S/Ns) FR2018, FR2103, FR2108, FR2109, FR2111, FR2123, FR2183, FR2187, FR2262, FR2276 through FR2279 inclusive, FR 2398, FR2449 to FR2958 inclusive, FR20010710 to FR20010722 inclusive, and FR20010723RT to FR20020127RT inclusive, installed. These propellers are installed on, but not limited to, ATR–GIE Avions de Transport Regional ATR72–210 and ATR72–210E airplanes.

Unsafe Condition

(d) This AD results from reports of blades with corrosion pits in the tulip area of the blades. We are issuing this AD to prevent cracks from developing in the tulip area of the blade, which could result in separation of the blade and possible loss of airplane control.

Compliance

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

Removing Blades P/N 817370–1

(f) Remove from service, blades P/N 817370–1, S/Ns FR2018, FR2103, FR2108, FR2109, FR2111, FR2123, FR2183, FR2187, FR2262, FR2276 through FR2279, FR2398, FR2449 to FR2958 inclusive, FR20010710 to FR20010722 inclusive, and FR20010723RT to FR20020127RT inclusive, within 30 days after the effective date of this AD.

Alternative Methods of Compliance

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

Related Information

(h) For more information about this AD, contact Michael Schwetz, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7761; fax (781) 238–7170; e-mail: *michael.schwetz@faa.gov*.

Issued in Burlington, Massachusetts, on January 31, 2011.

Peter A. White,

Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–2758 Filed 2–8–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 748

[Docket No. 100826397–1059–02]

RIN 0694–AE98

Simplified Network Application Processing System, On-line Registration and Account Maintenance

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) amends the Export Administration Regulations to implement a mandatory on-line registration process for obtaining an account to submit license applications and similar documents electronically through SNAP–R. This final rule sets forth the information that parties registering on-line are required to provide to BIS and the duties that registered parties have with respect to keeping information in their accounts current. This rulemaking is consistent with the goals and principles of Executive Orders 13563 and 12866, which are to enhance effectiveness and efficiency and to promote transparency and openness in government, and the Presidential Memorandum on Regulatory Flexibility, Small Business, and Job Creation (January 18, 2011).

DATES: *Effective date:* March 11, 2011.

Compliance dates: Beginning on April 11, 2011, all new SNAP–R registrations must be made in accordance with this rule.

Beginning on June 10, 2011 accounts of filing entities that do not have account administrators will not be accessible until an existing individual user for that entity logs-on to SNAP–R and registers as account administrator.

Beginning on September 8, 2011 the accounts of filing entities that do not have an account administrator will become inactive. In order to reactivate the account, filing entities will have to complete the entire registration process that applies to new entities.

FOR FURTHER INFORMATION CONTACT: Thomas W. Andrukonis, Director, Export Management and Compliance Division, Office of Exporter Services, telephone (202) 482–6393, e-mail *tandruko@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Immediate Voluntary Implementation of On-Line Registration

Beginning on February 9, 2011, BIS will accept on-line SNAP–R

registrations from parties who wish to submit them.

Background

BIS administers an export licensing program pursuant to the Export Administration Regulations (EAR). In connection with this program, BIS requires most parties to submit license applications, classification requests, encryption registrations, License Exception AGR notifications and foreign national review requests in connection with the License Exceptions APP and CIV (herein "work items") electronically via BIS's Simplified Network Application Processing (SNAP–R) system. To use SNAP–R, BIS required filing entities to register for an account through a paper and facsimile registration process.

On November 23, 2010, BIS published a proposed rule with request for comments entitled "Simplified Network Application Processing System, On-line Registration and Account Maintenance" (75 FR 71376) to amend the EAR to replace the paper and facsimile process for registering to use SNAP–R with an on-line account registration and account maintenance process, and to make modifications to user accounts in SNAP–R. In developing this rule, BIS considered ways to reduce regulatory burden and provide flexibility, an approach consistent with Executive Orders 13563 and 12866 and Presidential Memorandum on Regulatory Flexibility, Small Business, and Job Creation (January 18, 2011). This rule will eliminate the current and archaic practice of using a paper and facsimile based process for obtaining authorization to submit work items electronically. It will also reduce the time between initial submission of registration information and receipt of authorization to use the electronic filing system. Finally, the system will allow registered filing entities to add or remove individual users without waiting for approval from BIS.

The final day of the comment period on the proposed rule was January 24, 2011. BIS received nine comments on the proposed rule. Eight of the commenters expressed approval of the proposed changes. One commenter expressed opposition to the proposed changes. Commenters who expressed approval mentioned the following points as benefits of the changes: The process would be faster than paper registration; the time needed to add a new employee to a filing entity's account under the paper registration system caused delays and interruptions in new employee training; and on-line registration would free up government employee time for other tasks. In addition, the fact that the new rule would not require a corporate officer to sign registration-related documents would simplify account maintenance within companies that use the system.

The reasoning of the commenters who favored the change generally aligns with BIS's purposes in proposing this rule, *i.e.* reduced time and effort to register for an on-line submission account, reduced time and effort to maintain that account, faster accommodation of personnel changes in companies that use the system, and more effective use of existing resources in both the public and private sector.

In addition to expressing general support for the rule, three of the eight commenters who favored the rule offered suggestions related to implementation of the rule or improvements to the SNAP–R system. A summary of each suggestion and BIS's response is below.

One commenter who favored the changes proposed by the rule noted that in some instances paper might be a submitter's only option and asked whether there would be a manual process in the future.

BIS believes that its existing systems are adequate to accommodate situations in which submitting paper is the only option. This rule addresses the process of registering with BIS to submit license applications and other documents to BIS on-line. This rule does not change the text of § 748.1(d)(1) of the EAR (15 CFR 748.1(d)(1)), which provides conditions under which parties may make those submissions to BIS by paper. Those circumstances include low volume (no more than one submission in the past twelve months) and lack of access to the Internet. None of those circumstances requires prior registration with BIS. In practice, there are very few submissions made via the paper submissions process in a given year (ten paper submissions out of 26,803 total submissions in calendar year 2010). BIS believes that because the agency has procedures in place for accepting paper submissions, which do not require prior registration, a separate paper-based registration process for on-line submissions via SNAP–R is not needed. Those parties for whom paper is truly the only option need not register, on-line or otherwise.

One commenter, who favored the changes in the proposed rule, asked that BIS clarify whether the system would function automatically, that is, once an individual end-user designates himself or herself on-line as an account administrator, would the system immediately accept the action and generate a response or would BIS review the information and respond later. If the response would be later, this commenter asked that BIS state the estimated time-frame for a response.

When an individual user registers as the account administrator for a filing entity, all individual users for that filing entity will be notified by an automatically generated e-mail at the e-mail address currently recorded for those individual users in the SNAP–R system. All but two of the account administrator's capabilities will be immediately available to the new account administrator. There will be a two week delay before the new account administrator will be able to reset individual user passwords or change individual user e-mail addresses. BIS intends that the combination of e-mail notification to all individual users of the filing entity and the two week delay in implementing these two functions will provide a safeguard to prevent individual users who are not authorized by the filing entity to be the account administrator from doing so. During the two week period, the filing entity could contact BIS to notify the agency that the person claiming to be the account administrator is not authorized to do so. If BIS receives no notice during the two week period, the two delayed account administrator functions would become active automatically.

One commenter stated that it supported the changes in the proposed rule but offered one recommendation concerning SNAP–R and one comment concerning the process for making the transition from the paper based registration and account maintenance system to the on-line registration and account maintenance system. This commenter suggested that SNAP–R be further revised to allow first party account administrators to authorize access under a third party filer's company identification number. The commenter noted that such a change would allow greater flexibility to parties who wish to authorize third parties to submit on their behalf and for the first and third parties to collaborate on submissions. The commenter suggested that changes to SNAP–R concerning the relationship between first and third parties would require additional software development but likely could be accomplished without amending the EAR.

The EAR does not designate certain filers as first parties and others as third parties although the paper-based SNAP–R registration procedure does make this distinction. For this reason, BIS concurs that regulatory amendment is not necessarily required to implement

changes to make the SNAP–R system more useful in situations in which an agent submits license applications or other documents on behalf of a principal. However, such changes would require further software development. Moreover, BIS would want to take steps to assure itself that any such changes would be useful to more than one party and that the changes would not undermine the integrity and security of the on-line submission system. Therefore, BIS is making no changes to the proposed rule in response to this comment, but will continue to look for ways to improve SNAP–R irrespective of whether the improvements would require regulatory change.

This commenter also noted that BIS's plan, to inactivate SNAP–R accounts of the filing entities for which no individual user who has logged-in and registered as that entity's company administrator within the first 180 days of the effective date, could cause accounts of infrequent users to be inactivated. The commenter stated that if BIS intends to shut down accounts that have not been updated, it should notify the account holder directly and advise it of the need to take action.

BIS proposed to inactivate those accounts that do not have a registered account administrator beginning on the 181st day after the effective date of the rule for two reasons. First, a large number of SNAP–R accounts have not been used in years and may have been established for companies that no longer export or that no longer exist. BIS needs to make such accounts inactive to promote efficient operation of the SNAP–R system. Second, BIS needs to complete the transition from a paper based registration and account maintenance system to an on-line system within a reasonable and certain period of time. Assuring that all active accounts have account administrators is integral to an effective on-line system. In addition, BIS notes that because the effective date of this rule will be 30 days after publication, the deactivation of accounts will actually take place 211 days after publication of the rule. That said, BIS recognizes that not all parties who need to use the system are frequent users. BIS plans to publicize the transition to the on-line registration system and the deadlines for existing SNAP–R users to designate account administrators through the on-line process through a variety of ways including: Sending e-mail notices to user e-mail addresses that are in the SNAP–R system; sending e-mail notifications to parties who subscribe to BIS's listserv service; Web site postings; and announcements at BIS outreach events. Finally, BIS notes that the only burden to a filing entity for failing to have a registered account administrator by the deadline is that the filing entity will have to complete the registration process on-line as if it were a new user of the system. That registration process will consist of providing basic identifying information and certifying that it understands that it will be submitting documents to the government electronically and agrees to the terms for doing so.

One commenter expressed opposition to the procedures in the proposed rule. That commenter noted that new SNAP users can be added via the existing process and stated that the proposed changes would waste the users' and BIS' time. BIS recognizes that filing entities will need additional time to designate account administrators. However, BIS believes that over time, the time savings of allowing filing entities to manage their own accounts will exceed any time invested in designating account administrators. Those time savings will include elimination of the time spent while requests for changes are sent to BIS and responses are returned to the requester. BIS notes that most commenters recognized the net time savings and favored the proposal.

Accordingly BIS is making no changes to the text of the proposed rule in this final rule.

How the SNAP–R on-line registration process will work.

Organizations or individuals who submit work items are referred to in revised § 748.7 of the EAR as "filing entities." Individuals who act on behalf of filing entities are referred to as "individual users." For each filing entity, at least one individual user must act as an "account administrator." An account administrator is able to submit work items on behalf of his or her filing entity and has additional responsibilities within the on-line registration system.

An account administrator can add and remove individual users to or from the account of his or her filing entity. The account administrator can also designate other individual users who are authorized to act on behalf of the same filing entity as account administrators or can terminate an individual user's account administrator status. The account administrator can deactivate the account of an individual user and reactivate the account of a previously deactivated individual user. The account administrator can update the filing entity's identifying information, such as name and address, and any individual user's identifying information, such as name and telephone number. The account administrator can also reset an individual user's password.

BIS expects under this revised system, account administrators for filing entities will handle routine changes to the filing entity's accounts and BIS personnel will become involved only if necessary to protect a government interest, such as preventing misuse of the SNAP–R system, or if necessary to assist someone attempting to register on-line or administer an account.

Immediate acceptance of on-line registration for parties who wish to use it.

Beginning on February 9, 2011, BIS will accept on-line registrations for both filing entities and account administrators from parties who wish to submit them.

Deadline for new filing entities to use electronic registration.

Beginning on April 11, 2011, the on-line registration process will be mandatory for all new registrants. Until that date, new registrants can register via paper if they wish to do so.

Requirement to designate an account administrator at the time of registration.

A person registering on-line for a filing entity that does not have a SNAP–R account will be required to enter all of the identifying information for the filing entity including a certification that the person is authorized to register the filing entity and to act as account administrator for the filing entity as well as his or her own identifying information. That person will become the initial account administrator for that filing entity.

Deadlines for designating an account administrator if the filing entity is not registered electronically.

Filing entities that are registered to use SNAP–R on the effective date of the final rule and filing entities that elect to use the paper and facsimile based registration process prior to April 11, 2011 will be required to designate an account administrator as described below.

Prior to June 10, 2011, any individual user who is authorized to submit work items on behalf of a filing entity will be able to continue to access SNAP–R, submit new work items and perform any necessary tasks in connection with pending work items. In addition, the first such individual user who designates himself or herself as the account administrator will be required to certify that he or she is authorized to act as account administrator and will become the initial account administrator. BIS will inform via e-mail all other individual users who are

authorized to act for that filing entity of the identity of the newly designated account administrator.

On or after June 10, 2011, but before September 8, 2011, an individual user from a filing entity that does not have at least one account administrator will be able to access the SNAP–R system only: (1) For the purpose of designating himself or herself as account administrator for that filing entity and (2) certifying that he or she is authorized to act as account administrator. As soon as one individual user is designated as the account administrator, that individual user as well as all of the other individual users from that filing entity will regain full SNAP–R access.

Beginning on September 8, 2011, all filing entity accounts for which no account administrator has been designated will become inactive. To use the account for any purpose, an individual will have to log on to the SNAP–R Web site and furnish all of the information that would be required to register as a new filing entity.

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation contains a collection previously approved by OMB under control number 0694–0096. BIS believes that this rule will not materially affect the burden imposed by that collection. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to *jseehra@omb.eop.gov,* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, Room 2705, 14th Street and Pennsylvania Ave., NW., Washington, DC 20230.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities. The basis for that certification was published in the preamble to the proposed rule and is not repeated here. BIS received no comments regarding the certification. As a result, a final regulatory flexibility analysis is not required and one has not been prepared.

List of Subjects in 15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 748—APPLICATIONS (CLASSIFICATION, ADVISORY, AND LICENSE) AND DOCUMENTATION

■ 1. The authority citation for part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

■ 2. Section 748.7 is revised to read as follows:

§ 748.7 Registering for electronic submission of license applications and related documents.

(a) *Scope.* This section describes the procedures for registering to submit electronic documents to BIS. The procedures in this section apply to submission of export and reexport license applications (other than Special Comprehensive Licenses and Special Iraq Reconstruction Licenses), classification requests, encryption registrations, License Exception AGR notifications and foreign national review requests under License Exceptions APP or CIV.

(b) *Registration and use of BIS's Simplified Network Applications System—Redesign (SNAP–R).* Parties wishing to submit electronically must log on to *https://snapr.bis.doc.gov/registration* to register. Upon initial registration, the party (the filing entity) will have to supply the name of the entity that will be submitting documents electronically and its address and the name, telephone number, facsimile number and e-mail address of the person who will act as account administrator. The person will be required to certify that the information so supplied is correct and complete, that the person has authority to register the entity that will be making electronic submissions and that the person has authority to act as an account administrator for that entity.

(c) *Role of account administrator.* The account administrator is able to add and remove individual users to and from the account of the filing entity for which it is the account administrator. The account administrator can also make individual users account administrators and can terminate an individual user's administrator status. The account administrator can deactivate the account of an individual user and reactivate the account of a previously deactivated individual user. The account administrator can update the filing entity's identifying information such as name and address and any individual user's identifying information such as name, telephone number, facsimile number and e-mail address. The account administrator can reset individual users' passwords.

(d) *Role of individual users.* An individual user may submit to BIS export and reexport license applications (other than Special Comprehensive Licenses and Special Iraq Reconstruction Licenses), classification requests, encryption registrations, License Exception AGR notifications and foreign national review requests under License Exceptions APP or CIV.

(e) *Effect of submission to BIS.* BIS may refuse to accept an electronic submission if it has reason to believe that the individual user making the submission lacks authority to do so. However, BIS is not obligated to conduct any checks to determine whether an individual user has the necessary authority and will generally treat users as acting within their authority. Acting through their account administrators, parties have the ability to remove an individual user when that individual user is no longer authorized to make submissions on behalf of that party to BIS and should do so promptly.

(f) *Requirement to keep identifying information accurate and current.*

(1) *Filing entities.* Filing entities must, through their account administrators, update their identifying information such as name, address and telephone number in their SNAP–R account as necessary to keep that information accurate and current.

(2) *Individual users.* Individual users must, through their account administrators, update their identifying information such as name, telephone number, facsimile number and e-mail address in their SNAP–R accounts as necessary to keep that information accurate and current.

Dated: February 3, 2011.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2011–2760 Filed 2–8–11; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. FDA–2009–F–0525]

Food Additives Permitted in Feed and Drinking Water of Animals; Formic Acid

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for food additives permitted in feed and drinking water of animals to provide for the safe use of formic acid as an acidifying agent in swine feed. This action is in response to a food additive petition filed by Kemira Oyj of Finland.

DATES: This rule is effective February 9, 2011. Submit either electronic or written objections and requests for a hearing by March 11, 2011. See section V of this document for information on the filing of objections.

ADDRESSES: You may submit either electronic or written objections and a request for a hearing, identified by Docket No. FDA–2009–F–0525, by any of the following methods:

Electronic Submissions

Submit electronic objections in the following ways:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Written Submissions

Submit written objections in the following ways:

Fax: 301–827–6870.

Mail/Hand delivery/Courier (For paper, disk, or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2009–F–0525 for this rulemaking. All objections received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting objections, see the "Objections" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or objections received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Isabel W. Pocurull, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6853, e-mail: *isabel.pocurull@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of December 7, 2009 (74 FR 64091), FDA announced that a food additive petition (animal use) (FAP 2262) had been filed by Kemira Oyj, Porkkalantatu 3, P.O. Box 330, 001000 Helsinki, Finland. The petition proposed to amend the food additive regulations to provide for the safe use of formic acid as an acidifying agent at levels not to exceed 1.2 percent in swine feed. The notice of filing provided for a 30-day comment period on the petitioner's environmental assessment. One comment was received that was not substantive.

II. Conclusion

FDA concludes that the data establish the safety and utility of formic acid for use as proposed with modification and that the food additive regulations should be amended as set forth in this document.

III. Public Disclosure

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Veterinary Medicine by appointment with the information contact person (*see* **FOR FURTHER INFORMATION CONTACT**). As provided in § 571.1(h), the Agency will delete from the documents materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The Agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Objections and Hearing Requests

Any person who will be adversely affected by this regulation may file with the Division of Dockets Management (see **ADDRESSES**) either electronic or written objections (see **DATES**). Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provision of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. It is only necessary to send one set of documents. It is no longer necessary to send three copies of all documents. Identify documents with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 573 is amended as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

■ 1. The authority citation for 21 CFR part 573 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

■ 2. Revise § 573.480 to read as follows:

§ 573.480 Formic acid.

The food additive, formic acid, may be safely used in accordance with the following conditions:

(a) The additive is used as a preservative in hay crop silage in an amount not to exceed 2.25 percent of

the silage on a dry weight basis or 0.45 percent when direct cut, as follows:

(1) The top foot of silage stored should not contain formic acid and

(2) Silage should not be fed to livestock within 4 weeks of treatment.

(b) The additive is used or intended for use as a feed acidifying agent, to lower the pH, in complete swine feeds at levels not to exceed 1.2 percent of the complete feed.

(1) The additive consists of not less than 85 percent formic acid (CAS 64–18–6).

(2) The additive meets the following specifications:

(i) Free methyl alcohol not to exceed 1,000 parts per million (ppm);

(ii) Methyl formate not to exceed 1,000 ppm; and

(iii) Moisture not to exceed 15 percent.

(3) To assure safe use of the additive, in addition to the other information required by the Federal Food, Drug and Cosmetic Act, the label and labeling shall contain:

(i) The name of the additive.

(ii) Adequate directions for use including a statement that formic acid must be uniformly applied and thoroughly mixed into complete swine feeds and that the complete swine feeds so treated shall be labeled as containing formic acid.

(4) To assure safe use of the additive, in addition to the other information required by the Federal Food, Drug, and Cosmetic Act and paragraph (b)(3) of this section, the label and labeling shall contain:

(i) Appropriate warnings and safety precautions concerning formic acid (85 percent formic acid).

(ii) Statements identifying formic acid (85 percent formic acid) as a corrosive and possible severe irritant.

(iii) Information about emergency aid in case of accidental exposure.

(A) Statements reflecting requirements of applicable sections of the Superfund Amendments and Reauthorization Act (SARA), and the Occupational Safety and Health Administration's (OSHA) human safety guidance regulations.

(B) Contact address and telephone number for reporting adverse reactions or to request a copy of the Material Safety Data Sheet (MSDS).

Dated: February 3, 2011.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2011–2789 Filed 2–8–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100, 117, 147, and 165

[USCG–2011–0399]

Quarterly Listings; Safety Zones, Security Zones, Special Local Regulations, Drawbridge Operation Regulations and Regulated Navigation Areas

AGENCY: Coast Guard, DHS.

ACTION: Notice of expired temporary rules issued.

SUMMARY: This document provides required notice of substantive rules issued by the Coast Guard and temporarily effective between February 2008 and October 2010, that expired before they could be published in the **Federal Register**. This document lists temporary safety zones, security zones, special local regulations, drawbridge operation regulations and regulated navigation areas, all of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This document lists temporary Coast Guard rules between February 15, 2008 and October 10, 2010 that became effective and were terminated before they could be published in the Federal Register.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Documents indicated in this notice will be available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building ground floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions on this notice contact Yeoman First Class Denise Johnson, Office of Regulations and Administrative Law, telephone (202) 372–3862. For questions on viewing, or on submitting material to the docket, contact Ms. Angie Ames, Docket Operations, telephone 202–366–5115.

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. *Safety zones* may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. *Security zones* limit access to prevent injury or damage to vessels, ports, or waterfront facilities and may also describe a zone around a vessel in motion. *Special local regulations* are issued to enhance the safety of participants and spectators at regattas and other marine events. *Drawbridge operation regulations* authorize changes to drawbridge schedules to accommodate bridge repairs, seasonal vessel traffic, and local public events.

Regulated Navigation Areas are water areas within a defined boundary for which regulations for vessels navigating within the area have been established by the regional Coast Guard District Commander. Timely publication of these rules in the **Federal Register** is often precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Because **Federal Register** publication was not possible before the beginning of the effective period, mariners were personally notified of the contents of these safety zones, security zones, special local regulations, regulated navigation areas or drawbridge operation regulations by Coast Guard officials' on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary safety zones, security zones, special local regulations, regulated navigation areas and drawbridge operation regulations. Permanent rules are not included in this list because they are published in their entirety in the **Federal Register.** Temporary rules are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The temporary rules listed in this notice have been exempted from review under Executive Order 12666, Regulatory Planning and Review, because of their emergency nature, or limited scope and temporary effectiveness.

The following unpublished rules were placed in effect temporarily during the period between February 2008 and October 2010 unless otherwise indicated.

Dated: February 2, 2011.

K.A. Sinniger,

Chief, Office of Regulations and Administrative Law.

4TH QUARTER 2009 LISTING

Docket No.	Location	Type	Effective date
CGD13–01–004	Lake Washington, WA	Special Local Regulation and Safety Zones (Part 100 and 165)	7/30/2009
CGD13–04–019	Puget Sound, WA	Security Zones (Part 165)	3/14/2010
CGD13–04–019	Puget Sound, WA	Security Zones (Part 165)	5/6/2009
CGD13–04–019	Puget Sound, WA	Security Zones (Part 165)	6/29/2009
CGD13–04–019	Puget Sound, WA	Security Zones (Part 165)	10/22/2009
CGD13–05–004	Elliott Bay	Special Local Regulation and Safety Zones (Part 100.1306)	5/9/2009
CGD13–08–018	Umpqua River, OR	Safety Zones (Part 165)	2/15/2008
USCG–2008–0142	Tillamook Bay, OR	Safety Zones (Part 165)	11/28/2008
USCG–2008–0143	Tillamook Bay, OR	Safety Zones (Part 165)	11/29/2008
USCG–2008–0314	Detroit, MI	Safety Zones (Part 165)	5/29/2008
USCG–2008–0534	Point Lookout, NY	Safety Zones (Part 165)	6/28/2008
USCG–2008–0538	Seattle, WA	Security Zones (Part 165)	7/29/2008
USCG–2008–0646	Dauphin Island Bridge	Safety Zones (Part 165)	11/9/2009
USCG–2008–0700	Portland, OR	Safety Zones (Part 165)	7/17/2008
USCG–2008–0798	San Diego, CA	Safety Zones (Part 165)	9/19/2008
USCG–2008–0814	San Diego, CA	Safety Zones (Part 165)	9/6/2008
USCG–2008–0827	Ocean City, NJ	Safety Zones (Part 165)	9/14/2009
USCG–2008–0874	Cape Charles, VA	Safety Zones (Part 165)	9/27/2008
USCG–2008–0925	Lake Charles, LA	Safety Zones (Part 165)	8/29/2008
USCG–2008–0943	San Francisco, CA	Safety Zones (Part 165)	9/25/2008
USCG–2008–0944	Cathlamet, WA	Safety Zones (Part 165)	9/6/2008
USCG–2008–0948	Shark River Channel, NJ	Safety Zones (Part 165)	10/3/2008
USCG–2008–0981	Westport, WA	Safety Zones (Part 165)	9/15/2008
USCG–2008–0983	Harris County, TX	Safety Zones (Part 165)	9/17/2008
USCG–2008–0993	Biloxi, MS	Safety Zones (Part 165)	11/9/2009
USCG–2008–0997	New York, NY	Security Zones (Part 165)	9/23/2008
USCG–2008–0998	Puerto Rico	Safety Zones (Part 165)	12/7/2008
USCG–2008–1063	Lake Havasu, AZ	Safety Zones (Part 165)	2/21/2009
USCG–2008–1068	San Francisco Bay, CA	Safety Zones (Part 165)	10/22/2008
USCG–2008–1071	Lake Charles, LA	Safety Zones (Part 165)	9/9/2008
USCG–2008–1073	San Diego, CA	Safety Zones (Part 165)	11/17/2008
USCG–2008–1074	San Diego, CA	Safety Zones (Part 165)	11/12/2008
USCG–2008–1087	Charlotte Amalie, USVI	Safety Zones (Part 165)	12/31/2008
USCG–2008–1093	Miami, FL	Safety Zones (Part 165)	11/21/2008
USCG–2008–1099	Louisiana	Safety Zones (Part 165)	11/5/2008
USCG–2008–1102	San Diego, CA	Safety Zones (Part 165)	12/21/2008
USCG–2008–1113	Chicago, IL	Safety Zones (Part 165)	11/4/2008
USCG–2008–1114	San Diego, CA	Safety Zones (Part 165)	12/11/2008
USCG–2008–1116	San Diego, CA	Safety Zones (Part 165)	12/13/2008
USCG–2008–1121	Miami, FL	Safety Zones (Part 165)	11/18/2008
USCG–2008–1131	Vero Beach, FL	Safety Zones (Part 165)	12/13/2008
USCG–2008–1134	Louisiana	Safety Zones (Part 165)	11/18/2008
USCG–2008–1146	Sausalito, CA	Safety Zones (Part 165)	12/13/2008
USCG–2008–1147	Cameron, LA	Safety Zones (Part 165)	11/19/2008
USCG–2008–1152	San Francisco, CA	Safety Zones (Part 165)	12/30/2008
USCG–2008–1154	Milwaukee, WI	Safety Zones (Part 165)	11/22/2008
USCG–2008–1156	Lake Havasu Landing, CA	Safety Zones (Part 165)	2/14/2009
USCG–2008–1162	San Diego, CA	Safety Zones (Part 165)	12/31/2008
USCG–2008–1164	Baltimore, MD	Safety Zones (Part 165)	12/2/2008
USCG–2008–1171	Sacramento, CA	Safety Zones (Part 165)	1/1/2009
USCG–2008–1178	Hampton, NH	Drawbridge Operations Regulation (Part 117)	12/16/2008
USCG–2008–1189	M/V AL JABIRAH	Security Zones (Part 165)	12/10/2008
USCG–2008–1200	Washington Coast	Safety Zones (Part 165)	12/12/2008
USCG–2008–1202	Oregon Coast	Safety Zones (Part 165)	12/25/2008
USCG–2008–1213	San Francisco Bay, CA	Drawbridge Operations Regulation (Part 117)	1/31/2009
USCG–2008–1214	San Diego, CA	Safety Zones (Part 165)	1/10/2009
USCG–2008–1228	Chicago, IL	Safety Zones (Part 165)	12/27/2008
USCG–2008–1242	San Francisco Bay, CA	Security Zones (Part 165)	12/29/2008
USCG–2008–1246	Hood River, OR	Safety Zones (Part 165)	7/9/2009
USCG–2008–1246	Hood River, OR	Safety Zones (Part 165)	7/10/2009
USCG–2008–1248	Sault Ste. Marie, MI	Safety Zones (Part 165)	12/31/2008
USCG–2008–1251	Port Huron, MI	Safety Zones (Part 165)	1/1/2009
USCG–2008–1265	Baltimore, MD	Security Zones (Part 165)	1/17/2009
USCG–2008–1267	Wilmington, DE	Security Zones (Part 165)	1/17/2009
USCG–2008–1270	Ketchikan, AK	Safety Zones (Part 165)	1/7/2009
USCG–2008–1272	Massachusetts Bay, MA	Safety Zones (Part 165)	1/8/2009
USCG–2009–0011	Anne Arundel County, MD	Safety Zones (Part 165)	1/17/2009

4TH QUARTER 2009 LISTING—Continued

Docket No.	Location	Type	Effective date
USCG–2009–0013	Lake Washington, WA	Safety Zones (Part 165)	8/8/2009
USCG–2009–0014	Steilacoom, WA	Safety Zones (Part 165)	10/9/2010
USCG–2009–0015	Washington Coastal Bar, WA	Safety Zones (Part 165)	11/6/2009
USCG–2009–0017	Long Beach, CA	Drawbridge Operations Regulation (Part 117)	1/27/2009
USCG–2009–0018	Hampton, VA	Safety Zones (Part 165)	4/24/2009
USCG–2009–0020	San Francisco	Safety Zones (Part 165)	2/2/2009
USCG–2009–0029	San Diego, CA	Safety Zones (Part 165)	2/2/2009
USCG–2009–0030	Charles County, MD	Safety Zones (Part 165)	4/1/2009
USCG–2009–0031	Tillamook Bay, OR	Safety Zones (Part 165)	11/5/2009
USCG–2009–0032	Washington Coast, WA	Safety Zones (Part 165)	11/6/2009
USCG–2009–0033	Coquille River Bar, OR	Safety Zones (Part 165)	11/6/2009
USCG–2009–0034	Washington Coastal Bar, WA	Safety Zones (Part 165)	11/7/2009
USCG–2009–0035	Seattle, WA	Safety Zones (Part 165)	11/10/2009
USCG–2009–0036	Washington Coastal Bar, WA	Safety Zones (Part 165)	11/18/2009
USCG–2009–0037	Tillamook Bay, OR	Safety Zones (Part 165)	11/16/2009
USCG–2009–0038	Columbia River Bar, OR	Safety Zones (Part 165)	11/16/2009
USCG–2009–0039	Oregon Coast, OR	Safety Zones (Part 165)	11/18/2009
USCG–2009–0040	Seattle, WA	Safety Zones (Part 165)	11/22/2009
USCG–2009–0041	San Diego, CA	Security Zones (Part 165)	1/27/2009
USCG–2009–0042	Guam	Safety Zones (Part 165)	1/22/2009
USCG–2009–0043	Guam	Safety Zones (Part 165)	1/27/2009
USCG–2009–0048	Williamsburg, VA	Security Zones (Part 165)	2/5/2009
USCG–2009–0049	San Diego, CA	Safety Zones (Part 165)	3/8/2009
USCG–2009–0052	Miami, FL	Safety Zones (Part 165)	2/4/2009
USCG–2009–0055	Savannah, GA	Safety Zones (Part 165)	2/23/2009
USCG–2009–0056	Lower Mississippi River	Safety Zones (Part 165)	1/28/2009
USCG–2009–0057	Lower Mississippi River	Safety Zones (Part 165)	12/14/2008
USCG–2009–0061	Birmingham, MO	Safety Zones (Part 165)	2/3/2009
USCG–2009–0062	Savannah, GA	Safety Zones (Part 165)	2/6/2009
USCG–2009–0067	Lower Mississippi River	Safety Zones (Part 165)	2/4/2009
USCG–2009–0068	New London, CT	Drawbridge Operations Regulation (Part 117)	3/3/2009
USCG–2009–0070	Sabine, TX	Security Zones (Part 165)	1/31/2010
USCG–2009–0072	West Palm, FL	Safety Zones (Part 165)	5/3/2009
USCG–2009–0079	Chicago, IL	Safety Zones (Part 165)	2/8/2009
USCG–2009–0085	Chicago, IL	Security Zones (Part 165)	2/13/2009
USCG–2009–0087	Potomac River, VA	Security Zones (Part 165)	2/23/2009
USCG–2009–0088	Honolulu, HI	Safety Zones (Part 165)	3/6/2009
USCG–2009–0095	White River	Safety Zones (Part 165)	12/22/2008
USCG–2009–0096	Greenville, MS	Safety Zones (Part 165)	1/5/2009
USCG–2009–0105	Guam	Safety Zones (Part 165)	3/17/2009
USCG–2009–0109	San Diego, CA	Safety Zones (Part 165)	3/6/2009
USCG–2009–0111	Charleston, WV	Safety Zones (Part 165)	4/25/2009
USCG–2009–0112	Lake Havasu, AZ	Safety Zones (Part 165)	4/25/2009
USCG–2009–0113	Louisiana	Safety Zones (Part 165)	3/9/2009
USCG–2009–0129	Port Neches, TX	Safety Zones (Part 165)	5/1/2009
USCG–2009–0131	Sacramento, CA	Drawbridge Operations Regulation (Part 117)	3/15/2009
USCG–2009–0133	Natchez, MS	Safety Zones (Part 165)	2/27/2009
USCG–2009–0134	Jonesville, LA	Safety Zones (Part 165)	7/15/2009
USCG–2009–0135	Ouachita-Black River	Safety Zones (Part 165)	3/9/2009
USCG–2009–0136	Bayou Cassotte, MS	Safety Zones (Part 165)	4/13/2009
USCG–2009–0137	Biloxi, MS	Safety Zones (Part 165)	4/4/2009
USCG–2009–0138	Biloxi, MS	Safety Zones (Part 165)	4/2/2009
USCG–2009–0140	San Francisco, CA	Safety Zones (Part 165)	3/5/2009
USCG–2009–0142	Miami, FL	Security Zones (Part 165)	3/6/2009
USCG–2009–0148	Vicksburg, MS	Safety Zones (Part 165)	4/18/2009
USCG–2009–0151	Old Lyme, CT	Drawbridge Operations Regulation (Part 117)	3/22/2009
USCG–2009–0153	West Palm, FL	Security Zones (Part 165)	3/8/2009
USCG–2009–0159	American Samoa	Safety Zones (Part 165)	5/1/2009
USCG–2009–0161	San Francisco, CA	Safety Zones (Part 165)	4/8/2009
USCG–2009–0163	Nassau County, NY	Drawbridge Operations Regulation (Part 117)	5/17/2009
USCG–2009–0164	Louisville, KY	Safety Zones (Part 165)	4/17/2009
USCG–2009–0165	Lake Cumberland, KY	Safety Zones (Part 165)	5/16/2009
USCG–2009–0167	Louisville, KY	Safety Zones (Part 165)	4/18/2009
USCG–2009–0170	Charleston, SC	Safety Zones (Parts 147 and 165)	6/29/2009
USCG–2009–0171	Portsmouth, VA	Safety Zones (Part 165)	8/13/2009
USCG–2009–0172	Lower Chesapeake Bay	Safety Zones (Part 165)	11/12/2009
USCG–2009–0173	Port Zone, MD	Safety Zones (Part 165)	11/12/2009
USCG–2009–0177	West Memphis, AR	Safety Zones (Part 165)	3/12/2009
USCG–2009–0189	Norfolk, VA	Safety Zones (Part 165)	5/16/2009
USCG–2009–0190	Lower Mississippi River	Safety Zones (Part 165)	11/11/2008
USCG–2009–0196	Pensacola, Beach, FL	Safety Zones (Part 165)	7/8/2009
USCG–2009–0197	Sabine, TX	Security Zones (Part 165)	3/25/2009

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Docket No.	Location	Type	Effective date
USCG–2009–0200	Redwood, MS	Safety Zones (Part 165)	5/19/2009
USCG–2009–0200	Redwood, MS	Safety Zones (Part 165)	6/30/2009
USCG–2009–0207	Destin, FL	Safety Zones (Part 165)	3/26/2009
USCG–2009–0208	Panama City, FL	Safety Zones (Part 165)	3/28/2009
USCG–2009–0209	Biloxi, MS	Safety Zones (Part 165)	3/29/2009
USCG–2009–0212	San Francisco, CA	Safety Zones (Part 165)	3/24/2009
USCG–2009–0213	Biloxi, MS	Safety Zones (Part 165)	3/20/2009
USCG–2009–0214	Cameron, LA	Security Zones (Part 165)	3/24/2009
USCG–2009–0215	San Diego, CA	Safety Zones (Part 165)	3/31/2009
USCG–2009–0216	St Joseph, MI	Safety Zones (Part 165)	3/17/2009
USCG–2009–0220	Washington, DC	Safety Zones (Part 165)	3/25/2009
USCG–2009–0221	Sausalito, CA	Safety Zones (Part 165)	3/28/2009
USCG–2009–0224	Pomeroy, OH	Safety Zones (Part 165)	4/21/2009
USCG–2009–0226	Charlotte Amalie, USVI	Safety Zones (Part 165)	4/26/2009
USCG–2009–0227	Memphis, TN	Safety Zones (Part 100)	7/31/2009
USCG–2009–0236	San Francisco, CA	Special Local Regulation (Part 100)	4/26/2009
USCG–2009–0237	San Francisco, CA	Special Local Regulation (Part 100)	4/26/2009
USCG–2009–0238	Amesbury, MA	Safety Zones (Part 165)	3/31/2009
USCG–2009–0241	San Diego, CA	Safety Zones (Part 165)	4/25/2009
USCG–2009–0243	William Sound, AK	Safety Zones (Part 165)	6/3/2009
USCG–2009–0245	Dutch Harbor, AK	Safety Zones (Part 165)	1/25/2010
USCG–2009–0248	Miami Beach, FL	Safety Zones (Part 165)	4/6/2009
USCG–2009–0253	Lake Washington, WA	Safety Zones (Part 165)	4/14/2009
USCG–2009–0254	Red River,	Safety Zones (Part 165)	4/2/2009
USCG–2009–0256	Puget Sound, WA	Security Zones (Part 165)	4/12/2009
USCG–2009–0258	Stuart, FL	Safety Zones (Part 165)	4/25/2009
USCG–2009–0261	Offshore Sunny Isles, FL	Safety Zones (Part 165)	6/11/2009
USCG–2009–0262	Washington Harbor, DC	Safety Zones (Part 165)	4/11/2009
USCG–2009–0264	Fire Island, NY	Safety Zones (Part 165)	4/5/2009
USCG–2009–0270	San Diego, CA	Safety Zones (Part 165)	5/1/2009
USCG–2009–0272	Key West, FL	Safety Zones (Part 165)	4/24/2009
USCG–2009–0282	Santa Cruz Beach	Safety Zones (Part 165)	6/13/2009
USCG–2009–0287	Blue Island, IL	Safety Zones (Part 165)	5/2/2009
USCG–2009–0289	North Palm Beach, FL	Safety Zones (Part 165)	5/2/2009
USCG–2009–0290	Washington, DC	Safety Zones (Part 165)	4/17/2009
USCG–2009–0291	Nahant, MA	Safety Zones (Part 165)	4/9/2009
USCG–2009–0294	Sabine, TX	Safety Zones (Part 165)	4/16/2009
USCG–2009–0295	Cameron Parish, LA	Security Zones (Part 165)	4/16/2009
USCG–2009–0297	Hampton, NH	Drawbridge Operations Regulation (Part 117)	5/12/2009
USCG–2009–0303	Charleston, WV	Safety Zones (Part 165)	6/5/2009
USCG–2009–0304	Columbia River Bar, OR	Safety Zones (Part 165)	4/21/2009
USCG–2009–0305	Kachemak Bay, AK	Safety Zones (Part 165)	4/29/2009
USCG–2009–0306	Pittsburgh, PA	Safety Zones (Part 165)	7/3/2009
USCG–2009–0307	Port Everglades, FL	Security Zones (Part 165)	4/27/2009
USCG–2009–0309	Port Everglades, FL	Security Zones (Part 165)	5/2/2009
USCG–2009–0312	Lower Mississippi River	Safety Zones (Part 165)	3/16/2009
USCG–2009–0320	Counce, TN	Safety Zones (Part 165)	7/3/2009
USCG–2009–0321	Seattle, WA	Special Local Regulation (Part 100)	5/2/2009
USCG–2009–0322	Portland, OR	Safety Zones (Part 165)	5/1/2009
USCG–2009–0323	Romeoville, IL	Safety Zones (Part 165)	4/29/2009
USCG–2009–0326	San Francisco, CA	Safety Zones (Part 165)	7/25/2009
USCG–2009–0334	Hood Canal, WA	Safety Zones (Part 165)	5/1/2009
USCG–2009–0336	Pittsburgh, PA	Safety Zones (Part 165)	5/16/2009
USCG–2009–0338	Louisville, KY	Safety Zones (Part 165)	4/26/2009
USCG–2009–0340	Cincinnati, OH	Safety Zones (Part 165)	7/25/2009
USCG–2009–0341	Vicksburg, MS	Safety Zones (Part 165)	7/4/2009
USCG–2009–0344	Key West, FL	Safety Zones (Part 165)	5/31/2009
USCG–2009–0346	Sacramento, CA	Drawbridge Operations Regulation (Part 117)	5/23/2009
USCG–2009–0352	Cairo, IL	Safety Zones (Part 165)	4/30/2009
USCG–2009–0353	Greenville, MS	Safety Zones (Part 165)	7/4/2009
USCG–2009–0355	Quincy, MA	Safety Zones (Part 165)	6/27/2009
USCG–2009–0358	Puerto Rico	Safety Zones (Part 165)	5/31/2009
USCG–2009–0360	Cincinnati, OH	Safety Zones (Part 165)	7/11/2009
USCG–2009–0363	Leesville, LA	Safety Zones (Part 165)	5/1/2009
USCG–2009–0364	Amelia, LA	Safety Zones (Part 165)	5/8/2009
USCG–2009–0366	Virginia Beach, VA	Safety Zones (Part 165)	5/31/2009
USCG–2009–0367	Memphis, TN	Safety Zones (Part 165)	5/23/2009
USCG–2009–0368	South Lake Tahoe, CA	Safety Zones (Part 165)	7/3/2009
USCG–2009–0369	Tahoe City, CA	Safety Zones (Part 165)	7/4/2009
USCG–2009–0371	Portland, OR	Safety Zones (Part 165)	5/22/2009
USCG–2009–0372	Hempstead, NY	Drawbridge Operations Regulation (Part 117)	5/23/2009
USCG–2009–0375	Morgan City Port Allen	Safety Zones (Part 165)	5/14/2009

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Docket No.	Location	Type	Effective date
USCG–2009–0380	San Diego, CA	Safety Zones (Part 165)	8/2/2009
USCG–2009–0381	Atchafalaya Channel	Safety Zones (Part 165)	5/10/2009
USCG–2009–0382	Leesville, LA	Safety Zones (Part 165)	5/5/2009
USCG–2009–0387	Lake Tahoe, CA	Safety Zones (Part 165)	7/3/2009
USCG–2009–0388	Mandeville Island, CA	Safety Zones (Part 165)	7/2/2009
USCG–2009–0389	Leesville, LA	Safety Zones (Part 165)	5/20/2009
USCG–2009–0390	Vicksburg, MS	Safety Zones (Part 165)	5/13/2009
USCG–2009–0395	Bridgeport, CT	Special Local Regulation (Part 100)	8/1/2009
USCG–2009–0397	Hudson River, NY	Safety and Security Zones (Part 165)	6/5/2009
USCG–2009–0402	Ocean City, NJ	Safety Zones (Part 165)	10/10/2009
USCG–2009–0403	Redwood City, CA	Safety Zones (Part 165)	7/4/2009
USCG–2009–0403	El Granada, CA	Safety Zones (Part 165)	7/4/2009
USCG–2009–0411	New London, CT	Security Zones (Part 165)	5/20/2009
USCG–2009–0427	Pensacola Beach, FL	Safety Zones (Part 165)	6/3/2009
USCG–2009–0428	Lower Mississippi River	Safety Zones (Part 165)	5/19/2009
USCG–2009–0429	Bayou Casotte, MS	Safety Zones (Part 165)	5/28/2009
USCG–2009–0435	Port Detroit Zone	Safety Zones (Part 165)	5/22/2009
USCG–2009–0438	Pomeroy, OH	Safety Zones (Part 165)	5/28/2009
USCG–2009–0441	Port Arthur, TX	Safety Zones (Part 165)	5/26/2009
USCG–2009–0442	Perryville, MD	Safety Zones (Part 165)	6/9/2009
USCG–2009–0445	Portsmouth, OH	Safety Zones (Part 165)	7/4/2009
USCG–2009–0451	Hackberry, LA	Safety Zones (Part 165)	5/28/2009
USCG–2009–0463	San Francisco, CA	Safety Zones (Part 165)	7/3/2009
USCG–2009–0467	Upper Mississippi River	Safety Zones (Part 165)	7/3/2009
USCG–2009–0468	Upper Mississippi River	Safety Zones (Part 165)	7/3/2009
USCG–2009–0470	San Francisco, CA	Safety Zones (Part 165)	6/8/2009
USCG–2009–0471	Guam	Safety Zones (Part 165)	6/2/2009
USCG–2009–0473	Houghton, MI	Special Local Regulation (Part 100)	6/21/2009
USCG–2009–0473	Manitowoc, WI	Safety Zones (Part 165)	6/7/2008
USCG–2009–0476	Grosse Point Farms, MI	Safety Zones (Part 165)	6/12/2009
USCG–2009–0480	Pittsburg, CA	Safety Zones (Part 165)	7/4/2009
USCG–2009–0481	Martinez, CA	Safety Zones (Part 165)	7/4/2009
USCG–2009–0482	San Diego, CA	Security Zones (Part 165)	6/23/2009
USCG–2009–0487	Nashville, TN	Safety Zones (Part 165)	8/22/2009
USCG–2009–0488	Milwaukie, OR	Safety Zones (Part 165)	6/13/2009
USCG–2009–0489	Oregon Inlet, NC	Regulated Navigation Area (Part 165)	6/5/2009
USCG–2009–0490	Boston, MA	Regulated Navigation Area (Part 100)	7/6/2009
USCG–2009–0492	St Joseph, MI	Safety Zones (Part 165)	6/20/2009
USCG–2009–0493	Smithfield, VA	Safety Zones (Part 165)	7/3/2009
USCG–2009–0495	Allegheny River, PA	Safety Zones (Part 165)	7/26/2009
USCG–2009–0499	Sabine, TX	Security Zones (Part 165)	6/8/2009
USCG–2009–0500	Cameron Parish, LA	Security Zones (Part 165)	6/8/2009
USCG–2009–0505	Pomeroy, OH	Safety Zones (Part 165)	6/17/2009
USCG–2009–0506	Marietta, OH	Safety Zones (Part 165)	7/11/2009
USCG–2009–0509	Pomeroy, OH	Safety Zones (Part 165)	6/16/2009
USCG–2009–0514	San Diego, CA	Safety Zones (Part 165)	7/16/2009
USCG–2009–0515	Charleston, WV	Safety Zones (Part 165)	7/31/2009
USCG–2009–0517	Sabine, TX	Security Zones (Part 165)	6/10/2009
USCG–2009–0518	San Diego, CA	Safety Zones (Part 165)	6/23/2009
USCG–2009–0525	Potts Harbor	Safety Zones (Part 165)	7/25/2009
USCG–2009–0528	Burnham Park Harbor	Security Zones (Part 165)	6/15/2009
USCG–2009–0530	Gloucester, MA	Special Local Regulation (Parts 100 and 165)	6/26/2009
USCG–2009–0531	Haverhill, MA	Special Local Regulation (Part 100)	8/22/2009
USCG–2009–0533	Coos Bay, OR	Safety Zones (Part 165)	7/4/2009
USCG–2009–0536	Port Arthur, TX	Safety Zones (Part 165)	6/15/2009
USCG–2009–0538	Presque Isle Bay	Security Zones (Part 165)	6/17/2009
USCG–2009–0539	Polaris Point, GU	Safety Zones (Part 165)	7/4/2009
USCG–2009–0540	Kittery, ME	Drawbridge Operations Regulation (Part 117)	7/3/2009
USCG–2009–0541	Detroit, MI	Safety Zones (Part 165)	6/25/2009
USCG–2009–0542	Lake Champlain, VT	Safety Zones (Part 165)	7/18/2009
USCG–2009–0543	Grand Marais, MI	Safety Zones (Part 165)	6/20/2009
USCG–2009–0545	Oakland, CA	Safety Zones (Part 165)	7/4/2009
USCG–2009–0550	Houghton, MI	Safety Zones (Part 165)	6/20/2009
USCG–2009–0551	Lake Superior, WI	Safety Zones (Part 165)	7/3/2009
USCG–2009–0554	Bal Harbour, FL	Safety Zones (Part 165)	7/4/2009
USCG–2009–0555	Detroit, MI	Safety Zones (Part 165)	6/24/2009
USCG–2009–0556	Sault Ste. Marie, MI	Security Zones (Part 165)	6/30/2009
USCG–2009–0563	Bay City, MI	Safety Zones (Part 165)	7/2/2009
USCG–2009–0564	Great Lakes	Special Local Regulation (Part 100)	6/26/2009
USCG–2009–0566	Seattle, WA	Safety Zones (Part 165)	7/29/2009
USCG–2009–0567	Puget Sound, WA	Security Zones (Part 165)	7/26/2009
USCG–2009–0569	San Francisco, CA	Safety Zones (Part 165)	7/13/2009

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Docket No.	Location	Type	Effective date
USCG–2009–0570	Parkersburg, WV	Safety Zones (Part 165)	6/21/2009
USCG–2009–0572	Lake Tahoe, CA	Safety Zones (Part 165)	7/4/2009
USCG–2009–0575	Toledo, OH	Safety Zones (Part 165)	7/4/2009
USCG–2009–0577	Tacoma, WA	Safety Zones (Part 165)	7/4/2009
USCG–2009–0583	Huntington Bay, NY	Special Local Regulation (Part 100)	7/13/2008
USCG–2009–0586	Everglades, FL	Safety Zones (Part 165)	6/28/2009
USCG–2009–0590	Savannah, GA	Safety Zones (Part 165)	7/4/2009
USCG–2009–0592	Pensacola Beach, FL	Safety Zones (Part 165)	7/10/2009
USCG–2009–0593	Essington, PA	Safety Zones (Part 165)	7/18/2009
USCG–2009–0598	Kendall, NY	Safety Zones (Part 165)	7/3/2009
USCG–2009–0599	Lapointe, WI	Safety Zones (Part 165)	7/4/2009
USCG–2009–0601	Cameron Parish, LA	Security Zones (Part 165)	6/28/2009
USCG–2009–0602	Sabine, TX	Security Zones (Part 165)	6/28/2009
USCG–2009–0603	Cornucopia, WI	Safety Zones (Part 165)	7/4/2009
USCG–2009–0604	Ashland, WI	Safety Zones (Part 165)	7/4/2009
USCG–2009–0605	Duluth, MN	Safety Zones (Part 165)	7/4/2009
USCG–2009–0606	Natchez, MS	Safety Zones (Part 165)	7/3/2009
USCG–2009–0609	Sault Ste. Marie, MI	Safety Zones (Part 165)	7/4/2009
USCG–2009–0610	Munishing, MI	Safety Zones (Part 165)	7/4/2009
USCG–2009–0611	Marquette, MI	Safety Zones (Part 165)	7/4/2009
USCG–2009–0612	Cedarville, MI	Safety Zones (Part 165)	7/4/2009
USCG–2009–0613	Buffalo, NY	Safety Zones (Part 165)	7/4/2009
USCG–2009–0614	Bayfield, WI	Safety Zones (Part 165)	7/4/2009
USCG–2009–0615	St. Ignance, MI	Safety Zones (Part 165)	7/4/2009
USCG–2009–0617	Wymouth, MA	Safety Zones (Part 165)	7/3/2009
USCG–2009–0620	Rochester, NY	Safety Zones (Part 165)	7/3/2009
USCG–2009–0621	Olcott, NY	Safety Zones (Part 165)	7/3/2009
USCG–2009–0622	Avon Lake, OH	Safety Zones (Part 165)	7/4/2009
USCG–2009–0623	Cleveland, OH	Safety Zones (Part 165)	7/4/2009
USCG–2009–0624	Conneaut, OH	Safety Zones (Part 165)	7/5/2009
USCG–2009–0625	Fairport Harbor, OH	Safety Zones (Part 165)	7/5/2009
USCG–2009–0626	Youngstown, NY	Safety Zones (Part 165)	7/3/2009
USCG–2009–0627	Oswego, NY	Safety Zones (Part 165)	7/5/2009
USCG–2009–0628	Lorain, OH	Safety Zones (Part 165)	7/16/2009
USCG–2009–0629	Mentor, OH	Safety Zones (Part 165)	7/3/2009
USCG–2009–0630	Erie, PA	Safety Zones (Part 165)	7/4/2009
USCG–2009–0634	Paradise, MI	Safety Zones (Part 165)	7/4/2009
USCG–2009–0636	Sabine, TX	Security Zones (Part 165)	7/14/2009
USCG–2009–0637	Newport News, VA	Safety Zones (Part 165)	7/2/2009
USCG–2009–0638	Mackinac Island, MI	Safety Zones (Part 165)	7/4/2009
USCG–2009–0640	Brooklyn/Queens, NY	Drawbridge Operations Regulation (Part 117)	8/1/2009
USCG–2009–0650	Lorain, OH	Safety Zones (Part 165)	7/16/2009
USCG–2009–0653	Gary, IN	Safety Zones (Part 165)	7/10/2009
USCG–2009–0655	Milwaukie, WI	Safety Zones (Part 165)	7/23/2009
USCG–2009–0656	Sheffield Lake, OH	Safety Zones (Part 165)	7/17/2009
USCG–2009–0657	Sackets Harbor, NY	Safety Zones (Part 165)	7/18/2009
USCG–2009–0660	Chaumont, NY	Safety Zones (Part 165)	7/25/2009
USCG–2009–0662	Dorchester Bay, MA	Special Local Regulation (Part 100)	8/8/2009
USCG–2009–0663	Orange, TX	Safety Zones (Part 165)	7/13/2009
USCG–2009–0665	Milwaukee, WI	Safety Zones (Part 165)	7/16/2009
USCG–2009–0668	Nashville, TN	Safety Zones (Part 165)	7/26/2009
USCG–2009–0673	Romeoville, IL	Safety Zones (Part 165)	7/17/2009
USCG–2009–0675	Sacramento, CA	Safety Zones (Part 165)	10/2/2009
USCG–2009–0678	Maersk Jewel	Security Zones (Part 165)	7/21/2009
USCG–2009–0678	Maersk Jewel	Security Zones (Part 165)	7/22/2009
USCG–2009–0682	Ozarks	Safety Zones (Part 165)	9/25/2009
USCG–2009–0690	Cincinnati, OH	Safety Zones (Part 165)	9/12/2009
USCG–2009–0691	Cleveland, OH	Security Zones (Part 165)	7/23/2009
USCG–2009–0694	Lake Fireworks	Safety Zones (Part 165)	9/6/2009
USCG–2009–0695	Ohio River, PA	Safety Zones (Part 165)	8/9/2009
USCG–2009–0696	Monongahela River, PA	Safety Zones (Part 165)	8/9/2009
USCG–2009–0697	Harrison Township, MI	Safety Zones (Part 165)	7/25/2009
USCG–2009–0698	Chicago, IL	Safety Zones (Part 165)	7/25/2009
USCG–2009–0707	Massachusetts Bay, MA	Safety Zones (Part 165)	7/25/2009
USCG–2009–0710	Gilbertsville, KY	Safety Zones (Part 165)	8/21/2009
USCG–2009–0711	Patchogue, NY	Safety Zones (Part 165)	8/22/2009
USCG–2009–0712	Cleveland, OH	Safety Zones (Part 165)	8/2/2009
USCG–2009–0713	Biloxi, MS	Safety Zones (Part 165)	8/14/2009
USCG–2009–0715	Beaver River, PA	Safety Zones (Part 165)	8/15/2009
USCG–2009–0716	Modu Ralph Colfman	Safety Zones (Part 165)	8/24/2009
USCG–2009–0719	Upper Mississippi River	Safety Zones (Part 165)	8/16/2009
USCG–2009–0720	Ocean City, NJ	Safety Zones (Part 165)	9/19/2009

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Docket No.	Location	Type	Effective date
USCG–2009–0721	Harriman, TN	Safety Zones (Part 165)	8/11/2009
USCG–2009–0721	Harriman, TN	Safety Zones (Part 165)	9/10/2009
USCG–2009–0725	Chesapeake Bay, VA	Safety Zones (Part 165)	9/26/2009
USCG–2009–0726	Newburyport, MA	Safety Zones (Part 165)	8/1/2009
USCG–2009–0727	Portland, OR	Safety Zones (Part 165)	8/5/2009
USCG–2009–0728	Oregon City, OR	Safety Zones (Part 165)	8/9/2009
USCG–2009–0730	Ouachita River	Safety Zones (Part 165)	10/9/2009
USCG–2009–0731	Evansville, IN	Safety Zones (Part 165)	8/22/2009
USCG–2009–0732	Louisville, KY	Safety Zones (Part 165)	8/28/2009
USCG–2009–0733	San Diego, CA	Safety Zones (Part 165)	8/16/2009
USCG–2009–0734	Pittsburgh, PA	Security Zones (Part 165)	9/24/2009
USCG–2009–0738	Silverdale, DC	Safety Zones (Part 165)	8/14/09
USCG–2009–0740	Bay City, MI	Safety Zones (Part 165)	8/8/2009
USCG–2009–0741	Michigan City, IN	Safety Zones (Part 165)	8/9/2009
USCG–2009–0742	Port Huron, MI	Safety Zones (Part 165)	8/16/2009
USCG–2009–0743	Upper Mississippi River	Safety Zones (Part 165)	10/4/2009
USCG–2009–0750	Pt Pleasant, WV	Safety Zones (Part 165)	9/5/2009
USCG–2009–0758	Sabine, TX	Security Zones (Part 165)	8/10/2009
USCG–2009–0762	High Island, TX	Safety Zones (Part 165)	8/10/2009
USCG–2009–0763	Glen Cove, NY	Safety Zones (Part 165)	8/15/2009
USCG–2009–0766	Romeoville, IL	Regulated Navigation Area and Safety Zone (Part 165)	8/17/2009
USCG–2009–0770	M/V Sylvie	Security Zones (Part 165)	8/23/2009
USCG–2009–0771	Seattle, WA	Security Zones (Part 165)	8/23/2009
USCG–2009–0773	Sabine, TX	Security Zones (Part 165)	8/18/2009
USCG–2009–0774	Cameron, Parish, LA	Security Zones (Part 165)	8/18/2009
USCG–2009–0775	East Isleton, CA	Drawbridge Operations Regulation (Part 117)	9/15/2009
USCG–2009–0776	Rio Vista, CA	Drawbridge Operations Regulation (Part 117)	9/15/2009
USCG–2009–0778	Treasure Island, CA	Safety Zones (Part 165)	8/19/2009
USCG–2009–0779	Chicago, IL	Safety Zones (Part 165)	8/21/2010
USCG–2009–0783	Superior, WI	Safety Zones (Part 165)	8/22/2009
USCG–2009–0784	Cleveland, OH	Safety Zones (Part 165)	9/2/2009
USCG–2009–0786	Sandusky, OH	Safety Zones (Part 165)	8/22/2009
USCG–2009–0793	Sabine, TX	Security Zones (Part 165)	8/22/2009
USCG–2009–0798	Wises Landing, KY	Safety Zones (Part 165)	9/8/2009
USCG–2009–0799	Augusta, GA	Safety Zones (Part 165)	9/27/2009
USCG–2009–0802	Pittsburgh, PA	Safety Zones (Part 165)	9/10/2009
USCG–2009–0806	San Diego, CA	Safety Zones (Part 165)	9/12/2009
USCG–2009–0807	Arlington Fairfax Counties, VA	Security Zones (Part 165)	8/29/2009
USCG–2009–0808	Harbor, MD	Safety Zones (Part 165)	9/6/2009
USCG–2009–0813	Boston, MA	Security Zones (Part 165)	8/28/2009
USCG–2009–0819	Cleveland, OH	Safety Zones (Part 165)	9/5/2009
USCG–2009–0821	Lower Mississippi River	Safety Zones (Parts 100)	10/10/2009
USCG–2009–0825	Mackinac City, MI	Security Zones (Part 165)	9/7/2009
USCG–2009–0830	Cincinnati, OH	Security Zones (Part 165)	9/7/2009
USCG–2009–0831	Port San Juan	Safety Zones (Part 165)	9/2/2009
USCG–2009–0833	Pittsburgh, PA	Security Zones (Part 165)	9/15/2009
USCG–2009–0834	Pittsburgh, PA	Security Zones (Part 165)	9/7/2009
USCG–2009–0835	Charleston, WV	Safety Zones (Part 165)	10/3/2009
USCG–2009–0836	Biloxi, MS	Safety Zones (Part 165)	10/2/2009
USCG–2009–0846	Rio Vista, CA	Safety Zones (Part 165)	10/10/2009
USCG–2009–0850	Romeoville, IL	Safety Zones (Part 165)	9/9/2009
USCG–2009–0853	San Francisco, CA	Safety Zones (Part 165)	9/17/2009
USCG–2009–0862	Superior, WI	Special Local Regulation (Part 100)	9/19/2009
USCG–2009–0866	Guam	Safety Zones (Part 165)	9/17/2009
USCG–2009–0867	Guam	Safety Zones (Part 165)	9/21/2009
USCG–2009–0868	Guam	Safety Zones (Part 165)	10/7/2009
USCG–2009–0873	Port Valdez, AK	Safety Zones (Part 165)	9/19/2009
USCG–2009–0875	Miami Beach, FL	Security Zones (Part 165)	10/26/2009
USCG–2009–0879	Cleveland, OH	Special Local Regulation (Part 100)	9/19/2009
USCG–2009–0880	Puget Sound, WA	Safety Zones (Part 165)	9/23/2009
USCG–2009–0885	West Sister Island, OH	Safety Zones (Part 165)	9/18/2009
USCG–2009–0886	Lower Mississippi River	Safety Zones (Part 165)	9/18/2009
USCG–2009–0892	Stamford, CT	Security Zones (Part 165)	10/23/2009
USCG–2009–0893	Sacramento, CA	Drawbridge Operations Regulation (Part 117)	10/24/2009
USCG–2009–0894	Mackinac Island, MI	Safety Zones (Part 165)	9/25/2009
USCG–2009–0901	Lake Havasu, AZ	Safety Zones (Part 165)	10/24/2009
USCG–2009–0904	Orange, TX	Safety Zones (Part 165)	9/28/2009
USCG–2009–0905	Pittsburgh, PA	Safety Zones (Part 165)	10/3/2009
USCG–2009–0912	Portland, OR	Safety Zones (Part 165)	10/7/2009
USCG–2009–0919	Morgantown, WV	Safety Zones (Part 165)	10/10/2009
USCG–2009–0922	San Diego, CA	Safety Zones (Part 165)	10/18/2009
USCG–2009–0923	Lower Mississippi River	Safety Zones (Part 165)	10/4/2009

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Docket No.	Location	Type	Effective date
USCG–2009–0924	Kodiak Island, AK	Safety Zones (Part 165)	10/16/2009
USCG–2009–0927	San Juan, PR	Safety Zones (Part 165)	10/23/2009
USCG–2009–0928	Knik Arm, AK	Security Zones (Part 165)	10/20/2009
USCG–2009–0930	San Diego, CA	Safety Zones (Part 165)	10/25/2009
USCG–2009–0932	San Diego, CA	Safety Zones (Part 165)	10/24/2009
USCG–2009–0933	Port Arthur, TX	Safety Zones (Part 165)	11/16/2009
USCG–2009–0938	Cleveland, OH	Security Zones (Part 165)	10/26/2009
USCG–2009–0939	Pittsburgh, PA	Safety Zones (Part 165)	11/20/2009
USCG–2009–0941	San Diego, CA	Safety Zones (Part 165)	10/23/2009
USCG–2009–0943	Pittsburgh, PA	Security Zones (Part 165)	10/19/2009
USCG–2009–0944	Fairfax County, VA	Safety Zones (Part 165)	10/24/2009
USCG–2009–0945	Port Neches, TX	Safety Zones (Part 165)	10/15/2009
USCG–2009–0953	Big Sandy River	Safety Zones (Part 165)	10/24/2009
USCG–2009–0954	Chicago, IL	Safety Zones (Part 165)	10/26/2009
USCG–2009–0958	Ambrosia, WV	Safety Zones (Part 165)	11/14/2009
USCG–2009–0962	Miami, FL	Security Zones (Part 165)	10/29/2009
USCG–2009–0964	San Francisco	Safety Zones (Part 165)	12/12/2009
USCG–2009–0971	Wrightsville Beach, NC	Special Local Regulation (Part 100)	11/7/2009
USCG–2009–0977	Oak Island, NC	Safety Zones (Part 165)	11/16/2009
USCG–2009–0980	Cameron Parish, LA	Security Zones (Part 165)	11/4/2009
USCG–2009–0981	Sabine, TX	Security Zones (Part 165)	11/4/2009
USCG–2009–0987	Orange Beach, AL	Safety Zones (Part 165)	11/7/2009
USCG–2009–0991	San Francisco, CA	Safety Zones (Part 165)	12/31/2009
USCG–2009–1002	Waterway, TX	Security Zones (Part 165)	11/10/2009
USCG–2009–1005	Oregon Coast, OR	Safety Zones (Part 165)	11/22/2009
USCG–2009–1007	Quillayute River	Safety Zones (Part 165)	2/27/2009
USCG–2009–1007	Quillayute River	Safety Zones (Part 165)	3/1/2020
USCG–2009–1008	Seattle, WA	Safety Zones (Part 165)	4/22/2010
USCG–2009–1010	Waterway, TX	Security Zones (Part 165)	11/11/2009
USCG–2009–1012	San Diego, CA	Safety Zones (Part 165)	12/4/2009
USCG–2009–1015	Sabine-Neches Canal, TX	Safety Zones (Part 165)	11/13/2009
USCG–2009–1016	Ouachita River	Safety Zones (Part 165)	11/13/2009
USCG–2009–1018	Sabine-Neches Canal	Safety Zones (Part 165)	11/16/2009
USCG–2009–1019	Matagorda Island, TX	Safety Zones (Part 165)	11/17/2009
USCG–2009–1032	Smithland, KY	Safety Zones (Part 165)	11/30/2009
USCG–2009–1040	Lower Chesapeake Bay, VA	Safety Zones (Part 165)	11/13/2009
USCG–2009–1041	St. Thomas, USVI	Safety Zones (Part 165)	12/8/2009
USCG–2009–1042	Baton Rouge, LA	Safety Zones (Part 165)	12/4/2009
USCG–2009–1043	South Padre Island, TX	Safety Zones (Part 165)	12/13/2009
USCG–2009–1044	Sacramento, CA	Safety Zones (Part 165)	1/1/2010
USCG–2009–1048	Niagara River, NY	Safety Zones (Part 165)	11/30/2009
USCG–2009–1054	Hackberry, LA	Security Zones (Part 165)	12/1/2009
USCG–2009–1055	Louisiana	Security Zones (Part 165)	11/27/2009
USCG–2009–1062	Chicago, IL	Safety Zones (Part 165)	12/4/2009
USCG–2009–1063	St. Joseph, MI	Safety Zones (Part 165)	12/1/2009
USCG–2009–1077	Waterway, TX	Security Zones (Part 165)	12/10/2009
USCG–2009–1082	Oahu, HI	Security Zones (Part 165)	12/23/2009
USCG–2009–1092	Sabine-Neches Canal	Safety Zones (Part 165)	12/17/2009
USCG–2009–1103	Cameron Parish, LA	Security Zones (Part 165)	12/19/2009
USCG–2009–1104	West Palm Beach, FL	Safety Zones (Part 165)	1/1/2010
USCG–2009–1114	Oahu, HI	Security Zones (Part 165)	12/30/2009
USCG–2009–1115	M/V Sylvie	Security Zones (Part 165)	12/26/2009
USCG–2009–1115	M/V Sylvie	Security Zones (Part 165)	12/29/2009
USCG–2009–1121	Sabine, TX	Security Zones (Part 165)	1/1/2010
USCG–2009–1122	Cameron Parish, LA	Security Zones (Part 165)	1/1/2010
USCG–2009–1126	Sabine, TX	Safety Zones (Part 165)	1/3/2010
USCG–2009–1127	Mobile, AL	Safety Zones (Part 165)	1/15/2010
USCG–2009–1128	Mobile, AL	Security Zones (Part 165)	1/16/2010

[FR Doc. 2011–2835 Filed 2–8–11; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 20

International Mail: Mailing Services Price Change

AGENCY: Postal Service™

ACTION: Final rule.

SUMMARY: The Postal Service will revise *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®) for Mailing Services. This price change correlates to the Postal Service's January 13, 2011 filing of Docket No. R2011–2, Notice of Price Adjustment, with the Postal Regulatory Commission (PRC).

DATES: April 17, 2011.

FOR FURTHER INFORMATION CONTACT: Rick Klutts at 813–877–0372.

SUPPLEMENTARY INFORMATION: On January 13, 2011, the Postal Service filed a notice of Mailing Services price adjustments with the Postal Regulatory Commission to be effective on April 17, 2011. This final rule provides the mailing standards that would accompany new prices.

First-Class Mail International

The overall price increase for First-Class Mail International® is approximately 5.1 percent. More specifically, postcards increase by 1 percent, letter-size pieces increased by 1.9 percent, flat-size pieces increased by 4.0 percent, and package-size pieces increased by 7.8 percent.

Postcards

The price structure for postcards now includes only two separate price categories: Canada and Mexico, and all other countries. Previously, Canada and Mexico were priced separately. The price for postcards increases by approximately 1.0 percent.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

Accordingly, 39 CFR part 20 is amended as follows:

PART 20 —[AMENDED]

■ 1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), as follows:

* * * * *

Index of Countries and Localities

Country Conditions for Mailing

* * * * *

[Replace the current price tables in the Individual Country Listings with the following:]

FIRST-CLASS MAIL INTERNATIONAL LETTERS

Weight not over (ozs.)	Price groups			
	1	2	3, 4, 5	6, 7, 8, 9
1	$0.80	$0.80	$0.98	$0.98
2	1.08	1.36	1.82	1.76
3	1.36	1.92	2.66	2.54
3.5	1.64	2.48	3.50	3.32
Postcards	0.80	0.80	0.98	0.98

FIRST-CLASS MAIL INTERNATIONAL LARGE ENVELOPES (FLATS)

Weight not over (ozs.)	Price groups			
	1	2	3, 4, 5	6, 7, 8, 9
1	$1.08	$1.08	$1.30	$1.30
2	1.34	1.65	2.17	2.13
3	1.60	2.22	3.04	2.96
4	1.86	2.79	3.91	3.79
5	2.12	3.36	4.78	4.62
6	2.38	3.93	5.65	5.45
7	2.64	4.50	6.52	6.28
8	2.90	5.07	7.39	7.11
12	3.94	6.71	9.18	8.86
16	4.98	8.35	10.97	10.61
20	6.02	9.99	12.76	12.36
24	7.06	11.63	14.55	14.11
28	8.10	13.27	16.34	15.86
32	9.14	14.91	18.13	17.61
36	10.18	16.55	19.92	19.36
40	11.22	18.19	21.71	21.11
44	12.26	19.83	23.50	22.86
48	13.30	21.47	25.29	24.61
52	14.34	23.11	27.08	26.36
56	15.38	24.75	28.87	28.11
60	16.42	26.39	30.66	29.86
64	17.46	28.03	32.45	31.61

FIRST-CLASS MAIL INTERNATIONAL PACKAGES (SMALL PACKETS)

Weight not over (ozs.)	Price groups			
	1	2	3, 4, 5	6, 7, 8, 9
1	$1.72	$1.72	$1.72	$1.72
2	1.98	2.29	2.59	2.53
3	2.24	2.86	3.46	3.34
4	2.50	3.43	4.33	4.15

FIRST-CLASS MAIL INTERNATIONAL PACKAGES (SMALL PACKETS)—Continued

Weight not over (ozs.)	Price groups			
	1	2	3, 4, 5	6, 7, 8, 9
5	2.76	4.00	5.20	4.96
6	3.02	4.57	6.07	5.77
7	3.28	5.14	6.94	6.58
8	3.54	5.71	7.81	7.39
12	4.56	7.33	9.60	9.14
16	5.58	8.95	11.39	10.89
20	6.60	10.57	13.18	12.64
24	7.62	12.19	14.97	14.39
28	8.64	13.81	16.76	16.14
32	9.66	15.43	18.55	17.89
36	10.68	17.05	20.34	19.64
40	11.70	18.67	22.13	21.39
44	12.72	20.29	23.92	23.14
48	13.74	21.91	25.71	24.89
52	14.76	23.53	27.50	26.64
56	15.78	25.15	29.29	28.39
60	16.80	26.77	31.08	30.14
64	17.82	28.39	32.87	31.89

* * * * *

We will publish an amendment to 39 CFR part 20 to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2011–2794 Filed 2–8–11; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

EPA–R10–OAR–2010–0921, FRL–9257–1]

Approval and Promulgation of Implementation Plans; Alaska: Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a revision to the State Implementation Plan (SIP), submitted by the Commissioner of the Alaska Department of Environmental Conservation (ADEC) to EPA on November 19, 2010. The SIP revision updates Alaska's Prevention of Significant Deterioration (PSD) program to reflect changes to the Federal PSD program relating to the permitting of greenhouse gas (GHG) emissions.

DATES: This action is effective on March 11, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R10–OAR–2010–0921. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics, AWT–107, 1200 Sixth Avenue, Seattle, Washington 98101. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Scott Hedges at telephone number: (206) 553–0296, e-mail address: *hedges.scott@epa.gov,* or the above EPA, Region 10 address.

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

Information is organized as follows:

Table of Contents

I. Background
II. Public Comments on the Proposed Action
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

On December 6, 2010, EPA published in the **Federal Register**, a proposal to approve a draft revision to the Alaska SIP, submitted by the Commissioner of ADEC to EPA on October 25, 2010, for parallel processing if the final SIP revision submitted by ADEC to EPA was consistent with the draft SIP revision. See 75 FR 75658. The draft SIP revision reflected changes to the Federal PSD program as of August 2, 2010 relating to the permitting of GHGs. In the proposal, EPA made the preliminary determination that the draft SIP revision was approvable as a SIP strengthening measure because it was consistent with the Clean Air Act (CAA) and EPA regulations regarding PSD permitting for GHGs.

ADEC submitted to EPA a final SIP revision relating to the permitting of GHGs on November 19, 2010. The final SIP revision is consistent with the draft SIP revision.

ADEC has also made other changes to its PSD permitting rule and other air regulations at the same time as this GHG-related revision. EPA will be acting on these other changes in a subsequent and separate rulemaking.

II. Public Comments on the Proposed Action

EPA provided a 30-day review and comment period and solicited comments on our proposal published in the December 6, 2010, **Federal Register** (75 FR 75658). EPA received one comment, submitted by ADEC, which supported the proposed action.

III. Final Action

Pursuant to section 110 of the CAA, EPA is approving as a SIP strengthening measure the State of Alaska's SIP revision that reflects changes to the Federal PSD program as of August 2, 2010, relating to the permitting of GHGs. The SIP revision provides Alaska with the authority to regulate GHGs under its

PSD program and establishes appropriate emissions thresholds for determining PSD applicability to new and modified GHG-emitting sources in accordance with EPA's regulations regarding PSD permitting for GHGs.

IV. Statutory and Executive Order Reviews

Under the CAA, 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 CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the 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 the 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. The 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 11, 2011. 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, and Reporting and recordkeeping requirements.

Dated: January 18, 2011.

Dennis J. McLerran,

Regional Administrator, Region 10.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart C—Alaska

■ 2. Section 52.70 is amended by adding paragraph (c)(38) to read as follows:

§ 52.70 Identification of plan

* * * * *

(c) * * *

(38) On November 19, 2010, the Alaska Department of Environmental Conservation (ADEC) submitted a revision to the State of Alaska Implementation Plan that adds a definition of "Subject to regulation" as it applies to greenhouse gases in Alaska's Prevention of Significant Deterioration (PSD) permit rule.

(i) *Incorporation by reference.* (A) The following section of ADEC's air quality regulations: The incorporation by reference date for 40 CFR 52.21 in 18 AAC 50.040(h), introductory paragraph, but only with respect to its incorporation by reference of the definition of "Subject to regulation" in 40 CFR 52.21(b)(49) for the purpose of greenhouse gases only; State effective December 9, 2010.

■ 3. Section 52.96 is amended by revising paragraph (a) to read as follows:

§ 52.96 Significant deterioration of air quality.

(a) The State of Alaska Department of Environmental Conservation Air Quality Control Regulations as in effect on December 3, 2005 (specifically 18 AAC 50.010 except (7) and (8); 50.015; 50.020; 50.030(6) and (7); 50.035(a)(4) and (5); 50.040(h) except (17), (18), and (19); 50.215 except (a)(3); 50.250; 50.306 except (b)(2) and (b)(3); 50.345 except (b), (c)(3) and (l); and 50.990 except (21) and (77)) are approved as meeting the requirements of part C for preventing significant deterioration of air quality. The introductory paragraph to 18 AAC 50.040(h) as in effect on December 9, 2010 is also approved as meeting the requirements of part C for preventing significant deterioration of air quality, but only with respect to its incorporation by reference of the definition of "Subject to regulation" in 40 CFR 52.21(b)(49) for the purpose of greenhouse gases only.

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[FR Doc. 2011–2776 Filed 2–8–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XA199

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the western zone of the Gulf of Mexico (Gulf) to commercial king mackerel fishing in the exclusive economic zone (EEZ). This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective noon, local time, February 11, 2011, until 12:01 a.m., local time, on July 1, 2011.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, 727–824–5305, fax: 727–824–5308, e-mail: *Susan.Gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Commercial fishing for the Gulf migratory group of king mackerel in the western zone is managed under a quota of 1.01 million lb (0.46 million kg) (66 FR 17368, March 30, 2001) for the current fishing year, July 1, 2010, through June 30, 2011.

Under 50 CFR 622.43(a)(3), NMFS is required to close any segment of the king mackerel commercial sector when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the Federal Register. NMFS has determined the commercial quota of 1.01 million lb (0.46 million kg) for Gulf group king mackerel in the western zone will be reached by February 11, 2011. Accordingly, the western zone is closed effective noon, local time, February 11, 2011, through June 30, 2011, the end of the fishing year to commercial fishing for Gulf group king mackerel. The boundary between the eastern and western zones is 87°31′06″ W. long., which is a line directly south from the Alabama/Florida boundary.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for or retain Gulf group king mackerel in the EEZ in the closed zones or subzones. A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.39(c)(1)(ii) and (c)(2), provided the vessel is operating as a charter vessel or headboat. A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zone taken in the EEZ, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed zones or subzones that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

This action responds to the best available information recently obtained from the fisheries. The Assistant Administrator for Fisheries, NOAA (AA), finds that the need to immediately implement this action to close the western zone of the Gulf to commercial king mackerel fishing constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule implementing the quota and the associated requirement for closure of the commercial harvest when the quota is reached or projected to be reached has already been subject to notice and comment, and all that remains is to notify the public of the closure.

Allowing prior notice and opportunity for public comment on this action would be contrary to the public interest because any delay in the closure of the commercial harvest could result in the commercial quota being exceeded. There is a need to immediately implement this action to protect the king mackerel resource because the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: February 4, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–2895 Filed 2–4–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 27
Wednesday, February 9, 2011

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Doc. No. AMS–FV–10–0104; FV11–925–1 PR]

Grapes Grown in Designated Area of Southeastern California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the California Desert Grape Administrative Committee (Committee) for the 2011 and subsequent fiscal periods from $0.01 to $0.0125 per 18-pound lug of grapes handled. The Committee locally administers the marketing order, which regulates the handling of grapes grown in a designated area of southeastern California. Assessments upon grape handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins January 1 and ends December 31. The assessment rate would remain in effect indefinitely unless modified, suspended or terminated.

DATES: Comments must be received by March 11, 2011.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Jerry L. Simmons, 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: Jerry.Simmons@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov.*

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 925, as amended (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern 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, grape handlers in a designated area of southeastern California are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable grapes beginning on January 1, 2011, 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 would increase the assessment rate established for the Committee for the 2011 and subsequent fiscal periods from $0.01 to $0.0125 per 18-pound lug of grapes.

The grape 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 grapes grown in a designated area of southeastern California. 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 2009 and subsequent fiscal periods, the Committee recommended, and the USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period 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 October 21, 2010, and unanimously recommended 2011 expenditures of $89,616 and an assessment rate of $0.0125 per 18-pound lug of grapes handled. In comparison, last year's budgeted expenditures were $73,666. The proposed assessment rate of $0.0125 is $0.0025 higher than the rate currently in effect. The Committee recommended a higher assessment rate to offset the 2011 budget increases in research, general office expenses, management and compliance expenses, as well as a decreased crop estimate. The Committee estimated a decreased

2011 crop of 6,000,000 18-pound lugs of grapes handled, which is about 604,951 18-pound lugs fewer than the 6,604,951 18-pound lugs handled during the 2010 fiscal period. Based on increases in expenses and a decreased crop estimate, the Committee unanimously recommended that the assessment rate of $0.01 currently in effect be increased by $0.0025. Income derived from handler assessments, along with funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2011 fiscal period include $10,000 for research, $15,616 for general office expenses, and $64,000 for management and compliance expenses. The $10,000 research project is for a new vine study proposed by the University of California Riverside. In comparison, major expenditures for the 2010 fiscal period included no funds for research, $13,666 for general office expenses, and $60,000 management and compliance expenses.

The assessment rate recommended by the Committee was derived by the following formula: Anticipated 2011 expenses ($89,616) plus the desired 2011 ending reserve ($88,384), minus the 2011 beginning reserve ($103,000), divided by the estimated 2011 shipments (6,000,000 18-pound lugs) equals $0.0125 per lug.

Income generated through the $0.0125 assessment ($75,000) plus carry-in reserve funds ($103,000) should be sufficient to meet anticipated expenses ($89,616). Reserve funds by the end of 2011 are projected at $88,384 or about one fiscal period's expenses. Section 925.41 of the order permits the Committee to maintain about one fiscal period's expenses in reserve.

The proposed assessment rate would 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 would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period 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 would evaluate the Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2011 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial 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 rule on small entities. Accordingly, AMS has prepared this initial 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 approximately 14 handlers of southeastern California grapes who are subject to regulation under the order and about 50 grape producers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000. Nine of the 14 handlers subject to regulation have annual grape sales of less than $7 million. Based on data from the National Agricultural Statistics Service and the Committee, the crop value for the 2010 season was about $38,139,629. Dividing this figure by the number of producers (50) yields an average annual producer revenue estimate of about $762,793. However, according to the Committee, at least ten of 50 producers would be considered small businesses under the Small Business Administration threshold of $750,000. Based on the foregoing, it may be concluded that a majority of grape handlers and at least ten of the producers could be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2011 and subsequent fiscal periods from $0.01 to $0.0125 per 18-pound lug of grapes. The Committee unanimously recommended 2011 expenditures of $89,616 and an assessment rate of $0.0125 per 18-pound lug of grapes handled. The proposed assessment rate of $0.0125 is $0.0025 higher than the 2010 rate currently in effect. The Committee recommended the higher assessment rate of $0.0125 to offset the 2011 budget increases in research, general office expenses, management and compliance expenses, and a decreased crop estimate. The number of assessable grapes is estimated at 6 million 18-pound lugs of grapes. Thus, income generated through the $0.0125 assessment ($75,000) plus reserve funds ($103,000) should be sufficient to meet anticipated expenses ($89,616). Reserve funds by the end of 2011 are projected at $88,384 or about one fiscal period's expenses.

The major expenditures recommended by the Committee for the 2011 fiscal period include $10,000 for research, $15,616 for general office expenses, and $64,000 for management and compliance expenses. The $10,000 research project is a for a new vine study proposed by the University of California Riverside. In comparison, major expenditures for the 2010 fiscal period included no funds for research, $13,666 for general office expenses, and $60,000 management and compliance expenses.

The assessment rate recommended by the Committee was derived based on the Committee's estimates of the available beginning reserve ($103,000), projected decreased crop size (6 million 18-pound lugs), anticipated assessment income ($75,000), anticipated expenses ($89,616), and the ending 2011 reserve ($88,384).

The Committee reviewed and unanimously recommended 2011 expenditures of $89,616, which included increases in research, general office expenses, and management and compliance expenses. Prior to arriving at this budget, the Committee considered alternative expenditures and assessment rates, to include not increasing the $0.01 assessment rate currently in effect. Based on a decreased 2011 estimate crop of 6 million 18-pound lugs, the Committee ultimately determined that increasing the assessment rate to $0.0125 combined with funds generated from the reserve would adequately cover increased expenses and provide an adequate 2011 ending reserve.

A review of historical crop and price information, as well as preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2011 season could average about $5.77 per 18-pound lug of grapes handled for California grapes. To calculate the percentage of grower revenue represented by the assessment rate for 2010, the assessment rate of $0.01 per 18-pound lug is divided by the estimated average grower price

($5.77 per 18-pound lug). NASS data for 2011 is not yet available. However, applying these same calculations above using the 2010 grower price would result in an estimated assessment revenue as a percentage of total grower revenue of 0.216 percent for the 2011 season ($0.0125 divided by $5.77 per 18-pound lug). Thus, the assessment revenue should be well below the 1 percent of estimated grower revenue in 2011.

This action would increase 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 would be offset by the benefits derived by the operation of the order. In addition, the Committee's meeting was widely publicized throughout the grape production area and all interested persons were invited to attend and participate in Committee deliberations on all issues. Like all Committee meetings, the October 21, 2010, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California grape 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 small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2011 fiscal period begins on January 1, 2011, and the order requires that the rate of assessment for each fiscal period apply to all assessable grapes handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; and (3) handlers are aware of this action, which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is proposed to be amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR part 925 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 925.215 is revised to read as follows:

§ 925.215 Assessment rate.

On or after January 1, 2011, an assessment rate of $0.0125 per 18-pound lug is established for grapes grown in a designated area of southeastern California.

Dated: February 3, 2011.

David R. Ship,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2011–2875 Filed 2–8–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 1

RIN 1505–AC28

Privacy Act of 1974; Proposed Implementation

AGENCY: Departmental Offices, Treasury

ACTION: Notice of proposed rulemaking.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, the Department of the Treasury gives notice of a proposed amendment to this part to exempt a system of records from certain provisions of the Privacy Act.

DATES: Comments must be received no later than March 11, 2011.

ADDRESSES: Written comments should be sent to the Department of the Treasury, ATTN: Supervisory Fraud Specialist, Office of Financial Stability (OFS), 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The Department will make such comments available for public inspection and copying in the Department's Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 622–0990 (not a toll-free line). You may also submit comments through the Federal rulemaking portal at *http://www.regulations.gov* (follow the instructions for submitting comments). All comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Brian Bressman, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 927–9219 (fax) or via electronic mail at *Brian.Bressman@do.treas.gov.*

SUPPLEMENTARY INFORMATION: The Department is establishing the Troubled Asset Relief Program (TARP) Fraud Investigation Information System to assist in carrying out its responsibilities under the Emergency Economic Stabilization Act of 2008 (EESA). The TARP Fraud Investigation Information System maintains information relevant to background inquiries conducted on individuals who seek, receive or are entrusted with TARP funds, and to complaints received and collected as part of investigations pertaining to alleged fraud, waste, and/or abuse committed against the TARP programs. Information in the system will assist investigators in determining whether to: (a) Refer matters to the Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) for further investigation and resolution; (b) refer matters to OFS Financial Agents and others for compliance review; or (c) close matters with no further action to be taken. The Department of the Treasury is publishing separately in the **Federal Register** a notice of the new system of records.

Under 5 U.S.C. 552a(k)(2), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is "investigatory material compiled for law enforcement

purposes, other than material within the scope of subsection (j)(2)." To the extent that this system of records contain investigative material within the provision of 5 U.S.C. 552a(k)(2), the Department of the Treasury proposes to exempt the TARP Fraud Investigation Information System from various provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

The proposed exemption under 5 U.S.C. 552a(k)(2) for the reference system of records is from provisions 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f). Exemptions from these particular subsections are justified on a case-by-case basis to be determined at the time a request is made for the following reasons:

(1) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of disclosures of the record and the names and addresses of recipients. Making accountings of disclosures available to the subjects of investigations would alert them to the fact that an investigation is being conducted into their activities as well as identify the nature, scope, and purpose of that investigation. The subjects of investigations, if provided an accounting of disclosures, would be able to take measures to avoid detection or apprehension by destroying or concealing evidence that would form the basis for detection or apprehension.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H), and (f)(2), (3), and (5) grant individual access, or concern procedures by which an individual may gain access, to records pertaining to themselves. Disclosure of this information to the subjects of investigations would provide individuals with information concerning the nature and scope of any current investigation, may enable them to avoid detection or apprehension, may enable them to destroy or alter evidence of criminal conduct that would form the basis for their arrest, and could impede the investigator's ability to investigate the matter. In addition, permitting access to investigative files and records could disclose the identity of confidential sources and the nature of the information supplied by informants as well as endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informers might refuse to provide valuable information unless they believe that their identities would not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair the investigator's ability to perform its law enforcement responsibilities. Furthermore, providing access to records contained in the system of records could reveal the identities of undercover law enforcement officers who compiled information regarding the individual's criminal activities, thereby endangering the physical safety of those undercover officers by exposing them to possible reprisals. Permitting access in keeping these provisions would also discourage other law enforcement and regulatory agencies, foreign or domestic, from freely sharing information and thus would restrict access to information necessary to accomplish it mission most effectively.

(3) 5 U.S.C. 552a(d)(2), (3), and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to the individual or concern related to procedures, and require the agency either to amend the record or to note the disputed portion of the record, and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend upon the individual having access to his or her records, and since an exemption from the provisions of 5 U.S.C. 552a relating to access to records is proposed for the reasons set out in the preceding paragraph of this section, these provisions should not apply to the above-listed system or records.

(4) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or Executive Order. The term "maintain," as defined in 5 U.S.C. 552a(a)(3), includes "collect" and "disseminate." The application of this provision could impair the investigator's ability to collect and disseminate valuable law enforcement information. In the early stages of an investigation, it may be impossible to determine whether information collected is relevant and necessary, and information that initially appears irrelevant and information developed subsequently, prove particularly relevant and necessary to the investigation. Compliance with the above records maintenance requirements would require the periodic up-dating of information the Department collects and maintains to ensure that the records in this system remain timely, accurate, and complete. Further, the investigator may uncover evidence of violations of law that fall within the investigative jurisdiction of other law enforcement agencies. To promote effective law enforcement, the investigator will refer this evidence to the appropriate authority for further investigation.

(5) 5 U.S.C. 552a(e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the above-referenced systems of records could allow individuals to learn whether they have been identified as subjects of investigation. Access to such knowledge would impair the investigator's ability to carry out the mission, since individuals could take steps to avoid detection and destroy or hide evidence needed to prove the violation.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. Revealing sources for information could disclose investigative techniques and procedures; result in threats or reprisals against confidential informants by the subjects of investigations; and cause confidential informants to refuse to give full information to investigators for fear of having their identities as sources disclosed.

As required by Executive Order 12866, it has been determined that this rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis.

Pursuant to the requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, it is hereby certified that this rule will not have significant economic impact on a substantial number of small entities. The term "small entity" is defined to have the same meaning as the terms "small business", "small organization" and "small governmental jurisdiction" as defined in the RFA.

The proposed regulation, issued under section 552a(k) of the Privacy Act, is to exempt certain information maintained by the Department in the above system of records from notification, access and amendment of a record by individuals who are citizens of the United States or an alien lawfully admitted for permanent residence. Inasmuch as the Privacy Act rights are personal and apply only to U.S. citizens or an alien lawfully admitted for permanent residence, small entities, as defined in the RFA, are not provided rights under the Privacy Act and are outside the scope of this regulation.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1, subpart C of title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

2. Section 1.36 paragraph (g)(1)(i) is amended by adding the following text to the table in numerical order.

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 522a and this part.

* * * * *

(g) * * *

(1) * * *

(i) * * *

Number	System name.
* * * * * * *	
DO .225	TARP Fraud Investigation Information System
* * * * * * *	

* * * * *

Dated: January 25, 2011.

Melissa Hartman,

Deputy Assistant Secretary for Privacy, Transparency and Records.

[FR Doc. 2011–2869 Filed 2–8–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2009–0558]

RIN 1625–AA08

Eleventh Coast Guard District Annual Marine Events

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to update and consolidate the list of marine events occurring annually within the Eleventh Coast Guard District. These amendments will standardize the special local regulations language, update listed events, delete events that are no longer occurring, add new unlisted annual events to the regulation, and standardize the format for all tables in these four sections. When these special local regulations are activated, and thus subject to enforcement, this rule would enable vessel movement restrictions in the regulated area.

DATES: Comments and related material must be received by the Coast Guard on or before March 11, 2011. Requests for public meetings must be received by the Coast Guard on or before March 1, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0558 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Lieutenant Junior Grade Lucas Mancini, Eleventh Coast Guard District Prevention Division, Waterways Management Branch, Coast Guard; telephone 510–437–3801, e-mail *Lucas.W.Mancini@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0558), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2009–0558" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may

change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2009–0558" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before March 1, 2011 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Lieutenant Junior Grade Lucas Mancini at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Background and Purpose

Marine events are annually held on a recurring basis on the navigable waters within the Eleventh Coast Guard District. These events include sailing regattas, powerboat races, rowboat races, parades, and swim events. Many of the annual events requiring special local regulations do not currently reflect changes in actual dates and other required information.

The effect of these proposed special local regulations will be to restrict general navigation in the vicinity of the events, from the start of each event until the conclusion of that event. These areas will be patrolled at the discretion of the Coast Guard. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to keep spectators and vessels a safe distance away from the specified events to ensure the safety of participants, spectators, and transiting vessels

Discussion of Proposed Rule

The Coast Guard proposes to revise 33 CFR 100.1101, 100.1102, 100.1103, and to add 33 CFR 100.1104. The proposed changes will effectively update the outdated special local regulations. The proposed amendments and addition will address minor corrections required in the regulatory text.

The Coast Guard proposes to amend 33 CFR 100.1101, 1101.1102, and 100.1103 by replacing paragraphs a and b of each section to conform to a uniform regulatory text for these sections of 33 CFR Part 100 that govern annual marine events within the Eleventh Coast Guard District. Table 1 for each of the listed sections is being updated as follows: Existing events that continue to occur are being updated with current information, previously unlisted events are being added, and listed events that the Coast Guard has been unable to verify as continuing are being deleted. The proposed addition of a 33 CFR 100.1104 is needed to ease administrative burden on the event sponsors and the public by adding a specific section for annual marine events requiring special local regulations in the Los Angeles Long Beach Captain of the Port Zone.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This rule is not a significant regulatory action because the regulations exist for a limited period of time on a limited portion of the waterways. Further, individuals and vessels desiring to use the affected portion of the waterways may seek permission from the Patrol Commander to use the affected areas.

Small Entities

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

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

We expect this proposed rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to fish, transit, or anchor in the waters affected by these special local regulations. These special local regulations will not have a significant economic impact on a substantial number of small entities for the following reasons: Small vessel traffic will be able to pass safely around the area and vessels engaged in event activities, sightseeing and commercial fishing have ample space outside of the area governed by the special local regulations to engage in these activities. Small entities and the maritime public will be advised of implementation of these special local regulations via public notice to mariners or notice of implementation published in the **Federal Register**.

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

Assistance for Small Entities

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

If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Lucas Mancini, Eleventh Coast Guard District Prevention Division, Waterways Management Branch, Coast Guard; telephone 510–437–3801, e-mail *Lucas.W.Mancini@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 100

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

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

PART 100—MARINE EVENTS

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

Authority: 33 U.S.C. 1233.

2. Revise 33 CFR 100.1101 to read as follows:

§ 100.1101 Southern California Annual Marine Events for the San Diego Captain of the Port Zone.

(a) *General.* Special local regulations are established for the events listed in Table 1 of this section. Notice of implementation of these special local regulations will be made by publication in the **Federal Register** 30 days prior to the event for those events without specific dates. In all cases, further information on exact dates, times, and other details concerning the number and type of participants and an exact geographical description of the areas are published by the Eleventh Coast Guard District in the Local Notice to Mariners at least 20 days prior to each event. Note: Sponsors of events listed in Table 1 of this section must submit an application each year as required by 33 CFR part 100 to the cognizant Coast Guard Sector Commander no less than 60 days before the start of the proposed event. Sponsors are informed that ample lead time is required to inform all Federal, state, local agencies, and/or other interested parties and to provide the sponsor the best support to ensure the safety of life and property.

(b) *Special local regulations.* All persons and vessels not registered with the sponsor as participants or as official

patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard or other vessels assigned or approved by the cognizant Coast Guard Sector Commander to patrol each event.

(1) No spectator shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels in the regulated areas during all applicable effective dates and times unless cleared to do so by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, any spectator located within a regulated area during all applicable effective dates and times shall come to an immediate stop.

(3) The Patrol Commander (PATCOM) is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander shall be designated by the cognizant Coast Guard Sector Commander; will be a U.S. Coast Guard commissioned officer, warrant officer, or petty officer to act as the Sector Commander's official representative; and will be located aboard the lead official patrol vessel. As the Sector Commander's representative, the PATCOM may terminate the event any time it is deemed necessary for the protection of life and property. PATCOM may be reached on VHF–FM Channel 13 (156.65MHz) or 16 (156.8MHz) when required, by the call sign "PATCOM".

(4) The Patrol Commander may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

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

TABLE 1 TO § 100.1101

[All coordinates referenced use datum NAD 83.]

	1. San Diego Fall Classic
Sponsor	San Diego Rowing Club.
Event Description	Competitive rowing race.
Date	Sunday in November.
Location	Mission Bay, CA.
Regulated Area	The waters of Mission Bay to include South Pacific Passage, Fiesta Bay, and the waters around Vacation Isle.
	2. California Half Ironman Triathlon
Sponsor	North America Sport, Inc.
Event Description	Swimming Portion of Triathlon Race.
Date	Saturday in late March or early April.
Location	Oceanside, CA.
Regulated Area	The waters of Oceanside Harbor, CA, including the entrance channel.
	3. San Diego Crew Classic
Sponsor	San Diego Crew Classic.
Event Description	Competitive rowing race.
Date	First Saturday and Sunday in April.
Location	The Mission Bay Park area of San Diego, CA.
Regulated Area	Mission Bay, the portion known as Fiesta Bay.
	4. Dutch Shoe Regatta
Sponsor	San Diego Yacht Club.
Event Description	Sailboat Race.
Date	Friday in late July.
Location	San Diego, CA.
Regulated Area	The waters of San Diego Bay, CA, from Shelter Island to Glorietta Bay.
	5. San Diego Parade of Lights
Sponsor	Greater Shelter Island Association.
Event Description	Boat Parade.
Date	Late December.
Location	San Diego Harbor.
Regulated Area	The northern portion of the San Diego Main Ship Channel from Seaport Village to the Shelter Island Basin.
	6. Mission Bay Parade of Lights
Sponsor	Mission Bay Yacht Club.
Event Description	Boat Parade.
Date	Late December.
Location	San Diego, CA.
Regulated Area	Mission Bay, the Main Entrance Channel, Sail Bay, and Fiesta Bay.

3. Revise § 100.1102 to read as follows:

§ 100.1102 Annual Marine Events on the Colorado River, between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona).

(a) *General.* Special local regulations are established for the events listed in Table 1 of this section. Notice of implementation of these special local regulations will be made by publication in the **Federal Register** 30 days prior to the event for those events without specific dates or by Notice to Mariners

20 Days prior to the event for those events listing a period for which a firm date is identifiable. In all cases, further information on exact dates, times, and other details concerning the number and type of participants and an exact geographical description of the areas are published by the Eleventh Coast Guard District in the Local Notice to Mariners at least 20 days prior to each event. To be placed on the mailing list for Local Notice to Mariners contact: Commander (dpw), Eleventh Coast Guard District, Coast Guard Island, Building 50–2, Alameda, CA 94501–5100. Note: Sponsors of events listed in Table 1 of this section must submit an application each year as required by 33 CFR part 100, subpart A, to the cognizant Coast Guard Sector Commander. Sponsors are informed that ample lead time is required to inform all Federal, state, local agencies, and/or other interested parties and to provide the sponsor the best support to ensure the safety of life and property. A Coast Guard-National Park Service agreement exists for both the Glen Canyon and Lake Mead National Recreational Areas; applicants shall contact the cognizant authority for approval of events in these areas.

(b) *Special local regulations.* All persons and vessels not registered with the sponsor as participants or as official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, other Federal, state or local law enforcement, and any public or sponsor-provided vessels assigned or approved by the cognizant Coast Guard Sector Commander to patrol each event.

(1) No spectator shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels in the regulated areas during all applicable effective dates and times unless cleared to do so by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, any spectator located within a regulated area during all applicable effective dates and times shall come to an immediate stop.

(3) The Patrol Commander (PATCOM) is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander shall be designated by the cognizant Coast Guard Sector Commander; will be a U.S. Coast Guard commissioned officer, warrant officer, or petty officer to act as the Sector Commander's official representative; and will be located aboard the lead official patrol vessel. As the Sector Commander's representative, the PATCOM may terminate the event any time it is deemed necessary for the protection of life and property. PATCOM may be reached on VHF–FM Channel 13 (156.65MHz) or 16 (156.8MHz) when required, by the call sign "PATCOM".

(4) The Patrol Commander may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

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

TABLE 1 TO § 100.1102

[All coordinates referenced use datum NAD 83.]

	1. Lake Havasu Winter Heat Water-Ski Race
Sponsor	National Water-ski Racing Association.
Event Description	Water-ski races.
Date	Saturday and Sunday in February.
Location	Lake Havasu, AZ.
Regulated Area	That portion of the lower Colorado River on the Arizona side between Thompson Bay and Copper Canyon.
	2. Havasu Landing Regatta
Sponsor	Southern Outboard Association.
Event Description	Boat Races on closed course.
Date	Saturday and Sunday in February.
Location	Havasu Lake, CA.
Regulated Area	That portion of the lower Colorado River on the California side at Havasu Landing Resort and Casino.
	3. Parker International Water-ski Race
Sponsor	International Water-ski Race Association.
Event Description	Water-ski Show.
Date	Second Saturday and Sunday in March.
Location	Parker, AZ.
Regulated Area	The entire water area of the Colorado River beginning at Bluewater Marina in Parker, AZ, and extending approximately 10 miles to La Paz County Park.
	4. Desert Storm
Sponsor	Lake Racer LLC.
Event Description	Boat Poker Run and Exhibition Runs.
Date	April weekend (3 day event).
Location	Lake Havasu, AZ.
Regulated Area	The waters of the lower Colorado River encompassed by the following boundaries: Boundary one from 34°27′44″ N, 114°20′53″ W to 34°27′51″ N, 114°20′43″ W. Boundary two from 34°26′50″ N, 114°20′41″ W to 34°27′14″ N, 114°20′55″ W. Boundary three from 34°26′10″ N, 114°18′40″ W to 34°25′50′ N, 114°18′52″ W.
	5. Lake Havasu Grand Prix
Sponsor	POPRA.
Event Description	Boat Races on closed course.
Date	April weekend (2 day event).
Location	Lake Havasu, AZ.

TABLE 1 TO § 100.1102—Continued

[All coordinates referenced use datum NAD 83.]

Regulated Area	The waters of the lower Colorado River encompassed by the following boundaries: Boundary one from 34°27′44″ N, 114°20′53″ W to 34°27′51″ N, 114°20′43″ W. Boundary two from 34°26′50″ N, 114°20′41″ W to 34°27′14″ N, 114°20′55″ W. Boundary three from 34°26′10″ N, 114°18′40″ W to 34°25′50″ N, 114°18′52″ W.
	6. Bluewater Resort and Casino Spring Classic
Sponsor	Southern California Speedboat Club.
Event Description	Professional High-speed powerboat race, closed course.
Date	Saturday and Sunday in April.
Location	Parker, AZ.
Regulated Area	The Lake Moovalya area of the Colorado River in Parker, AZ.
	7. IJSBA World Finals
Sponsor	International Jet Sports Boating Association.
Event Description	Personal Watercraft Race.
Date	Second Saturday through third Sunday of October (10 Days).
Location	Lake Havasu City, AZ.
Regulated Area	The navigable waters of Lake Havasu, AZ in the area known as Crazy Horse Campgrounds.
	8. Parker Enduro
Sponsor	Parker Area Chamber of Commerce.
Event Description	Hydroplane, flatbottom, tunnel, and v-bottom powerboat race.
Date	Late October.
Location	Parker, AZ.
Regulated Area	Between river miles 179 and 185 (between the Roadrunner Resort and Headgate Dam).
	9. Bluewater Resort and Casino Thanksgiving Regatta
Sponsor	Southern California Speedboat Club.
Event Description	Boat Races.
Date	Thursday, Friday, Saturday, and Sunday during Thanksgiving week.
Location	Parker, AZ.
Regulated Area	That portion of Lake Moovalya, Parker, AZ between the northern and southern boundaries of La Paz County Park.
	10. Lake Havasu City Boat Parade of Lights
Sponsor	London Bridge Yacht Club.
Event Description	Boat parade during which vessels pass by a pre-designated vessel and then transit through the London Bridge Channel.
Date	First Saturday and Sunday in December.
Location	Lake Havasu, AZ.
Regulated Area	The limits of this temporary safety zone are consists of the navigable waters of North Lake Havasu, London Bridge Channel and Thompson Bay.

4. Revise § 100.1103 to read as follows:

§ 100.1103 Northern California and Lake Tahoe Area Annual Marine Events.

(a) *General.* Special local regulations are established for the events listed in Table 1 of this section. Notice of implementation of these special local regulations will be made by publication in the **Federal Register** 30 days prior to the event for those events without specific dates or by Notice to Mariners 20 Days prior to the event for those events listing a period for which a firm date is identifiable. In all cases, further information on exact dates, times, and other details concerning the number and type of participants and an exact geographical description of the areas are published by the Eleventh Coast Guard District in the Local Notice to Mariners at least 20 days prior to each event. To be placed on the mailing list for Local Notice to Mariners contact: Commander (dpw), Eleventh Coast Guard District, Coast Guard Island, Building 50–2, Alameda, CA 94501–5100. Note: Sponsors of events listed in Table 1 of this section must submit an application each year as required by 33 CFR part 100, subpart A, to the cognizant Coast Guard Sector Commander. Sponsors are informed that ample lead time is required to inform all Federal, state, local agencies, and/or other interested parties and to provide the sponsor the best support to ensure the safety of life and property.

(b) *Special local regulations.* All persons and vessels not registered with the sponsor as participants or as official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard; other Federal, state, or local law enforcement; and any public or sponsor-provided vessels assigned or approved by the cognizant Coast Guard Sector Commander to patrol each event.

(1) No spectator shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels in the regulated areas during all applicable effective dates and times unless cleared to do so by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, any spectator located within a regulated area during all applicable effective dates and times shall come to an immediate stop.

(3) The Patrol Commander (PATCOM) is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander shall be designated by the cognizant Coast Guard

Sector Commander; will be a U.S. Coast Guard commissioned officer, warrant officer, or petty officer to act as the Sector Commander's official representative; and will be located aboard the lead official patrol vessel. As the Sector Commander's representative, the PATCOM may terminate the event any time it is deemed necessary for the protection of life and property. PATCOM may be reached on VHF–FM Channel 13 (156.65 MHz) or 16 (156.8 MHz) when required, by the call sign "PATCOM".

(4) The Patrol Commander may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

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

TABLE 1 TO § 100.1103

[All coordinates referenced use datum NAD 83.]

	1. Redwood Heron Sprints Regatta
Sponsor	Humboldt State University Athletic Department.
Event Description	Sport rowing shells.
Date	Third Sunday in April
Location	Eureka Inner Reach Channel.
Regulated Area	The navigable waters within an area bounded by a line starting 40°48′16″ N, 124°10′28″ W; thence to 40°48′21″ N, 124°10′28″ W; thence to 40°48′35″ N, 124°09′17″ W; thence to 40°48′30″ N, 124°09′17″ W; thence returning to the point of origin.
	2. Stockton Asparagus Festival
Sponsor	City of Stockton.
Event Description	Pier side Event.
Date	Last Friday, Saturday and Sunday in April.
Location	McLeod Lake, Stockton, CA.
Regulated Area	Starting at the Port of Stockton and extending east to McLeod Lake; beginning at latitude 37°57′06″ N and longitude 121°19′35″ W; then northerly to latitude 37°57′10″ N and longitude 121°19′36″ W; then north-northeasterly to latitude 37°57′24″ N and longitude 121°17′35″ W; then south-southwesterly to latitude 37°57′15″ N and longitude 121°17′41″ W; then south-southeasterly to latitude 37°57′14″ N and longitude 121° 17′31″ W; and then back to the beginning point.
	3. Blessing of the Fleet
Sponsor	Corinthian Yacht Club.
Event Description	Boat parade during which vessels pass by a pre-designated platform or vessel.
Date	Last Sunday in April.
Location	San Francisco Waterfront to South Tower of Golden Gate Bridge.
Regulated Area	The area between a line drawn from Bluff Point on the southeastern side of Tiburon Peninsula to Point Campbell on the northern edge of Angel Island, and a line drawn from Peninsula Point to the southern edge of Tiburon Peninsula to Point Stuart on the western edge of Angel Island.
	4. Opening Day on San Francisco Bay
Sponsor	Pacific Inter-Club Yacht Association and Corinthian Yacht Club.
Event Description	Boat parade during which vessels pass by a pre-designated platform or vessel.
Date	Last Sunday in April.
Location	San Francisco, CA waterfront: Crissy Field to Pier 39.
Regulated Area	The area defined by a line drawn from Fort Point; thence easterly approximately 5,000 yards; thence easterly to the Blossom Rock Bell Buoy; thence westerly to the Northeast corner of Pier 39; thence returning along the shoreline to the point of origin. Special Requirements: All vessels entering the regulated area shall follow the parade route established by the sponsor and be capable of maintaining an approximate speed of 6 knots. Commercial Vessel Traffic Allowances: The parade will be interrupted, as necessary, to permit the passage of commercial vessel traffic. Commercial traffic must cross the parade route at a no-wake speed and perpendicular to the parade route.
	5. Kinetic Sculpture Race
Sponsor	Kinetic Sculpture Race Inc.
Event Description	Human Powered Craft Race.
Date	Saturday and Sunday of Memorial Day Weekend.
Location	Eureka Inner Reach Channel.
Regulated Area	The navigable waters within an area bounded by a line starting 40°48′16″ N, 124°10′28″ W; thence to 40°48′21″ N, 124°10′28″ W; thence to 40°48′35″ N, 124°09′17″ W; thence to 40°48′30″ N, 124°09′17″ W; thence returning to the point of origin.
	6. Sacramento Bridge-to-Bridge Water Festival
Sponsor	Sacramento Visitors Bureau.
Event Description	Professional high-speed powerboat races.
Date	Second to last Friday, Saturday and Sunday in July.
Location	Sacramento, CA.

TABLE 1 TO § 100.1103—Continued

[All coordinates referenced use datum NAD 83.]

Regulated Area	The navigable waters within an area bounded by a line starting 38°35′49″ N, 121°30′30″ W; thence to 38°35′49″ N, 121°30′23″ W: thence to 38°40′00″ N, 121°30′59″ W; thence to 38°33′46″ N, 121°31′11″ W thence returning to the point of origin.
	7. Humboldt Bay Paddle Fest
Sponsor	Humboldt State University Alumni Association.
Event Description	Paddle boat race.
Date	Last weekend in September or first weekend in October.
Location	Eureka Inner Reach Channel.
Regulated Area	The navigable waters within an area bounded by a line starting 40°48′16″ N, 124°10′28″ W; thence to 40°48′21″ N, 124°10′28″ W; thence to 40°48′35″ N, 124°09′17″ W; thence to 40°48′30″ N, 124°09′17″ W; thence returning to the point of origin.
	8. Delta Thunder Powerboat Race
Sponsor	Pacific Offshore Power Racing Association.
Event Description	Professional high-speed powerboat race.
Date	Second Saturday, Sunday in September.
Location	Off Pittsburgh, CA in the waters around Winter Island and Brown Island.
Regulated Area	The water area of Suisun Bay commencing at Simmons Point on Chipps Island; thence southwesterly to Stake Point on the southern shore of Suisun Bay; thence easterly following the southern shoreline of Suisun Bay and New York Slough to New York Slough Buoy 13; thence north-northwesterly to the Northwestern corner of Fraser Shoal; thence northwesterly to the western tip of Chain Island; thence west-northwesterly to the northeast tip of Van Sickle Island; thence following the shoreline of Van Sickle Island and Chipps Island and returning to the point of origin.
	9. Pittsburg Seafood Festival Air Show
Sponsor	City of Pittsburg, CA.
Event Description	Pittsburg Seafood Festival Air Show.
Date	Second Saturday, Sunday in September.
Location	Off Pittsburg, CA in the waters around Winter Island and Brown Island.
Regulated Area	The water area of Suisun Bay commencing at Simmons Point on Chipps Island; thence southwesterly to Stake Point on the southern shore of Suisun Bay; thence easterly following the southern shoreline of Suisun Bay and New York Slough to New York Slough Buoy 13; thence north-northwesterly to the Northwestern corner of Fraser Shoal; thence northwesterly to the western tip of Chain Island; thence west-northwesterly to the northeast tip of Van Sickle Island; thence following the shoreline of Van Sickle Island and Chipps Island and returning to the point of origin.

5. Add § 100.1104 to read as follows:

§ 100.1104 Southern California Annual Marine Events for the Los Angeles Long Beach Captain of the Port Zone.

(a) *General.* Special local regulations are established for the events listed in Table 1 of this section. Notice of implementation of these special local regulations will be made by publication in the **Federal Register** 30 days prior to the event for those events without specific dates or by Notice to Mariners 20 Days prior to the event for those events listing a period for which a firm date is identifiable. In all cases, further information on exact dates, times, and other details concerning the number and type of participants and an exact geographical description of the areas are published by the Eleventh Coast Guard District in the Local Notice to Mariners at least 20 days prior to each event. To be placed on the mailing list for Local Notice to Mariners contact: Commander (dpw), Eleventh Coast Guard District, Coast Guard Island, Building 50–2, Alameda, CA 94501–5100. Note: Sponsors of events listed in Table 1 of this section must submit an application each year as required by 33 CFR part 100, subpart A, to the cognizant Coast Guard Sector Commander. Sponsors are informed that ample lead time is required to inform all Federal, state, local agencies, and/or other interested parties and to provide the sponsor the best support to ensure the safety of life and property.

(b) *Special local regulations.* All persons and vessels not registered with the sponsor as participants or as official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard; other Federal, state, or local law enforcement; and any public or sponsor-provided vessels assigned or approved by the cognizant Coast Guard Sector Commander to patrol each event.

(1) No spectator shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels in the regulated areas during all applicable effective dates and times unless cleared to do so by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, any spectator located within a regulated area during all applicable effective dates and times shall come to an immediate stop.

(3) The Patrol Commander (PATCOM) is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander shall be designated by the cognizant Coast Guard Sector Commander; will be a U.S. Coast Guard commissioned officer, warrant officer, or petty officer to act as the Sector Commander's official representative; and will be located aboard the lead official patrol vessel. As the Sector Commander's representative, the PATCOM may terminate the event any time it is deemed necessary for the protection of life and property. PATCOM may be reached on VHF–FM Channel 13 (156.65 MHz) or 16 (156.8 MHz) when required, by the call sign "PATCOM".

(4) The Patrol Commander may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

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

TABLE 1 TO § 100.1104

[All coordinates referenced use datum NAD 83.]

	1. Newport to Ensenada Yacht Race
Sponsor	Newport Ocean Sailing Association.
Event Description	Sailing vessel race; open ocean.
Date	Fourth Friday in April.
Location	Newport Beach, CA.
Regulated Area	Starting area only. All waters of the Pacific Ocean near Newport Beach, CA bounded by a line starting 33°35′18″ N, 117°53′18″ W; thence to 33°34′54″ N, 117°53′18″ W; thence to 33°34′54″ N, 117°54′30″ W; thence to 33°35′18″ N, 117°54′30″ W; thence returning to the point of origin.

Dated: December 21, 2010.

J.R. Castillo,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 2011–2861 Filed 2–8–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0204]

RIN 1625–AA09

Drawbridge Operation Regulation; Mantua Creek, Paulsboro, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The Coast Guard is withdrawing its notice of proposed rulemaking concerning the proposed change to the regulations that governed the operation of the S.R. 44 Bridge, at mile 1.7, across Mantua Creek at Paulsboro, NJ. The requested change would have allowed the drawbridge to operate on an advance notice basis year-round.

DATES: The notice of proposed rulemaking is withdrawn on February 9, 2011.

ADDRESSES: The docket for this withdrawn rulemaking is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2009–0204 in the "Keyword" box and then clicking "Search".

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, call or e-mail Waverly W. Gregory, Jr., Fifth Coast Guard District; telephone (757) 398–6222, e-mail *Waverly.W.Gregory@uscg.mil.* If you have questions on viewing material in the docket call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background

On April 24, 2009, we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations; Mantua Creek, Paulsboro, NJ" in the Federal Register (74 FR 18665–18667). The rulemaking would have allowed the drawbridge to operate on an advance notice basis year-round.

Withdrawal

The New Jersey Department of Transportation (NJDOT), the responsible party for the operation of the S.R. 44 Bridge, at mile 1.7, across Mantua Creek at Paulsboro, NJ, had requested to change the operating schedule for the S.R. 44 Bridge to require a four-hour advance notification of vessel openings year-round due to the decrease in vessel opening requests of the drawbridge in recent years.

The Coast Guard recently received an application from the South Jersey Port Corporation and the Gloucester County Improvement Authority proposing the construction of an access road and bridge that will span Mantua Creek within close proximity to the upstream S.R. 44 Bridge. The proposed bridge will be a three-span composite steel plate girder bridge (fixed superstructure) with two concrete piers within Mantua Creek.

Based on the expected increase in the use of the waterway and vessel opening requests of the S.R. 44 Bridge, the rulemaking could impose critical service delays to commercial vessels attempting to arrive promptly on scene for the proposed bridge construction. As a result of this change in circumstances, the proposed rulemaking would no longer improve the schedule for waterway users.

Authority

This action is taken under the authority of 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

Dated: January 27, 2011.

William D. Lee,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2011–2898 Filed 2–8–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0559]

RIN 1625–AA00

Safety Zones; Eleventh Coast Guard District Annual Fireworks Events

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the listing of permanent safety zones to ensure public safety during annual firework displays at various locations in the Eleventh Coast Guard District. These amendments will standardize the safety zone language, update listed events, delete events that are no longer occurring, add new unlisted annual fireworks events to the regulations, and standardize the format for all tables in these four sections. When these safety zones are activated, and thus subject to enforcement, this rule would limit the movement of vessels within the established firework display area.

DATES: Comments and related material must be received by the Coast Guard on or before March 11, 2011. Requests for public meetings must be received by the Coast Guard on or before March 1, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0559 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Lieutenant Junior Grade Lucas Mancini, Eleventh Coast Guard District Prevention Division, Waterways Management Branch, Coast Guard; telephone 510–437–3801 e-mail *Lucas.W.Mancini@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0559), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2009–0559" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2009–0559" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

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

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Lieutenant Junior Grade Lucas Mancini at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Basis and Purpose

Firework displays are held annually on a recurring basis on the navigable waters within the Eleventh Coast Guard District. Many of the annual firework events requiring safety zones do not currently reflect changes in actual dates and other required information. These safety zones are necessary to provide for the safety of the crew, spectators, participants of the event, participating vessels, and other users and vessels of the waterway from the hazards associated with firework displays. This proposed rule will also provide the public current information on safety zone locations, size, and length of time the zones will be active.

The effect of these proposed safety zones will be to restrict general navigation in the vicinity of the events, from the start of each event until the conclusion of that event. These areas will be patrolled at the discretion of the Coast Guard. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to keep spectators and vessels a safe distance away from the firework displays to ensure the safety of participants, spectators, and transiting vessels.

33 CFR 165.1191 has not been updated recently and Section 165.1123, 165.1124, and 165.1125 need to be added to include In addition, information for those events that continue to occur has changed in some cases and requires updating. Also, there are minor corrections required in the regulatory text. Finally, amending the text will create

Discussion of Proposed Rule

The Coast Guard is proposing to revise 33 CFR 165.1191, and add 33 CFR 165.1123, 165.1124, 165.1125. These amendments are necessary to provide the public with current information on the annual firework displays occurring within the Eleventh Coast Guard District. 33 CFR 165.1191 will be revised to conform existing regulatory language for regulations establishing permanent safety zones for annual firework events within the Eleventh Coast Guard District. Additionally, the Coast Guard proposes to add 33 CFR 165.1123, 165.1124, and 165.1125 to establish safety zones for annual firework events in two Southern California Captain of the Port Zones and on the Colorado River between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona).

Table 1 for each of the listed sections will be updated or added as follows: update with current information existing events, add previously unlisted events, and delete listed events that the Coast Guard has been unable to verify as continuing.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This rule is not a significant regulatory action because the regulations exist for a limited period of time on a limited portion of the waterways. Furthermore, individuals and vessels desiring to use the affected portion of the waterways may seek permission from the Patrol Commander to use the affected areas.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. We expect this proposed rule will affect the following entities, some of which may be small entities: Owners and operators of vessels intending to fish, sightsee, transit, or anchor in the waters affected by these safety zones. These regulations will not have a significant economic impact on a substantial number of small entities for several reasons: Small vessel traffic will be able to pass safely around the area and vessels engaged in event activities, sightseeing and commercial fishing have ample space outside of the area governed by the special local regulations to engage in these activities. Small entities and the maritime public will be advised of implementation of the safety zone via public notice to mariners or notice of implementation published in the **Federal Register**.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Junior Grade Lucas Mancini, Eleventh Coast Guard District Prevention Division, Waterways Management Branch, Coast Guard; telephone 510–437–3801 e-mail *Lucas.W.Mancini@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.1123 with the following:

§ 165.1123 Southern California Annual Firework Events for the San Diego Captain of the Port Zone.

(a) *General.* Safety zones are established for the events listed in Table 1 of this section. Further information on exact dates, times, and other details concerning the exact geographical description of the areas are published by the Eleventh Coast Guard District in the Local Notice to Mariners at least 20 days prior to the event.

(b) *Regulations.* All persons and vessels not registered with the sponsor as participants or as official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard; other Federal, state, or local law enforcement; and any public or sponsor-provided vessels assigned or approved by the cognizant Coast Guard Sector Commander to patrol each event.

(1) No spectator shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels in the safety zone during all applicable effective dates and times unless cleared to do so by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, any spectator located within a safety zone during all applicable effective dates and times shall come to an immediate stop.

(3) The Patrol Commander (PATCOM) is empowered to forbid and control the movement of all vessels in the safety zone. The Patrol Commander shall be designated by the cognizant Coast Guard Sector Commander; will be a U.S. Coast Guard commissioned officer, warrant officer, or petty officer to act as the Sector Commander's official representative; and will be located aboard the lead official patrol vessel. As the Sector Commander's representative, the PATCOM may terminate the event any time it is deemed necessary for the protection of life and property. PATCOM may be reached on VHF–FM Channel 13 (156.65 MHz) or 16 (156.8 MHz) when required, by the call sign "PATCOM."

(4) The Patrol Commander may, upon request, allow the transit of commercial vessels through the safety zone when it is safe to do so.

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

TABLE 1 TO § 165.1123

[All coordinates referenced use datum NAD 83.]

	1. San Diego, CA POPS Fireworks Display
Sponsor	Fireworks America.
Event Description	Fireworks Display.
Date	Friday/Saturday/Sunday Last weekend of June through first weekend of September.
Location	San Diego Bay South Embarcadero.
Regulated Area	800-foot radius safety zone around tug/barge combination.
	2. Fourth of July Fireworks, Mission Bay
Sponsor	Mission Bay 4th of July Fireworks.
Event Description	Fireworks Display.
Date	July 3rd and 4th.
Location	Mission Bay/Paradise Point and Sail Bay, CA.
Regulated Area	800-foot radius safety zone around tug/barge combination.

TABLE 1 TO § 165.1123—Continued

[All coordinates referenced use datum NAD 83.]

	3. Coronado Fourth of July Fireworks
Sponsor	Coronado, CA.
Event Description	Fireworks Display.
Date	July 4th.
Location	Glorietta Bay, CA.
Regulated Area	All navigable waters of San Diego Bay in San Diego, CA within a 1200 foot radius of the fireworks barge located at approximately 32°40′41″ N, 117°10′11″ W. Note: This will result in no through vessel traffic of Glorietta Bay for the duration of the fireworks display.
	4. San Diego Parade of Lights Fireworks Display
Sponsor	Greater Shelter Island Association.
Event Description	Boat Parade.
Date	Late December.
Location	San Diego Harbor.
Regulated Area	The northern portion of the San Diego Main Ship Channel from Seaport Village to the Shelter Island Basin.

3. Add § 165.1124 to read as follows:

§ 165.1124 Annual Firework Events on the Colorado River, between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona).

(a) *General.* Safety zones are established for the events listed in Table 1 of this section. Further information on exact dates, times, and other details concerning the exact geographical description of the areas are published by the Eleventh Coast Guard District in the Local Notice to Mariners at least 20 days prior to the event.

(b) *Regulations.* All persons and vessels not registered with the sponsor as participants or as official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard; other Federal, state, or local law enforcement; and any public or sponsor-provided vessels assigned or approved by the cognizant Coast Guard Sector Commander to patrol each event.

(1) No spectator shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels in the safety zone during all applicable effective dates and times unless cleared to do so by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, any spectator located within a safety zone during all applicable effective dates and times shall come to an immediate stop.

(3) The Patrol Commander (PATCOM) is empowered to forbid and control the movement of all vessels in the safety zone. The Patrol Commander shall be designated by the cognizant Coast Guard Sector Commander; will be a U.S. Coast Guard commissioned officer, warrant officer, or petty officer to act as the Sector Commander's official representative; and will be located aboard the lead official patrol vessel. As the Sector Commander's representative, the PATCOM may terminate the event any time it is deemed necessary for the protection of life and property. PATCOM may be reached on VHF–FM Channel 13 (156.65 MHz) or 16 (156.8 MHz) when required, by the call sign "PATCOM."

(4) The Patrol Commander may, upon request, allow the transit of commercial vessels through the safety zone when it is safe to do so.

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

TABLE 1 TO § 165.1124

[All coordinates referenced use datum NAD 83.]

	1. Avi Resort & Casino Memorial Day Fireworks
Sponsor	Avi Resort & Casino.
Event Description	Fireworks Display.
Date	Sunday before Memorial Day.
Location	Laughlin, NV.
Regulated Area	River closure from 8 p.m.–10 p.m. The safety zone includes all navigable waters of the lower Colorado River at Laughlin, NV encompassed by the following coordinates: 35°01′05″ N, 114°38′20″ W; 35°01′05″ N, 114°38′15″ W; along the shoreline to 35°00′50″ N, 114°38′13″ W; 35°00′49″ N, 114°38′18″ W; along the shoreline to 35°01′05″ N, 114°38′20″ W.
	2. Rockets over the River
Sponsor	Laughlin Tourism Committee.
Event Description	Fireworks Display.
Date	First week in July.
Location	Laughlin, NV.
Regulated Area	The temporary safety zone is specifically defined as all navigable waters of the lower Colorado River at Laughlin, NV encompassed by the following coordinates: 35°09′53″ N, 114°34′15″ W; 35°09′53″ N, 114°34′07″ W; along the shoreline to 35°09′25″ N, 114°34′09″ W; 35°09′06″ N, 114°34′17″ W; along the shoreline to 35°09′53″ N, 114°34′15″ W.
	3. Avi Resort & Casino Fourth of July Fireworks
Sponsor	Avi Resort & Casino.
Event Description	Fireworks Display.

TABLE 1 TO § 165.1124—Continued

[All coordinates referenced use datum NAD 83.]

Date	First week in July.
Location	Laughlin, NV.
Regulated Area	River closure from 8 p.m.–10 p.m. The safety zone includes all navigable waters of the lower Colorado River at Laughlin, NV encompassed by the following coordinates: 35°01′05″ N, 114°38′20″ W; 35°01′05″ N, 114°38′14″ W; along the shoreline to 35°00′50″ N, 114°38′13″ W; 35°00′49″ N, 114°38′18″ W; along the shoreline to 35°01′05″ N, 114°38′20″ W.
	4. Avi Resort & Casino Labor Day Fireworks
Sponsor	Avi Resort & Casino.
Event Description	Fireworks Display.
Date	Sunday before Labor Day.
Location	Laughlin, NV.
Regulated Area	River closure from 8 p.m.–10 p.m. The safety zone includes all navigable waters of the lower Colorado River at Laughlin, NV encompassed by the following coordinates: 35°01′05″ N, 114°38′20″ W; 35°01′05″ N, 114°38′15″ W; along the shoreline to 35°00′20″ N, 114°38′13″ W; 35°00′49″ N, 114°38′18″ W; along the shoreline to 35°01′05″ N, 114°38′20″ W.

4. Add § 165.1125 to read as follows:

§ 165.1125 Southern California Annual Firework Events for the Los Angeles Long Beach Captain of the Port Zone.

(a) *General.* Safety zones are established for the events listed in Table 1 of this section. Further information on exact dates, times, and other details concerning the exact geographical description of the areas are published by the Eleventh Coast Guard District in the Local Notice to Mariners at least 20 days prior to the event.

(b) *Regulations.* All persons and vessels not registered with the sponsor as participants or as official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard; other Federal, state, or local law enforcement; and any public or sponsor-provided vessels assigned or approved by the cognizant Coast Guard Sector Commander to patrol each event.

(1) No spectator shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels in the safety zone during all applicable effective dates and times unless cleared to do so by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, any spectator located within a safety zone during all applicable effective dates and times shall come to an immediate stop.

(3) The Patrol Commander (PATCOM) is empowered to forbid and control the movement of all vessels in the safety zone. The Patrol Commander shall be designated by the cognizant Coast Guard Sector Commander; will be a U.S. Coast Guard commissioned officer, warrant officer, or petty officer to act as the Sector Commander's official representative; and will be located aboard the lead official patrol vessel. As the Sector Commander's representative, the PATCOM may terminate the event any time it is deemed necessary for the protection of life and property. PATCOM may be reached on VHF–FM Channel 13 (156.65 MHz) or 16 (156.8 MHz) when required, by the call sign "PATCOM."

(4) The Patrol Commander may, upon request, allow the transit of commercial vessels through the safety zone when it is safe to do so.

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

TABLE 1 TO § 165.1125

[All coordinates referenced use datum NAD 83.]

	1. Cambria American Legion Post Fourth of July Fireworks
Sponsor	Cambria American Legion Post.
Event Description	Fireworks Display.
Date	July 4th.
Location	Shamel Beach, Cambria, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	2. LA County Dept of Beach and Harbors 4th of July Fireworks
Sponsor	Los Angeles, CA County Dept of Beach and Harbors.
Event Description	Fireworks Display.
Date	July 4th.
Location	Main Ship Channel of Marina Del Rey, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	3. Fourth of July Fireworks, City of Dana Point
Sponsor	City of Dana Point, CA.
Event Description	Fireworks Display.
Date	July 4th.
Location	Offshore Dana Point Harbor, CA.

TABLE 1 TO § 165.1125—Continued

[All coordinates referenced use datum NAD 83.]

Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	4. Fourth of July Fireworks, City of Long Beach
Sponsor	City of Long Beach, CA.
Event Description	Fireworks Display.
Date	July 4th.
Location	Long Beach Harbor, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	5. Fourth of July Fireworks, Irvine Cove Community Association
Sponsor	Irvine Cove Community Association.
Event Description	Fireworks Display.
Date	July 4th.
Location	Offshore Laguna Beach, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	6. Fourth of July Fireworks, Emerald Bay Community Association
Sponsor	Emerald Bay Community Association.
Event Description	Fireworks Display.
Date	July 4th.
Location	Offshore Laguna Beach, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	7. Fourth of July Fireworks, Morro Bay CoC
Sponsor	Morro Bay Chamber of Commerce.
Event Description	Fireworks Display.
Date	July 4th.
Location	Offshore Morro Bay State Park.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	8. Fourth of July Fireworks, Catalina Island CoC
Sponsor	Catalina Island Chamber of Commerce.
Event Description	Fireworks Display.
Date	July 4th.
Location	Avalon Bay, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	9. Fourth of July Fireworks, City of Santa Barbara
Sponsor	City of Santa Barbara, CA.
Event Description	Fireworks Display.
Date	July 4th.
Location	Harbor Entrance of Santa Barbara, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	10. Fourth of July Fireworks, City of Faria
Sponsor	City of Faria, CA.
Event Description	Fireworks Display.
Date	July 4th.
Location	Offshore Faria Beach, CA
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.

TABLE 1 TO § 165.1125—Continued

[All coordinates referenced use datum NAD 83.]

	11. Fourth of July Fireworks, City of Redondo Beach
Sponsor	City of Redondo Beach, CA.
Event Description	Fireworks Display.
Date	July 4th.
Location	Offshore Redondo Beach, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	12. Fourth of July Fireworks, City of San Pedro
Sponsor	City of San Pedro, CA.
Event Description	Fireworks Display.
Date	July 4th.
Location	Offshore Cabrillo Beach, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	13. Fourth of July Fireworks, City of Cayucos
Sponsor	City of Cayucos, CA.
Event Description	Fireworks Display.
Date	July 4th.
Location	Cayucos Pier.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.

5. Revise § 165.1191 to read as follows:

§ 165.1191 Northern California and Lake Tahoe Area Annual Fireworks Events.

(a) *General.* Safety zones are established for the events listed in Table 1 of this section. Further information on exact dates, times, and other details concerning the exact geographical description of the areas are published by the Eleventh Coast Guard District in the Local Notice to Mariners at least 20 days prior to the event.

(b) *Regulations.* All persons and vessels not registered with the sponsor as participants or as official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard; other Federal, state, or local law enforcement; and any public or sponsor-provided vessels assigned or approved by the cognizant Coast Guard Sector Commander to patrol each event.

(1) No spectator shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels in the safety zone during all applicable effective dates and times unless cleared to do so by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, any spectator located within a safety zone during all applicable effective dates and times shall come to an immediate stop.

(3) The Patrol Commander (PATCOM) is empowered to forbid and control the movement of all vessels in the safety zone. The Patrol Commander shall be designated by the cognizant Coast Guard Sector Commander; will be a U.S. Coast Guard commissioned officer, warrant officer, or petty officer to act as the Sector Commander's official representative; and will be located aboard the lead official patrol vessel. As the Sector Commander's representative, the PATCOM may terminate the event any time it is deemed necessary for the protection of life and property. PATCOM may be reached on VHF–FM Channel 13 (156.65 MHz) or 16 (156.8 MHz) when required, by the call sign "PATCOM."

(4) The Patrol Commander may, upon request, allow the transit of commercial vessels through the safety zone when it is safe to do so.

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

TABLE 1 TO § 165.1191

[All coordinates referenced use datum NAD 83.]

	1. San Francisco Giants Fireworks Display
Sponsor	San Francisco Giants Baseball Team.
Event Description	Fireworks display in conjunction with baseball season home games.
Date	All season home games at AT&T Park.
Location	1,000 feet off of Pier 48.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	2. KFOG KaBoom
Sponsor	KFOG Radio, San Francisco, CA.
Event Description	Fireworks Display.

TABLE 1 TO § 165.1191—Continued

[All coordinates referenced use datum NAD 83.]

Date	Second or Third Saturday in May.
Location	1,200 feet off Candlestick Point, San Francisco, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	3. Fourth of July Fireworks, City of Eureka
Sponsor	City of Eureka, CA.
Event Description	Fireworks Display.
Date	July 4th.
Location	Humboldt Bay, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	4. Fourth of July Fireworks, Crescent City
Sponsor	Crescent City, CA.
Event Description	Fireworks Display.
Date	July 4th.
Location	Crescent City Harbor.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	5. Fourth of July Fireworks, City of Monterey
Sponsor	City of Monterey, CA: Recreation & Community Services Department.
Event Description	Fireworks Display.
Date	July 4th.
Location	Monterey Bay, CA: East of Municipal Wharf #2.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	6. Light up the Sky Fireworks Display/Pillar Point Harbor Fireworks
Sponsor	Various sponsors.
Event Description	Fireworks Display.
Date	July 4th.
Location	Half Moon Bay, CA.
Regulated Area	Pillar Point Harbor within the area of navigable waters within a 1,000-foot radius of the launch platform located on the harbor break wall.
	7. Peninsula Fireworks Spectacular, Redwood City
Sponsor	Peninsula Celebration Association.
Event Description	Fireworks Display.
Date	July 4th.
Location	Redwood City, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	8. San Francisco Independence Day Fireworks Display
Sponsor	The City of San Francisco, CA and the Fisherman's Wharf Association.
Event Description	Fireworks Display.
Date	July 4th.
Location 1	A barge located approximately 1000 feet off San Francisco Pier 39 at approximately 37°48′49″ N, 122°24′46″ W.
Location 2	The end of the San Francisco Municipal Pier at Aquatic Park at approximately 37°48′38″ N, 122°24′30″ W.
Regulated Area 1	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
Regulated Area 2	The area of navigable waters within a 1,000-foot radius of the launch platform located on the Municipal Pier.
	9. Jack London Square Fourth of July Fireworks
Sponsor	Jack London Square Business Association.
Event Description	Fireworks Display.
Date	July 4th.
Location	Oakland Inner Harbor, CA.

TABLE 1 TO § 165.1191—Continued

[All coordinates referenced use datum NAD 83.]

Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	10. Fourth of July Fireworks, Berkley Marina
Sponsor	Berkeley Marina.
Event Description	Fireworks Display.
Date	July 4th.
Location	Berkeley Pier, CA.
Regulated Area	The area of navigable waters within a 1,000-foot radius of the launch platform located on the Berkeley Pier.
	11. Fourth of July Fireworks, City of Richmond
Sponsor	City of Richmond.
Event Description	Fireworks Display.
Date	Week of July 4th.
Location	Richmond Harbor, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	12. Fourth of July Fireworks, City of Sausalito
Sponsor	City of Sausalito.
Event Description	Fireworks Display.
Date	July 4th.
Location	1,000 feet off-shore from Sausalito, CA waterfront, north of Spinnaker Restaurant.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	13. Fourth of July Fireworks, City of Martinez
Sponsor	City of Martinez.
Event Description	Fireworks Display.
Date	July 4th.
Location	Carquinez Strait, CA.
Regulated Area	The area of navigable waters within a 1,000-foot radius of the launch platform located on a Martinez Marina Pier.
	14. Fourth of July Fireworks, City of Antioch
Sponsor	City of Antioch.
Event Description	Fireworks Display.
Date	July 4th.
Location	San Joaquin River, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the moving fireworks display.
	15. Fourth of July Fireworks, City of Pittsburg
Sponsor	City of Pittsburg.
Event Description	Fireworks Display.
Date	July 4th.
Location	Suisun Bay, CA.
Regulated Area	The area of navigable waters within a 1,000-foot radius of the launch platform located on a Pittsburg Marina Pier.
	16. Independence Day Celebration, City of Stockton
Sponsor	City of Stockton.
Event Description	Fireworks Display.
Date	July 4th.
Location	Stockton, CA Deep Water Ship Channel.
Regulated Area	The area of navigable waters from the Port of Stockton to Mcleod Lake; beginning at 37°57′06″ N, 121°19′35″ W, then north to 37°57′10″ N, 121°19′36″ W, then north-east 37°57′24″ N, 121°17′35″ W, south-west 37°57′15″ N, 121°17′41″ W, then south-east 37°57′14″ N, 121°17′31″ W, and then back to the beginning point.
	17. Hilton Fourth of July Fireworks
Sponsor	Hilton Corporation.
Event Description	Fireworks Display.
Date	July 4th.
Location	San Joaquin River, near Venice Island, CA.

TABLE 1 TO § 165.1191—Continued

[All coordinates referenced use datum NAD 83.]

Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	18. Fourth of July Fireworks Display, Tahoe City, CA
Sponsor	Tahoe City Rotary.
Event Description	Fireworks Display.
Date	July 4th.
Location	Off-shore from Common Beach, Tahoe City, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	19. Fourth of July Fireworks Display, Glenbrook, NV
Sponsor	Glenbrook Community Homeowners Association.
Event Description	Fireworks Display.
Date	July 4th.
Location	Off-shore Glenbrook Beach, NV.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	20. Independence Day Fireworks, Kings Beach, CA
Sponsor	North Tahoe Business Association.
Event Description	Fireworks Displays.
Date	Week of July 4th.
Location	Off-shore from Kings Beach, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	21. "Lights on the Lake" Fourth of July Fireworks, South Lake Tahoe, CA
Sponsor	Various Sponsors.
Event Description	Fireworks Display.
Date	Week of July 4th.
Location	Off South Lake Tahoe, CA near the NV Border.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	22. Red, White, and Tahoe Blue Fireworks, Incline Village, NV
Sponsor	Various Sponsors.
Event Description	Fireworks Display.
Date	Week of July 4th.
Location	500–1,000 feet off Incline Village, NV in Crystal Bay.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	23. Independence Day Fireworks Display, Homewood, CA
Sponsor	Westshore Café.
Event Description	Fireworks Display.
Date	Week of July 4th.
Location	Homewood, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	24. "Labor Day Fireworks Display" South Lake Tahoe, CA
Sponsor	Various Sponsors.
Event Description	Fireworks Display.
Date	Labor Day.
Location	Off South Lake Tahoe, California near the Nevada Border.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.

TABLE 1 TO § 165.1191—Continued

[All coordinates referenced use datum NAD 83.]

	25. Fleet Week Fireworks
Sponsor	Various Sponsors.
Event Description	Fireworks Display.
Date	Second Friday and Saturday in October.
Location	1,000 feet off Pier 3, San Francisco, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	26. Monte Foundation Fireworks
Sponsor	Monte Foundation Fireworks.
Event Description	Fireworks Display.
Date	Second Saturday in October.
Location	Sea Cliff State Beach Pier in Aptos, CA.
Regulated Area	1000-foot safety zone around the navigable waters of the Sea Cliff State Beach Pier.
	27. Rio Vista Bass Derby Fireworks
Sponsor	Rio Vista Chamber of Commerce.
Event Description	Fireworks Display.
Date	Second Saturday in October.
Location	500 feet off Rio Vista, CA waterfront.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	28. San Francisco New Years Eve Fireworks Display
Sponsor	City of San Francisco.
Event Description	Fireworks Display.
Date	New Years Eve, December 31st.
Location	1,000 feet off Pier 2, San Francisco, CA.
Regulated Area	100-foot radius around the fireworks launch barge during the loading of pyrotechnics aboard the fireworks barge and during the transit of the fireworks barge from the loading location to the display location. Increases to a 1000-foot radius upon commencement of the fireworks display.
	29. Sacramento New Years Eve Fireworks Display
Sponsor	Sacramento Convention and Visitors' Bureau.
Event Description	Fireworks Display.
Date	New Years Eve, December 31st.
Location	Near Tower Bridge, Sacramento River.
Regulated Area	The navigable waters of the Sacramento River surrounding the shore-based launch locations between two lines drawn 1,000 feet south of Tower Bridge, and 1,000 feet north of the I Street Bridge.

Dated: December 21, 2010.

J.R. Castillo,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 2011–2863 Filed 2–8–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–1073; FRL–9263–8]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). These revisions clarify permitting requirements, and update and revise exemptions from New Source Review (NSR) permitting requirements, for various air pollution sources. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by *March 11, 2011.*

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2007–1073, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: R9airpermits@epa.gov.*

3. *Mail or deliver:* Gerardo Rios (Air—3), 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. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-

mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region IX, (415) 972–3534, *yannayon.laura@epa.gov.*

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

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal, including the dates they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended	Submitted
ICAPCD	201	Permits Required	10/10/06	08/24/07
ICAPCD	202	Exemptions	10/10/06	08/24/07

On September 17, 2007, EPA determined that the submittal for ICAPCD Rules 201 and 202 met the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved an earlier version of Rule 201 into the SIP on January 3, 2007 (72 FR 9). There are no previous versions of Rule 202 in the SIP, but SIP approved Rule 103, also contains permit exemptions. Rule 103 was approved into the SIP on May 31, 1972 (37 FR 10842). The ICAPCD originally adopted new Rule 202 on June 1, 1977 and also adopted revisions on September 7, 1993 and September 14, 1999. Both of these revisions were submitted to EPA, however EPA has not taken action on either of these submittals. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

C. What is the purpose of the submitted rules and rule revisions?

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, nitrogen oxides, particulate matter and other air pollutants which harm human health and the environment. Permitting rules were developed as part of the local air district's programs to control these pollutants.

The purpose of District Rule 201 (Permits Required) is to identify when, and what permits, a source must obtain prior to construction and operation.

The purpose of District Rule 202 (Exemptions) is to identify processes, articles, machines, equipment, or other contrivances for which an Authority to Construct (ATC) or Permit to Operate (PTO) is not required. Rule 202 also requires recordkeeping to verify and maintain any exemption.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

The relevant statutory provisions for our review of the submitted rules include CAA section 110(a) and section 110(l). Section 110(a) requires that SIP rules be enforceable, while section 110(l) precludes EPA approval of SIP revisions that would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. In addition, we have reviewed the submitted rules for compliance with EPA implementing regulations for NSR, including 40 CFR 51.160 through 40 CFR 51.165.

B. Do the rules meet the evaluation criteria?

EPA has reviewed the submitted rules in accordance with the Rule Evaluation criteria described above. Consistent with the requirements of 40 CFR subpart I, all major stationary sources are required to obtain an ATC permit prior to construction. For minor sources, EPA believes that emissions from the types and sizes of equipment and operations exempted from NSR permit requirements are consistent with the flexibility afforded to states to regulate only those sources as necessary to assure attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). While several new provisions have been added to Rule 202 that could be seen as a relaxation of the SIP because more sources are specifically exempted from Rule 207 permit requirements, in practice most of these sources have never been required to obtain a NSR ATC permit due to their small size or state law prohibitions. Because these rules will not actually worsen air quality, and will in fact require many agricultural sources to obtain permits and be subject to control requirements for the first time, EPA believes that these revisions are a long overdue update to the SIP which will provide an overall strengthening of the SIP without interfering with the District's ability to attain and maintain the NAAQS, and are therefore approvable under 110(l) of the CAA.

The TSD has more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the rules.

D. Public Comment and Final Action

Because EPA believes the submitted rules fulfill all relevant requirements, we are proposing to fully approve them as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval

action that will incorporate these rules into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: January 28, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–2862 Filed 2–8–11; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 76, No. 27
Wednesday, February 9, 2011

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: This **Federal Register** notice was originally published on October 29, 2010 (75 FR 66724) and is being republished. Unfortunately, it appears that supporting documentation sent to OMB included language from USAID's December 2002 certification rather than from its September 2004 certification attached. The agency has worked with OMB to correct this error. Also, revisions were made regarding the certification burden due to the respondents providing a response three times a year vs. two. In addition, less preparation time was required for all involved parties due to their familiarity with the certification process and salary costs and benefits costs increased due to inflation and an increase in the cost of living. U.S. Agency for International Development (USAID) has resubmitted the following information collections to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be sent via e-mail to *OIRA_submission@omb.eop.gov* (attention: USAID desk officer) or fax to 202–395–6882.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0565.

Form Number: N/A.

Title: Applicant's Certification that it Does not Support Terrorist Organizations or Individuals.

Type of Submission: Revision of Information Collection.

Purpose: The United States Agency for International Development (USAID) needs to require applicants for assistance to certify that it does not and will not engage in financial transactions with, and does not and will not provide material support and resources to individuals or organizations that engage in terrorism. The purpose of this requirement is to assure that USAID does not directly provide support to such organizations or individuals, and to assure that recipients are aware of these requirements when it considers individuals or organizations are subrecipients.

Annual Reporting Burden

Respondents: 2,000.

Total annual responses: 6,000.

Total annual hours requested: 1,500 hours.

Dated: January 31, 2011.

Lynn P. Winston,

Acting Chief, Information and Records Division, Office of Management Services, Bureau for Management.

Attachment

Certification

By signing and submitting this application, the prospective recipient provides the certification set out below:

1. The Recipient, to the best of its current knowledge, did not provide, within the previous ten years, and will take all reasonable steps to ensure that it does not and will not knowingly provide, material support or resources to any individual or entity that commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated, or participated in terrorist acts, as that term is defined in paragraph 3.

2. The following steps may enable the Recipient to comply with its obligations under paragraph 1:

a. Before providing any material support or resources to an individual or entity, the Recipient will verify that the individual or entity does not (i) appear on the master list of Specially Designated Nationals and Blocked Persons, which list is maintained by the U.S. Treasury's Office of Foreign Assets Control (OFAC) and is available online at OFAC's Web site: *http://www.treas.gov/offices/eotffc/ofac/sdn/t11sdn.pdf,* or (ii) is not included in any supplementary information concerning prohibited individuals or entities that may be provided by USAID to the Recipient.

b. Before providing any material support or resources to an individual or entity, the Recipient also will verify that the individual or entity has not been designated by the United Nations Security (UNSC) sanctions committee established under UNSC Resolution 1267 (1999) (the "1267 Committee") [individuals and entities linked to the Taliban, Usama bin Laden, or the Al Qaida Organization]. To determine whether there has been a published designation of an individual or entity by the 1267 Committee, the Recipient should refer to the consolidated list available online at the Committee's Web site: *http://www.un.org/Docs/sc/committees/1267/1267ListEng.htm.*

c. Before providing any material support or resources to an individual or entity, the Recipient will consider all information about that individual or entity of which it is aware and all public information that is reasonably available to it or of which it should be aware.

d. The Recipient also will implement reasonable monitoring and oversight procedures to safeguard against assistance being diverted to support terrorist activity.

3. For purposes of this Certification—

a. "Material support and resources" means currency or monetary instruments or financial securities, financial services, lodging, training, except advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal subtances, explosives, personnel, transportation, and other physical assests, except medicine or religious materials."

b. "Terrorist act" means—

(i) An act prohibited pursuant to one of the 12 United Nations Conventions and Protocols related to terrorism (*see* UN terrorism conventions Internet site: *http://untreaty.un.org/English/Terrorism.asp*); or

(ii) An act of premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents; or

(iii) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

c. "Entity" means a partnership, association, corporation, or other organization, group or subgroup.

d. References in this Certification to the provision of material support and resources shall not be deemed to include the furnishing of USAID funds or USAID-financed commodities to the ultimate beneficiaries of USAID assistance, such as recipients of food, medical care, micro-enterprise loans, shelter, etc., unless the Recipient has reason to believe that one or more of these beneficiaries commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated or participated in terrorist acts.

e. The Recipient's obligations under paragraph 1 are not applicable to the procurement of goods and/or services by the Recipient that are acquired in the ordinary course of business through contract or purchase, e.g., utilities, rents, office supplies, gasoline, *etc.,* unless the Recipient has reason to believe that a vendor or supplier of such goods and services commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated or participated in terrorist acts.

This Certification is an express term and condition of any agreement issued as a result of this application, and any violation of it shall be grounds for unilateral termination of the agreement by USAID prior to the end of its term.

[FR Doc. 2011–2669 Filed 2–8–11; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 4, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Research Data Archive Use Tracking System.

OMB Control Number: 0596–0210.

Summary of Collection: Authorized under 16 U.S.C. 1645(c), Forest Service Research and Development (FS R&D) plans to create a data archive to store and disseminate data collected in the course of its scientific research. This archive will provide a sound balance between meeting obligations to scientific staff and ease-of-access by the public (research community). The information provided by this collection will assist FS R&D personnel in evaluating the research program.

Need and Use of the Information: Form FS 4000–5, General Data Use Agreement, will be used to collect the information electronically. When a member of the public requests a copy of a data set, FS R&D will collect the name, affiliation, contact information (including e-mail address), Statement of Intended Use and Data Use Agreement. FS archive staff will review the individual Data Use Agreements prior to approving release of the data set to the requestor. The collection of Data Use Agreements will be evaluated by the data archiving program to identify opportunities for improving the archive's function and offerings.

Description of Respondents: Not-for-profit Institutions.

Number of Respondents: 100.

Frequency of Responses: Reporting: Yearly.

Total Burden Hours: 25.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–2893 Filed 2–8–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Report of Supplemental Nutrition Assistance Program Benefit Issuance and Report of Commodity Distribution for Disaster Relief

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. The proposed collection is a revision of a collection currently approved for the Supplemental Nutrition Assistance Program and the Food Distribution Program.

DATES: Written comments must be received on or before April 11, 2011.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding form 292–A may be sent to Laura Castro, Chief, Policy Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 506, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Ms. Castro at (703) 305–1410 or via e-mail to *Laura.Castro@fns.usda.gov.*

Comments regarding form 292–B may be sent to Angela Kline, Chief,

Certification Policy Branch, Program Development Division, Supplemental Nutrition Assistance Program, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 812, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Ms. Kline at (703) 305–2896 or via e-mail to *Angela.Kline@fns.usda.gov.*

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 812 and Room 506.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Angela Kline, (703) 305–2495 or to Laura Castro, (703) 305–2662.

SUPPLEMENTARY INFORMATION:

Title: Report of Supplemental Nutrition Assistance Program Benefit Issuances and Commodity Distribution for Disaster Relief.

OMB Number: 0584–0037.

Form Number: FNS 292–A and 292–B.

Expiration Date: 7/31/2011.

Type of Request: Revision of a currently approved collection.

Abstract: The Food and Nutrition Service (FNS) utilizes Form 292 A and B to collect information not otherwise available on the extent of FNS-funded disaster relief operations. Form 292–A is used by State distributing agencies to provide a summary report to FNS following termination of disaster commodity assistance. Form 292–B is used by State departments of social services to report to FNS the number of households and persons certified for Disaster Supplemental Nutrition Assistance Program (D–SNAP) benefits as well as the value of benefits issued.

Commodity food distribution in disaster situations is authorized under Section 32 of the Act of August 24, 1935 (7 U.S.C. 612c); Section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431); Section 709 of the Food and Agriculture Act of 1965 (7 U.S.C. 1446a–1); Section 4(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note); and by Sections 412 and 413 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179, 5180). Program implementing regulations are contained in 7 CFR part 250. In accordance with 7 CFR 250.69(f), distributing agencies shall provide a summary report to the FNS within 45 days following termination of the disaster assistance.

Disaster assistance through SNAP is authorized by sections 402 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) and the temporary emergency provisions contained in Section 5 of the Food and Nutrition Act of 2008, and in 7 CFR Part 280 of the SNAP regulations. In accordance with 7 CFR 274.4, State agencies shall keep records and report SNAP participation and issuance totals to FNS.

The Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246) changed the name of the Food Stamp Program to the Supplemental Nutrition Assistance Program (SNAP) on October 1, 2008, to reflect the fact that participants no longer receive stamps or coupons to make food purchases and to emphasize the nutritional aspect of the program. To comply with current law, FNS is using the new program name in this revision of information collection for OMB No. 0584–0037.

Affected Public: State agencies that administer FNS disaster food relief activities.

Estimated Number of Respondents: 55.

Number of Responses per Respondent: The number of responses annually is estimated to be 1 response per State agency per form.

Estimated Total Annual Responses: 110.

Estimated Time per Response: Public reporting burden for this collection of information is estimated to average 25 minutes (0.42 hours) per form (FNS 292 A and 292 B) per respondent (total of 50 minutes (.84 hours) per respondent). Recordkeeping burden for the State agencies is estimated to be 25 minutes (.42 hours) per form (FNS 292 A and 292 B) per respondent (total of 50 minutes (.84 hours) per respondent).

Estimated Total Annual Burden: 5,500 minutes (92 hours) including a total reporting burden of 2,750 minutes (46 hours) and a total recordkeeping burden of 2,750 minutes (46 hours).

REPORTING BURDEN

Description of the collection activity	Form No.	Number of respondents	Number of responses annually per respondent	Estimated total annual responses	Estimate of burden hours per response	Total annual burden hours
Commodity distribution	292–A	55	1	55	.4175	22.96
SNAP benefit issuance	292–B	55	1	55	.4175	22.96
Totals		55		110		45.92

RECORD KEEPING BURDEN

Description of recordkeeping activity	Form No.	Number of record keepers	Frequency of responses	Estimated total annual responses	Annual hours per record-keeper	Total annual recordkeeping hours
Commodity distribution	292–A	55	1	55	. 4175	22.96
SNAP benefit issuance	292–B	55	1	55	. 4175	22.96
Totals		55		110		45.92

Dated: January 31, 2010.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. 2011–2891 Filed 2–8–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Meeting

AGENCY: Forest Service, Department of Agriculture.

ACTION: Notice of meeting. Siskiyou Resource Advisory Committee to meet February 28, 2011.

SUMMARY: The Siskiyou County Resource Advisory Committee (RAC) will meet February 28th, 2011.

DATES: The meeting will be held on February 28th, 2011 and will begin at 4:00 p.m.

ADDRESSES: The meeting will be held at the Klamath National Forest Supervisor's Office, Conference Room, 1312 Fairlane Road, Yreka, CA.

FOR FURTHER INFORMATION CONTACT: Kerry Greene, Committee Coordinator, USDA, Klamath National Forest, Supervisor's Office, 1312 Fairlane Road, Yreka, CA 96097. (530) 841–4484; e-mail *kggreene@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The agenda includes project updates and financial status, and presentation and review of new project proposals to be considered by the RAC. The meeting is open to the public. Opportunity for public comment will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: February 2, 2011.

Donna Harloff,

Acting Forest Supervisor, Klamath National Forest.

[FR Doc. 2011–2831 Filed 2–8–11; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Iowa Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a State Advisory Committee (SAC) planning meeting of the Iowa Advisory Committee to the Commission will convene by conference call at 11 a.m. and adjourn at approximately 12 p.m. (CST) on Thursday, March 3, 2011. The purpose of this meeting is to continue planning a civil rights project.

This meeting is available to the public through the following toll-free call-in number: (866) 364–7584, conference call access code number 41547304. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name Farella E. Robinson.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office and TTY/TDD telephone number, by 4 p.m. on February 25, 2011.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by March 11, 2011. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Comments may be e-mailed to *frobinson@usccr.gov.* Records generated by this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Central Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, February 4, 2011.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2011–2889 Filed 2–8–11; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Proposed Information Collection; Comment Request; Revolving Loan Fund (RLF) Reporting and Compliance Requirements

AGENCY: Economic Development Administration.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 11, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Kenneth M. Kukovich, EDA PRA Liaison, Office of Management Services, Economic Development Administration, Department of Commerce, HCHB Room 7227, 1401 Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–4965; *fax:* (202) 501–0766; *e-mail: kkukovich@eda.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The mission of the Economic Development Administration (EDA) is to lead the Federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. One of EDA's eight economic development programs is the Revolving Loan Fund (RLF) program.

Under the RLF program, EDA's regional offices award competitive grants to units of state and local government, institutions of higher education, public or private non-profit organizations, EDA-approved economic development district organizations, and Indian Tribes to establish RLFs. Following grant award, an RLF grantee disburses money from the RLF to make loans at interest rates that are at or below the current market rate to small

businesses or to businesses that cannot otherwise borrow capital. On occasion, RLFs also make loans to finance public infrastructure. As the loans are repaid, the grantee uses a portion of interest earned to pay administrative expenses and adds the remaining principal and interest repayments to the RLF's capital base to make new loans. An RLF award that is well managed is actively used to make loans to eligible businesses and entities, continues to revolve funds, and *does not have a termination date.*

One of the unique features of the program is that, by law, EDA must exercise fiduciary responsibility over its RLF portfolio in perpetuity—a significant challenge since many RLF grants date back to 1979. EDA's regulations therefore require EDA RLF grantees to submit an ED–209, Semi-annual Report to EDA, every six months for each RLF they operate. In addition, EDA RLF grantees must submit an ED–209I, RLF Income and Expense Statement, if either of the following conditions applies to their RLF: (a) Total administrative expenses for the 6-month period exceed $100,000, or (b) administrative expenses for the 6-month period exceed 50 percent of RLF income for the 6-month period. EDA requires that both of these reports be completed and submitted via the web-based Revolving Loan Fund Management System (RLFMS). This system was successfully launched on April 1, 2010, and was designed to eliminate duplicative data entry fields and pre-populate all calculable fields.

II. Method of Collection

Electronically via the RLFMS.

III. Data

OMB Control Number: 0610–0095.

Form Number(s): ED–209 and ED–209I.

Type of Review: Regular submission (extension of a currently approved information. collection).

Affected Public: Not for-profit institutions; state or local governments.

Estimated Number of Respondents: 1,460.

Estimated Time per Response: ED–209, 3 hours; and ED–209I, 1 hour.

Estimated Total Annual Burden Hours: 3,796.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 4, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–2894 Filed 2–8–11; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE 1/19/2011 THROUGH 2/3/2011

Firm name	Address	Date accepted for investigation	Products
American Disposables, Inc	6 East Main Street, Ware, MA 01082.	21–Jan–11	The firm manufactures disposable hospital pads as well as housebreaking pads for pets.
Awning Canopy Systems, Inc ...	201 Industrial Park Place, Cassville, MO 65625–0906.	01–Feb–11	The firm manufactures awnings, walkway covers, kiosk buildings, entrance canopies, aluminum composite wall panels, and steel bridges.
Baker Road Furniture Corporation.	730 Schneider Drive, South Elgin, IL 60177.	01–Feb–11	The firm manufactures products such as home office furniture, bookcases, bedroom furniture, and entertainment furniture.
Boathouse Row Sports, Ltd	425 East Hunting Park Avenue, Philadelphia, PA 19124.	19–Jan–11	The firm manufactures outerwear, sublimated uniforms, and training gear.
Hiwasse Manufacturing Company, Inc.	1030 N. Redmond Road, Jacksonville, AR 72076–3656.	26–Jan–11	The firm manufactures appliance and automotive decorative trim metal, graphic panels, inserts, nameplates, escutcheons, tags and labels.
L.A. Najarian, Inc	17 Willard Street, PO Box 614, Greene, NY 13778.	01–Feb–11	The firm manufactures custom run narrow fabric ribbon for a wide variety of industries.
Rosewood Industries, Inc	1203 E. Central Terrace, Stigler, OK 74462.	24–Jan–11	The firm manufactures wooden case goods including kitchen cabinets, vanities, and other utility spaces.
Smith Sport Optics, Inc	1 Freeport Center; Building F–13, Clearfield, UT 84016.	26–Jan–11	The firm manufactures sun, safety, industrial and underwater goggles.

Any party having a substantial interest in these proceedings may request a public hearing on the matter.

A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: February 3, 2011.

Miriam Kearse,

Eligibility Certifier.

[FR Doc. 2011–2838 Filed 2–8–11; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–836]

Notice of Final Results of Expedited Sunset Review of the Antidumping Duty Order: Glycine From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 1, 2010, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on glycine from the People's Republic of China ("PRC") pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). *See Initiation of Five-Year ("Sunset") Review,* 75 FR 60731 (October 1, 2010) ("*Initiation*"). Based on filings by domestic interested parties and pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(A) of the Department's regulations, the Department conducted an expedited sunset review of the antidumping duty order. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the level indicated in the "Final Results of Review" section of this notice.

DATES: *Effective Date:* February 9, 2011.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–8029 or 202–482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2010, the Department initiated a sunset review of the antidumping duty order on glycine from the PRC pursuant to section 751(c) of the Act. *See Initiation.* On October 5, 2010, the Department received a notice of intent to participate from the following domestic interested parties: GEO Specialty Chemicals ("GEO") and Chattem Chemicals, Inc. ("Chattem") (collectively the Glycine Producers of the United States or "the domestic interested parties"), within the deadline specified in 19 CFR 351.218(d)(1)(I). *See* Letter from David M. Schwartz, to Secretary Gary Locke, titled "Sunset Review of the Antidumping Order on Glycine from the People's Republic of China—Notification of Intent to Participate by Domestic Interested Parties," dated October 5, 2010. In this letter, the domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as U.S. manufacturers of glycine. On October 29, 2010, the Department received a complete substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). *See* Letter from David M. Schwartz, to Secretary Gary Locke, titled "Sunset Review of the Antidumping Order on Glycine from the People's Republic of China—Substantive Response to Notice of Initiation," dated October 29, 2010. The Department did not receive any comments from producers or exporters of glycine from the PRC.

Based on the submissions of the domestic interested parties and pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department has conducted the sunset review on an expedited basis.

Scope of Order

The product covered by the order is glycine, which is a free-flowing crystalline material, like salt or sugar. Glycine is produced at varying levels of purity and is used as a sweetener/taste enhancer, a buffering agent, reabsorbable amino acid, chemical intermediate, and a metal complexing agent. This order covers glycine of all purity levels. Glycine is currently classified under subheading 2922.49.4020 of the Harmonized Tariff Schedule of the United States ("HTSUS"). In a separate scope ruling, the Department determined that D(-) Phenylglycine Ethyl Dane Salt is outside the scope of the order. *See Notice of Scope Rulings,* 62 FR 62288 (November 21, 1997). Although the HTSUS subheading is provided for convenience and Customs purposes, the written description of the merchandise under the order is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum ("Decision Memorandum") from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated January 31, 2011, which is hereby adopted by this notice. The issues discussed in the accompanying Decision Memorandum address the likelihood of a continuation or recurrence of dumping were the order to be revoked and also the magnitude of the margin likely to prevail upon revocation. Parties can find a complete discussion of the issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room 7046 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

The Department determines that revocation of the antidumping duty order on glycine from the PRC would be likely to lead to a continuation or recurrence of dumping at the following weighted-average percentage margin:

Manufacturers/producers/exporters	Weighted-average margin
PRC-Wide Entity (all manufacturers/producers/exporters) ...	155.89%

The Department is issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 31, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–2883 Filed 2–8–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–602, A–588–602, A–583–605, A–549–807, A–570–814]

Certain Carbon Steel Butt-Weld Pipe Fittings From Brazil, Japan, Taiwan, Thailand, and the People's Republic of China: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 1, 2010, the Department of Commerce (the Department) initiated the third sunset reviews of the antidumping duty orders on carbon steel butt-weld pipe fittings from Brazil, Japan, Taiwan, Thailand, and the People's Republic of China (PRC), pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). See *Initiation of Five-Year ("Sunset") Review,* 75 FR 60731 (October 1, 2010) (*Notice of Initiation*). The Department has conducted expedited (120-day) sunset reviews of these orders. As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping as indicated in the "Final Results of Reviews" section of this notice.

DATES: *Effective Date:* February 9, 2011.

FOR FURTHER INFORMATION CONTACT: Catherine Cartsos or Minoo Hatten, 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) 482–1757 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2010, the Department published the notice of initiation of the sunset reviews of the antidumping duty orders [1] on carbon steel butt-weld pipe fittings from Brazil, Japan, Taiwan, Thailand, and the PRC pursuant to section 751(c) of the Act. See *Notice of Initiation.*

The Department received notices of intent to participate in these sunset reviews from the domestic interested parties, Weldbend Corporation, Tube Forging of America, Mills Iron Works Inc., and Hackney Ladish, Inc. (collectively, the petitioners), within the 15-day period specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested-party status under section 771(9)(C) of the Act as producers of a domestic like product in the United States.

The Department received complete substantive responses to the *Notice of Initiation* from the domestic interested parties within the 30-day period specified in 19 CFR 351.218(d)(3)(i). The Department received no substantive responses from any respondent interested parties. In accordance with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting expedited (120-day) sunset reviews of the antidumping duty orders on carbon steel butt-weld pipe fittings from Brazil, Japan, Taiwan, Thailand, and the PRC.

Scope of the Orders

Brazil

The merchandise covered by the order consists of certain carbon steel butt-weld type fittings, other than couplings, under 14 inches in diameter, whether finished or unfinished, that have been formed in the shape of elbows, tees, reducers, caps, etc., and, if forged, have been advanced after forging. These advancements may include any one or more of the following: Coining, heat treatment, shot blasting, grinding, die stamping or painting. Such merchandise was classifiable under Tariff Schedules of the United States Annotated (TSUSA) item number 610.8800. These imports are currently classified under subheading 7307.93.30 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheading is provided for convenience and customs purposes. The written product description remains dispositive.

Japan

The merchandise covered by the order consists of certain carbon steel butt-weld type fittings, other than couplings, under 14 inches in inside diameter, whether finished or unfinished, that have been formed in the shape of elbows, tees, reducers, caps, etc., and if forged, have been advanced after forging. These advancements may include any one or more of the following: Coining, heat treatment, shot blasting, grinding, die stamping or painting. Such merchandise was classifiable under TSUSA item number 610.8800. These imports are currently classifiable under the HTSUS item number 7307.93.30. Induction pipe bends classifiable under item 7307.93.30 which have at one or both ends tangents that equal or exceed 12 inches in length are excluded from the scope. The HTSUS subheading is provided for convenience and customs purposes. The written product description remains dispositive.

Taiwan

The merchandise covered by this order consists of certain carbon steel butt-weld type fittings, other than couplings, under 14 inches in inside diameter, whether finished or unfinished, that have been formed in the shape of elbows, tees, reducers, and caps, and if forged, have been advanced after forging. These advancements may include one or more of the following: Coining, heat treatment, shot blasting, grinding, die stamping or painting. The Department clarified that the so-called sprink-let is within the scope of the order (57 FR 19602). Such merchandise was classifiable under TSUSA item number 610.8800. These imports are currently classifiable under the HTSUS item number 7307.93.3000. The HTSUS subheading is provided for convenience and for customs purposes. The written product description remains dispositive.

Thailand and PRC

The merchandise covered by the orders consists of certain carbon steel butt-weld pipe fittings, having an inside diameter of less than 14 inches, imported in either finished or unfinished form. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (*e.g.,* threaded, grooved, or bolted fittings). Carbon steel butt-weld pipe fittings are currently classified under subheading 7307.93.30 of the HTSUS. The HTSUS subheading is provided for convenience and customs purposes. The written product description remains dispositive.

Analysis of Comments Received

All issues raised in these reviews are addressed in the "Issues and Decision Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Orders on Certain Carbon Steel Butt-Weld Pipe Fittings From Brazil, Japan, Taiwan, Thailand, and the People's Republic of China" from Deputy

[1] See *Antidumping Duty Order; Certain Carbon Steel Butt-Weld Pipe Fittings from Brazil,* 51 FR 45152 (December 17, 1986); *Antidumping Duty Order: Certain Carbon Steel Butt-Weld Pipe Fittings from Japan,* 52 FR 4167 (February 10, 1987), *Antidumping Duty Order; Certain Carbon Steel Butt-Weld Pipe Fittings From Taiwan,* 51 FR 45152 (December 17, 1986); *Antidumping Duty Order; Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand,* 57 FR 29702 (July 6, 1992); *Antidumping Duty Order and Amendment to the Final Determination of Sales at Less Than Fair Value; Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China,* 57 FR 29702 (July 6, 1992).

Assistant Secretary for Antidumping and Countervailing Duty Operations Christian Marsh to Deputy Assistant Secretary for Import Administration Ronald K. Lorentzen dated concurrently with this notice (I&D Memo), which is hereby adopted by this notice. The issues discussed in the I&D Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the orders were revoked.

Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room 7046 of the main Department of Commerce building.

In addition, a complete version of the I&D Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the I&D Memo are identical in content.

Final Results of Reviews

The Department determines that revocation of the antidumping duty orders on carbon steel butt-weld pipe fittings from Brazil, Japan, Taiwan, Thailand, and the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Country	Company	Weighted-average margin (percent)
Brazil	All manufacturers/producers/exporters	52.25
Japan	Awaji Sangyo, K.K.	30.83
	Nippon Benkan Kogyo, Ltd. Co.	65.81
	All Others	62.79
Taiwan	Rigid Industries	6.84
	C.M. Pipe Fittings	8.57
	Gei Bay	87.30
	Chup Hsin Enterprises	87.30
	All Others	49.46
Thailand	Thai Benkan Company	52.60
	TTU Industrial Corp. Ltd.	12.44
	All Others	40.86
PRC	China North Industries Corp.	154.72
	Jilin Provincial Machinery & Equipment Import & Export Corp.	75.23
	Liaoning Machinery & Equipment Import & Export Corp.	134.79
	Liaoning Metals & Minerals Import & Export Corp.	103.70
	Shenyang Billiongold Pipe Fittings Co. Ltd.	110.39
	Shandong Metals & Minerals Import & Export Corp.	35.06
	Shenyang Machinery & Equipment Import & Export Corp.; Lianoning Metals; Shenshen Machinery Industry Corp.	182.90
	PRC–Wide Rate	182.90

Notification Regarding APO

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the 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 the final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: January 31, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–2884 Filed 2–8–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

ICT Trade Mission to Saudi Arabia; Application Deadline Extended

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet Web sites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

Recruitment for the mission will begin immediately and conclude no later than February 7, 2011. The U.S. Department of Commerce will review all applications immediately after the deadline. We will inform applicants of selection decisions as soon as possible after February 7, 2011. Applications received after that date will be considered only if space and scheduling constraints permit.

Contacts

U.S. Commercial Service Domestic Contact

Natalia Susak, Commercial Service Trade Missions Program, Phone: 202–482–4423, Fax: 202–482–9000, E-mail: *Natalia.Susak@trade.gov.*

U.S. Commercial Service Saudi Arabia Contacts

Ahmed Khayyat, Phone: 966/1/488–3800 x 4441, Fax: 966/1/488–3237, E-mail: *ahmed.khayyat@trade.gov.*

Natalia Susak, Trade Promotion Programs, Commercial Service Trade Missions Program, Phone: 202–482–4423, Fax: 202–482–9000, E-mail: *Natalia.Susak@trade.gov.*

[FR Doc. 2011–2800 Filed 2–8–11; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

Secretarial Business Development Mission; Transportation Infrastructure/ Multimodal Products and Services to Qatar and United Arab Emirates

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

U.S. Secretary of Commerce Gary Locke will lead a business development mission for multi-modal transportation and infrastructure development products and services to Doha, Qatar and Abu Dhabi and Dubai, United Arab Emirates (UAE) June 4–9, 2011. The mission is designed to contribute to President Obama's National Export Initiative to achieve the goal of doubling exports over the next five years to support millions of American jobs. This mission will support job creation by increasing exports of products and services that contribute to development projects in these locations.

The industry sectors for this mission will include, but are not limited to: Multimodal freight transportation systems, products and technologies, including port development, airport development, freight rail systems and technologies, supply chain systems and strategies; mass transportation systems; advanced vehicle technologies and intelligent transportation systems and related services and software; and other relevant products and services.

The mission will help U.S. companies already doing business in Qatar or the U.A.E. to increase their current level of exports, business interests and exposure, and will help experienced U.S. exporters, which have not yet done business in Qatar or the U.A.E. to enter these markets in support of job creation in the United States. Participating firms will gain market information, connect with key business and government decision makers, solidify business strategies, and/or advance specific projects. In each of these important sectors, participating U.S. companies will meet with prescreened potential partners, agents, distributors, representatives, and licensees. The agenda will also include meetings with high-level national and local government officials, networking opportunities, country briefings, and seminars.

The delegation will be composed of 15–20 U.S. firms representing the industry sectors noted above. Representatives of the U.S. Department of Transportation and the Export-Import Bank of the United States (Ex-Im) will be invited to participate (as appropriate) to provide information and counseling on their programs as they relate to the markets in Qatar and the U.A.E.

Commercial Setting

Qatar

The United States continues to be the largest import partner to Qatar, accounting for 14% of the total import market. U.S. exports to Qatar surged by 495 percent, from $454 million in 2003 to $2.7 billion in 2009. Qatar is the fifth largest U.S. export destination in the Middle East, making it an important market for U.S. small and medium-sized businesses.

Qatar is one of the richest countries per capita in the world, posting one of the highest GDP per capita values with $90,000 and a GDP of $128 billion forecasted in 2010. The International Monetary Fund predicts that Qatar's GDP will grow by almost 20% in 2011. The World Bank announced that Qatar is the most economically competitive country in the Middle East. Taken together, this has led foreign firms to increase their investment in Qatar's infrastructure, making it one of the most prosperous markets in the Middle East.

Qatar's hosting of the 2022 World Cup Nation Host opens up a constellation of opportunities for U.S. business. The country plans to spend up to $100 billion on infrastructure projects between now and the 2022 World Cup, including roads, bridges, highways, railways, ports, and related consultancy services. Qatar's transportation infrastructure is the main sector benefiting from the current domestic growth environment. Its road transportation structure has been operating at capacity with a strong need to expand the system. Currently, road infrastructure is the only mode of transportation, which is one of the major causes for heavy congestion throughout the country. There are excellent opportunities for U.S. engineers, program management firms, and manufacturers to contribute to the creation of new transport infrastructure projects (*i.e.*, railways, roads, ports, bridges, and highways), along with improved traffic safety systems.

The Prime Minister, Sheikh Hamad bin Jassim, has stated that a significant share of Qatar's budget for 2010–2011 will be for infrastructure development, and it will be completely self-financed. The country continues to maintain high levels of capital spending on major projects, which will reach $12 billion in 2010–2011 compared with $10.4 billion in 2009–2010, representing a 15% year-on-year increase. A significant share of Qatar's budget for 2010–2011 will be for infrastructure development, with 30% reportedly earmarked for infrastructure upgrades, such as the New Doha International Airport, New Doha Seaport, the Doha Expressway Project, roads, and related program management services.

U.A.E.

The U.A.E. is the largest U.S. export market in the Middle East/North Africa region, the second largest economy in the region, and presents qualified American companies with opportunities to expand sales of their products and services to a fast growing market. The U.A.E. is the logistics and business services hub for the wider region. The 2009 GDP for the U.A.E. was $231.3 billion and the 2009 per capita income was $42,000. Despite the recent global financial crisis, the United States and the U.A.E. have continued their long-term trade and investment relationship. Exports between both countries have increased almost every year since 1971, when the U.A.E. was established.

The United States exported over $12 billion worth of products to the U.A.E. in 2009, representing a 237 percent increase since 2002. The United States is the third largest exporter to the U.A.E. and enjoys a very large trade surplus and a strong trading and investment relationship. The U.A.E. is among the Middle East region's leaders in terms of openness to international trade and investment and political stability. It has successfully developed itself into the largest logistics hub in the wider region, with the second-largest man-made port in the world at Jebel Ali, and the fourth busiest airport in the world. It is making major investments in infrastructure and economic diversification, resulting in significant export opportunities for U.S. firms. The U.A.E. is developing key transportation infrastructure projects including: Port Khalifa and industrial zone at Taweelah; the new $8 billion Union Railway project; the $6.7 billion expansion of Abu Dhabi International Airport; the construction of the new Maktoum Airport, which will eventually have five runways; and public transportation systems, such as the expansion of the Dubai metro and the construction of the Abu Dhabi metro and light rail. The goods, services and know-how necessary for the construction and profitable operation of these new systems, particularly those related to multi-modal freight and intelligent supply chain management, provides significant business

opportunities in areas where U.S. companies excel. U.S. products enjoy favorable tariffs that generally do not exceed five percent.[1]

Other Products and Services

The foregoing analysis of export opportunities in Qatar and the U.A.E. is not intended to be exhaustive, but illustrative of the many opportunities in these markets available to U.S. businesses. Applications from companies selling products or services within the scope of this mission, but not specifically identified, will be considered and evaluated by the U.S. Department of Commerce Companies whose products or services do not fit the scope of the mission may contact their local U.S. Export Assistance Center (USEAC) to learn about other trade missions and services that may provide more targeted export opportunities. Companies may call 1–800–872–8723, or e-mail: *tic@trade.gov* to obtain such information. This information also may be found on the Web site: *http://www.export.gov.*

Mission Goals

This Business Development Mission will demonstrate the United States' commitment to a sustained economic engagement with Qatar and the U.A.E. The mission will combine Secretarial level policy dialogue and business development for U.S. firms. Additionally, the mission will advance the Administration's goal to broaden and deepen the U.S. exporter base and support the President's National Export Initiative by providing individual participants with business opportunities to achieve export success in these markets.

In support of these goals, the mission's purpose is to support participants as they construct a firm foundation for future business in Qatar and the U.A.E., and specifically aims to:

Provide participants with market information about the local infrastructure opportunities that will contribute to increasing U.S. exports to the Qatari and U.A.E. markets.

Assist in identifying potential end-users and partners (including potential agents, distributors, and licensee partners) and business strategies for U.S. companies to gain access to the Qatari and U.A.E. markets.

Provide an opportunity for participants to be present for discussions with Qatari and U.A.E. government officials and private sector representatives to advance U.S. market access interests in these markets.

Confirm U.S. government support for U.S. business activities in Qatar and the U.A.E. and to provide access to senior foreign government decision makers.

Mission Scenario

During the mission to Qatar and the U.A.E., the participants will:

Meet with high-level Qatari and Emirati government officials

Meet with prescreened potential partners, agents, distributors, representatives and licensees

Meet with representatives of the Chambers of Commerce, industry and trade associations

Attend briefings conducted by Embassy officials on the economic and commercial climate

Receptions and other business events will be organized to provide mission participants with additional opportunities to speak with local business and government representatives, as well as U.S. business executives living and working in the region.

Timetable

The mission program will begin at 5:00 p.m., Saturday, June 4, 2011 and run through the evening of Thursday, June 9, 2011. Participants are encouraged to arrive on or before June 4, 2011.

June 4	Doha, Qatar. Orientation. Market Briefing by U.S. Embassy Officials. Welcome Dinner.
June 5	Doha, Qatar. Meetings with Senior Qatari Government Officials. Business Event/Briefing with Local Industry Representatives. One-on-One Business Meetings for the Delegation. Networking Reception.
June 6	Doha, Qatar. One-on-One Business Meetings for the Delegation. Travel to Abu Dhabi, UAE. Abu Dhabi, UAE. Market Briefing by U.S. Embassy Officials. One-on-One Business Meetings for the Delegation. Networking reception.
June 7	Abu Dhabi, UAE. Meetings with Senior UAE and Abu Dhabi Government Officials. Business Event/Briefing with Local Industry Representatives. One-on-One Business Meetings for the Delegation.
June 8	Abu Dhabi, UAE. One-on-One Business Meetings for the Delegation. Travel to Dubai. Dubai, UAE. One-on-One Business Meetings for the Delegation. Networking reception.
June 9	Dubai, UAE. Meetings with Senior Dubai Government Officials. Business Event/Briefing with Local Industry Representatives. One-on-One Business Meetings for the Delegation. Closing Dinner. Mission Ends/Departure.

Participation Requirements

All parties interested in participating in the Secretarial Business Development Mission to Qatar and the U.A.E. must submit an application package for consideration by the U.S. Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. The mission is designed to select a minimum of 15 and a maximum of 20 companies to participate in the mission from the applicant pool. U.S. companies already doing business in the target markets, as well as U.S. companies seeking to enter these markets for the first time, are encouraged to apply.

Fees and Expenses

After a company has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be $10,200 for large firms and $8,800 for a small or medium-sized enterprise (SME),[2] which will cover the principal (one) representative. The fee for each additional firm representative (large firm or SME) is $2,000. Local transportation, including transport between mission cities, is included in the participation fee.

Expenses for lodging, some meals, and incidentals will be the responsibility of each mission participant. Air transportation from the United States (or point of origin) to Qatar and return to the United States is the responsibility of the participant.

[1] World Trade Organization: Latest Available MFN Applied Tariffs At HS 6 (2007).

[2] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (*see http://www.sba.gov/services/contracting opportunities/sizestandardstopics/index.html).* Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (*see http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

Business visas may be required. Government fees and processing expenses to obtain such visas are not included in the participation fee. However, the U.S. Department of Commerce will provide instructions to each participant on the procedures required to obtain necessary business visas.

Conditions for Participation

An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the U.S. Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

Each applicant must also:

Certify that the products and services it seeks to export through the mission are either produced in the United States or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content. In cases where the U.S. content does not exceed fifty percent, especially where the applicant intends to pursue investment and major project opportunities, the following factors, often associated with U.S. ownership, may be considered in determining whether the applicant's participation in the business development mission is in the U.S. national interest:

U.S. materials and equipment content; U.S. labor content; Repatriation of profits to the U.S. economy; and/or Potential for follow-on business that would benefit the U.S. economy;

Certify that the products and services that it wishes to export through the mission would be in compliance with U.S. export controls and regulations;

Certify that it has identified to the Department of Commerce for its evaluation any business pending before the Department of Commerce that may present the appearance of a conflict of interest;

Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and

Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

Selection Criteria for Participation

Selection will be based on the following criteria in decreasing order of importance:

Consistency of a company's products or services with the scope and desired outcome of the mission's goals; Suitability of a company's products or services to the Qatari and U.A.E. markets and the likelihood of a participating company's increased exports to or business interests in these markets as a result of this mission; Demonstrated export experience in Qatar, the U.A.E., or other foreign markets; Current or pending major project participation; and Rank/seniority of the designated company representative.

Additional factors, such as diversity of company size, type, location, and demographics, may also be considered during the review process.

Referrals from political organizations and any documents, including the application, containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar—*http://www.trade.gov/trade-missions/*—and other Internet Web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

The Commerce Department's Office of Business Liaison and the International Trade Administration will explore and welcome outreach assistance from other interested organizations, including other U.S. government agencies.

Recruitment for the mission will begin on/or about January 24, 2011. Applications can be completed on-line at the Qatar and U.A.E. Business Development Mission Web site at *http://www.trade.gov/QatarUAE Mission2011* or can be obtained by contacting the U.S. Department of Commerce from Larry Brill, U.S. Commercial Service (202–482–1856/*Lawrence.Brill@trade.gov*). The application deadline is Friday, March 18, 2011, unless extended by the Department of Commerce. Completed applications should be submitted to the Office of Business Liaison. Applications received after Friday, March 18, 2011, will be considered only if space and scheduling constraints permit.

Information can also be obtained by contacting the mission contacts listed below.

Contacts

The Office of Business Liaison, Office of the Secretary, Phone: (202) 482–1360/Fax: (202) 482–4054, E-mail: *BusinessLiaison@doc.gov*.

U.S. Commercial Service Domestic Contact

Mr. Larry Brill, Phone: (202) 482–1856/Fax: (202) 482–2331, E-mail: *Lawrence.Brill@trade.gov*.

U.S. Commercial Service Qatar Contact

Mr. Dao Le, U.S. Commercial Service, Doha, Qatar, Tel: 011–974–488–4101/Fax: 011–974–488–4163, E-mail: *Dao.Le@trade.gov*.

U.S. Commercial Service U.A.E. Contact

Ms. Laurie Farris, U.S. Commercial Service, Abu Dhabi, UAE, Phone: 011–971–2–414–2665/Fax: 011–971–2–414–2228, E-mail: *Laurie.Farris@trade.gov*.

Larry Brill,

Global Trade Programs, U.S. & Foreign Commercial Service.

[FR Doc. 2011–2802 Filed 2–8–11; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA200

Atlantic Highly Migratory Species; Announcement of Billfish and Swordfish Catch Card Pilot Program for Puerto Rico

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

ACTION: Notice; Announcement of Billfish and Swordfish Catch Card Pilot Program for Puerto Rico.

SUMMARY: Accurate information is vital to NMFS' efforts to manage highly migratory species (HMS). In an effort to improve the accuracy of recreational billfish and swordfish landings data, NMFS will pilot test a new catch card program in Puerto Rico in 2011. Recreational HMS Angling category, HMS Charter Headboat category, and General category (participating in a

tournament) permit holders will be asked to affix a landings tag to all billfish and swordfish prior to removal from the vessel. Tags will be readily available at most fishing locations where billfish and swordfish are landed. In exchange for the tag, HMS recreational permit holders will be asked to fill out a catch card documenting their landing. If the pilot catch card program is successful, NMFS may consider long-term implementation in place of the current reporting system.

DATES: The voluntary HMS catch card pilot program will begin in Puerto Rico in March 2011.

ADDRESSES: Questions or comments can be submitted to Ron Salz, NMFS Office of Science and Technology, 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Ron Salz by phone at (301) 713–2328 or by e-mail at *ron.salz@noaa.gov.*

SUPPLEMENTARY INFORMATION: Accurate information is vital to NMFS' efforts to manage highly migratory species (HMS). The collection of catch and effort information for Atlantic HMS fulfills U.S. obligations to the International Commission for the Conservation of Atlantic Tunas (ICCAT) and provides the basis for stock assessments and management of these valuable species in U.S. territorial waters and international waters.

In an effort to improve the accuracy of recreational billfish and swordfish landings data as part of the Marine Recreational Information Program, NMFS will pilot test a new catch card program in Puerto Rico in 2011. The program will be implemented by the University of Puerto Rico at Mayaguez Sea Grant Program. Recreational HMS Angling category, HMS Charter Headboat category, and General category (participating in a tournament) permit holders will be asked to affix a landings tag to all billfish and swordfish prior to removal from the vessel. Tags will be readily available at most fishing locations where billfish and swordfish are landed. In exchange for the tag, HMS recreational permit holders will be asked to fill out a catch card documenting their landing. The success of this voluntary pilot program and the value of the information obtained will depend entirely on recreational fishing industry support or "buy-in." Through educational outreach, HMS recreational permit holders will be encouraged to participate and provide their landings information. Marinas, tackle shops and other private businesses will be asked to serve as catch card reporting stations to assist in this effort. If the pilot catch card program is successful, NMFS may consider long-term implementation in place of the current reporting system.

The current mandatory reporting system and regulatory requirements will remain in effect, and anglers who report their billfish and swordfish landings through the voluntary catch card pilot program must also report their non-tournament landings through the online web-reporting portal at *http://www.hmspermits.gov* or by phone at 1–800–894–5528. Non-tournament landings reports are not considered complete unless a landings-specific confirmation number has been issued by NMFS.

Dated: February 4, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–2899 Filed 2–8–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ83

Taking of Marine Mammals Incidental to Specified Activities; Construction of the East Span of the San Francisco-Oakland Bay Bridge

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) has been issued to the California Department of Transportation (CALTRANS) to take small numbers of California sea lions, Pacific harbor seals, harbor porpoises, and gray whales, by harassment, incidental to construction of a replacement bridge for the East Span of the San Francisco-Oakland Bay Bridge (SF–OBB) in California.

DATES: This authorization is effective from February 7, 2011, until February 6, 2012.

ADDRESSES: A copy of the application, IHA, and/or a list of references used in this document may be obtained by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Shane Guan, NMFS, (301) 713–2289, ext 137, or Monica DeAngelis, NMFS, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such taking are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS

must either issue or deny issuance of the authorization.

Summary of Request

On July 8, 2010, CALTRANS submitted a request to NOAA requesting renewal of an IHA for the possible harassment of small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina richardsii*), harbor porpoises (*Phocoena phocoena*), and gray whales (*Eschrichtius robustus*) incidental to construction of a replacement bridge for the East Span of the SF–OBB, in San Francisco Bay (SFB), California. An IHA was previously issued to CALTRANS for this activity on August 14, 2009 and it expired on August 13, 2010 (74 FR 41684, August 18, 2009). In its renewal request, CALTRANS states that it has not scheduled any in-water pile driving and removal for the 2010–2011 construction year. However, CALTRANS states that due to the possibility of unforeseen construction changes, it is important for CALTRANS to maintain a current IHA during SF–OBB Project construction operations. In addition, CALTRANS stated that should construction schedule changes necessitate the installation of in-water piles, these would be small diameter temporary piles like the ones used during the 2009–2010 season, ranging from 0.3 m (18 in) to 1.2 m (48 in); and the scale of such events will not exceed the scale of work conducted in the previous season. A detailed description of the SF–OBB 2009–2010 construction work was provided in the August 18, 2009 (74 FR 41684) **Federal Register** notice of issuance of the IHA and is not repeated here. The following is a brief summary of CALTRANS 2009–2010 activities.

CALTRANS 2009–2010 pile driving activities for 2009–2010 construction included driving the 42–48 in (1.1–1.2 m) diameter temporary piles, as opposed to the much larger 5.9–8.2 ft (1.8–2.5 m) diameter permanent piles used in the past. Therefore, the noise from pile driving of these temporary piles is far less than that resulting from previous pile driving activities. CALTRANS indicates that deployment of an air bubble curtain would not be feasible for the driving of these smaller temporary piles due to the complexity of the driving frames. In addition, during the 2009–2010 construction season, certain piles were installed by using both vibratory and impact hammers, instead of only impact hammers as in the past.

Empirical hydroacoustic measurements of impact and vibratory hammers during CALTRANS testing of pile driving in San Francisco Bay on October 23, December 9, and December 11, 2008, are shown in Table 1. Hydroacoustic monitors used data collected on December 9 and December 11, 2008, to determine the distance of the 120 dB isopleths. At 1,900 m from the vibratory pile driving, sound levels are in the low 120 dB root-mean-squared (rms) range. At this distance pile driving was audible but not measurable due to ambient noise (CALTRANS, 2009).

If in-water pile driving is to be conducted, the previously collected hydroacoustic data showed that the vibration of the bottom segment of each pile took approximately 3 minutes; the vibration of the top segment of each pile took approximately 8 minutes; and the impact driving of the top segment of each pile lasted an average of 15 minutes. On average, it took about 25 minutes of driving time to install each temporary pile (CALTRANS, 2009).

TABLE 1—ROOT-MEAN-SQUARE ISOPLETHS BASED ON HYDROACOUSTIC MONITORING OF PILE DRIVING (48 IN. DIAMETER) IN SAN FRANCISCO BAY BY ILLINGWORTH & RODKIN, INC. (CALTRANS, 2009)

Sound level (dB-rms re 1 μPa)	120*	160**	180**	190**
Radius for Vibratory Pile Driving	1,900 m	250 m	15 m	does not exist.
Radius for Impact Pile Driving	NA	1,000 m	235 m	95 m.

* Hydroacoustic measurements for received level at 120 dB (rms) re 1 μPa from vibratory pile driving were collected on December 9 and 11, 2008.

** Hydroacoustic measurements for received levels at 160, 180, and 190 dB (rms) re 1 μPa from vibratory pile driving were collected on October 23, 2008.

Since the proposed SF–OBB construction project would be installing smaller temporary piles with no air bubble curtain, and since the pile driving activities would be performed by using both impact and vibratory hammers, NMFS conducted a comparison of isopleths from CALTRANS' large foundation pile driving activities using an air bubble curtain system (Table 2) with the current testing pile driving without an air bubble curtain by both impact and vibratory pile driving (Table 1). The acoustic data used from the foundation pile driving were provided by CALTRANS (CALTRANS, 2005). The comparison shows that the radius for the zone of influence (ZOI) for Level B behavioral harassment, as defined by marine mammals exposed to received impulse sound pressure level (SPL) of 160 dB (rms) re 1 μPa, for the previous larger pile driving activities using an air bubble curtain was about 2,000 m (*see* further discussion on potential impacts to marine mammals below). This distance is approximately the same as the radius for the proposed vibratory pile driving for the smaller temporary piles at received SPL of 120 dB (rms) re 1 μPa, a level that may cause Level B behavioral harassment to marine mammals by vibratory pile driving. Therefore, NMFS concludes that the potential impacts to marine mammals from the proposed SF–OBB construction project involving installation of smaller temporary piles using both impact and vibratory hammers without deployment of an air bubble curtain system are the same as the previous construction activities installing larger foundation piles using impact hammers and an air bubble curtain system as a mitigation measure. If pile driving or removal are to be conducted, they are expected to occur during daylight hours only, as in the previous IHAs.

TABLE 2—SUMMARY OF HYDROACOUSTIC MEASUREMENTS OF PILE DRIVING (8.2 FT DIAMETER) REPORTED AS dB RE 1 μPA—PIER E3W MARINE MAMMAL HYDROACOUSTIC CHARACTERIZATION, 10/13/2004 (ADOPTED FROM CALTRANS, 2005)

Position	Water depth	South pile Hammer: Menck 1,700		North pile Hammer: Menck 1,700	
		RMS impulse	Peak	RMS impulse	Peak
50m West (made by Caltrans) *		177	186		
100m West *	~12–14m	175	185	173	182
100m North	~12m	174	183		
100m South **	~12m			174	182
500m West	~8m	174	182		
500m South	~10m	167	177	177	188
1000m North	14m			169	178
1000m South	~10m	169	176		
2000m North	11m			162	169
2000m South	~10m	<140	<150		
4400m North	>12m			<130	<150
4400m South	>12m	<130	<150		

* Continuous measurement. All others are spot measurements of at least 5 minutes in duration.
** Many obstructions including Pier E3E.

Comments and Responses

A notice of receipt and request for public comment on the application and proposed authorization was published on December 13, 2010 (75 FR 77617). During the 30-day public comment period, the Marine Mammal Commission (Commission) provided the only comment.

Comment: The Commission recommends that NMFS issue the requested IHA subject to a condition requiring CALTRANS to make observations before, during, and after all soft-starts of pile driving activities to gather the data needed to analyze and report on its effectiveness as a mitigation measure.

Response: NMFS agrees that studies are needed to evaluate the effectiveness of soft-start or ramp-up procedures as mitigation measures prescribed in NMFS incidental take authorizations (ITAs). Although soft-start or ramp-up procedures for pile driving have been routinely prescribed as a mitigation measure under NMFS ITAs, its efficacy has not been assessed. It is believed that by increasing the pile driving power incrementally instead of starting with the full power, marine mammals that were missed during the 30-minute pre-pile driving monitoring would leave the area, thus avoiding temporary threshold shift (TTS) or permanent threshold shift (PTS) of hearing sensitivity.

However, given the limited nature of actual pile driving, and overall low marine mammal densities and occurrence within parts of the San Francisco Bay where the CALTRANS project is located, NMFS does not believe that mandating a soft start effectiveness analysis would be meaningful or provide enough verifiable data to make any sort of reliable, scientific conclusion based on the limited CALTRANS pile driving. Nevertheless, NMFS will require CALTRANS to note any observations during the entire pile driving sequence, including the "soft-start" period, for later analysis. This analysis could provide some insights regarding the effectiveness of prescribing soft-start or ramp up as a mitigation measure for pile driving.

Potential Effects on Marine Mammals and Their Habitat

CALTRANS and NMFS have determined that open-water pile driving, as outlined in the project description, has the potential to result in behavioral harassment of California sea lions, Pacific harbor seals, harbor porpoises, and gray whales that may be swimming, foraging, or resting in the project vicinity while pile driving is being conducted. Pile driving could potentially harass those few pinnipeds that are in the water close to the project site, whether their heads are above or below the surface.

Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.* 1999; Schlundt *et al.* 2000; Finneran *et al.* 2002; 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is unrecoverable, or temporary (TTS), in which case the animal's hearing threshold will recover over time (Southall *et al.* 2007). Since marine mammals depend on acoustic cues for vital biological functions, such as orientation, communication, finding prey, and avoiding predators, marine mammals that suffer from PTS or TTS will have reduced fitness in survival and reproduction, either permanently or temporarily. Repeated noise exposure that leads to TTS could cause PTS.

Measured source levels from impact pile driving can be as high as 214 dB re 1 μPa @ 1 m. Although no marine mammals have been shown to experience TTS or PTS as a result of being exposed to pile driving activities, experiments on a bottlenose dolphin (*Tursiops truncates*) and beluga whale (*Delphinapterus leucas*) showed that exposure to a single watergun impulse at a received level of 207 kPa (or 30 psi) peak-to-peak (p-p), which is equivalent to 228 dB (p-p) re 1 μPa, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within 4 minutes of the exposure (Finneran *et al.* 2002). No TTS was observed in the bottlenose dolphin. Although the source level of pile driving from one hammer strike is expected to be much lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more noise exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1 μPa^2-s) in the aforementioned experiment (Finneran *et al.* 2002).

However, in order for marine mammals to experience TTS or PTS, the animals have to be close enough to be exposed to high intensity noise levels for prolonged period of time. Based on the best scientific information available, these sound levels are far below the threshold that could cause TTS or the onset of PTS.

In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions. Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction.

Masking occurs at the frequency band which the animals utilize. Therefore, since noise generated from in-water pile driving during the SF–OBB construction activities is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by harbor porpoises. However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (*e.g.,* Clark *et al.* 2009) and cause increased stress levels (*e.g.,* Foote *et al.* 2004; Holt *et al.* 2009).

Unlike TS, masking can potentially impact the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than 3 times in terms of SPL) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand 2009). All anthropogenic noise sources, such as those from vessel traffic, pile driving, and dredging activities, contribute to the elevated ambient noise levels, thus intensify masking.

Nevertheless, the sum of noise from the proposed SF–OBB construction activities is confined in an area of inland waters (San Francisco Bay) that is bounded by landmass, therefore, the noise generated is not expected to contribute to increased ocean ambient noise.

Finally, exposure of marine mammals to certain sounds could lead to behavioral disturbance (Richardson *et al.* 1995), such as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities, changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping), avoidance of areas where noise sources are located, and/or flight responses (*e.g.,* pinnipeds flushing into water from haulouts or rookeries).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, and reproduction. Some of these significant behavioral modifications include:

- Drastic change in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cease feeding or social interaction.

For example, at the Guerreo Negro Lagoon in Baja California, Mexico, which is one of the important breeding grounds for Pacific gray whales, shipping and dredging associated with a salt works may have induced gray whales to abandon the area through most of the 1960s (Bryant *et al.* 1984). After these activities stopped, the lagoon was reoccupied, first by single whales and later by cow-calf pairs.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.* 2007).

The proposed project area is not believed to be a prime habitat for marine mammals, nor is it considered an area frequented by marine mammals. Therefore, behavioral disturbances that could result from anthropogenic noise associated with SF–OBB construction activities are expected to affect only a small number of marine mammals on an infrequent basis.

Currently NMFS uses 160 dB re 1 μPa at received level for impulse noises (such as impact pile driving) as the onset of marine mammal behavioral harassment, and 120 dB re 1 μPa for continued noises (vibratory pile driving and dredging).

As far as airborne noise is concerned, based on airborne noise levels measured and on-site monitoring conducted during 2004 under a previous IHA, noise levels from the East Span project did not result in the harassment of harbor seals hauled out on Yerba Buena Island (YBI). Also, noise levels from the East Span project are not expected to result in harassment of the sea lions hauled out at Pier 39 as airborne and waterborne sound pressure levels (SPLs) would attenuate to levels below where harassment would be expected by the time they reach that haul-out site, 5.7 km (3.5 miles) from the project site. Therefore, no pinniped hauled out would be affected as a result of the proposed pile-driving. A detailed description of the acoustic measurements is provided in the 2004 CALTRANS marine mammal and acoustic monitoring report for the same activity (CALTRANS' 2005).

Short-term impacts to habitat may include minimal disturbance of the sediment where individual bridge piers are constructed. Long-term impacts to marine mammal habitat will be limited to the footprint of the piles and the obstruction they will create following installation. However, this impact is not considered significant as the marine mammals can easily swim around the piles of the new bridge, as they currently swim around the existing bridge piers.

Estimated Take by Incidental Harassment

For reasons provided in greater detail in NMFS' November 14, 2003 (68 FR 64595) **Federal Register** notice and in CALTRANS' annual monitoring reports (CALTRANS 2007; 2010) and marine mammal observation memoranda under the previous IHAs, the proposed construction would result in harassment of only small numbers of marine mammals and would not result in more than a negligible impact on marine mammal stocks and their habitat. This was achieved by implementing a variety of monitoring and mitigation measures including marine mammal monitoring before and during pile driving, establishing safety zones, and ramping up pile driving.

Marine mammal take estimates are based on marine mammal monitoring reports and marine mammal observations made during pile driving activities associated with the SF–OBB construction work authorized under prior IHAs. For pile driving activities conducted in 2006, 5 harbor seals and no other marine mammals were detected within the isopleths of 160 dB (rms) re 1 microPa during impact pile driving where air bubble curtains were deployed for mitigation measures (radius of ZOI at 500 m) (CALTRANS 2007). For pile driving activities conducted in the 2008 and 2009 seasons, CALTRANS monitored a much

larger ZOI of 120 dB (rms) re 1 microPa as a result of vibratory pile driving. A total of 11 harbor seals and 1 California sea lion were observed entering the 120 dB (rms) re 1 microPa ZOI (CALTRANS). However, despite the monitored ZOI being extended to 1,900 m for the 120 dB isopleths, CALTRANS did not specify which pile driving activities conducted in 2008 and 2009 used impact hammer and which ones used vibratory hammer. Therefore, at least some of these animals were not exposed to received levels above 160 dB (rms) re 1 microPa, and thus should not be considered as "taken" under the MMPA. No harbor porpoise or gray whale were observed during CALTRANS' pile driving activities since 2006 (CALTRANS 2007; 2010).

Based on these results, in addition to CALTRANS' expectation that very limited pile driving activities would be conducted in the next season, NMFS concludes that at a maximum of 10 harbor seals, 2 California sea lions, 5 harbor porpoises, and 1 gray whale could be exposed to noise levels above 120 dB by vibratory pile driving.

Marine Mammal Monitoring Report From Previous IHA

As mentioned above, marine mammal monitoring during CALTRANS' pile driving activities and weekly marine mammal observation memorandums (CALTRANS 2007; 2010) indicate that only a small number of harbor seals (a total of 16 individuals since 2006) and 1 California sea lion (a total of 1 individual in 2009) were observed within ZOIs that could result in behavioral harassment. However, the reports state that none of the animals were observed to have been startled by the exposure, which could be an indication that these animals were habituated to human activities in San Francisco Bay. In addition, no harbor porpoise or gray whales were observed during pile driving activities associated to CALTRANS' SF–OBB construction work.

Mitigation Measures

For the issuance of the IHA for the planned 2011–2012 SF–OBB potential construction activities to reduce adverse impacts to marine mammals to the lowest extent practicable, NMFS requires the following mitigation measures to be implemented.

Establishment of Safety/Buffer Zones

CALTRANS conducted underwater acoustic measures during temporary pile driving using impact hammers conducted under the previous IHA (CALTRANS 2010). The measurements showed that the distance to the 190 dB (rms) re 1 μPa isopleths ranged from 50 m (164 ft) to 150 m (492 ft), and the distance to the 180 dB (rms) re 1 μPa isopleths ranged from 375 m (1,230 ft) to 500 m (1,640 ft) at different locations. NMFS required CALTRANS to use the most conservative measurements for the establishment of safety zones at 500 m (1,640 ft) for pinnipeds and at 150 m (492 ft) for cetaceans. These safety zones shall be monitored at all times when impact pile driving is underway.

No safety zone would be established for vibratory pile driving and removal since the measured source levels will not exceed the 180 and 190 dB re 1 μPa.

Observers on boats would survey the safety zone to ensure that no marine mammals are seen within the zones before impact pile driving of a pile segment begins. If marine mammals are found within the safety zone, impact pile driving of the segment would be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor would wait 15 minutes for pinnipeds and harbor porpoise and 30 minutes for gray whale. If no marine mammals are seen by the observer in that time it would be assumed that the animal has moved beyond the safety zone. This 15-minute criterion is based on scientific evidence that harbor seals in San Francisco Bay dive for a mean time of 0.50 minutes to 3.33 minutes (Harvey and Torok, 1994), and the mean diving duration for harbor porpoises ranges from 44 to 103 seconds (Westgate *et al.,* 1995).

Once the pile driving of a segment begins it cannot be stopped until that segment has reached its predetermined depth due to the nature of the sediments underlying the Bay. If pile driving stops and then resumes, it would potentially have to occur for a longer time and at increased energy levels. In sum, this would simply amplify impacts to marine mammals, as they would endure potentially higher SPLs for longer periods of time. Pile segment lengths and wall thickness have been specially designed so that when work is stopped between segments (but not during a single segment), the pile tip is never resting in highly resistant sediment layers. Therefore, because of this operational situation, if seals, sea lions, or harbor porpoises enter the safety zone after pile driving of a segment has begun, pile driving will continue and marine mammal observers will monitor and record marine mammal numbers and behavior. However, if pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated safety zone prior to commencement of pile driving, the observer(s) must notify the Resident Engineer (or other authorized individual) immediately and follow the mitigation requirements as outlined previously in this document.

Soft Start

It should be recognized that although marine mammals will be protected from Level A harassment (*i.e.,* injury) through marine mammal observers monitoring a 190-dB safety zone for pinnipeds and 180-dB safety zone for cetaceans, mitigation may not be 100 percent effective at all times in locating marine mammals. Therefore, in order to provide additional protection to marine mammals near the project area by allowing marine mammals to vacate the area prior to receiving a potential injury, CALTRANS would also "soft start" the hammer prior to operating at full capacity. CALTRANS typically implements a "soft start" with several initial hammer strikes at less than full capacity (*i.e.,* approximately 40–60 percent energy levels) with no less than a 1 minute interval between each strike. Similar levels of noise reduction are expected underwater. Therefore, the contractor would initiate pile driving hammers with this procedure in order to allow pinnipeds or cetaceans in the area to voluntarily move from the area. This should expose fewer animals to loud sounds both underwater and above water. This would also ensure that, although not expected, any pinnipeds and cetaceans that are missed during safety zone monitoring will not be injured.

Compliance With Equipment Noise Standards

To mitigate noise levels and, therefore, impacts to California sea lions, Pacific harbor seals, harbor porpoises, and gray whales, all construction equipment shall comply with applicable equipment noise standards of the U.S. Environmental Protection Agency, and all construction equipment shall have noise control devices no less effective than those provided on the original equipment.

Monitoring Measures

The following monitoring measures are required for the proposed SF–OBB construction activities.

Safety zone monitoring would be conducted during pile driving and removal of all in-water piles. Monitoring of the pinniped and cetacean safety zones shall be conducted by a minimum of three qualified NMFS-approved observers for each safety zone. One three-observer team would be required

for the safety zones around each pile driving site, so that multiple teams would be required if pile driving is occurring at multiple locations at the same time. The observers would begin monitoring at least 30 minutes prior to startup of the pile driving, including the period of "soft start." Most likely observers would conduct the monitoring from small boats, as observations from a higher vantage point (such as the SF–OBB) are not practical. Pile driving should not begin until the safety zones are clear of marine mammals. However, as described in the Mitigation section, once pile driving of a segment begins, operations would continue uninterrupted until the segment has reached its predetermined depth. However, if pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated safety zone prior to commencement of pile driving, the observer(s) must notify the Resident Engineer (or other authorized individual) immediately and follow the mitigation requirements as outlined previously (*see* Mitigation). Monitoring should continue through the pile driving period and would end approximately 30 minutes after pile driving has been completed. Biological observations would be made using binoculars during daylight hours.

In addition to monitoring from boats, during in-water pile driving, monitoring at one control site (*i.e.,* harbor seal haul-out sites and the waters surrounding such sites not impacted by the East Span Project's pile driving activities, *e.g.,* Mowry Slough) would be designated and monitored for comparison. Monitoring would be conducted twice a week at the control site whenever in-water pile driving is being conducted.

Data on all observations would be recorded and should include the following information:

(1) Location of sighting;

(2) Species;

(3) Number of individuals;

(4) Number of calves present;

(5) Duration of sighting;

(6) Behavior of marine animals sighted;

(7) Direction of travel;

(8) Environmental information associated with sighting event including Beaufort sea state, wave height, tide state, water currents, wind direction, visibility, glare, percentage of glare, percentage of cloud cover; and

(9) When in relation to pile driving or removal activities did the sighting occur (before, "soft-start," during, or after the pile driving or removal).

The reactions of marine mammals would be recorded based on the following classifications that are consistent with the Richmond Bridge Harbor Seal survey methodology (for information on the Richmond Bridge authorization, *see* 68 FR 66076, November 25, 2003): (1) No response, (2) head alert (looks toward the source of disturbance), (3) approach water (but not leave), and (4) flush (leaves haul-out site). The number of marine mammals under each disturbance reaction should be recorded, as well as the time when seals re-haul after a flush.

Reporting Measures

Under previous IHAs, CALTRANS submitted weekly marine mammal monitoring reports for the time when in-water pile driving was commenced. In June 2010, CALTRANS submitted the Marine Mammal Monitoring for the Self-anchored Suspension Span Temporary Tower, which also includes hydroacoustic measurements during both impact and vibratory pile driving. The report is available by contacting NMFS (*see* **ADDRESSES**).

Under the IHA, coordination with NMFS would occur on a weekly basis if pile driving or removal is conducted. During periods with in-water pile driving or removal activities, weekly monitoring reports will be made available to NMFS and the public at *http://biomitigation.org.* These weekly reports would include a summary of the previous week's monitoring activities and an estimate of the number of seals and sea lions that may have been disturbed as a result of pile driving activities.

In addition, CALTRANS would provide NMFS with a draft final report within 90 days after completion of the westbound Skyway contract and 90 days after completion of the Suspension Span foundations contract. This report should detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed due to pile driving. If no comments are received from NMFS within 30 days, the draft final report would be considered the final report. If comments are received, a final report must be submitted within 30 days after receipt of comments.

Negligible Impact and Small Numbers Analysis and Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be "taken" by the specified activities (*i.e.,* takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a "negligible impact" on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination.

In addition to considering estimates of the number of marine mammals that might be "taken" through behavioral harassment, NMFS considers other factors, such as the likely nature of any responses (their intensity, duration, *etc.*), the context of any responses (critical reproductive time or location, migration, *etc.*), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat.

The CALTRANS' specified activities have been described based on best estimates of the planned SF–OBB construction project within the proposed project area. Some of the noises that would be generated as a result of the proposed bridge construction project, such as impact pile driving, are high intensity. However, the in-water pile driving for the test piles, if conducted, would use small hammers and/or vibratory pile driving methods, therefore the resulting safety zones for potential TS are expected to be small and can be easily monitored to ensure no marine mammals are within the zones when pile driving starts. In addition, the source levels from vibratory pile driving are expected to be below the TS onset threshold. Therefore, NMFS does not expect that any animals would receive Level A (including injury) harassment or Level B harassment in the form of TTS from being exposed to in-water pile driving associated with the SF–OBB construction project.

Based on marine mammal monitoring reports under previous IHAs, only 16 harbor seals and 1 California sea lion were observed within the 120 dB (in 2008 and 2009) or 160 dB (in 2006) ZOIs during in-water pile driving since 2006. NMFS proposes that up to 10 harbor seals, 2 California sea lions, 5 harbor porpoises, and 1 gray whale could be exposed to received levels above 120 dB (rms) during vibratory pile driving or

160 dB (rms) during impact pile driving for the next season of construction activities if pile driving frequency would be kept at 2008–2009 level. These are small numbers, representing 0.03% of the California stock of harbor seal population (estimated at 34,233; Carretta *et al.* 2010), 0.00% of the U.S. stock of California sea lion population (estimated at 238,000; Carretta *et al.* 2010), 0.05% of the San Francisco-Russian River stock of harbor porpoise population (estimated at 9,181; Carretta *et al.* 2010), and 0.01% of the Eastern North Pacific stock of gray whale population (estimated at 18,813; Allen and Angliss 2010).

Animals exposed to construction noise associated with the SF–OBB construction work would be limited to Level B behavioral harassment only, *i.e.,* the exposure of received levels for impulse noise between 160 and 180 dB (rms) re 1 μPa (from impact pile driving) and for non-impulse noise between 120 and 180 dB (rms) re 1 μPa (from vibratory pile driving). In addition, the potential behavioral responses from exposed animals are expected to be localized and short in duration.

These low intensity, localized, and short-term noise exposures (*i.e.,* 160 dB re 1 μPa (rms) from impulse sources and 120 dB re 1 μPa (rms) from non-impulse sources), are expected to cause brief startle reactions or short-term behavioral modification by the animals. These brief reactions and behavioral changes are expected to disappear when the exposures cease. Therefore, these levels of received underwater construction noise from the proposed SF–OBB construction project are not expected to affect marine mammal annual rates of recruitment or survival. The average measured 160 dB isopleths from impact pile driving is 1,000 m from the pile, and the estimated 120 dB isopleths from vibratory pile driving is approximately 1,900 m from the pile.

For the reasons discussed in this document, NMFS has determined that the impact of in-water pile driving associated with construction of the SF–OBB would result, at worst, in the Level B harassment of small numbers of California sea lions, Pacific harbor seals, harbor porpoises, and potentially gray whales that inhabit or visit SFB in general and the vicinity of the SF–OBB in particular. While behavioral modifications, including temporarily vacating the area around the construction site, may be made by these species to avoid the resultant visual and acoustic disturbance, the availability of alternate areas within SFB and haul-out sites (including pupping sites) and feeding areas within the Bay has led NMFS to determine that this action will have a negligible impact on California sea lion, Pacific harbor seal, harbor porpoise, and gray whale populations along the California coast.

In addition, no take by Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document. The activity will not have an unmitigable adverse impact on subsistence uses of marine mammals described in MMPA section 101(a)(5)(D)(i)(II).

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

National Environmental Policy Act (NEPA)

NMFS' prepared an Environmental Assessment (EA) for the take of marine mammals incidental to construction of the East Span of the SF–OBB and made a Finding of No Significant Impact (FONSI) on November 4, 2003. Due to the modification of part of the construction project and the mitigation measures, NMFS reviewed additional information from CALTRANS regarding empirical measurements of pile driving noises for the smaller temporary piles without an air bubble curtain system and the use of vibratory pile driving. NMFS prepared a Supplemental Environmental Assessment (SEA) and analyzed the potential impacts to marine mammals that would result from the modification of the action. A Finding of No Significant Impact (FONSI) was signed on August 5, 2009. A copy of the SEA and FONSI is available upon request (*see* **ADDRESSES**).

Endangered Species Act (ESA)

On October 30, 2001, NMFS completed consultation under section 7 of the ESA with the Federal Highway Administration (FHWA) on the CALTRANS' construction of a replacement bridge for the East Span of the SF–OBB in California. Anadromous salmonids are the only listed species which may be affected by the project. The finding contained in the Biological Opinion was that the proposed action at the East Span of the SF–OBB is not likely to jeopardize the continued existence of listed anadromous salmonids, or result in the destruction or adverse modification of designated critical habitat for these species. Listed marine mammals are not expected to be in the area of the action and thus would not be affected.

NMFS' issuance of an IHA to CALTRANS constitutes an agency action that authorizes an activity that may affect ESA-listed species and, therefore, is subject to section 7 of the ESA. There is no ESA-listed marine mammal species in the proposed action area, therefore, NMFS has determined that issuance of an IHA for this activity will have no effect on any listed marine mammal species.

Authorization

NMFS has issued an IHA to CALTRANS for the potential harassment of small numbers of harbor seals, California sea lions, harbor porpoises, and gray whales incidental to construction of a replacement bridge for the East Span of the San Francisco-Oakland Bay Bridge in California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: February 2, 2011.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–2892 Filed 2–4–11; 4:15 pm]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2010–0088]

Supplementary Examination Guidelines for Determining Compliance With 35 U.S.C. 112 and for Treatment of Related Issues in Patent Applications

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: These supplementary guidelines are intended to assist United States Patent and Trademark Office (Office) personnel in the examination of claims in patent applications for compliance with 35 U.S.C. 112, second paragraph, which requires that claims particularly point out and distinctly claim the subject matter that applicant regards as his or her invention. In addition, supplemental information is provided to assist Office personnel in the examination of claims that contain functional language for compliance with 35 U.S.C. 112, especially computer-implemented invention claims. The guidelines also include information to assist Office personnel in the examination of dependent claims for compliance with 35 U.S.C. 112, fourth

paragraph. The guidelines are a supplement to the current provisions in the Manual of Patent Examining Procedure (MPEP) pertaining to 35 U.S.C. 112, and the current provisions in the MPEP pertaining to 35 U.S.C. 112 remain in effect except as where indicated in these guidelines.

DATES: These guidelines and supplemental examination information are effective February 9, 2011. These guidelines and supplemental examination information apply to all applications filed before, on or after the effective date of February 9, 2011.

Comment Deadline Date: To be ensured of consideration, written comments must be received on or before April 11, 2011. No public hearing will be held.

ADDRESSES: Comments concerning these guidelines and supplemental examination information may be sent by electronic mail message over the Internet addressed to *SEGuidelines112@uspto.gov,* or submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450. Although comments may be submitted by mail, the Office prefers to receive comments via the Internet.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the USPTO Internet Web site (address: *http://www.uspto.gov*). Because comments will be available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Caroline D. Dennison, Nicole D. Haines, or Joni Y. Chang, Legal Advisors, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy, by telephone at (571) 272–7729, (571) 272–7717 or (571) 272–7720, or by mail addressed to: Mail Stop Comments-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Caroline D. Dennison.

SUPPLEMENTARY INFORMATION: These guidelines are intended to assist Office personnel in the examination of claims for compliance with 35 U.S.C. 112, ¶ 2 (§ 112, ¶ 2), which requires that claims particularly point out and distinctly claim the subject matter that applicant regards as his or her invention. In addition, supplemental information is provided to assist Office personnel in the examination of claims that contain functional language for compliance with 35 U.S.C. 112, especially computer-implemented invention claims. The guidelines also include information to assist Office personnel in the examination of dependent claims for compliance with 35 U.S.C. 112, ¶ 4 (§ 112, ¶ 4). The guidelines and supplemental information are based on the Office's current understanding of the law and are believed to be fully consistent with the binding precedent of the U.S. Supreme Court, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) and its predecessor courts.

These guidelines and supplemental information do not constitute substantive rule making and hence do not have the force and effect of law. They have been developed as a matter of internal Office management and are not intended to create any right or benefit, substantive or procedural, enforceable by any party against the Office. Rejections will continue to be based upon the substantive law, and it is these rejections that are appealable. Consequently, any failure by Office personnel to follow the guidelines and supplemental information is neither appealable nor petitionable.

These guidelines and supplemental information merely update USPTO examination practice for consistency with the USPTO's current understanding of the case law regarding the requirements of 35 U.S.C. 112. Therefore, these guidelines and supplemental information relate only to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice. The USPTO is providing this opportunity for public comment because the USPTO desires the benefit of public comment on these guidelines and supplemental information; however, notice and an opportunity for public comment are not required under 5 U.S.C. 553(b) or any other law. *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice and comment rule making for "'interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'" (quoting 5 U.S.C. 553(b)(A))). Persons submitting written comments should note that the USPTO may not provide a "comment and response" analysis of such comments as notice and an opportunity for public comment are not required under 5 U.S.C. 553(b) or any other law.

Part 1: Examination Guidelines for Ensuring Compliance With 35 U.S.C. 112, Second Paragraph—Definite Claim Language

I. *Background:* Optimizing patent quality by providing clear notice to the public of the boundaries of the inventive subject matter protected by a patent grant fosters innovation and competitiveness. Accordingly, providing high quality patents is one of the agency's guiding principles. The Office recognizes that issuing patents with clear and definite claim language is a key component to enhancing the quality of patents and raising confidence in the patent process.

As part of the ongoing efforts to enhance patent quality and continually improve patent examination, the Office is issuing clarifying guidelines on examination of claims under § 112, ¶ 2. This statutory section requires that a patent application specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his or her invention. In patent examining parlance, the claim language must be "definite" to comply with § 112, ¶ 2. Conversely, a claim that does not comply with this requirement of § 112, ¶ 2 is "indefinite."

It is of utmost importance that patents issue with definite claims that clearly and precisely inform persons skilled in the art of the boundaries of protected subject matter. Therefore, claims that do not meet this standard must be rejected under § 112, ¶ 2 as indefinite. Such a rejection requires that the applicant respond by explaining why the language is definite or by amending the claim, thus making the record clear regarding the claim boundaries prior to issuance. As an indefiniteness rejection requires the applicant to respond by explaining why the language is definite or by amending the claim, such rejections must clearly identify the language that causes the claim to be indefinite and thoroughly explain the reasoning for the rejection.

These guidelines set forth the examining procedure for making such determinations and focus on several key aspects of examining claims under § 112, ¶ 2. The guidelines are a first step toward providing additional examination guidance in this area and may be supplemented in later stages to address further topics relating to definite claim language. This document is not a comprehensive revision of the MPEP. However, it is anticipated that the MPEP will be updated based on a final version of these guidelines, and

those sections of the MPEP directly affected by these guidelines are referenced therein. The current provisions in the MPEP that are consistent with these guidelines remain in effect.

II. Step 1—Interpreting the Claims

A. *Broadest Reasonable Interpretation:* The first step to examining a claim to determine if the language is definite is to fully understand the subject matter of the invention disclosed in the application and to ascertain the boundaries of that subject matter encompassed by the claim. During examination, a claim must be given its broadest reasonable interpretation consistent with the specification as it would be interpreted by one of ordinary skill in the art. Because the applicant has the opportunity to amend claims during prosecution, giving a claim its broadest reasonable interpretation will reduce the possibility that the claim, once issued, will be interpreted more broadly than is justified.[1] The focus of the inquiry regarding the meaning of a claim should be what would be reasonable from the perspective of one of ordinary skill in the art.[2] *See* MPEP § 2111 for a full discussion of broadest reasonable interpretation.

Under a broadest reasonable interpretation, words of the claim must be given their plain meaning, unless such meaning is inconsistent with the specification. The plain meaning of a term means the ordinary and customary meaning given to the term by those of ordinary skill in the art at the time of the invention. The ordinary and customary meaning of a term may be evidenced by a variety of sources, including the words of the claims themselves, the specification, drawings, and prior art. However, the best source for determining the meaning of a claim term is the specification—the greatest clarity is obtained when the specification serves as a glossary for the claim terms. The presumption that a term is given its ordinary and customary meaning may be rebutted by the applicant by clearly setting forth a different definition of the term in the specification.[3] When the specification sets a clear path to the claim language, the scope of the claims is more easily determined and the public notice function of the claims is best served. *See* MPEP § 2111.01 for a full discussion of the plain meaning of claim language.

B. *Claims Under Examination Are Evaluated With a Different Standard Than Patented Claims to Determine Whether the Language Is Definite:* Patented claims enjoy a presumption of validity and are not given the broadest reasonable interpretation during court proceedings involving infringement and validity, and can be interpreted based on a fully developed prosecution record. Accordingly, when possible, courts construe patented claims in favor of finding a valid interpretation. A court will not find a patented claim indefinite unless it is "insolubly ambiguous."[4] In other words, the validity of a claim will be preserved if some meaning can be gleaned from the language.

In contrast, no presumption of validity attaches before the issuance of a patent. The Office is not required or even permitted to interpret claims when examining patent applications in the same manner as the courts, which, post-issuance, operate under the presumption of validity.[5] The Office must construe claims in the broadest reasonable manner during prosecution in an effort to establish a clear record of what applicant intends to claim. In deciding whether a pending claim particularly points out and distinctly claims the subject matter, a lower threshold of ambiguity is applied during prosecution.[6] The lower threshold is applied because the patent record is in development and not fixed. As such, applicant has the ability to provide explanation and/or amend the claims to ensure that the meaning of the language is clear and definite prior to issuance.[7]

During examination, after applying the broadest reasonable interpretation to the claim, if the metes and bounds of the claimed invention are not clear, the claim is indefinite and should be rejected.[8] For example, if the language of a claim, given its broadest reasonable interpretation, is such that a person of ordinary skill in the relevant art would read it with more than one reasonable interpretation, then a rejection under § 112, ¶ 2 is appropriate.[9] Examiners, however, are cautioned against confusing claim breadth with claim indefiniteness. A broad claim is not indefinite merely because it encompasses a wide scope of subject matter provided the scope is clearly defined. Instead, a claim is indefinite when the boundaries of the protected subject matter are not clearly delineated and the scope is unclear. For example, a genus claim that covers multiple species is broad, but is not indefinite because of its breadth, which is otherwise clear. But a genus claim that could be interpreted in such a way that it is not clear which species are covered would be indefinite (*e.g.,* because there is more than one reasonable interpretation of what species are included in the claim). *See* PART 1, section III.A.4. (below), for more information regarding the determination of whether a Markush claim satisfies the requirements of § 112, ¶ 2.

C. *Determine Whether Each Claim Limitation Invokes 35 U.S.C. 112, ¶ 6 or Not:* As part of the claim interpretation analysis, examiners should determine whether each limitation invokes 35 U.S.C. 112, ¶ 6 (112, ¶ 6) or not. If the claim limitation invokes 112, ¶ 6, the claim limitation must "be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof."[10] *See* PART 1, section III.C. (below), for more information regarding the determination of whether a limitation invokes 112, ¶ 6, and means-plus-function claim limitations.

III. *Step 2—Determining Whether Claim Language Is Definite:* During prosecution, applicant has an opportunity and a duty to amend ambiguous claims to clearly and precisely define the metes and bounds of the claimed invention. The claim places the public on notice of the scope of the patentee's right to exclude.[11] As the Federal Circuit stated in *Halliburton Energy Services:*

> We note that the patent drafter is in the best position to resolve the ambiguity in the patent claims, and it is highly desirable that patent examiners demand that applicants do so in appropriate circumstances so that the patent can be amended during prosecution rather than attempting to resolve the ambiguity in litigation.[12]

A decision on whether a claim is indefinite under § 112, ¶ 2 requires a determination of whether those skilled in the art would understand what is claimed when the claim is read in light of the specification.[13] Claim terms are typically given their ordinary and customary meaning as understood by one of ordinary skill in the pertinent art, and the generally understood meaning of particular terms may vary from art to art. Therefore, it is important to analyze claim terms in view of the application's specification from the perspective of those skilled in the relevant art since a particular term used in one patent or application may not have the same meaning when used in a different application.[14]

The following sections highlight certain areas in which questions of definiteness commonly arise.

A. Indeterminate Terms

1. *Functional Claiming:* A claim term is functional when it recites a feature "by what it does rather than by what it is."[15] There is nothing intrinsically wrong with the use of such claim language.[16] In fact, § 112, ¶ 6, expressly authorizes a form of functional claiming

(means-plus-function claim limitations discussed in III.C. below). Functional language may also be employed to limit the claims without using the means-plus-function format.[17] Unlike means-plus-function claim language that applies only to purely functional limitations,[18] functional claiming often involves the recitation of some structure followed by its function. For example, in *In re Schreiber,* the claims were directed to a conical spout (the structure) that "allow[ed] several kernels of popped popcorn to pass through at the same time" (the function).[19] As noted by the court in *Schreiber,* "[a] patent applicant is free to recite features of an apparatus either structurally or functionally."[20]

Notwithstanding the permissible instances, the use of functional language in a claim may fail "to provide a clear-cut indication of the scope of the subject matter embraced by the claim" and thus be indefinite.[21] For example, when claims merely recite a description of a problem to be solved or a function or result achieved by the invention, the boundaries of the claim scope may be unclear.[22] Further, without reciting the particular structure, materials or steps that accomplish the function or achieve the result, all means or methods of resolving the problem may be encompassed by the claim.[23] Unlimited functional claim limitations that extend to all means or methods of resolving a problem may not be adequately supported by the written description or may not be commensurate in scope with the enabling disclosure,[24] both of which are required by § 112, ¶ 1.[25] For instance, a single means claim covering every conceivable means for achieving the stated result was held to be invalid under § 112, ¶ 1 because the court recognized that the specification, which disclosed only those means known to the inventor, was not commensurate in scope with the claim.[26] For more information regarding the written description requirement and enablement requirement under § 112, ¶ 1, *see* MPEP §§ 2161–2164.08(c) and PART 2, sections I and II (below).

When a claim limitation employs functional language, the examiner's determination of whether the limitation is sufficiently definite will be highly dependent on context (*e.g.,* the disclosure in the specification and the knowledge of a person of ordinary skill in the art).[27] For example, a claim that included the term "fragile gel" was found to be indefinite because the definition of the term in the specification was functional, *i.e.,* the fluid is defined by what it does rather than what it is ("ability of the fluid to transition quickly from gel to liquid, and the ability of the fluid to suspend drill cuttings at rest"), and it was ambiguous as to the requisite degree of the fragileness of the gel, the ability of the gel to suspend drill cuttings (*i.e.,* gel strength), and/or some combination of the two.[28] In another example, the claims directed to a tungsten filament for electric incandescent lamps were held invalid for including a limitation that recited "comparatively large grains of such size and contour as to prevent substantial sagging or offsetting during a normal or commercially useful life for such a lamp or other device."[29] The court observed that the prior art filaments also "consisted of comparatively large crystals" but they were "subject to offsetting" or shifting, and the court further found that the phrase "of such size and contour as to prevent substantial sagging and offsetting during a normal or commercially useful life for a lamp or other device" did not adequately define the structural characteristics of the grains (*e.g.,* the size and contour) to distinguish the claimed invention from the prior art.[30] Similarly, a claim was held invalid because it recited "sustantially (sic) pure carbon black in the form of commercially uniform, comparatively small, rounded smooth aggregates having a spongy or porous exterior."[31] In the latter example, the Court observed various problems with the limitation: "commercially uniform" meant only the degree of uniformity buyers desired; "comparatively small" did not add anything because no standard for comparison was given; and "spongy" and "porous" are synonyms that the Court found unhelpful in distinguishing the claimed invention from the prior art.[32]

In comparison, a claim limitation reciting "transparent to infrared rays" was held to be definite because the specification showed that a substantial amount of infrared radiation was always transmitted even though the degree of transparency varied depending on certain factors.[33] Likewise, the claims in another case were held definite because applicant provided "a general guideline and examples sufficient to enable a person of ordinary skill in the art to determine whether a process uses a silicon dioxide source 'essentially free of alkali metal' to make a reaction mixture 'essentially free of alkali metal' to produce a zeolitic compound 'essentially free of alkali metal.'"[34]

Examiners should consider the following factors when examining claims that contain functional language to determine whether the language is ambiguous: (1) Whether there is a clear cut indication of the scope of the subject matter covered by the claim; (2) whether the language sets forth well-defined boundaries of the invention or only states a problem solved or a result obtained; and (3) whether one of ordinary skill in the art would know from the claim terms what structure or steps are encompassed by the claim. These factors are examples of points to be considered when determining whether language is ambiguous and are not intended to be all inclusive or limiting. Other factors may be more relevant for particular arts. The primary inquiry is whether the language leaves room for ambiguity or whether the boundaries are clear and precise.

During prosecution, applicant may resolve the ambiguities of a functional limitation in a number of ways. For example: (1) "The ambiguity might be resolved by using a quantitative metric (*e.g.,* numeric limitation as to a physical property) rather than a qualitative functional feature;"[35] (2) applicant could demonstrate that the "specification provide[s] a formula for calculating a property along with examples that meet the claim limitation and examples that do not;"[36] (3) applicant could demonstrate that the specification provides a general guideline and examples sufficient to teach a person skilled in the art when the claim limitation was satisfied;[37] or (4) applicant could amend the claims to recite the particular structure that accomplishes the function.

2. *Terms of Degree:* When a term of degree is used in the claim, the examiner should determine whether the specification provides some standard for measuring that degree.[38] If the specification does not provide some standard for measuring that degree, a determination must be made as to whether one of ordinary skill in the art could nevertheless ascertain the scope of the claim (*e.g.,* a standard that is recognized in the art for measuring the meaning of the term of degree).[39] The claim is not indefinite if the specification provides examples or teachings that can be used to measure a degree even without a precise numerical measurement (*e.g.,* a figure that provides a standard for measuring the meaning of the term of degree).[40] During prosecution, an applicant may also overcome an indefiniteness rejection by submitting a declaration under 37 CFR 1.132 showing examples that meet the claim limitation and examples that do not.[41]

3. *Subjective Terms:* When a subjective term is used in the claim, the examiner should determine whether the specification supplies some standard for

measuring the scope of the term, similar to the analysis for a term of degree. Some objective standard must be provided in order to allow the public to determine the scope of the claim. A claim that requires the exercise of subjective judgment without restriction may render the claim indefinite.[42] Claim scope cannot depend solely on the unrestrained, subjective opinion of a particular individual purported to be practicing the invention.[43]

For example, in *Datamize,* the invention was directed to a computer interface screen with an "aesthetically pleasing look and feel."[44] The meaning of the term "aesthetically pleasing" depended solely on the subjective opinion of the person selecting features to be included on the interface screen. Nothing in the intrinsic evidence (*e.g.,* the specification) provided any guidance as to what design choices would result in an "aesthetically pleasing" look and feel.[45] The claims were held indefinite because the interface screen may be "aesthetically pleasing" to one user but not to another.[46]

During prosecution, the applicant may overcome a rejection by providing evidence that the meaning of the term can be ascertained by one of ordinary skill in the art when reading the disclosure, or by amending the claim to remove the subjective term.

4. *Markush Groups:* A "Markush" claim recites a list of alternatively useable species.[47] A Markush claim is commonly formatted as: "selected from the group consisting of A, B, and C;" however, the phrase "Markush claim" as used in these guidelines means any claim that recites a list of alternatively useable species regardless of format. A Markush claim may encompass a large number of alternative species, but is not necessarily indefinite under § 112, ¶2 for such breadth.[48] In certain circumstances, however, a Markush group may be so expansive that persons skilled in the art cannot determine the metes and bounds of the claimed invention. For example, a Markush group that encompasses a massive number of distinct alternative species may be indefinite under § 112, ¶2 if one skilled in the art cannot determine the metes and bounds of the claim due to an inability to envision all of the members of the Markush group. In such a circumstance, an examiner may reject the claim for indefiniteness under § 112, ¶2.

In addition, a Markush claim may be rejected under the judicially approved "improper Markush grouping" doctrine when the claim contains an improper grouping of alternatively useable species.[49] A Markush claim contains an "improper Markush grouping" if: (1) The species of the Markush group do not share a "single structural similarity,"[50] or (2) the species do not share a common use. Members of a Markush group share a "single structural similarity" when they belong to the same recognized physical or chemical class or to the same art-recognized class. Members of a Markush group share a common use when they are disclosed in the specification or known in the art to be functionally equivalent.[51] When an examiner determines that the species of a Markush group do not share a single structural similarity or do not share a common use, then a rejection on the basis that the claim contains an "improper Markush grouping" is appropriate. The examiner should maintain the rejection of the claim on the basis that the claim contains an "improper Markush grouping" until the claim is amended to include only the species that share a single structural similarity and a common use, or the applicant presents a sufficient showing that the species in fact share a single structural similarity and a common use.

Under principles of compact prosecution, the examiner should also require the applicant to elect a species or group of indistinct species for search and examination (*i.e.,* an election of species).[52] If the examiner does not find the species or group of indistinct species in the prior art, then the examiner should extend the search to those additional species that fall within the scope of a permissible Markush claim. In other words, the examiner should extend the search to the species that share a single structural similarity and a common use. The improper Markush claim should be examined for patentability over the prior art with respect to the elected species or group of indistinct species, as well as the species that share a single structural similarity and a common use with the elected species or group of indistinct species (*i.e.,* the species that would fall within the scope of a proper Markush claim). The examiner should also reject the claim under § 112, ¶2 as indefinite if appropriate.

Depending upon the circumstances of an application, it may be appropriate to reject a Markush claim under § 112, ¶2 as indefinite (if one skilled in the art cannot determine the metes and bounds of the Markush claim due to an inability to envision all of the members of the Markush), or under the "improper Markush grouping" doctrine (if the species of a Markush group do not share a single structural similarity or a common use). Alternatively, it may be appropriate to reject a Markush claim under both § 112, ¶2 and the "improper Markush grouping" doctrine.

5. *Dependent Claims:* When examining a dependent claim, the examiner should also determine whether the claim complies with § 112, ¶4, which requires that dependent claims contain a reference to a previous claim in the same application, specify a further limitation of the subject matter claimed, and necessarily include all the limitations of the previous claim.[53] If the dependent claim does not comply with the requirements of § 112, ¶4, the examiner should reject the dependent claim under § 112, ¶4 as unpatentable rather than objecting to the claim.[54] Although the requirements of § 112, ¶4 are related to matters of form, non-compliance with § 112, ¶4 renders the claim unpatentable just as non-compliance with other paragraphs of § 112 would.[55] For example, a dependent claim must be rejected under § 112, ¶4 if it omits an element from the claim upon which it depends[56] or it fails to add a limitation to the claim upon which it depends.[57]

B. *Correspondence Between Specification and Claims:* The specification should ideally serve as a glossary to the claim terms so that the examiner and the public can clearly ascertain the meaning of the claim terms. Correspondence between the specification and claims is required by 37 CFR 1.75(d)(1), which provides that claim terms must find clear support or antecedent basis in the specification so that the meaning of the terms may be ascertainable by reference to the specification. To meet the definiteness requirement under § 112, ¶2, the exact claim terms are not required to be used in the specification as long as the specification provides the needed guidance on the meaning of the terms (*e.g.,* by using clearly equivalent terms) so that the meaning of the terms is readily discernable to a person of ordinary skill in the art.[58] Nevertheless, glossaries of terms used in the claims are a helpful device for ensuring adequate definition of terms used in claims. Express definitions of claim terms can eliminate the need for any "time-consuming and difficult inquiry into indefiniteness."[59] Therefore, applicants are encouraged to use glossaries as a best practice in patent application preparation. If the specification does not provide the needed support or antecedent basis for the claim terms, the specification should be objected to under 37 CFR 1.75(d)(1).[60] Applicant will be required to make appropriate amendment to the description to provide clear support or

antecedent basis for the claim terms provided no new matter is introduced, or amend the claim.

A claim, although clear on its face, may also be indefinite when a conflict or inconsistency between the claimed subject matter and the specification disclosure renders the scope of the claim uncertain.[61] For example, a claim with a limitation of "the clamp means including a clamp body and first and second clamping members, the clamping members being supported by the clamp body" was determined to be indefinite because the terms "first and second clamping members" and "clamp body" were found to be vague in light of the specification which showed no "clamp member" structure being "supported by the clamp body."[62] In another example, a claim was directed to a process of treating an aluminum surface with an alkali silicate solution and included a further limitation that the surface has an "opaque" appearance.[63] The specification, meanwhile, associated the use of an alkali silicate with a glazed or porcelain-like finish, which the specification distinguished from an opaque finish.[64] Noting that no claim may be read apart from and independent of the supporting disclosure on which it is based, the court found that the claim was internally inconsistent based on the description, definitions and examples set forth in the specification relating to the appearance of the surface after treatment, and therefore indefinite.[65]

C. Interpreting Claim Limitations Under § 112, ¶6

1. *Determining Whether a Claim Limitation Invokes § 112, ¶6:* If a claim limitation recites a term and associated functional language, the examiner should determine whether the claim limitation invokes § 112, ¶6. The claim limitation is presumed to invoke § 112, ¶6 when it explicitly uses the phrase "means for" or "step for" and includes functional language. That presumption is overcome when the limitation further includes the structure necessary to perform the recited function.[66]

By contrast, a claim limitation that does not use the phrase "means for" or "step for" will trigger the rebuttable presumption that § 112, ¶6 does not apply.[67] This presumption is a strong one that is not readily overcome.[68] This strong presumption may be overcome if the claim limitation is shown to use a non-structural term that is "a nonce word or a verbal construct that is not recognized as the name of structure" but is merely a substitute for the term "means for," associated with functional language.[69] However, § 112, ¶6 will not apply if persons of ordinary skill in the art reading the specification understand the term to be the name for the structure that performs the function, even when the term covers a broad class of structures or identifies the structures by their function (*e.g.,* "filters," "brakes," "clamp," "screwdriver," and "locks").[70] The term is not required to denote a specific structure or a precise physical structure to avoid the application of § 112, ¶6.[71]

When the claim limitation does not use the phrase "means for" or "step for," examiners should determine whether the claim limitation uses a non-structural term (a term that is simply a substitute for the term "means for"). Examiners will apply § 112, ¶6 to a claim limitation that uses a non-structural term associated with functional language, unless the non-structural term is (1) preceded by a structural modifier, defined in the specification as a particular structure or known by one skilled in the art, that denotes the type of structural device (*e.g.,* "filters"), or (2) modified by sufficient structure or material for achieving the claimed function. The following is a list of non-structural terms that may invoke § 112, ¶6: "mechanism for," "module for," "device for," "unit for," "component for," "element for," "member for," "apparatus for," "machine for," or "system for."[72] This list is not exhaustive, and other non-structural terms may invoke § 112, ¶6. The following are examples of structural terms that have been found not to invoke § 112, ¶6: "circuit for,"[73] "detent mechanism,"[74] "digital detector for,"[75] "reciprocating member,"[76] "connector assembly,"[77] "perforation,"[78] "sealingly connected joints,"[79] and "eyeglass hanger member."[80]

A limitation will not invoke § 112, ¶6 if there is a structural modifier that further describes the non-structural term. For example, although a non-structural term like "mechanism" standing alone may invoke § 112, ¶6 when coupled with a function, it will not invoke § 112, ¶6 when it is preceded by a structural modifier (*e.g.,* "detent mechanism").[81] By contrast, when a non-structural term is preceded by a non-structural modifier that does not have any generally understood structural meaning in the art, the phrase may invoke § 112, ¶6 when coupled with a function (*e.g.,* "colorant selection mechanism," "lever moving element," or "movable link member").[82]

To determine whether a word, term, or phrase coupled with a function denotes structure, examiners should check whether: (1) The specification provides a description sufficient to inform one of ordinary skill in the art that the term denotes structure; (2) general and subject matter specific dictionaries provide evidence that the term has achieved recognition as a noun denoting structure; and (3) the prior art provides evidence that the term has an art-recognized structure to perform the claimed function.[83]

Examiners will apply § 112, ¶ 6 to a claim limitation that meets the following conditions: (1) The claim limitation uses the phrase "means for" or "step for" or a **non-structural term** that does not have a structural modifier; (2) the phrase "means for" or "step for" or the non-structural term recited in the claim is modified by functional language; and (3) the phrase "means for" or "step for" or the non-structural term recited in the claim is not modified by sufficient structure, material, or acts for achieving the specified function.

This guideline modifies the 3-prong analysis in MPEP § 2181, which will be revised in due course.

When it is unclear whether a claim limitation invokes § 112, ¶ 6 or not, a rejection under § 112, ¶ 2 may be appropriate.[84] Similarly, when applicant uses the phrase "means for" or "step for" in the preamble, a rejection under § 112, ¶ 2 may be appropriate when it is unclear whether the preamble is reciting a means (or step) plus function limitation or whether the preamble is merely stating the intended use of the claimed invention. If applicant uses a structural or non-structural term with the word "for" in the preamble, the examiner should not construe such phrase as reciting a means-plus-function limitation.

2. *Rejections Under § 112, ¶ 2 When Examining Means-Plus-Function Limitations Under § 112, ¶ 6:* Once the examiner determines that a claim limitation is a means-plus-function limitation invoking § 112, ¶ 6, the examiner should determine the claimed function[85] and then review the written description of the specification to determine whether the corresponding structure, material, or acts that perform the claimed function are disclosed.[86] The disclosure must be reviewed from the point of view of one skilled in the relevant art to determine whether that person would understand the written description to disclose the corresponding structure, material, or acts.[87] To satisfy the definiteness requirement under § 112, ¶ 2, the written description must clearly link or associate the corresponding structure, material, or acts to the claimed function.[88] A rejection under § 112, ¶ 2 is appropriate if the written description

fails to link or associate the disclosed structure, material, or acts to the claimed function, or if there is no disclosure (or insufficient disclosure) of structure, material, or acts for performing the claimed function.[89] A bare statement that known techniques or methods can be used would not be a sufficient disclosure to support a means-plus-function limitation.[90]

A rejection under § 112, ¶ 2 may be appropriate in the following situations when examining means-plus-function claim limitations under § 112, ¶ 6: (1) When it is unclear whether a claim limitation invokes § 112, ¶ 6; (2) when § 112, ¶ 6 is invoked and there is no disclosure or there is insufficient disclosure of structure, material, or acts for performing the claimed function; and/or (3) when § 112, ¶ 6 is invoked and the supporting disclosure fails to clearly link or associate the disclosed structure, material, or acts to the claimed function.[91] When the examiner cannot identify the corresponding structure, material, or acts, a rejection under § 112, ¶ 2 should be made. In some cases, a requirement for information under 37 CFR 1.105 may be made to require the identification of the corresponding structure, material, or acts.[92] If a requirement for information under 37 CFR 1.105 is made and the applicant states that he or she lacks such information or the reply does not identify the corresponding structure, material, or acts, a rejection under § 112, ¶ 2 should be made.[93]

If the written description sets forth the corresponding structure, material, or acts in compliance with § 112, ¶ 2, the claim limitation must "be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof."[94] However, functional limitations that are not recited in the claim, or structural limitations from the written description that are unnecessary to perform the claimed function, cannot be imported into the claim.[95]

3. *Computer-Implemented Means-Plus-Function Limitations:* For a computer-implemented means-plus-function claim limitation invoking § 112, ¶ 6, the corresponding structure is required to be more than simply a general purpose computer or microprocessor.[96] To claim a means for performing a particular computer-implemented function and then to disclose only a general purpose computer as the structure designed to perform that function amounts to pure functional claiming.[97]

The structure corresponding to a § 112, ¶ 6 claim limitation for a computer-implemented function must include the algorithm needed to transform the general purpose computer or microprocessor disclosed in the specification.[98] The corresponding structure is not simply a general purpose computer by itself but the special purpose computer as programmed to perform the disclosed algorithm.[99] Thus, the specification must sufficiently disclose an algorithm to transform a general purpose microprocessor to the special purpose computer.[100] An algorithm is defined, for example, as "a finite sequence of steps for solving a logical or mathematical problem or performing a task."[101] Applicant may express the algorithm in any understandable terms including as a mathematical formula, in prose, in a flow chart, or "in any other manner that provides sufficient structure."[102]

A rejection under § 112, ¶ 2 is appropriate if the specification discloses no corresponding algorithm associated with a computer or microprocessor.[103] For example, mere reference to a general purpose computer with appropriate programming without providing an explanation of the appropriate programming,[104] or simply reciting "software" without providing detail about the means to accomplish the software function,[105] would not be an adequate disclosure of the corresponding structure to satisfy the requirements of § 112, ¶ 2. In addition, merely referencing a specialized computer (*e.g.,* a "bank computer"), some undefined component of a computer system (*e.g.,* "access control manager"), "logic," "code," or elements that are essentially a black box designed to perform the recited function, will not be sufficient because there must be some explanation of how the computer or the computer component performs the claimed function.[106]

In several Federal Circuit cases, the patentees argued that the requirement for the disclosure of an algorithm can be avoided if one of ordinary skill in the art is capable of writing the software to convert a general purpose computer to a special purpose computer to perform the claimed function.[107] Such argument was found to be unpersuasive because the understanding of one skilled in the art does not relieve the patentee of the duty to disclose sufficient structure to support means-plus-function claim terms.[108] The specification must explicitly disclose the algorithm for performing the claimed function, and simply reciting the claimed function in the specification will not be a sufficient disclosure for an algorithm which, by definition, must contain a sequence of steps.[109]

If the specification explicitly discloses an algorithm, the sufficiency of the disclosure of the algorithm must be determined in light of the level of ordinary skill in the art.[110] The examiner should determine whether one skilled in the art would know how to program the computer to perform the necessary steps described in the specification (*i.e.,* the invention is enabled), and that the inventor was in possession of the invention (*i.e.,* the invention meets the written description requirement). Thus, the specification must sufficiently disclose an algorithm to transform a general purpose microprocessor to a special purpose computer so that a person of ordinary skill in the art can implement the disclosed algorithm to achieve the claimed function.[111]

Often the supporting disclosure for a computer-implemented invention discusses the implementation of the functionality of the invention through hardware, software, or a combination of both. In this situation, a question can arise as to which mode of implementation supports the means-plus-function limitation. The language of § 112, ¶ 6 requires that the recited "means" for performing the specified function shall be construed to cover the corresponding "structure or material" described in the specification and equivalents thereof. Therefore, by choosing to use a means-plus-function limitation and invoke § 112, ¶ 6, applicant limits that claim limitation to the disclosed structure, *i.e.,* implementation by hardware or the combination of hardware and software, and equivalents thereof. Therefore, the examiner should not construe the limitation as covering pure software implementation.

However, if there is no corresponding structure disclosed in the specification (*i.e.,* the limitation is only supported by software and does not correspond to an algorithm **and** the computer or microprocessor programmed with the algorithm), the limitation should be deemed indefinite as discussed above, and the claim should be rejected under § 112, ¶ 2. It is important to remember that claims must be interpreted as a whole; so, a claim that includes a means-plus-function limitation that corresponds to software *per se* (and is thus indefinite for lacking structural support in the specification) is not necessarily directed as a whole to software *per se* unless the claim lacks other structural limitations.

IV. Step 3—Resolving Indefinite Claim Language

A. *Examiner Must Establish a Clear Record:* Examiners are urged to carefully carry out their responsibilities to see that the application file contains a complete and accurate picture of the Office's consideration of the patentability of an application.[112] In order to provide a complete application file history and to enhance the clarity of the prosecution history record, an examiner should provide clear explanations of all actions taken during prosecution of the application.[113] Thus, when a rejection under § 112, ¶ 2, is appropriate based on the examiner's determination that a claim term or phrase is indefinite, the examiner should clearly communicate in an Office action any findings and reasons which support the rejection and avoid a mere conclusion that the claim term or phrase is indefinite.[114]

MPEP § 2173.05 provides numerous examples of rationales that may support a rejection under § 112, ¶ 2, such as functional claim limitations, relative terminology/terms of degree, lack of antecedent basis, etc. (*See* PART 1, section III above for detailed guidance on certain situations in determining whether claim language is definite.) Only by providing a complete explanation in the Office action as to the basis for determining why a particular term or phrase used in the claim is "vague and indefinite" will the examiner enhance the clarity of the prosecution history record.[115]

B. *An Office Action Should Provide a Sufficient Explanation:* The Office action must set forth the specific term or phrase that is indefinite and why the metes and bounds are unclear. Since a rejection requires the applicant to respond by explaining why claim language is definite or by amending the claim, the Office action should provide enough information for the applicant to prepare a meaningful response. "Because claims delineate the patentee's right to exclude, the patent statute requires that the scope of the claims be sufficiently definite to inform the public of the bounds of the protected invention, *i.e.,* what subject matter is covered by the exclusive rights of the patent." [116] Thus, claims are given their broadest reasonable interpretation during prosecution "to facilitate sharpening and clarifying the claims at the application stage" when claims are readily changed.[117]

To comply with § 112, ¶ 2, applicants are required to make the terms that are used to define the invention clear and precise, so that the metes and bounds of the subject matter that will be protected by the patent grant can be ascertained.[118] It is important that a person of ordinary skill in the art be able to interpret the metes and bounds of the claims so as to understand how to avoid infringement of the patent that ultimately issues from the application being examined.[119] Examiners should bear in mind that "[a]n essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process." [120]

Accordingly, when rejecting a claim as indefinite under § 112, ¶ 2, the examiner should provide enough information in the Office action to permit applicant to make a meaningful response, as the indefiniteness rejection requires the applicant to explain or provide evidence as to why the claim language is not indefinite or amend the claim. For example, the examiner should point out the specific term or phrase that is indefinite, explain in detail why such term or phrase renders the metes and bounds of the claim scope unclear and, whenever practicable, indicate how the indefiniteness issues may be resolved to overcome the rejection.[121]

The focus during the examination of claims for compliance with the requirement for definiteness under § 112, ¶ 2, is whether the claim meets the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available. *See* MPEP § 2173.02. If the language used by applicant satisfies the statutory requirement of § 112, ¶ 2, but the examiner merely wants the applicant to improve the clarity or precision of the language used, the examiner should suggest improved claim language to the applicant and not make a rejection under § 112, ¶ 2.[122] Furthermore, when the examiner determines that more information is necessary to ascertain the meaning of a claim term, a requirement for information under 37 CFR 1.105 is appropriate. *See* MPEP § 704.10 regarding requirements for information.

It is highly desirable to have applicants resolve ambiguity by amending the claims during prosecution of the application rather than attempting to resolve the ambiguity in subsequent litigation of the issued patent.[123] Likewise, if the applicant traverses a rejection under § 112, ¶ 2, with or without the submission of an amendment, and the examiner considers applicant's arguments to be persuasive, the examiner should indicate in the next Office communication that the previous rejection under § 112, ¶ 2, has been withdrawn and provide an explanation as to what prompted the change in the examiner's position (*e.g.,* by making specific reference to portions of applicant's remarks).[124]

C. Practice Compact Prosecution

1. *Interpret the Claim and Apply Art With an Explanation of How an Indefinite Term Is Interpreted:* The goal of examination is to clearly articulate any rejection early in the prosecution process so that the applicant has the chance to provide evidence of patentability and otherwise reply completely at the earliest opportunity.[125] Under the principles of compact prosecution, the examiner should review each claim for compliance with every statutory requirement for patentability in the initial review of the application and identify all of the applicable grounds of rejection in the first Office action to avoid unnecessary delays in the prosecution of the application.[126]

Thus, when the examiner determines that a claim term or phrase renders the claim indefinite, the examiner should make a rejection based on indefiniteness under § 112, ¶ 2, as well as a rejection(s) in view of the prior art under § 102 or § 103 that renders the prior art applicable based on the examiner's interpretation of the claim. When making a rejection over prior art in these circumstances, it is important that the examiner state on the record how the claim term or phrase is being interpreted with respect to the prior art applied in the rejection. By rejecting each claim on all reasonable grounds available, the examiner can avoid piecemeal examination.[127]

2. *Open Lines of Communication With the Applicant—When Indefiniteness Is the Only Issue, Attempt Resolution Through an Interview Before Resorting to a Rejection:* Examiners are reminded that interviews can be an effective examination tool and are encouraged to initiate an interview with the applicant or applicant's representative at any point during the pendency of an application, if the interview can help further prosecution, shorten pendency, or provide a benefit to the examiner or applicant.[128] Issues of claim interpretation and clarity of scope may lend themselves to resolution through an examiner interview. For example, the examiner may initiate an interview to discuss, among other issues, the broadest reasonable interpretation of a claim, the meaning of a particular claim limitation, and the scope and clarity of preamble language, functional language,

intended use language, and means-plus-function limitations, etc.

An interview can serve to develop and clarify such issues and lead to a mutual understanding between the examiner and the applicant, potentially eliminating the need for the examiner to resort to making a rejection under § 112, ¶ 2. The examiner is reminded that the substance of any interview, whether in person, by video conference, or by telephone must be made of record in the application, whether or not an agreement was reached at the interview.[129] Examples of § 112 issues that should be made of record after the interview include: why the discussed claim term is or is not sufficiently clear; why the discussed claim term is or is not inconsistent with the specification; why the discussed claim term does or does not invoke § 112, ¶ 6, (and if it does, the identification of corresponding structure in the specification for a § 112, ¶ 6 limitation); and any claim amendments discussed that would resolve identified ambiguities.

D. Ensure That the Record Is Clear

1. *Provide Claim Interpretation in Reasons for Allowance When Record Is Unclear:* Pursuant to 37 CFR 1.104(e), if the examiner believes that the record of the prosecution as a whole does not make clear his or her reasons for allowing a claim or claims, the examiner may set forth such reasoning in reasons for allowance.[130] One of the primary purposes of 37 CFR 1.104(e) is to improve the quality and reliability of issued patents by providing a complete file history which should clearly reflect the reasons why the application was allowed. Such information facilitates evaluation of the scope and strength of a patent by the patentee and the public and may help avoid or simplify subsequent litigation of an issued patent.[131] In meeting the need for the application file history to speak for itself, it is incumbent upon the examiner in exercising his or her responsibility to the public, to see that the file history is complete.[132]

For example, when allowing a claim based on a claim interpretation which might not be readily apparent from the record of the prosecution as a whole, the examiner should set forth in reasons for allowance the claim interpretation that he or she applied in determining that the claim is allowable over the prior art.[133] This is especially the case where the application is allowed after an interview. The examiner should ensure, however, that statements of reasons for allowance do not place unwarranted interpretations, whether broad or narrow, upon the claims.[134]

2. *Provide Claim Interpretation When § 112, ¶ 6 Is Invoked:* The examiner should specify in the Office action that a claim limitation has been interpreted under the provisions of § 112, ¶ 6, as provided above in section III.C. When claim terms other than "means for" or "step for" are determined to invoke § 112, ¶ 6 pursuant to the guidance above, the reasons why the claim was interpreted as invoking 112, ¶ 6, should also be clearly stated in the Office action. For example, the Office action can include a statement that a certain claim limitation is expressed in functional terms coupled to a non-structural word (*e.g.,* "module for,") that does not connote structure and therefore invokes treatment under § 112, ¶ 6. When the examiner has determined that § 112, ¶ 6 applies, the examiner may also specify what the specification identifies as the corresponding structure.

Additionally, if the corresponding structure for the claimed function is not clearly identifiable in the specification, the Office action should, nevertheless, attempt to identify what structure is most closely associated with the means-plus-function limitation to facilitate a prior art search. This is especially true when there may be confusion as to which disclosed implementation of the invention supports the limitation, as explained in section III.C.3 above.

When allowing a claim that was treated under § 112, ¶6, the examiner should indicate that the claim was interpreted under the provisions of § 112, ¶6 in reasons for allowance if such an explanation has not previously been made of record. As noted above, the indication should also clarify the associated structure if not readily apparent in the specification.

Part 2: Supplemental Information for Examining Computer-Implemented Functional Claim Limitations

The statutory requirements for computer-implemented inventions are the same as for all inventions, such as the subject matter eligibility[135] and utility[136] requirements under § 101, the definiteness requirement of § 112, ¶ 2, the three separate and distinct requirements of § 112, ¶ 1,[137] the novelty requirement of § 102, and nonobviousness requirement of § 103.[138] Nevertheless, computer-implemented inventions have certain unique examination issues, especially those that are claimed using functional language that is not limited to a specific structure. This section provides supplemental information to assist examiners in examining computer-implemented functional claim limitations. *See* PART 1, sections III.C. and IV.D. (above) for information regarding means (or step) plus function limitations that invoke § 112, ¶ 6.

I. *Determining Whether There Is Adequate Written Description for a Computer-Implemented Functional Claim Limitation:* The first paragraph of § 112 contains a written description requirement that is separate and distinct from the enablement requirement.[139] To satisfy the written description requirement, the specification must describe the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention.[140] Specifically, the specification must describe the claimed invention in a manner understandable to a person of ordinary skill in the art and show that the inventor actually invented the claimed invention.[141]

The written description requirement of § 112, ¶ 1 applies to all claims including original claims that are part of the disclosure as filed.[142] As stated by the Federal Circuit, "[a]lthough many original claims will satisfy the written description requirement, certain claims may not."[143] For instance, generic claim language in the original disclosure does not satisfy the written description requirement if it fails to support the scope of the genus claimed.[144] For example, in *LizardTech,* the claim was directed to a method of compressing digital images using seamless discrete wave transformation ("DWT"). The court found that the claim covered all ways of performing DWT-based compression processes that lead to a seamless DWT because there were no limitations as to how the seamless DWT was to be accomplished.[145] However, the specification provided only one method for creating a seamless DWT, and there was no evidence that the specification contemplated a more generic way of creating a seamless array of DWT coefficients. Therefore, the written description requirement was not satisfied in this case because the specification did not provide sufficient evidence that the inventor invented the generic claim.[146]

In addition, original claims may fail to satisfy the written description requirement when the invention is claimed and described in functional language but the specification does not sufficiently identify how the invention achieves the claimed function.[147] In *Ariad,* the court recognized the problem of using functional claim language without providing in the specification examples of species that achieve the claimed function:

The problem is especially acute with genus claims that use functional language to define the boundaries of a claimed genus. In such a case, the functional claim may simply claim a desired result, and may do so without describing species that achieve that result. But the specification must demonstrate that the applicant has made a generic invention that achieves the claimed result and do so by showing that the applicant has invented species sufficient to support a claim to the functionally-defined genus.[148]

The level of detail required to satisfy the written description requirement varies depending on the nature and scope of the claims and on the complexity and predictability of the relevant technology.[149] Computer-implemented inventions are often disclosed and claimed in terms of their functionality. This is because writing computer programming code for software to perform specific functions is normally within the skill of the art once those functions have been adequately disclosed.[150] Nevertheless, for computer-implemented inventions, the determination of the sufficiency of disclosure will require an inquiry into both the sufficiency of the disclosed hardware as well as the disclosed software due to the interrelationship and interdependence of computer hardware and software.[151] For instance, in *In re Hayes Microcomputer Products,* the written description requirement was satisfied because the specification disclosed the specific type of microcomputer used in the claimed invention as well as the necessary steps for implementing the claimed function. The disclosure was in sufficient detail such that one skilled in the art would know how to program the microprocessor to perform the necessary steps described in the specification.[152] Two additional observations made by the Federal Circuit in *Hayes* are important. First, the Federal Circuit stressed that the written description requirement was satisfied because the particular steps, *i.e.,* algorithm, necessary to perform the claimed function were "described in the specification." [153] Second, the Court acknowledged that the level of detail required for the written description requirement to be met is case specific.[154]

When examining computer-implemented functional claims, examiners should determine whether the specification discloses the computer and the algorithm (*e.g.,* the necessary steps and/or flowcharts) that perform the claimed function in sufficient detail such that one of ordinary skill in the art can reasonably conclude that the inventor invented the claimed subject matter. Specifically, if one skilled in the art would know how to program the disclosed computer to perform the necessary steps described in the specification to achieve the claimed function and the inventor was in possession of that knowledge, the written description requirement would be satisfied.[155] If the specification does not provide a disclosure of the computer and algorithm in sufficient detail to demonstrate to one of ordinary skill in the art that the inventor possessed the invention including how to program the disclosed computer to perform the claimed function, a rejection under § 112, ¶ 1 for lack of written description must be made. For more information regarding the written description requirement, *see* MPEP § 2161.01–2163.07(b).

II. *Determining Whether the Full Scope of a Computer-Implemented Functional Claim Limitation Is Enabled:* To satisfy the enablement requirement of § 112, ¶ 1, the specification must teach those skilled in the art how to make and use the full scope of the claimed invention without "undue experimentation." [156] In *In re Wands,* the court set forth the following factors to consider when determining whether undue experimentation is needed: (1) The breadth of the claims; (2) the nature of the invention; (3) the state of the prior art; (4) the level of one of ordinary skill; (5) the level of predictability in the art; (6) the amount of direction provided by the inventor; (7) the existence of working examples; and (8) the quantity of experimentation needed to make or use the invention based on the content of the disclosure.[157] The undue experimentation determination is not a single factual determination. Rather, it is a conclusion reached by weighing all the factual considerations.[158]

Functional claim language may render the claims broad when the claim is not limited to any particular structure for performing the claimed function.[159] Since such a claim covers all devices which perform the recited function, there is a concern regarding whether the scope of enablement provided to one skilled in the art by the disclosure is commensurate with the scope of protection sought by the claim.[160] Applicants who present broad claim language must ensure the claims are fully enabled. Specifically, the scope of the claims must be less than or equal to the scope of the enablement provided by the specification.[161]

For example, the claims in *Sitrick* were directed to "integrating" or "substituting" a user's audio signal or visual image into a pre-existing video game or movie. While the claims covered both video games and movies, the specification only taught the skilled artisan how to substitute and integrate user images into video games. The Federal Circuit held that the specification failed to enable the full scope of the claims because the skilled artisan could not substitute a user image for a preexisting character image in movies without undue experimentation. Specifically, the court recognized that one skilled in the art could not apply the teachings of the specification regarding video games to movies, because movies, unlike video games, do not have easily separable character functions. Because the specification did not teach how the substitution and integration of character functions for a user image would be accomplished in movies, the claims were not enabled.[162]

Although the specification need not teach what is well known in the art, applicant cannot rely on the knowledge of one skilled in the art to supply information that is required to enable the novel aspect of the claimed invention, when the enabling knowledge is in fact not known in the art.[163] The Federal Circuit has stated that " '[i]t is the specification, not the knowledge of one skilled in the art, that must supply the novel aspects of an invention in order to constitute adequate enablement.' " [164] The rule that a specification need not disclose what is well known in the art is "merely a rule of supplementation, not a substitute for a basic enabling disclosure." [165] Therefore, the specification must contain the information necessary to enable the novel aspects of the claimed invention.[166] For instance, in *Auto. Techs.,* the claim limitation "means responsive to the motion of said mass" was construed to include both mechanical side impact sensors and electronic side impact sensors for performing the function of initiating an occupant protection apparatus.[167] The specification did not disclose any discussion of the details or circuitry involved in the electronic side impact sensor, and thus, it failed to apprise one of ordinary skill how to make and use the electronic sensor. Since the novel aspect of the invention was side impact sensors, the patentee could not rely on the knowledge of one skilled in the art to supply the missing information.[168]

A rejection under § 112, ¶ 1 for lack of enablement must be made when the specification does not enable the full scope of the claim. USPTO personnel should establish a reasonable basis to question the enablement provided for the claimed invention and provide reasons for the uncertainty of the enablement. For more information

regarding the enablement requirement, *see* MPEP §§ 2161.01, 2164.01(a)–2164.08(c), *e.g.,* 2164.06(c) on examples of computer programming cases.

III. *Determining Whether a Computer-Implemented Functional Claim Limitation Is Patentable Over the Prior Art Under §§ 102 and 103:* Functional claim language that is not limited to a specific structure covers all devices that are capable of performing the recited function. Therefore, if the prior art discloses a device that can inherently perform the claimed function, a rejection under § 102 or 103 may be appropriate.[169] *See* MPEP §§ 2112 and 2114 for more information.

Computer-implemented functional claim limitations may also be broad because the term "computer" is commonly understood by one of ordinary skill in the art to describe a variety of devices with varying degrees of complexity and capabilities.[170] Therefore, a claim containing the term "computer" should not be construed as limited to a computer having a specific set of characteristics and capabilities, unless the term is modified by other claim terms or clearly defined in the specification to be different from its common meaning.[171] In *In re Paulsen,* the claims, directed to a portable computer, were rejected as anticipated under § 102 by a reference that disclosed a calculator, because the term "computer" was given the broadest reasonable interpretation consistent with the specification to include a calculator, and a calculator was considered to be a particular type of computer by those of ordinary skill in the art.[172]

When determining whether a computer-implemented functional claim is obvious, examiners should note that broadly claiming an automated means to replace a manual function to accomplish the same result does not distinguish over the prior art.[173] Furthermore, implementing a known function on a computer has been deemed obvious to one of ordinary skill in the art if the automation of the known function on a general purpose computer is nothing more than the predictable use of prior art elements according to their established functions.[174] Likewise, it has been found to be obvious to adapt an existing process to incorporate Internet and Web browser technologies for communicating and displaying information because these technologies had become commonplace for those functions.[175]

For more information on the obviousness determination, *see* MPEP § 2141 and *Examination Guidelines Update: Developments in the Obviousness Inquiry after KSR* v. *Teleflex,* 75 FR 53643 (Sept. 1, 2010).

Dated: January 21, 2011.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[1] *In re Yamamoto,* 740 F.2d 1569, 1571 (Fed. Cir. 1984); *In re Zletz,* 893 F.2d 319, 321 (Fed. Cir. 1989) ("During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow.").

[2] *In re Suitco Surface, Inc.,* 603 F.3d 1255, 1260 (Fed. Cir. 2010); *In re Buszard,* 504 F.3d 1364 (Fed. Cir. 2007). In *Buszard,* the claim was directed to a flame retardant composition comprising a flexible polyurethane foam reaction mixture. *Id.* at 1365. The Federal Circuit found that the Board's interpretation that equated a "flexible" foam with a crushed "rigid" foam was not reasonable. *Id.* at 1367. Persuasive argument was presented that persons experienced in the field of polyurethane foams know that a flexible mixture is different than a rigid foam mixture. *Id.* at 1366.

[3] *In re Morris,* 127 F.3d 1048, 1054 (Fed. Cir. 1997) (the USPTO looks to the ordinary use of the claim terms taking into account definitions or other "enlightenment" contained in the written description); *But c.f. In re Am. Acad. of Sci. Tech. Ctr.,* 367 F.3d 1359, 1369 (Fed. Cir. 2004) ("We have cautioned against reading limitations into a claim from the preferred embodiment described in the specification, even if it is the only embodiment described, absent clear disclaimer in the specification.").

[4] *See, e.g., Exxon Research and Eng'g Co.* v. *United States,* 265 F.3d 1371, 1375 (Fed. Cir. 2001).

[5] *Morris,* 127 F.3d at 1054; *Zletz,* 893 F.2d at 321–322.

[6] *Ex parte Miyazaki,* 89 USPQ2d 1207, 1212 (Bd. Pat. App. & Int. 2008) (precedential); *In re Am. Acad. of Sci. Tech Center,* 367 F.3d 1359, 1369 (Fed. Cir. 2004) ("However, the Board is required to use a different standard for construing claims than that used by district courts.").

[7] *Burlington Indus. Inc.* v. *Quigg,* 822 F.2d 1581, 1583 (Fed. Cir. 1987) ("Issues of judicial claim construction such as arise after patent issuance, for example during infringement litigation, have no place in prosecution of pending claims before the PTO, when any ambiguity or excessive breadth may be corrected by merely changing the claim.") (emphasis added).

[8] *Zletz,* 893 F.2d at 322.

[9] *See* Memorandum entitled "*Indefiniteness rejections under 35 U.S.C. 112, second paragraph*" available at *http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/section_112_6th_09_02_2008.pdf.*

[10] 35 U.S.C. 112, ¶ 6; *see also In re Donaldson Co.,* 16 F.3d 1189, 1193 (Fed. Cir. 1994) (en banc) ("[W]e hold that paragraph six applies regardless of the context in which the interpretation of means-plus-function language arises, i.e., whether as part of a patentability determination in the PTO or as part of a validity or infringement determination in a court.").

[11] *See, e.g., Johnson & Johnston Assoc. Inc.* v. *R.E. Serv. Co.,* 285 F.3d 1046, 1052 (Fed. Cir. 2002).

[12] *Halliburton Energy Servs., Inc.* v. *M–I LLC,* 514 F.3d 1244, 1255 (Fed. Cir. 2008) (emphasis added).

[13] *Power-One, Inc.* v. *Artesyn Techs., Inc.,* 599 F.3d 1343, 1350 (Fed. Cir. 2010); *Orthokinetics, Inc.* v. *Safety Travel Chairs, Inc.,* 806 F.2d 1565 (Fed. Cir. 1986). In *Orthokinetics,* a claim directed to a wheel chair included the phrase "so dimensioned as to be insertable through the space between the doorframe of an automobile and one of the seats thereof." *Id.* at 1568. The court found the phrase to be as accurate as the subject matter permits, since automobiles are of various sizes. *Id.* at 1576. "As long as those of ordinary skill in the art realized the dimensions could be easily obtained, § 112, 2d ¶ requires nothing more." *Id.*

[14] *Medrad, Inc.* v. *MRI Devices Corp.,* 401 F.3d 1313, 1318 (Fed. Cir. 2005).

[15] *In re Swinehart,* 439 F.2d 210, 212 (CCPA 1971); *see also* MPEP § 2173.05(g).

[16] *Swinehart,* 439 F.2d at 212; *see also Halliburton Energy Servs.,* 514 F.3d at 1255.

[17] *See, e.g., K–2 Corp.* v. *Salomon S.A.,* 191 F.3d 1356, 1363 (Fed. Cir. 1999).

[18] *Phillips* v. *AWH Corp,* 415 F.3d 1303, 1311 (Fed. Cir. 2005) (en banc) ("Means-plus-function claiming applies only to purely functional limitations that do not provide the structure that performs the recited function.").

[19] *In re Schreiber,* 128 F.3d 1473, 1478 (Fed. Cir. 1997).

[20] *Id.*

[21] *Swinehart,* 439 F.2d at 213.

[22] *Halliburton Energy Servs.,* 514 F.3d at 1255 (noting that the Supreme Court explained that a vice of functional claiming occurs "when the inventor is painstaking when he recites what has already been seen, and then uses conveniently functional language at the exact point of novelty") (quoting *General Elec. Co.* v. *Wabash Appliance Corp.,* 304 U.S. 364, 371 (1938)); *see also United Carbon Co.* v. *Binney & Smith Co.,* 317 U.S. 228, 234 (1942) (holding indefinite claims that recited substantially pure carbon black "in the form of commercially uniform, comparatively small, rounded smooth aggregates having a spongy or porous exterior").

[23] *Ariad Pharms., Inc.* v. *Eli Lilly & Co.,* 598 F.3d 1336, 1353 (Fed. Cir. 2010) (en banc).

[24] *In re Hyatt,* 708 F.2d 712, 714 (Fed. Cir. 1983).

[25] *Ariad,* 598 F.3d at 1340.

[26] *Hyatt,* 708 F.2d at 714–715.

[27] *Halliburton Energy Servs.,* 514 F.3d at 1255.

[28] *Id.* at 1255–56.

[29] *General Elec. Co.,* 304 U.S. at 370–71, 375.

[30] *Id.* at 370.

[31] *United Carbon Co.,* 317 U.S. at 234.

[32] *Id.* at 233.

[33] *Swinehart,* 439 F.2d at 214.

[34] *In re Marosi,* 710 F.2d 799, 803 (Fed. Cir. 1983).

[35] *Halliburton Energy Servs.,* 514 F.3d at 1255–56.

[36] *Id.* at 1256 (*citing Oakley, Inc.* v. *Sunglass Hut Int'l,* 316 F.3d 1331, 1341 (Fed. Cir. 2003)).

[37] *Marosi,* 710 F.2d at 803.

[38] *Hearing Components, Inc.* v. *Shure Inc.,* 600 F.3d 1357, 1367 (Fed. Cir. 2010); *Enzo Biochem, Inc.,* v. *Applera Corp.,* 599 F.3d 1325, 1332 (Fed. Cir. 2010); *Seattle Box Co., Inc. v. Indus. Crating & Packing, Inc.,* 731 F.2d 818, 826 (Fed. Cir. 1984).

[39] *See* MPEP § 2173.05(b).

[40] *See, e.g., Young v. Lumenis, Inc.,* 492 F.3d 1336, 1346 (Fed. Cir. 2007); *Exxon Research,* 265 F.3d at 1381.

[41] *Enzo Biochem,* 599 F.3d at 1335 (noting that applicant overcame an indefiniteness rejection over "not interfering substantially" claim language by submitting a declaration under 37 CFR 1.132 listing eight specific linkage groups that applicant declared did not substantially interfere with hybridization or detection).

[42] *In re Musgrave,* 431 F.2d 882, 893 (CCPA 1970).

[43] *Datamize, LLC* v. *Plumtree Software, Inc.,* 417 F.3d 1342, 1350 (Fed. Cir. 2005).

[44] *Id.* at 1344–45.

[45] *Id.* at 1352.

[46] *Id.* at 1350.

[47] *In re Harnisch,* 631 F.2d 716, 719–20 (CCPA 1980); *Ex parte Markush,* 1925 Dec. Comm'r Pat. 126, 127 (1924).

[48] *In re Gardner,* 427 F.2d 786, 788 (CCPA 1970) ("Breadth is not indefiniteness.").

[49] *Harnisch,* 631 F.2d at 721.

[50] *Id.* at 722.

[51] *See* MPEP § 803.02.

[52] *See id.* for more information on election of species.

[53] 35 U.S.C. 112, ¶4 ("Subject to the following paragraph, a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed. A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.").

[54] *Pfizer, Inc.* v. *Ranbaxy Labs., Ltd.,* 457 F.3d 1284, 1291–92 (Fed. Cir. 2006) (holding a dependent claim in a patent invalid for failure to comply with § 112, ¶4).

[55] *Id.*

[56] *Id.*

[57] *Curtiss-Wright Flow Control Corp.* v. *Velan, Inc.,* 438 F.3d 1374, 1380 (Fed. Cir. 2006) (stating that "reading an additional limitation from a dependent claim into an independent claim would not only make that additional limitation superfluous, it might render the dependent claim invalid" for failing to add a limitation to the claim upon which it depends, as required by § 112, ¶4).

[58] *See, e.g., Bancorp Servs., L.L.C.* v. *Hartford Life Ins. Co.,* 359 F.3d 1367, 1373 (Fed. Cir. 2004).

[59] *Id.*

[60] *See* MPEP §§ 608.01(o) and 2181.

[61] *In re Cohn,* 438 F.2d 989, 993 (CCPA 1971); *In re Moore,* 439 F.2d 1232, 1235–36 (CCPA 1971); MPEP § 2173.03.

[62] *In re Anderson,* 1997 U.S. App. Lexis 167 (Fed. Cir. Jan. 6, 1997) (unpublished).

[63] *Cohn,* 438 F.2d at 993.

[64] *Id.*

[65] *Id.*

[66] *TriMed, Inc.* v. *Stryker Corp.,* 514 F.3d 1256, 1259–60 (Fed. Cir. 2008) ("Sufficient structure exists when the claim language specifies the exact structure that performs the function in question without need to resort to other portions of the specification or extrinsic evidence for an adequate understanding of the structure."); *see also Altiris, Inc.* v. *Symantec Corp.,* 318 F.3d 1363, 1376 (Fed. Cir. 2003).

[67] *See, e.g., Phillips,* 415 F.3d at 1311; *CCS Fitness, Inc.* v. *Brunswick Corp.,* 288 F.3d 1359, 1369 (Fed. Cir. 2002); *Personalized Media Commc'ns, LLC* v. *ITC,* 161 F.3d 696, 703–04 (Fed. Cir. 1998).

[68] *Lighting World, Inc.* v. *Birchwood Lighting, Inc.,* 382 F.3d 1354, 1358 (2004).

[69] *Id.* at 1360.

[70] *Id.; Apex Inc.* v. *Raritan Computer, Inc.,* 325 F.3d 1364, 1372–73 (Fed. Cir. 2003); *CCS Fitness,* 288 F.3d at 1369; *Watts* v. *XL Sys. Inc.,* 232 F.3d 877, 800 (Fed. Cir. 2000); *Personalized Media,* 161 F.3d at 704; *Greenberg* v. *Ethicon Endo-Surgery, Inc.,* 91 F.3d 1580, 1583 (Fed. Cir. 1996) ("Many devices take their names from the functions they perform.").

[71] *Watts,* 232 F.3d at 800.

[72] *Welker Bearing Co.,* v. *PHD, Inc.,* 550 F.3d 1090, 1096 (Fed. Cir. 2008); *Massachusetts Inst. of Tech.* v. *Abacus Software,* 462 F.3d 1344, 1354 (Fed. Cir. 2006); *Personalized Media,* 161 F.3d at 704; *Mas-Hamilton Group* v. *LaGard, Inc.,* 156 F.3d 1206, 1214–1215 (Fed. Cir. 1998).

[73] *Linear Tech. Corp.* v. *Impala Linear Corp.,* 379 F.3d 1311, 1321 (Fed. Cir. 2004); *Apex,* 325 F.3d at 1373.

[74] *Greenberg,* 91 F.3d at 1583–84.

[75] *Personalized Media,* 161 F.3d at 704–05.

[76] *CCS Fitness,* 288 F.3d at 1369–70.

[77] *Lighting World,* 382 F.3d at 1358–63.

[78] *Cole* v. *Kimberly-Clark Corp.,* 102 F.3d 524, 531 (Fed. Cir. 1996).

[79] *Watts,* 232 F.3d at 881.

[80] *Al-Site Corp.* v. *VSI Int'l, Inc.,* 174 F.3d 1308, 1318–19 (Fed. Cir. 1999).

[81] *Greenberg,* 91 F.3d at 1583 (holding that the term "detent mechanism" did not to invoke § 112, ¶6 because the structural modifier "detent" denotes a type of structural device with a generally understood meaning in the mechanical arts).

[82] *Massachusetts Inst. of Tech.,* 462 F.3d at 1354; *Mas-Hamilton,* 156 F.3d at 1214–1215.

[83] *Ex parte Rodriguez,* 92 USPQ2d 1395, 1404 (Bd. Pat. App. & Int. 2009) (precedential).

[84] *See* Memorandum entitled "*Rejections under 35 U.S.C. 112, second paragraph, when examining means (or step) plus function claim limitations under 35 U.S.C. 112, sixth paragraph*" available at *http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/section_112_6th_09_02_2008.pdf.*

[85] The claimed function may include the functional language that precedes the phrase "means for." *Baran* v. *Medical Device Techs., Inc.,* No. 2010–1058, slip op. at 12–13 (Fed. Cir. Aug. 12, 2010).

[86] Note that drawings may provide a written description of an invention as required by 35 U.S.C. 112. *See Vas-Cath Inc.* v. *Mahurkar,* 935 F.2d 1555, 1565 (Fed. Cir. 1991). The corresponding structure, material, or acts may be disclosed in the original drawings, figures, tables, or sequence listing. However, the corresponding structure, material, or acts cannot include any structure, material, or acts disclosed only in the material incorporated by reference or a prior art reference. *See Pressure Prods. Med. Supplies, Inc.* v. *Greatbatch Ltd.,* 599 F.3d 1308, 1317 (Fed. Cir. 2010); *Atmel Corp.* v. *Info. Storage Devices, Inc.,* 198 F.3d 1374, 1381 (Fed. Cir. 1999).

[87] *Tech. Licensing Corp.* v. *Videotek, Inc.,* 545 F.3d 1316, 1338 (Fed. Cir. 2008); *Med. Instrumentation & Diagnostics Corp.* v. *Elekta AB,* 344 F.3d 1205, 1211–12 (Fed. Cir. 2003).

[88] *Telcordia Techs., Inc.* v. *Cisco Systems, Inc.,* No. 2009–1175, 2009–1184, slip op. at 19 (Fed. Cir. July 6, 2010).

[89] *Donaldson,* 16 F.3d at 1195.

[90] *Biomedino, LLC* v. *Waters Techs. Corp.,* 490 F.3d 946, 953 (Fed. Cir. 2007).

[91] *See* Memorandum entitled "*Rejections under 35 U.S.C. 112, second paragraph, when examining means (or step) plus function claim limitations under 35 U.S.C. 112, sixth paragraph*" available at *http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/section_112_6th_09_02_2008.pdf.*

[92] *See* MPEP § 704.11(a) (Example R).

[93] For more information, see MPEP § 704.12 ("Replies to requirements for information must be complete and filed within the time period set including any extensions. Failure to reply within the time period set will result in the abandonment of the application.")

[94] 35 U.S.C. 112, ¶6.

[95] *Welker Bearing,* 550 F.3d at 1097; *Wenger Mfg., Inc.* v. *Coating Mach. Sys., Inc.,* 239 F.3d 1225, 1233 (Fed. Cir. 2001).

[96] *Aristocrat Techs. Australia Pty Ltd.* v. *Int'l Game Tech.,* 521 F.3d 1328, 1333 (Fed. Cir. 2008).

[97] *Id.*

[98] *Id.; Finisar Corp.* v. *DirecTV Group, Inc.,* 523 F.3d 1323, 1340 (Fed. Cir. 2008); *WMS Gaming, Inc.* v. *Int'l Game Tech.,* 184 F.3d 1339, 1349 (Fed. Cir. 1999).

[99] *Aristocrat,* 521 F.3d at 1333.

[100] *Id.* at 1338.

[101] *Microsoft Computer Dictionary,* Microsoft Press, 5th edition, 2002.

[102] *Finisar,* 523 F.3d at 1340; *see also Intel Corp.* v. *VIA Techs., Inc.,* 319 F.3d 1357, 1366 (Fed. Cir. 2003); *In re Dossel,* 115 F.3d 942, 946–47 (1997); MPEP § 2181.

[103] *Aristocrat,* 521 F.3d at 1337–38.

[104] *Id.* at 1334.

[105] *Finisar,* 523 F.3d at 1340–41.

[106] *Blackboard, Inc.* v. *Desire2Learn, Inc.,* 574 F.3d 1371, 1383–1385 (Fed. Cir. 2009); *Net MoneyIN, Inc.* v. *VeriSign, Inc.,* 545 F.3d 1359, 1366–67 (Fed. Cir. 2008); *Rodriguez,* 92 USPQ2d at 1405–06.

[107] *See, e.g., Blackboard,* 574 F.3d at 1385; *Biomedino,* 490 F.3d at 952; *Atmel Corp.,* 198 F.3d at 1380.

[108] *Blackboard,* 574 F.3d at 1385 ("A patentee cannot avoid providing specificity as to structure simply because someone of ordinary skill in the art would be able to devise a means to perform the claimed function."); *Atmel Corp.,* 198 F.3d at 1380 ("[C]onsideration of the understanding of one skilled in the art in no way relieves the patentee of adequately disclosing sufficient structure in the specification.").

[109] *Blackboard,* 574 F.3d at 1384 (stating that language that simply describes the function to be performed describes an outcome, not a means for achieving that outcome); *Microsoft Computer Dictionary,* Microsoft Press, 5th edition, 2002; *see also Encyclopaedia Britannica, Inc.* v. *Alpine Elecs., Inc.,* 355 Fed. Appx. 389, 394–95, 2009 U.S. App. Lexis. 26358, 10–16 (Fed. Cir. 2009) (holding that implicit or inherent disclosure of a class of algorithms for performing the claimed functions is not sufficient, and the purported "one-step" algorithm is not an algorithm at all) (unpublished).

[110] *Aristocrat,* 521 F.3d at 1337; *AllVoice Computing PLC* v. *Nuance Commc'ns, Inc.,* 504 F.3d 1236, 1245 (Fed. Cir. 2007); *Intel Corp.,* 319 F.3d at 1366–67 (knowledge of a person of ordinary skill in the art can be used to make clear how to implement a disclosed algorithm).

[111] *Aristocrat,* 521 F.3d at 1338.

[112] *See* MPEP § 1302.14(I).

[113] *See* MPEP § 707.07(f).

[114] *See* MPEP § 706.03, 707.07(g).

[115] *See* MPEP § 2173.02.

[116] *Halliburton Energy Servs.,* 514 F.3d at 1249.

[117] *In re Buszard,* 504 F.3d 1364, 1366 (Fed. Cir. 2007); *see also Yamamoto,* 740 F.2d at 1571; *Zletz,* 893 F.2d at 322.

[118] *See* MPEP § 2173.05(a)(I).

[119] *See* MPEP § 2173.02 (citing *Morton Int 'l, Inc.* v. *Cardinal Chem. Co.,* 5 F.3d 1464, 1470 (Fed. Cir. 1993)); *see also Halliburton Energy Servs.,* 514 F.3d at 1249 ("Otherwise, competitors cannot avoid infringement, defeating the public notice function of patent claims.").

[120] *Zletz,* 893 F.2d at 322.

[121] *See* MPEP § 707.07(d).

[122] *See, e.g., In re Skvorecz,* 580 F.3d 1262, at 1268–69 (Fed. Cir. 2009).

[123] *Halliburton Energy Servs.,* 514 F.3d at 1255.

[124] *See* MPEP § 2173.02.

[125] *See* MPEP § 706; *see also Best Practices in Compact Prosecution* (2009) examiner training materials, available at *http://www.uspto.gov/patents/law/exam/exmr_training_materials.jsp.*

[126] *See* 37 CFR 1.104(a)(1) ("On taking up an application for examination or a patent in a reexamination proceeding, the examiner shall make a thorough study thereof and shall make a thorough investigation of the available prior art relating to the subject matter of the claimed invention. The examination shall be complete with respect both compliance of the application * * * with the applicable statutes and rules and to the patentability of the invention as claimed, as well as with respect to matters of form, unless otherwise indicated.").

[127] *See* MPEP § 707.07(g) ("Piecemeal examination should be avoided as much as possible. The examiner ordinarily should reject each claim on all valid grounds available * * * .").

[128] *See Examiner Interview Training* (2009) examiner training materials, available at *http://www.uspto.gov/patents/law/exam/exmr_training_materials.jsp.*

[129] *See* MPEP § 713.04; *see also* 37 CFR 1.2 ("The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.").

[130] Note that, prior to allowance, the examiner may also specify allowable subject matter and provide reasons for indicating such allowable subject matter in an Office communication. *See* MPEP § 1302.14(I).

[131] *Id.*

[132] *Id.*

[133] *See* MPEP § 1302.14(II)(G).

[134] *See* MPEP § 1302.14(I).

[135] For determining whether claimed subject matter complies with the subject matter eligibility requirement of § 101, examiners should consult the *Interim Guidance for Determining Subject Matter Eligibility for Process Claims in View of Bilski* v. *Kappos,* 75 *FR* 43922 (July 27, 2010), and Memorandum entitled *New Interim Patent Subject Matter Eligibility Examination Instructions,* signed on August 24, 2009, available at *http://www.uspto.gov/patents/law/exam/memoranda.jsp.*

[136] For determining whether claimed subject matter complies with the utility requirement of § 101, examiners should consult the "Guidelines for Examination of Applications for Compliance with the Utility Requirement" set forth in MPEP § 2107.

[137] For determining whether claimed subject matter complies with the written description requirement of § 112, ¶1, examiners should consult the "Computer Programming and 35 U.S.C. § 112, First Paragraph, Guidelines" set forth in MPEP § 2161.01, and the "Guidelines for the Examination of Patent Applications Under the 35 U.S.C. 112, para. 1, 'Written Description' Requirement" set forth in MPEP § 2163, and for determining whether claimed subject matter complies with the enablement requirement of § 112, ¶1, examiners should consult the enablement guidelines set forth in MPEP § 2164 *et seq.,* including the "Examples of Enablement Issues—Computer Programming Cases" set forth in MPEP § 2164.06(c) and "Enablement Commensurate in Scope With the Claims" set forth in MPEP § 2164.08.

[138] For determining whether the claims comply with the nonobviousness requirement of § 103, examiners should use "Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103" set forth in MPEP § 2141 and *Examination Guidelines Update: Developments in the Obviousness Inquiry after KSR* v. *Teleflex,* 75 FR 53643 (Sept. 1, 2010).

[139] *Ariad,* 598 F.3d at 1340.

[140] *Vas-Cath,* 935 F.2d at 1562–63.

[141] *Id.; Ariad,* 598 F.3d at 1351.

[142] *Ariad,* 598 F.3d at 1349.

[143] *Id.; see also LizardTech, Inc.* v. *Earth Res. Mapping, Inc.,* 424 F.3d 1336, 1343–46 (Fed. Cir. 2005); *Regents of the University of California* v. *Eli Lilly & Co.,* 119 F.3d 1559, 1568 (Fed. Cir. 1997).

[144] *Ariad,* 598 F.3d at 1350; *Enzo Biochem,* 323 F.3d at 968 (holding that generic claim language appearing *in ipsis verbis* in the original specification did not satisfy the written description requirement because it failed to support the scope of the genus claimed); *Fiers* v. *Revel,* 984 F.2d 1164, 1170 (Fed. Cir. 1993) (rejecting the argument that "only similar language in the specification or original claims is necessary to satisfy the written description requirement").

[145] *LizardTech,* 424 F.3d at 1346 ("[T]he description of one method for creating a seamless DWT does not entitle the inventor * * * to claim any and all means for achieving that objective.").

[146] *Id.*

[147] *Ariad,* 598 F.3d at 1349 ("[A]n adequate written description of a claimed genus requires more than a generic statement of an invention's boundaries.") (citing *Eli Lilly,* 119 F.3d at 1568).

[148] *Id.*

[149] *Id.* at 1351; *Capon* v. *Eshhar,* 418 F.3d 1349, 1357–58 (Fed. Cir. 2005).

[150] *Fonar Corp.* v. *General Elec. Co.,* 107 F.3d 1543, 1549 (Fed. Cir. 1997).

[151] *See* MPEP § 2161.01.

[152] *In re Hayes Microcomputer Prods., Inc. Patent Litigation,* 982 F.2d 1527, 1533–34 (Fed. Cir. 1992).

[153] *Id.* at 1534 (emphasis in original).

[154] *Id.*

[155] *Id.*

[156] *See, e.g., In re Wright,* 999 F.2d 1557, 1561 (Fed. Cir. 1993); *In re Wands,* 858 F.2d 731, 736–37 (Fed. Cir. 1988).

[157] *Wands,* 858 F.2d at 737.

[158] *Id.*

[159] *Swinehart,* 439 F.2d at 213.

[160] *Id.; AK Steel Corp.* v. *Sollac,* 344 F.3d 1234, 1244 (Fed. Cir. 2003); *In re Moore,* 439 F.2d 1232, 1236 (CCPA 1971).

[161] *Sitrick* v. *Dreamworks, LLC,* 516 F.3d 993, 999 (Fed. Cir. 2008) ("The scope of the claims must be less than or equal to the scope of the enablement to ensure that the public knowledge is enriched by the patent specification to a degree at least commensurate with the scope of the claims.") (quotation omitted).

[162] *Sitrick,* 516 F.3d at 999–1001.

[163] *ALZA Corp.* v. *Andrx Pharms., LLC,* 603 F.3d 935, 941 (Fed. Cir. 2010) ("ALZA was required to provide an adequate enabling disclosure in the specification; it cannot simply rely on the knowledge of a person of ordinary skill to serve as a substitute for the missing information in the specification."); *Auto. Techs. Int'l, Inc.* v. *BMW of N. Am., Inc.,* 501 F.3d 1274, 1283 (Fed. Cir. 2007) ("Although the knowledge of one skilled in the art is indeed relevant, the novel aspect of an invention must be enabled in the patent.").

[164] *Auto. Techs.,* 501 F.3d at 1283 (quoting *Genentech, Inc.* v. *Novo Nordisk A/S,* 108 F.3d 1361, 1366 (Fed. Cir. 1997)).

[165] *Genentech,* 108 F.3d at 1366; *see also ALZA Corp.,* 603 F.3d at 940–41.

[166] *ALZA Corp.,* 603 F.3d at 941; *Auto. Techs.,* 501 F.3d at 1283–84 ("[T]he 'omission of minor details does not cause a specification to fail to meet the enablement requirement. However, when there is no disclosure of any specific stating material or of any of the conditions under which a process can be carried out, undue experimentation is required.' ") (quoting *Genentech,*108 F.3d at 1366).

[167] *Auto. Techs.,* 501 F.3d at 1282.

[168] *Id.* at 1283.

[169] *Schreiber,* 128 F.3d at 1478; *In re Best,* 562 F.2d 1252, 1254 (CCPA 1977); *In re*

Ludtke, 441 F.2d 660, 663–64 (CCPA 1971); *Swinehart,* 439 F.2d at 212–213("[I]t is elementary that the mere recitation of a newly discovered function or property, inherently possessed by things in the prior art, does not cause a claim drawn to those things to distinguish over the prior art. Additionally, where the Patent Office has reason to believe that a functional limitation asserted to be critical for establishing novelty in the claimed subject matter may, in fact, be an inherent characteristic of the prior art, it possesses the authority to require the applicant to prove that the subject matter shown to be in the prior art does not possess the characteristic relied on.").

[170] *In re Paulsen,* 30 F.3d 1475, 1479–80 (Fed. Cir. 1994).

[171] *Id.*

[172] *Id.*

[173] *Leapfrog Enters., Inc.* v. *Fisher-Price, Inc.,* 485 F.3d 1157, 1161 (Fed. Cir. 2007) ("Accommodating a prior art mechanical device that accomplishes [a desired] goal to modern electronics would have been reasonably obvious to one of ordinary skill in designing children's learning devices. Applying modern electronics to older mechanical devices has been commonplace in recent years."); *In re Venner,* 262 F.2d 91, 95 (CCPA 1958); *see also* MPEP § 2144.04.

[174] *KSR Int'l Co.* v. *Teleflex Inc.,* 550 U.S. 398, 417 (2007); *see also* MPEP § 2143, Exemplary Rationales D and F.

[175] *Muniauction, Inc.* v. *Thomson Corp.,* 532 F.3d 1318, 1326–27 (Fed. Cir. 2008).

[FR Doc. 2011–2841 Filed 2–8–11; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 11, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 4, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of the Secretary

Type of Review: Extension.

Title of Collection: U.S. Department of Education Supplemental Information on the SF–424 Form.

OMB Control Number: 1894–0007.

Agency Form Number(s): SF–424 (U.S. Department of Education Supplemental Information).

Frequency of Responses: New Awards.

Affected Public: Businesses or other for-profit; Individuals or household; Not-for-profit institutions, State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 19,000.

Total Estimated Number of Annual Burden Hours: 6,270.

Abstract: The U.S. Department of Education Supplemental Information form for the SF–424 is used together with the SF–424, Application for Federal Assistance. The Supplemental Information form includes several needed data elements/questions that are not included on the SF–424, Application for Federal Assistance. We are requesting extension of the currently approved version of the Supplemental Information form.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 3910. 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 *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

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. 2011–2885 Filed 2–8–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Native Hawaiian Education Program; Office of Elementary and Secondary Education; Overview Information; Native Hawaiian Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2011

Catalog of Federal Domestic Assistance (CFDA) Number: 84.362A.

Dates:

Applications Available: February 9, 2011.

Deadline for Transmittal of Applications: April 11, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Native Hawaiian Education (NHE) program is to support innovative projects that enhance the educational services provided to Native Hawaiian children and adults. These projects may include those activities authorized under section 7205(a)(3) of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

Note: In prior years, Congress has expressly authorized that program funds may be used to support the construction, renovation, or modernization of any elementary school, secondary school, or structure related to an

elementary school or secondary school, run by the Department of Education of the State of Hawaii, that served a predominately Native Hawaiian student body. This will be a permissible use of fiscal year (FY) 2011 funds only if Congress specifically authorizes the use of these funds for this purpose.

Priorities: This competition includes six competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(iv), competitive preference priorities one through four are from section 7205(a)(2) of the ESEA (20 U.S.C. 7515(a)(2)) and competitive preference priorities five and six are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486).

Competitive Preference Priorities: For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award an additional five points to an application that meets one or more of these priorities. The application will receive only five additional points if it meets one or more of these priorities.

These priorities are:

Competitive Preference Priority 1—Needs of At-risk Children and Youth

Projects that are designed to meet the needs of at-risk children and youth.

Competitive Preference Priority 2—Native Hawaiian Underemployment

Projects that are designed to address needs in fields or disciplines in which Native Hawaiians are underemployed.

Competitive Preference Priority 3—Hawaiian Language Instruction

Projects that are designed to address the use of the Hawaiian language in instruction.

Competitive Preference Priority 4—Beginning Reading and Literacy

Projects that are designed to address beginning reading and literacy among students in kindergarten through third grade.

Competitive Preference Priority 5—Improving Early Learning Outcomes

Projects that are designed to improve school readiness and success for high-need children (as defined in this notice) from birth through third grade (or any age group of high-need children within this range) through a focus on one or more of the following priority areas:

(a) Physical well-being and motor development.

(b) Social-emotional development.

(c) Language and literacy development.

(d) Cognition and general knowledge, including early numeracy and early scientific development.

(e) Approaches toward learning.

Competitive Preference Priority 6—Improving Achievement and High School Graduation Rates

Projects that address one or more of the following priority areas:

(a) Accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for students with disabilities.

(b) Accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for English learners.

(c) Accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for high-need children and high-need students (as defined in this notice).

(d) Accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates in high-poverty schools (as defined in this notice).

(e) Accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for all students in an inclusive manner that ensures that the specific needs of high-need children and high-need students (as defined in this notice) participating in the project are addressed.

Note: In order to receive additional points under a competitive preference priority, an application must provide adequate and sufficient information that clearly substantiates its claim that it meets the competitive priority.

Definitions: These definitions are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486).

Graduation rate means a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1) and may also include an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if the State in which the proposed project is implemented has been approved by the Secretary to use such a rate under title I of the ESEA.

High-need children and high-need students means children and students at risk of educational failure, such as children and students who are living in poverty, who are English learners, who are far below grade level or who are not on track to becoming college- or career-ready by graduation, who have left school or college before receiving, respectively, a regular high school diploma or a college degree or certificate, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who are pregnant or parenting teenagers, who have been incarcerated, who are new immigrants, who are migrant, or who have disabilities.

High-poverty school means a school in which at least 50 percent of students are eligible for free or reduced-price lunches under the Richard B. Russell National School Lunch Act or in which at least 50 percent of students are from low-income families as determined using one of the criteria specified under section 1113(a)(5) of the ESEA. For middle and high schools, eligibility may be calculated on the basis of comparable data from feeder schools. Eligibility as a high-poverty school under this definition is determined on the basis of the most currently available data.

Program Authority: 20 U.S.C. 7511–7517.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486).

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $34,315,000 for the NHE program for FY 2011, of which we intend to use an estimated $12,146,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $250,000–$950,000.

Estimated Average Size of Awards: $425,000.

Estimated Number of Awards: 29.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Native Hawaiian educational organizations; Native Hawaiian community-based organizations; public and private nonprofit organizations, agencies, and institutions with experience in developing or operating Native Hawaiian programs or programs of instruction in the Native Hawaiian language; and consortia of the previously mentioned organizations, agencies, and institutions.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/programs/nathawaiian/applicant.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.362A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to no more than 25 pages, using the following standards:

- A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The page limit does not apply to the cover sheet; the budget section, including the recommended five-page budget narrative; the one-page abstract; the assurances and certifications; and the other attachments, including the resumes of up to five key personnel, endnotes, indirect cost rate agreements, if applicable, and five letters of support. However, the page limit does apply to all of the application narrative section.

Our reviewers will not read any pages of your application that exceed the page limit. None of the material sent as appendices to the narrative, with the exception of resumes, budget narrative, letters of support, and endnotes, will be sent to the reviewers.

3. *Submission Dates and Times:*

Applications Available: February 9, 2011.

Deadline for Transmittal of Applications: April 11, 2011.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This competition is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* Under section 7205(b) of the ESEA, not more than five percent of funds provided to a grantee under this competition for any fiscal year may be used for administrative purposes. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. You must register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (*see http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements:*

Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications.

Applications for grants under the NHE program, CFDA number 84.362A, must be submitted electronically using the Governmentwide Grants.gov Apply site at www.Grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload *and* submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the NHE program at www.Grants.gov. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.362, not 84.362A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must attach any narrative sections of your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues With the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked

no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Joanne Osborne, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E214, Washington, DC 20202–6200. FAX: (202) 260–8969.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.362A),
LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.362A),
550 12th Street, SW., Room 7041,
Potomac Center Plaza, Washington,
DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the following paragraphs. The maximum score for all criteria is 100 points. The maximum possible score for each criterion is indicated in parentheses.

(a) *Need for project (10 points).* The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project (5 points).

(ii) The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals (5 points).

(b) *Significance (10 points).* The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population (5 points).

(ii) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies (5 points).

(c) *Quality of the project design (25 points).* The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable (5 points).

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs (5 points).

(iii) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance (5 points).

(iv) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice (5 points).

(v) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition (5 points).

(d) *Quality of project services (15 points).* The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the following factors:

(i) The quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (5 points).

(ii) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards (5 points).

(iii) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services (5 points).

(e) *Adequacy of resources (10 points).* The Secretary considers the adequacy of the resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the budget is adequate to support the proposed project (2 points).

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project (4 points).

(iii) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits (4 points).

(f) *Quality of the management plan (15 points).* The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (8 points).

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project (7 points).

(g) *Quality of the project evaluation (15 points).* The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible (5 points).

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes (5 points).

(iii) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings (5 points).

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for the grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Department has established the following Government Performance and Results Act of 1993 (GPRA) performance measures for this program: (1) The percentage of Native Hawaiian students in schools served by the program who meet or exceed proficiency standards in reading, mathematics, and science on the State assessments; (2) The percentage of Native Hawaiian children participating in early education programs who consistently demonstrate school readiness in literacy as measured by the Hawaii School Readiness Assessment; (3) The percentage of Native Hawaiian students in schools served by the program who graduate from high school with a regular high school diploma, as defined in 34 CFR 200.19(b)(1)(iv), in four years; and (4) The percentage of students participating in a Hawaiian language program conducted under the Native Hawaiian Education program who meet or exceed proficiency standards in reading on a test of the Hawaiian language.

All grantees will be expected to submit an annual performance report that includes data addressing these performance measures, to the extent that they apply to the grantee's project.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made "substantial progress toward meeting the objectives in its approved application." This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

For Further Information Contact: Joanne Osborne, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E214, Washington, DC 20202–6200. Telephone: (202) 401–1265 or by e-mail: *Joanne.Osborne@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 4, 2011.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2011–2897 Filed 2–8–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students With Disabilities

AGENCY: Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities, Office of Special Education and Rehabilitative Services, U.S. Department of Education.

ACTION: Notice of an open meeting and public hearing.

SUMMARY: The notice sets forth the schedule and agenda of the meeting of the Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities. The notice also describes the functions of the Commission. Notice of the meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of its opportunity to attend.

DATES: *Open Meeting:* February 24–25, 2011.

Public Hearing: February 24, 2011.

TIME: February 24, 2011: The open meeting will occur from 8:30 a.m.–3:30 p.m. and the public hearing will occur from 4 p.m.–9 p.m.

February 25, 2011: The open meeting will occur from 8:30 a.m.–4 p.m.

ADDRESSES: Hyatt Regency Jacksonville Riverfront Hotel, 225 East Coastline Drive, Jacksonville, Florida 32202.

FOR FURTHER INFORMATION CONTACT: Elizabeth Shook, Program Specialist, Office of Special Education and Rehabilitative Services, United States Department of Education, 550 12th Street, SW., Washington, DC 20202; telephone: (202) 245–7642, fax: 202–245–7638.

SUPPLEMENTARY INFORMATION: The Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities (the Commission) is established under Section 772 of the Higher Education Opportunity Act, Public Law 110–315, dated August 14, 2008. The Commission is established to conduct a comprehensive study, which will—(I) "assess the barriers and systemic issues that may affect, and technical solutions available that may improve, the timely delivery and quality of accessible instructional materials for postsecondary students with print disabilities, as well as the effective use of such materials by faculty and staff; and (II) make recommendations related to the development of a comprehensive approach to improve the opportunities for postsecondary students with print disabilities to access instructional materials in specialized formats in a time frame comparable to the availability of instructional materials for postsecondary nondisabled students."

In making recommendations for the study, "the Commission shall consider—(I) how students with print disabilities may obtain instructional materials in accessible formats within a time frame comparable to the availability of instructional materials for nondisabled students; and to the maximum extent practicable, at costs comparable to the costs of such materials for nondisabled students; (II) the feasibility and technical parameters of establishing standardized electronic file formats, such as the National Instructional Materials Accessibility Standard as defined in Section 674(e)(3) of the Individuals with Disabilities Education Act, to be provided by publishers of instructional materials to producers of materials in specialized formats, institutions of higher education, and eligible students; (III) the feasibility of establishing a national clearinghouse, repository, or file-sharing network for electronic files in specialized formats and files used in producing instructional materials in specialized formats, and a list of possible entities qualified to administer such clearinghouse, repository, or network; (IV) the feasibility of establishing market-based solutions involving collaborations among publishers of instructional materials, producers of materials in specialized formats, and institutions of higher education; (V) solutions utilizing universal design; and (VI) solutions for low-incidence, high-cost requests for instructional materials in specialized formats."

The Commission will meet in open session on Thursday and Friday, and will discuss the work of Commission to date. The Commission will also discuss the structure and content of the Commission report and review the timeline for completing the report. The Commission's discussion will address the four areas that members have identified as being crucial to the development of the report: Legal, Technology, Market Model and Low Incidence/High Cost. The Commission will focus on an analysis of Legal and Technology issues.

The purpose of the public hearing is for the Commission to receive information from its stakeholders on issues pertaining to accessible instructional materials in postsecondary education. The public hearing session will address issues related to law, technology, the market model, and low-incidence/high-cost materials. Additionally, the public hearing will focus on individual experiences related to accessible instructional materials in postsecondary education.

Detailed minutes of the meeting and hearing, will be available to the public within 14 days of the meeting. Records are kept of all Commission proceedings and are available for public inspection at the Office of Special Education and Rehabilitative Services, United States Department of Education, 550 12th Street, SW., Washington, DC 20202, Monday—Friday during the hours of 8 a.m. to 4:30 p.m.

Additional Information

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or material in alternative format) should notify Elizabeth Shook at (202) 245–7642, no later than February 18, 2011. We will make every attempt to meet requests for accommodations after this date, but, cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Participants who wish to comment at the public hearing are encouraged to register in advance by calling Janet Gronneberg at CAST at 781–245–2212 (voice) or 781–245–9320 (TTY) or *jgronneberg@cast.org* by February 18, 2011. The Commission requests that organizations with multiple participants designate no more than one individual to speak on its behalf. Participants who register in advance, including remote participants, must report to the hearing registration desk at least thirty minutes prior to their scheduled time. A period of time will be reserved for individuals who choose to not register in advance. Participation in the hearing for unregistered participants will be subject to availability. Comments should be limited to five minutes per person or organization, but participants have the option of supplementing their testimony with written statements that will be part of the official hearing record. Technology to facilitate PowerPoint presentations will be available.

Members of the public who would like to offer comments as part of the public hearing remotely may submit written comments to *AIMCommission@ed.gov* or by mail to Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities, 550 12th St., SW., Room PCP–5113, Washington, DC 20202. All submissions will become part of the public record. Members of the public also have the option of participating in the open meeting and public hearing remotely. Remote access will be provided via an internet webinar service utilizing VoiP (Voice Over Internet Protocol). Login information will be provided via the Commission's public listserv at *pscpublic@lists.cast.org* and posted at the following site: *http://www2.ed.gov/about/bdscomm/list/aim/index.html.*

Electronic Access to this Document: You may view this document, as well as all other documents of this Department published in the Federal Register, in text or Adobe Portable Document Format (PDF) on the internet at the following site: *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 1–866–512–1800; or in the Washington, DC area at 202–512–0000.

Dated: February 3, 2011.

Alexa Posny,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 2011–2833 Filed 2–8–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: Department of Education, National Assessment Governing Board.

ACTION: Notice of open meeting and partially closed sessions.

SUMMARY: The notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify members of the general public of their opportunity to attend. Individuals who will need special accommodations in order to attend the meeting (e.g. interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than February 14, 2011. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: March 3–5, 2011.

Times:

March 3: Committee Meetings:

Assessment Development Committee: Closed Session—12 p.m.–4:15 p.m.

Executive Committee: Open Session—4:30 p.m. to 5:15 p.m.; Closed Session—5:15 p.m. to 6 p.m.

March 4:

Full Board: Open Session—8:15 a.m. to 10 a.m.; Closed Session—12:45 p.m. to 1:45 p.m.; Open Session—2 p.m. to 5 p.m.

Committee Meetings:

Assessment Development Committee: Closed Session—10:20 a.m. to 12:0 p.m.; Open session 12:25 p.m.–12:30 p.m.

Committee on Standards, Design and Methodology: Open Session—10:15 a.m. to 12:30 p.m.

Reporting and Dissemination Committee: Open Session—10:15 a.m. to 12:30 p.m.

March 5:

Nominations Committee: Closed Session—7:30 a.m. to 8:15 a.m.

Full Board: Closed Session—8:30 a.m. to 9 a.m.; Open Session—9 a.m. to 12 noon.

Location: Marriott Miami Biscayne Bay, 1633 North Bayshore Drive, Miami, FL 33132

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under Section 302 of Title III. Public Law 107–279 (which amended Pub. L. 107–110), the National Assessment of Educational Progress Authorization Act. The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include the following: selecting subject areas to be assessed, developing assessment frameworks and specifications, developing appropriate student achievement levels for each grade and subject tested, developing standards and procedures for regional and national comparisons, developing guidelines for reporting and disseminating results, and releasing initial NAEP results to the public.

On March 3, from 12 p.m. to 4:15 p.m., the Assessment Development Committee will meet in closed session to review 250 secure NAEP test items for the NAEP Long Term Trend in reading and mathematics for ages 9, 13, and 17 for the 2012 operational assessment and the 2016 pilot test. Board members will be provided with secure test items for review that cannot be discussed in an open meeting. Premature disclosure of these secure materials would significantly impede implementation of the NAEP assessments, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On March 3, from 4:30 p.m. to 5:15 p.m., the Executive Committee will meet in open session and thereafter in closed session from 5:15 p.m. to 6 p.m. During the closed session on March 3, the Executive Committee will receive a briefing from the National Center for Education Statistics (NCES) on options for NAEP contracts covering assessment years beyond 2011 and discuss budget implications for the NAEP assessment schedule and for international linking studies. The discussion of contract options and costs will address the congressionally mandated goals and Board policies on NAEP assessments. This part of the meeting must be conducted in closed session because public discussion of this information would disclose independent government cost estimates and contracting options, adversely impacting the confidentiality of the contracting process. Public disclosure of information discussed would significantly impede implementation of

the NAEP contracts, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On March 4, the full Board will meet in open session from 8:15 a.m. to 10 a.m. The Board will review and approve the meeting agenda and meeting minutes from the November 2010 Board meeting. The Executive Director will then administer the oath of office for a new Board member. This session will be followed by welcome remarks from the Governing Board member from Florida, Representative Anitere Flores and invited guests from Florida. The Executive Director of the Governing Board will then provide a report to the Board followed by remarks and updates from the Commissioner of the National Center for Education Statistics, and the Director of the Institute of Education Sciences. The Board will recess for Committee meetings on March 4 from 10:15 a.m. to 12:30 p.m.

The Reporting and Dissemination Committee and the Committee on Standards, Design and methodology will meet in open sessions on March 4 from 10:15 a.m. to 12:30 p.m. The Assessment Development Committee will meet in closed session from 10:15 a.m. to 12:30 p.m. From 10:15 a.m. to 11:20 a.m. the Assessment Development Committee will continue its review of the Long Term Trend test items that began the prior day, March 3. From 11:20 a.m. to noon the Committee will receive an embargoed briefing on the NAEP 2009 Science Interactive Computer Tasks (ICTs) and Hands-on Tasks (HOTs), which will include demonstration of secure tasks and preliminary embargoed data. This science report is not scheduled for public release until summer 2011. These data cannot be discussed in an open meeting prior to official release. Premature disclosure of data would significantly impede implementation of the NAEP assessment, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C. The Assessment Development Committee will meet in open session from 12:25 p.m. to 12:30 p.m.

On March 4, from 12:45 p.m. to 1:45 p.m. the full Board will meet in closed session to receive a briefing on the 2009 NAEP High School Transcript Study. Board members will be provided with embargoed results that cannot be discussed in an open meeting prior to their official release. Premature disclosure of data would significantly impede implementation of the NAEP assessment, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

From 2 p.m. to 3:45 p.m. the Board will meet in open session to receive briefings on the Virtual School in Florida and Options for NAEP Feedback to Schools. Following these sessions, from 4 p.m. to 5 p.m., the Board will discuss the Future of the Governing Board and NAEP. The March 4, 2011 Board meeting is scheduled to conclude at 5 p.m.

On March 5, the Nominations Committee will meet in closed session from 7:30 a.m. to 8:15 a.m. to review and discuss the final slates of nominees for six positions for terms beginning October 1, 2011. On March 5 from 8:30 a.m. to 9 a.m. the Nominations Committee will provide a briefing to the full Board in closed session on the recommended slate of finalists, following which, the Board will take action on the recommendations in open session. These discussions pertain solely to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 U.S.C.

Following the closed session, the full Board will meet in open session from 9 a.m. to 10 a.m. to receive a briefing on understanding how NAEP questions are scored. At 10:15 a.m. the Board will receive Committee reports and take action on Committee recommendations. The March 5, 2011 session of the Board meeting is scheduled to adjourn at 12 noon.

Detailed minutes of the meeting, including summaries of the activities of the closed sessions and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW, Washington, DC, from 9 a.m. to 5 p.m. Eastern Time, Monday through Friday.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *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 1–866–512–0000; or in the Washington, DC area at (202) 512–1800.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*

Dated: February 4, 2011.

Cornelia S. Orr,

Executive Director, National Assessment Governing Board, U.S. Department of Education.

[FR Doc. 2011–2902 Filed 2–8–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12611–005]

Verdant Power, LLC; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions, and Waiving the Timing Requirement for Filing Competing Development Applications

February 2, 2011.

Take notice that the following hydrokinetic pilot project license application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Pilot Project License.

b. *Project No.:* 12611–005.

c. *Date filed:* December 29, 2010.

d. *Applicant:* Verdant Power, LLC.

e. *Name of Project:* Roosevelt Island Tidal Energy (RITE) Project

f. *Location:* The proposed project would be located on the East River in New York, New York. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–828c.

h. *Applicant Contact:* Ronald F. Smith, Verdant Power, LLC, The Octagon, 888 Main Street, New York, NY 10044; telephone (212) 888–8887 (extension 601).

i. *FERC Contact:* Timothy Konnert, telephone (202) 502–6359, and e-mail *timothy.konnert@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and fishway prescriptions: 30 days from the issuance of this notice; reply comments are due 60 days from the issuance date of this notice.

Motions to intervene, protests, comments, recommendations, terms and conditions, and fishway prescriptions may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *The Project Description:* The primary project facilities would include: (1) Three 35-kilowatt (kW), 5-meter-diameter axial flow Kinetic System turbine generator units mounted on a single triframe mount, with a total installed capacity of 105 kW, in Phase 1; (2) nine additional 5-meter-diameter axial flow Kinetic System turbine generator units mounted on three triframe mounts, with a total installed capacity of 420 kW, in Phase 2; (3) eighteen additional 5-meter-diameter axial flow Kinetic System turbine generator units mounted on six triframe mounts, with a total installed capacity of 1,050 kW, in Phase 3; (4) 480-volt underwater cables from each turbine to five shoreline switchgear vaults that would interconnect to a control room and interconnection points; and (5) appurtenant facilities for navigation safety and operation. The project is estimated to have an annual generation of between 1,680 and 2,400 megawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) Bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "FISHWAY PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR § 4.34(b) except to the extent that this notice establishes deadlines different from those in the regulation. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. Procedural Schedule:

The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of recommendations, terms and conditions, and fishway prescriptions	March 4, 2011.
Commission issues Single EA	May 3, 2011.
Comments on EA	June 2, 2011.

p. Waiver of deadline to file competing applications filed pursuant to an NOI:

Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application or a notice of intent to file such an application. Section 4.36(b)(2) of the Commission's regulations, which allows 120 days from the specified intervention deadline date for interested parties to file competing development applications in which timely notice of intents have been submitted, is hereby waived. Due to the expedited nature of the pilot project licensing procedures, the submission of a timely notice of intent will instead allow an interested person to file the competing development application no later than 30 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant named in this public notice.

Kimberly D. Bose,

Secretary .

[FR Doc. 2011–2803 Filed 2–8–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–2280–013 ; P–13889–000]

FirstEnergy Generation Corporation; Seneca Nation of Indians; Notice of Intent To File Competing License Applications, Filing of Pre-Application Documents (PADS), Commencement of Pre-Filing Process, and Scoping; Request for Comments on the PADS and Scoping Document, and Identification of Issues and Associated Study Requests

January 28, 2011.

a. *Type of Filing:* Notices of Intent to File Competing License Applications for a New License and Commencing Pre-Filing Process.

b. *Project Nos.:* 2280–013 & 13889–000.

c. *Dated Filed:* November 30, 2010.

d. *Submitted By:* Existing licensee—FirstEnergy Generation Corporation (FirstEnergy); and Competitor—Seneca Nation of Indians (Seneca Nation).

e. *Name of Project:* Existing Project—Kinzua Pumped Storage Project; Competing Project—Seneca Pumped Storage Project.

f. *Location:* On the United States Army Corps of Engineers Kinzua Dam, and the United States Forest Service Allegheny National Forest, adjacent to the Allegheny River and the Allegheny Reservoir near the City of Warren, in Warren County, Pennsylvania. The project occupies 221.59 acres of federal lands.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Potential Applicants' Contacts:* For Project No. 2280–013: Morgan Parke, Federal Regulatory Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, Ohio 44308. For Project No. 13889–000: Wendy Huff, Executive Director Kinzua Dam Relicensing Commission, Seneca Nation of Indians, P.O. Box 231, 90 Ohio Way, Salamanca, NY 14779.

i. *FERC Contact:* Gaylord Hoisington at (202) 502–6032 or e-mail at *gaylord.hoisington@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and (b) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating FirstEnergy and the Seneca Nation as the Commission's non-federal representatives for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. FirstEnergy and the Seneca Nation filed Pre-Application Documents (PADs; including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission's regulations.

n. Copies of both PADs are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the documents. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Copies are also available for inspection and reproduction at the addresses in paragraph h. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PADs, the Commission staff's scoping document (SD) issued January 28, 2011, as well as study requests. All comments on the PADs, SD, and study requests should be sent to the addresses above in paragraph h. In addition, all comments on the PADs, SD, study requests, requests for cooperating agency status, and all communications to and from Commission staff-related to the merits of the potential applications must be filed with the Commission. Documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All filings with the Commission must include, on the first page, the project name (Kinzua Pumped Storage Project) and number (P–2280–013), for FirstEnergy and/or (Seneca Pumped Storage Project) and number (P–13889–000), for the Seneca Nation, and bear the heading: "Comments on Pre-Application Document," "Study Requests," "Comments on Scoping Document," "Request for Cooperating Agency Status," or "Communications to and from Commission Staff." Any individual or entity interested in submitting study requests, commenting on the PADs or SD, and any agency requesting cooperating status must do so by March 30, 2011.

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold three scoping meetings in the vicinity of the project at the time and place noted below. The morning and afternoon meetings will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or all three of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Morning Scoping Meeting

Date: Wednesday, February 23, 2011.

Time: 9 a.m. to 12 p.m.

Location: Holiday Inn, 210 Ludlow Street, Warren, Pa. 16365.

Phone: (814) 726–3000.

Evening Scoping Meeting

Date: Wednesday, February 23, 2011.
Time: 7 p.m. to 9 p.m.
Location: Holiday Inn, 210 Ludlow Street, Warren, Pa 16365.

Afternoon Scoping Meeting

Date: Thursday, February 24, 2011.
Time: 3 p.m. to 6 p.m.
Location: Salamanca City Central School District, 50 Iroquois Drive, Salamanca, NY 14779.
Phone: (716) 945–1790 ext. 3184.

The SD, which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing lists and the distribution lists for FirstEnergy's and the Seneca Nation's PADs. Copies of the SD will be available at the scoping meetings, or may be viewed on the web at *http://www.ferc.gov,* using the "eLibrary" link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Revised Scoping Document (RSD) may be issued. An RSD may include any revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Site Visit

The potential applicants and Commission staff will conduct a site visit of the project facilities on Wednesday afternoon, February 23, 2011, starting at 1:30 p.m. All participants should meet at the Kinzua Project powerhouse. All participants will be responsible for providing their own method of transportation. The time and location of the site visit is as follows:

Date: Wednesday, February 23, 2011.
Time: 1:30 p.m. to 4 p.m.
Location: Kinzua Project Powerhouse, Warren, PA 16365.
Name: Laura Cowan.
Phone: (717) 983–4056.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PADs in preparation for the scoping meetings. Instructions on how to obtain copies of the PADs and SD are included in item n. of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Kimberly D. Bose,
Secretary.

[FR Doc. 2011–2809 Filed 2–8–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–134–002]

Hill-Lake Gas Storage, LLC; Notice of Baseline Filings

February 2, 2011.

Take notice that on February 1, 2011, Hill-Lake submitted a revised baseline filing of their Statement of Operating Conditions for services provided under section 311 of the Natural Gas Policy Act of 1978 (NGPA).

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Friday, February 11, 2011.

Kimberly D. Bose,
Secretary.

[FR Doc. 2011–2813 Filed 2–8–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–17–000]

TGP Development Company, LLC v. California Independent System Operator Corporation; Notice of Complaint

February 1, 2011.

Take notice that on January 28, 2011, TGP Development Company, LLC (TGP or Complainants), pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206 (2010) and section 206 of the Federal Power Act, 16 U.S.C. 824e and 825e (2006), filed a complaint against the California Independent System Operator Corporation (CAISO or Respondent), concerning the requirement that TGP post its second financial security for transmission upgrades identified in the CAISO's Phase II interconnection study. Included in the complaint filing was a Motion for Stay of the financial security posting requirement.

By this notice, the date for filing answers to the Motion for Stay, pursuant to 18 CFR 385.213(d) is February 14, 2011.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 17, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–2810 Filed 2–8–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12632–002]

East Texas Electric Cooperative, Inc., Texas; Notice of Availability of Environmental Assessment

February 2, 2011.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC's) regulations, 18 Code of Federal Regulations (CFR) part 380 (Order No. 486, 52 Federal Register [FR] 47897), the Office of Energy Projects has reviewed East Texas Electric Cooperative, Inc.'s (the Cooperative's) application for license for the Lake Livingston Hydroelectric Project (FERC Project No. 12632–002), located on the Trinity River near the city of Livingston, in San Jacinto, Polk, Trinity, and Walker counties. The project would not occupy any federal lands.

Staff prepared an environmental assessment (EA) that analyzes the potential environmental effects of licensing the project, and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact Sarah Florentino at (202) 502–6863, or by e-mail at *sarah.florentino@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–2804 Filed 2–8–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–2128–000]

California Independent System Operator Corporation; Notice of Institution of Section 206 Proceeding and Refund Effective Date

February 2, 2011.

On January 31, 2011, the Commission issued an order that instituted a proceeding in Docket No. ER11–2128–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, concerning the justness and reasonableness of the California Independent System Operator Corporation's Virtual Award Charge. *California Independent System Operator Corp.,* 134 FERC ¶ 61,070 (2011).

The refund effective date in Docket No. ER11–2128–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register.**

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–2805 Filed 2–8–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD11–6–000]

Priorities for Addressing Risks to the Reliability of the Bulk-Power System; Reliability Technical Conference Panel

February 2, 2011.

As announced in the Notice of Technical Conference issued on December 16, 2010, the Commission will hold a technical conference on Tuesday, February 8, 2011, to discuss policy issues related to reliability of the Bulk-Power System, including priorities for addressing risks to reliability. Attached hereto is a modified agenda that includes a list of the panelists that have been asked to address the topics previously identified in the Agenda issued in this docket on January 7, 2011.

Kimberly D. Bose,

Secretary.

Reliability Technical Conference

February 8, 2011
10 a.m.–5 p.m.

Agenda

10 a.m. Commissioners' Opening Remarks.

10:20 a.m. Remarks; The Honorable Trent Franks, U.S. House of Representatives.

10:35 a.m. Introductions; Commissioner Cheryl LaFleur, Chair.

10:40 a.m. Panel 1: Discussion of Current Issues and Identifying Priorities.

Presentations: Panelists will be invited to express their general views on how current reliability issues and standards development initiatives can be ranked and prioritized to ensure that the key reliability issues are addressed first. Panelists will be asked to address some or all of the following:

a. What are the most significant risks to the reliability of the Bulk-Power System? Do the current Reliability Standards effectively address these risks? If not, what processes should be used by industry, the North American Electric Reliability Corp. (NERC) and the Commission to address these risks?

b. What are the most critical reliability issues and/or standards development initiatives that need to be addressed in 2011? What are the biggest challenges to addressing these issues and/or completing these initiatives in an effective and timely manner? What next steps are appropriate to timely and effectively address the priorities discussed?

c. How do NERC and reliability standards development teams incorporate in new priorities and/or Commission directives regarding reliability standards into their work plans?

d. How do NERC's non-standards processes such as the Industry Alerts, Recommendations, Event Analysis, Essential Actions, Lessons Learned and Compliance Application Notices interact with the reliability standards? To what extent do these processes aid in identifying important reliability matters that are not addressed under the existing Reliability Standards?

e. Going forward, what can the Commission do to assist NERC?

11:45 a.m. Lunch

12:30 p.m. Continuation of Panel 1

Discussion with Commissioners: Open dialogue and questions and answers between Panel 1 and Commissioners.

Panelists (Panel 1):

- John Q. Anderson, Chairman of the Board, North American Electric Reliability Corporation (NERC).
- Gerry W. Cauley, President and Chief Executive Officer, North American Electric.
- Reliability Corporation (NERC).
- Kevin Burke, Chairman, President and CEO, Consolidated Edison Inc.
- Roberta S. Brown.
- Mike Smith, President and CEO, Georgia Transmission Corp.
- Hon. Betty Ann Kane, Chairman, DC Public Service Commission.
- John Anderson, President, Electricity Consumers Resource Council (ELCON).
- Lonnie N. Carter, President and Chief Executive Officer, Santee Cooper.

1:30–3 p.m. Panel 2: Emerging Issues

Panelists will address more specifically their views regarding the emerging issues of the Bulk Power System. Panelists will be asked to address some or all of the following:

a. How do you expect the Bulk Power System to change in the next decade? What are the most critical new and emerging challenges facing the power grid?

b. Do the CIP standards assure cyber security, including protecting against sophisticated and fast-moving threats? What role do you expect Smart Grid to play in the Bulk Power System and will the Critical Infrastructure Protection (CIP) standards adequately assure grid reliability under Smart Grid applications? If not, how should NERC address these issues?

c. Will Smart Grid applications have non-cyber reliability implications that need to be addressed?

d. What steps are currently being taken to address the electromagnetic pulse (EMP) issue? Which Reliability Standards cover EMP and do they adequately address the issue?

e. Are there any other emerging reliability issues that NERC, industry and the Commission should consider addressing?

f. How can emerging issues that are identified be effectively and timely resolved while addressing NERC's other priorities?

Panelists (Panel 2):

- John Q. Anderson, Chairman of the Board, North American Electric Reliability Corporation (NERC).
- Gerry W. Cauley, President and Chief Executive Officer, North American Electric.
- Reliability Corporation (NERC).
- Ronald L. Litzinger, President, Southern California Edison Company.
- Stephen J. Wright, Administrator and Chief Executive Officer, Bonneville Power Administration.
- Stephen G. Whitely, President and Chief Executive Officer, New York Independent System Operator.
- Randy Vickers, Director, United States Computer Emergency Readiness Team (US–CERT).
- Avi Schnurr, President, Electric Infrastructure Security Council.
- Ed Tymofichuk, Vice-President, Transmission, Manitoba Hydro.

3:15–5 p.m. Panel 3: Next Steps and Wrap-up

Panelists will address more specifically their views regarding what steps and processes are necessary to effectively address the issues critical to the reliability of the Bulk Power System:

a. Does NERC have the necessary resources, tools, and authority to address these issues? Are NERC and Commission processes and procedures adequate to address the reliability priorities and issues discussed above? What can the Commission do to assist NERC?

b. What part of the discussion today was most helpful? What further discussion or guidance is needed?

c. How often should reliability summits like this occur? What other forums should we use to communicate about these and other critical reliability issues?

Panelists (Panel 3):

- Gerry W. Cauley, President and Chief Executive Officer, North American Electric Reliability Corporation (NERC).
- Hon. Betty Ann Kane, Chairman, DC Public Service Commission.
- John Anderson, President, Electricity Consumers Resource Council (ELCON).
- John Q. Anderson, Chairman of the Board, North American Electric Reliability Corporation (NERC).
- Kevin Burke, Chairman, President and CEO, Consolidated Edison Inc.
- Lonnie N. Carter, President and Chief Executive Officer, Santee Cooper.
- Mike Smith, President and CEO, Georgia Transmission Corp.
- Randy Vickers, Director, United States Computer Emergency Readiness Team (US–CERT).
- Roberta S. Brown.
- Stephen G. Whitely, President and Chief Executive Officer, New York Independent System Operator.
- Stephen J. Wright, Administrator and Chief Executive Officer, Bonneville Power Administration.

[FR Doc. 2011–2806 Filed 2–8–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP11–1566–000]

Tennessee Gas Pipeline Company; Notice Postponing Technical Conference

February 1, 2011.

In a prior notice, the Commission scheduled a technical conference to discuss the non-rate issues in Tennessee Gas Pipeline Company's rate case filing for February 2 and February 3, 2011 in the above-captioned docket. Due to forecasted inclement weather and hazardous travel conditions, both days of the conference are postponed until further notice.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–2812 Filed 2–8–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–65–000]

Dominion Transmission, Inc.; Notice of Request Under Blanket Authorization

February 2, 2011.

Take notice that on January 21, 2011 Dominion Transmission, Inc. (DTI), 701 East Cary Street, Richmond, Virginia 23219, filed in Docket No. CP11–65–000, a Prior Notice request pursuant to Sections 157.205 and 157.208 of the Commission's Regulations under the Natural Gas Act for authorization to replace approximately 3.07 miles of certain pipeline facilities located in Tompkins, Cortland, Madison, Oneida, Herkimer, and Schenectady Counties, New York. Specifically, DTI proposes to replace using a "lift and lay" construction technique 2.07 miles of the 16- and 20-inch diameter LN–30 pipeline and approximately 0.37 mile of the 30-inch diameter LN–550 pipeline. The LN–30 pipeline will be replaced at nine separate sites and the LN–550 will be replaced at two sites, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this Application should be directed to Brad Knisley, Regulatory and Certificates Analyst, Dominion Transmission, Inc., 701 East Cary Street, Richmond, Virginia 23219, or call (804) 771–4412, or fax (804) 771–4804, or by e-mail *brad.a.kinsley@dom.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov)* under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–2808 Filed 2–8–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–64–000]

Trunkline Gas Company, LLC; Notice of Request Under Blanket Authorization

February 2, 2010.

Take notice that on January 20, 2011, Trunkline Gas Company, LLC (Trunkline), P.O. Box 4967, Houston, Texas 77210–4967, filed a prior notice of blanket certificate pursuant to Sections 157.205(b) and 157.216(c) of the Federal Energy Regulatory Commission's Regulations under the Natural Gas Act, for authorization to abandon, by removal, its Ship Shoal T–27 Platform and appurtenant facilities located in Ship Shoal 274, Offshore Louisiana. Specifically, the T–27 Platform and all risers out of service, will be abandoned, salvaged and disposed of, all as more fully set forth in the application, which is open to the public for inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application may be directed to Stephen T. Veatch, Senior Director of Certificates and Tariffs, Trunkline Gas Company, LLC, 5444 Westheimer Road, Houston, Texas 77056, or call (713) 989–2024, or fax (713) 989–1176, or by e-mail *Stephen.Veatch@sug.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–2807 Filed 2–8–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2010–0365; FRL–9264–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for VOC Emissions From Petroleum Refinery Wastewater Systems (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C.

3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before March 11, 2011.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2010–0365, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert Marshall, Jr., Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–7021; *fax number:* (202) 564–0050; *e-mail address: marshall.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 2, 2010 (75 *FR* 30813), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2010–0365, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NSPS for VOC Emissions from Petroleum Refinery Wastewater Systems (Renewal)

ICR Numbers: EPA ICR Number 1136.10, OMB Control Number 2060–0172.

ICR Status: This ICR is scheduled to expire on February 28, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The New Source Performance Standards (NSPS) for Volatile Organic Compound (VOC) Emissions from Petroleum Refinery Wastewater Systems were proposed on May 4, 1987, and promulgated on November 23, 1988. These standards apply to the following facilities in petroleum refinery wastewater systems: Individual drain systems, oil-water separators, and aggregate facilities commencing construction, modification or reconstruction after the date of proposal. An individual drain system consists of all process drains connected to the first downstream junction box. An oil-water separator is the wastewater treatment equipment used to separate oil from water. An aggregate facility is an individual drain system together with ancillary downstream sewer lines and oil-water separators, down to and including the secondary oil-water separator, as applicable. Aggregate facilities are intended to capture any potential VOC emissions within the petroleum refinery wastewater system during expansions of and additions to the system. There are no additional recordkeeping or reporting requirements for aggregate facilities. In general, all NSPS standards require initial notifications, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance and are required of all sources subject to NSPS.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 60, subpart QQQ, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 34 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Petroleum refinery wastewater systems.

Estimated Number of Respondents: 135.

Frequency of Response: Initially, on occasion, quarterly, and semiannually.

Estimated Total Annual Hour Burden: 9,237.

Estimated Total Annual Cost: $840,361, which includes no annualized Capital/Startup costs, $17,550 in annualized Operating and Maintenance costs (O&M), and $822,811 in annualized Labor costs.

Changes in the Estimates: There is no change in the labor hours or cost to the respondents in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the respondents is very low, negative, or non-existent. Therefore, the labor hours and cost figures in the previous ICR reflect the current burden to the respondents and are reiterated in this ICR.

Dated: February 3, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–2868 Filed 2–8–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2010–0347; FRL–9264–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Stationary Spark Ignition Internal Combustion Engines (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before March 11, 2011.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2010–0347, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert C. Marshall, Jr., Office of Compliance, *Mail Code:* 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–7021; *fax number:* (202) 564–0050; *e-mail address: marshall.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 2, 2010 (75 FR 30813), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2010–0347, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NSPS for Stationary Spark Ignition Internal Combustion Engines (Renewal)

ICR Numbers: EPA ICR Number 2227.03, OMB Control Number 2060–0610.

ICR Status: This ICR is scheduled to expire on March 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 60, subpart A, and any changes, or additions to these Provisions specified at 40 CFR part 60, subpart JJJJ.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. At a minimum, reports are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1 hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently

changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of stationary spark ignition internal combustion engines.

Estimated Number of Respondents: 17,052.

Frequency of Response: Initially and on-occasion.

Estimated Total Annual Hour Burden: 22,634.

Estimated Total Annual Cost: $4,426,590, which includes $2,123,623 in labor costs, no capital/startup costs, and $2,302,967 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is a decrease in the total estimated labor hour burden as currently identified in the OMB Inventory of Approved ICR Burdens because the rule is now fully implemented. The previous ICR covered the initial phase of standard implementation which occurred over a three-year period. This ICR shows the labor hour and cost burden after full implementation. This decrease is not due to any program changes.

The change in cost to Respondents and the Agency is due to both labor rate adjustments to reflect the most recent available estimates and an overall decrease in burden.

Dated: February 3, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–2880 Filed 2–8–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2010–0361; FRL–9264–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Benzene Emissions From Benzene Storage Vessels and Coke By-Product Recovery Plants (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before March 11, 2011.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2010–0361 to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert C. Marshall, Jr., Office of Compliance, Mail code: 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–7021; *fax number:* (202) 564–0050; *e-mail address: marshall.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 2, 2010 (75 *FR* 30813), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2010–0361, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NESHAP for Benzene Emissions from Benzene Storage Vessels and Coke By-Product Recovery Plants (Renewal)

ICR Numbers: EPA ICR Number 1080.13, OMB Control Number 2060–0185.

ICR Status: This ICR is scheduled to expire on February 28, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR Part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR Part 9.

Abstract: The affected entities are subject to the General Provisions of the National Emission Standards for Hazardous Air Pollutants (NESHAP) at 40 CFR part 61, subpart A, and to the provisions at 40 CFR part 61, subpart L. Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 92 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or

for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of benzene storage vessels and coke by product recovery plants.

Estimated Number of Respondents: 17.

Frequency of Response: Semiannually and on occasion.

Estimated Total Annual Hour Burden: 3,137.

Estimated Total Annual Cost: $294,347 in labor costs; there are neither capital/startup costs nor operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in the labor hours, or capital/startup and operation and maintenance costs in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the industry is very low, negative, or non-existent.

It should be noted that the wage rates in this ICR have been updated resulting in an overall increase in the labor cost.

Dated: February 3, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–2877 Filed 2–8–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2010–0363; FRL–9265–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Onshore Natural Gas Processing Plants (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before March 11, 2011.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2010–0363, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert Marshall, Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–7021; *fax number:* (202 564–0050; *e-mail address: marshall.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 2, 2010 (75 *FR* 30813), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2010–0363, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NSPS for Onshore Natural Gas Processing Plants (Renewal).

ICR Numbers: EPA ICR Number 1086.09, OMB Control Number 2060–0120.

ICR Status: This ICR is scheduled to expire on February 28, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 60, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 60, subparts KKK & LLL. Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 91 hours per response. Burden means the total time,

effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of onshore natural gas processing plants.

Estimated Number of Respondents: 563.

Frequency of Response: Initially, semiannually and occasionally.

Estimated Total Annual Hour Burden: 149,180.

Estimated Total Annual Cost: $14,335,639, which includes $13,996,939 in labor costs, $219,000 in capital/startup costs, and $119,700 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in the labor hours, or capital/startup and operation and maintenance costs in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the industry is very low, negative, or non-existent.

It should be noted that the wage rates in this ICR have been updated resulting in an overall increase in the labor cost.

Dated: February 3, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–2870 Filed 2–8–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9264–3]

California State Nonroad Engine Pollution Control Standards; Request for Authorization of Portable Equipment Registration Program; Opportunity for Public Hearing and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has finalized amendments to its Portable Equipment Registration Program (PERP). PERP is a voluntary program that allows for the registration of nonroad engines and equipment units that operate at multiple locations, so that the engine/equipment owners can operate throughout California without the need of obtaining permits from local air pollution control districts. CARB has requested that EPA confirm that certain emission standards of the voluntary PERP fall within the scope of previously granted authorizations, and that a new authorization be granted for those emission standards that are otherwise not covered by the within-the-scope confirmation. This notice announces that EPA has tentatively scheduled a public hearing to consider California's PERP within-the-scope confirmation and authorization request and that EPA is now accepting written comment on the request.

DATES: EPA has tentatively scheduled a public hearing concerning CARB's request on February 24, 2011, at 1:00 p.m. EST. EPA will hold a hearing only if any party notifies EPA by February 17, 2011, expressing its interest in presenting oral testimony. By February 18, 2011, any person who plans to attend the hearing may call Robert Doyle at (202) 343–9258, to learn if a hearing will be held or may check the following webpage for an update: *http://www.epa.gov/otaq/cafr.htm.*

Parties wishing to present oral testimony at the public hearing should provide written notice to Robert Doyle at the e-mail address noted below. If EPA receives a request for a public hearing, that hearing will be held at 1310 L Street, NW., Washington, DC 20005.

If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and instead consider CARB's request based on written submissions to the docket. Any party may submit written comments until March 24, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0102, by one of the following methods:

- On-Line at *http://www.regulations.gov:* Follow the On-Line Instructions for Submitting Comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket, Docket ID No. EPA–HQ–OAR–2011–0102, U.S. Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

On-Line Instructions for Submitting Comments: Direct your comments to Docket ID No. EPA–HQ–OAR–2011–0102. EPA's policy is that all comments we receive will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will automatically be 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.*

EPA will make available for public inspection materials submitted by CARB, written comments received from any interested parties, and any testimony given at the public hearing. Materials relevant to this proceeding are contained in the Air and Radiation Docket and Information Center, maintained in Docket ID No. EPA–HQ–OAR–2011–0102. Publicly available docket materials are available either

electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open to the public on all Federal government work days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.gov/oar/docket.html.* The electronic mail (e-mail) address for the Air and Radiation Docket is: *a-and-r-Docket@epa.gov,* the telephone number is (202) 566–1742, and the fax number is (202) 566–9744. An electronic version of the public docket is available through the Federal government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov.* After opening the *http://www.regulations.gov* Web site, enter EPA–HQ–OAR–2011–0102, in the "Enter Keyword or ID" fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality also maintains a webpage that contains general information on its review of California waiver requests. Included on that page are links to prior waiver and authorization **Federal Register** notices; the page can be accessed at *http://www.epa.gov/otaq/cafr.htm.*

FOR FURTHER INFORMATION CONTACT: Robert M. Doyle, Attorney-Advisor, Compliance and Innovative Strategies Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue (6405J), NW., Washington, DC 20460. *Telephone:* (202) 343–9258. *Fax:* (202) 343–2804. *E-mail: doyle.robert@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. California's PERP Request

In a letter dated December 5, 2008, CARB submitted to EPA its request pursuant to section 209 of the Clean Air Act ("CAA" or "the Act"), regarding its regulations to enforce the requirements of its Portable Equipment Registration Program (PERP). CARB established the PERP as a voluntary program to address the concerns of equipment owners who moved equipment within California and thus often faced the need to obtain separate preconstruction and operating permits from the different local air pollution control districts in the state. Under the PERP, once registered, portable equipment is no longer subject to local air pollution control district permitting requirements. The PERP also requires that all registered engines and equipment meet established emission standards that reflected the best available control technology for all classes and categories of portable equipment. Generally, this means that, after January 1, 2006, only engines that meet the most stringent CARB or EPA emission standards in effect at the time of registration are allowed in the PERP. Registered compression-ignition engines must also meet the requirements of the CARB Airborne Toxic Control Measure (ATCM) for in-use portable diesel-fueled engines 50 brake-horsepower (hp) and greater (portable engines).[1] If spark-ignition engines do not meet Federal or CARB certification standards, they can still meet some minimum requirements to be in the program.

CARB has requested that EPA confirm that parts of the voluntary PERP for portable engines and equipment fall within the scope of previously issued authorizations,[2] and that the Administrator grant a new authorization for those emission standards that are not otherwise not covered by the within-the-scope confirmation.

II. Clean Air Act Nonroad Engine and Vehicle Authorizations

Section 209(e)(1) of the Act permanently preempts any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles.

Section 209(e)(2) requires the Administrator, after notice and opportunity for public hearing, to authorize California to enforce standards and other requirements relating to the control of emissions from new engines not listed under section 209(e)(1), if certain criteria are met. EPA has promulgated regulations implementing these provisions at 40 CFR part 1074. These regulations set forth the criteria that EPA must consider before granting California authorization to enforce its new nonroad emission standards.[3]

As stated in the preamble to the section 209(e) rule, EPA has historically interpreted the section 209(e)(2)(iii) "consistency" inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).[4]

In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California's nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same "consistency" criteria that are applied to motor vehicle waiver requests. Pursuant to section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California "standards and accompanying enforcement procedures are not consistent with section 202(a)" of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures are inconsistent with section 202(a) if: (1) There is inadequate lead time to

[1] CARB has requested an authorization for this ATCM; EPA has announced the opportunity for public hearing and public comment on this request by another **Federal Register** notice also published today. That notice is available at *http://epa.gov/otaq/cafr.htm.*

[2] This includes: California State Nonroad Engine Pollution Control Standards; Authorization of State Standards for 1996 and later New Diesel Cycle Engines 175 Horsepower and Greater, 60 FR 48981 (September 21, 1995); California State Nonroad Engine and Vehicle Pollution Control Standards: Authorization of Large Off-Road Spark-Ignition Engine Standards, Notice of Decision, 71 FR 29621 (May 23, 2006); California State Nonroad Engine Pollution Control Standards: California New Nonroad Compression Ignition Engine Emission Standards; Notice of Decision (75 FR 8056) (February 23, 2010).

[3] Title 40 of the Code of Federal Regulations, part 1074.105 provides:

(a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable Federal standards.

(b) The authorization will not be granted if the Administrator finds that any of the following are true:

(1) California's determination is arbitrary and capricious.

(2) California does not need such standards to meet compelling and extraordinary conditions.

(3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.

(c) In considering any request from California to authorize the state to adopt or enforce standards or other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

[4] *See* 59 FR 36969 (July 20, 1994).

permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the Federal and state testing procedures impose inconsistent certification requirements.

If California amends regulations that were previously granted an authorization, EPA can confirm that the amended regulations are within the scope of the previously granted authorization. Such within-the-scope amendments are permissible without a full authorization review if three conditions are met. First, the amended regulations must not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as applicable Federal standards. Second, the amended regulations must not affect consistency with section 202(a) of the Act. Third, the amended regulations must not raise any "new issues" affecting EPA's prior authorizations.

III. Procedures for Public Participation

As stated above, EPA is offering the opportunity for a public hearing, and requesting written comment on issues relevant to the CARB request. First, CARB has requested EPA confirm that parts of the voluntary PERP for portable engines and equipment fall within the scope of previously issued authorizations or submitted authorization requests. Within the context of a within-the-scope analysis, EPA invites comment on whether California's PERP requirements (1) undermine California's previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable Federal standards, (2) affect the consistency of California's requirements with section 202(a) of the Act, and (3) raise any other new issues affecting EPA's previous waiver or authorization determinations.

Second, CARB has requested that the Administrator grant a new authorization for those emission standards that are not otherwise not covered by the within-the-scope confirmation. For this full authorization analysis, we request comment on: (a) Whether CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious, (b) whether California needs such standards to meet compelling and extraordinary conditions, and (c) whether California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until March 24, 2011. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record from the public hearing, if any, all relevant written submissions, and other information that she deems pertinent. All information will be available for inspection at the EPA Air Docket No. EPA–HQ–OAR–2011–0102.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent possible and label it as "Confidential Business Information" (CBI). If a person making comments wants EPA to base its decision on a submission labeled as CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted to the public docket. To ensure that proprietary information is not inadvertently placed in the public docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed, and according to the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: February 3, 2011.

Lori Stewart,

Acting Director, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2011–2852 Filed 2–8–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9264–4]

California State Nonroad Engine Pollution Control Standards; Request for Authorization of Airborne Toxic Control Measure for In-Use Portable Diesel Engines 50 Horsepower and Greater; Opportunity for Public Hearing and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted regulations for the control of diesel particulate matter in the exhaust from in-use portable diesel-fueled compression-ignition engines 50 horsepower and greater. CARB has requested that EPA issue a new authorization for the emission standards established by these regulations. This notice announces that EPA has tentatively scheduled a public hearing to consider California's In-Use Portable Diesel Equipment Airborne Toxic Control Measure authorization request and that EPA is now accepting written comment on the request.

DATES: EPA has tentatively scheduled a public hearing concerning CARB's request on February 24, 2011, at 9:30 a.m. EST. EPA will hold a hearing only if any party notifies EPA by February 17, 2011, expressing its interest in presenting oral testimony. By February 18, 2011, any person who plans to attend the hearing may call Robert Doyle at (202) 343–9258, to learn if a hearing will be held or may check the following webpage for an update: *http://www.epa.gov/otaq/cafr.htm.*

Parties wishing to present oral testimony at the public hearing should provide written notice to Robert Doyle at the e-mail address noted below. If EPA receives a request for a public hearing, that hearing will be held at 1310 L Street, NW., Washington, DC 20005.

If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and instead consider CARB's request based on written submissions to the docket. Any party may submit written comments until March 24, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0101, by one of the following methods:

- On-Line at *http://www.regulations.gov:* Follow the On-Line Instructions for Submitting Comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket, Docket ID No. EPA–HQ–OAR–2011–0101, U.S. Environmental Protection Agency, *Mailcode:* 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements

should be made for deliveries of boxed information.

On-Line Instructions for Submitting Comments: Direct your comments to Docket ID No. EPA–HQ–OAR–2011–0101. EPA's policy is that all comments we receive will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will automatically be 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.*

EPA will make available for public inspection materials submitted by CARB, written comments received from any interested parties, and any testimony given at the public hearing. Materials relevant to this proceeding are contained in the Air and Radiation Docket and Information Center, maintained in Docket ID No. EPA–HQ–OAR–2011–0101. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open to the public on all Federal government work days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.gov/oar/docket.html.* The electronic mail (e-mail) address for the Air and Radiation Docket is: *a-and-r-Docket@epa.gov,* the telephone number is (202) 566–1742, and the fax number is (202) 566–9744. An electronic version of the public docket is available through the Federal government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov.* After opening the *http://www.regulations.gov* website, enter EPA–HQ–OAR–2010–XXXX, in the "Enter Keyword or ID" fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality also maintains a webpage that contains general information on its review of California waiver requests. Included on that page are links to prior waiver and authorization **Federal Register** notices; the page can be accessed at *http://www.epa.gov/otaq/cafr.htm.*

FOR FURTHER INFORMATION CONTACT: Robert M. Doyle, Attorney-Advisor, Compliance and Innovative Strategies Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue (6405J), NW., Washington, DC 20460. *Telephone:* (202) 343–9258. *Fax:* (202) 343–2804. *E-mail: doyle.robert@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. California's ATCM for In-Use Portable Diesel Engines 50 Horsepower and Greater

In a letter dated December 5, 2006, CARB submitted to EPA its request pursuant to section 209 of the Clean Air Act ("CAA" or "the Act"), regarding its regulations to enforce its airborne toxic control measure (ATCM) for in-use portable diesel-fueled engines 50 brake-horsepower (hp) and greater (portable engines).[1] The authorization request covers four primary substantive requirements: (1) Starting January 1, 2010, all portable engines in the state must be certified to meet a Federal or California standard for newly manufactured nonroad engines, subject to specified exceptions; (2) Starting January 1, 2020, all portable engines in California must be either (a) certified to meet Tier 4 emission standards, (b) equipped with a properly functioning Level-3 verified technology,[2] or (c) equipped with a combination of control strategies that have been verified together to achieve at least an 85% reduction in diesel particulate matter (PM) emissions, subject to specified exceptions; (3) All portable engines that prior to January 1, 2006 have not been either registered in CARB's Portable Equipment Registration Program (PERP) or permitted under the permit program of an air quality management district or air pollution control district must meet the most stringent of the Federal or California emission standards for non-road engines at the time the engine is either registered in the PERP or registered for a permit, subject to specified exceptions; and (4) Each fleet of portable engines must comply with increasingly more stringent weighted PM emission fleet averages that apply on three different deadlines, (January 1, 2013, January 1, 2017 and January 1, 2020), subject to specified exceptions.[3]

Owners of in-use equipment will have options available to meet the CARB requirements. These include: purchasing new equipment with cleaner engines, repowering existing equipment with cleaner engines, using verified add-on control devices on existing equipment and engines, switching to alternative diesel fuels or alternative fuels, or electrifying some or all of the in-use fleet and receiving emission credits.

II. Clean Air Act Nonroad Engine and Vehicle Authorizations

Section 209(e)(1) of the Act permanently preempts any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles.

Section 209(e)(2) requires the Administrator, after notice and opportunity for public hearing, to authorize California to enforce standards and other requirements

[1] Portable engines are engines that may be moved easily from location to location. The engines are used to power a variety of equipment, including pumps, ground support equipment at airports, cranes, oil-well drilling and workover rigs, power generators, dredging equipment rock crushing and screening equipment, welding equipment, woodchippers and compressors.

[2] Level 3 PM control technology refers to a control technology that has been verified to achieve PM reductions of at least 85 percent under the CARB "Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines," 13 California Code of Regulations (CCR) sections 2700–2710.

[3] The ATCM contains a fifth substantive requirement that pertains to the fuels that may be used in in-use portable equipment engines, but this fuels requirement is not preempted by CAA section 209(e) and does not require an authorization.

relating to the control of emissions from new engines not listed under section 209(e)(1), if certain criteria are met. EPA has promulgated regulations implementing these provisions at 40 CFR part 1074. These regulations set forth the criteria that EPA must consider before granting California authorization to enforce its new nonroad emission standards.[4]

As stated in the preamble to the section 209(e) rule, EPA has historically interpreted the section 209(e)(2)(iii) "consistency" inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).[5]

In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California's nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same "consistency" criteria that are applied to motor vehicle waiver requests. Pursuant to section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California "standards and accompanying enforcement procedures are not consistent with section 202(a)" of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures are inconsistent with section 202(a) if: (1) There is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the Federal and state testing procedures impose inconsistent certification requirements.

III. Procedures for Public Participation

As stated above, EPA is offering the opportunity for a public hearing, and requesting written comment on issues relevant to a full authorization analysis. Specifically, we request comment on: (a) Whether CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious, (b) whether California needs such standards to meet compelling and extraordinary conditions, and (c) whether California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until March 24, 2011. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record from the public hearing, if any, all relevant written submissions, and other information that she deems pertinent. All information will be available for inspection at the EPA Air Docket No. EPA–HQ–OAR–2011–0101.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent possible and label it as "Confidential Business Information" (CBI). If a person making comments wants EPA to base its decision on a submission labeled as CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted to the public docket. To ensure that proprietary information is not inadvertently placed in the public docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed, and according to the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: February 3, 2011.

Lori Stewart,

Acting Director, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2011–2855 Filed 2–8–11; 8:45 am]

BILLING CODE 6560–50–P

[4] Title 40 of the Code of Federal Regulations, part 1074.105 provides:

(a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable Federal standards.

(b) The authorization will not be granted if the Administrator finds that any of the following are true:

(1) California's determination is arbitrary and capricious.

(2) California does not need such standards to meet compelling and extraordinary conditions.

(3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.

(c) In considering any request from California to authorize the state to adopt or enforce standards or other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

[5] *See* 59 FR 36969 (July 20, 1994).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9264–6]

Science Advisory Board Staff Office; Notification of a Public Meeting of a Science Advisory Board Work Group

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of a work group of the Chartered Science Advisory Board to discuss the President's FY 2012 Budget Request for the EPA Office of Research and Development.

DATES: The meeting dates are March 3, 2011 from 1 p.m. to 6 p.m. and March 4, 2011 from 8 a.m. to 4 p.m. (Eastern Time).

ADDRESSES: The meeting will be held at the Four Points by Sheraton, 1201 K Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning this public meeting should contact Dr. Angela Nugent, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), 1200 Pennsylvania Ave., NW., Washington, DC 20460; *via telephone/voice mail:* (202) 564–2218; *fax:* (202) 565–2098; or e-mail at *nugent.angela@epa.gov.* General information concerning the EPA Science Advisory Board can be found on the SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDAA), codified at 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 the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Pursuant to FACA and EPA policy, notice is hereby given that a work group of the chartered SAB will hold a public meeting to discuss the President's requested Fiscal

Year 2012 Budget to support EPA research needs. The SAB work group and the SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: The chartered SAB conducts a review of the EPA research budget annually and provides written comments to the EPA Administrator and to Congress, as requested, on the adequacy of EPA's requested research budget. At the meeting, a work group of the chartered SAB will receive briefings on the requested research budget for Fiscal Year 2012 and develop a draft report for review by the full chartered SAB. The report will provide comments on the requested budget, in light of EPA's research needs. Previous SAB budget advisories are on the SAB Web site at *http://www.epa.gov/sab.*

Availability of Meeting Materials: The agenda and other materials in support of the meeting will be placed on the SAB Web site at *http://www.epa.gov/sab* in advance.

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments on the topics included in this advisory activity and/or the group conducting the activity. They should send their comments directly to the Designated Federal Officer for the relevant advisory committee. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker, with no more than a total of one hour for all speakers. Interested parties should contact Dr. Nugent, DFO, in writing (preferably via e-mail) at the contact information noted above by February 28, 2011 to be placed on a list of public speakers for the meeting. *Written Statements:* Written statements should be received in the SAB Staff Office by February 28, 2011 so that the information may be made available to the chartered SAB members for their consideration and placed on the SAB Web site for public information. 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 asked to provide 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. Angela Nugent at (202) 564–2218, or *nugent.angela@epa.gov.* To request accommodation of a disability, please contact Dr. Nugent, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: February 3, 2011,

Anthony Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2011–2876 Filed 2–8–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9264–5]

Science Advisory Board Staff Office; Notification of a Public Meeting of the Science Advisory Board Panel for the Review of EPA's Hydraulic Fracturing Study Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public face-to-face meeting of the SAB Panel to conduct an independent review of EPA's Draft Hydraulic Fracturing Study Plan.

DATES: The meeting will be held on March 7, 2011 from 9 a.m. to 5 p.m., and March 8, 2011 from 8 a.m. to 5 p.m. (Eastern Time).

ADDRESSES: The Panel meeting will be held at the Westin Alexandria Hotel located at 400 Courthouse Square, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this meeting may contact Mr. Edward Hanlon, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564–2134; by fax at (202) 565–2098 or via e-mail at *hanlon.edward@epa.gov.* General information concerning the EPA Science Advisory Board can be found at the EPA SAB Web site at *http://www.epa.gov/sab.* Any inquiry regarding EPA's Draft Hydraulic Fracturing Study Plan should be directed to Susan Burden, EPA Office of Research and Development (ORD), at *burden.susan@epa.gov* or (202) 564–6308. Media inquiries regarding EPA's Draft Hydraulic Fracturing Study Plan should be directed to Ms. Amy Dewey, EPA Office of Public Affairs (OPA), at *dewey.amy@epa.gov* or (202) 564–7816.

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDAA), codified at 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 the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Pursuant to FACA and EPA policy, notice is hereby given that an ad hoc SAB Panel will hold a public meeting to review EPA's Draft Hydraulic Fracturing Study Plan. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The EPA Draft Study Plan develops research questions and identifies research needs, and proposes an approach to: (1) Gather existing data and information, including input from stakeholders; (2) catalog potential impacts of hydraulic fracturing on drinking water resources; and (3) identify data gaps. EPA is seeking SAB review and comment regarding the Draft Study Plan. The SAB Staff Office previously announced that it was forming an SAB ad hoc Panel to provide independent expert advice on EPA's Draft Hydraulic Fracturing Study Plan (75 FR 42087–42088, July 20, 2010). The purpose of the March 7–8, 2011, meeting is for the Panel to discuss their review comments on EPA's Draft Study Plan.

Availability of Meeting Materials: The agenda and the EPA Draft Study Plan will be available on the SAB Web site at *http://www.epa.gov/sab* in advance of the meeting.

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public

can submit comments for a federal advisory committee to consider as it develops advice for EPA. They should send their comments directly to the Designated Federal Officer for the relevant advisory committee. *Oral Statements:* In general, individuals or groups requesting an oral presentation at this public meeting will be limited to five minutes per speaker. Interested parties should contact Mr. Edward Hanlon, DFO, in writing (preferably via e-mail), at the contact information noted above, by February 28, 2011 to be placed on the list of public speakers for the meeting. *Written Statements:* Written statements should be received in the SAB Staff Office by February 28, 2011 so that the information may be made available to the SAB Hydraulic Fracturing Study Plan Review Panel 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: One each 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 Mr. Edward Hanlon 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: February 3, 2011.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2011–2873 Filed 2–8–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0123; FRL–8862–5]

Methyl Bromide; Notice of Receipt of Requests To Voluntarily Amend Registrations To Terminate Certain Soil Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by the registrants to voluntarily amend their methyl bromide product registrations to terminate or delete one or more soil uses. The requests would delete all methyl bromide soil uses that do not meet the definition of a "critical use," a "quarantine application," or a "pre-shipment application" with the exception of the following uses: (1) Soils to be planted with caneberries (use allowed until December 31, 2014), fresh market tomatoes grown in California (use allowed until December 31, 2012), fresh market peppers grown in California (use allowed until December 31, 2012), Vidalia onions grown in Georgia (use allowed until December 31, 2012), ginger grown in Hawaii (use allowed until December 31, 2012); (2) soils on golf courses and athletic/recreational fields for resurfacing/replanting of turf (use allowed until December 31, 2013), and (3) tobacco seedling trays (use allowed until December 31, 2014). These requests would not affect post-harvest fumigant products. In addition, the Agency received a request from Soil Chemicals Corporation dba Cardinal Professional Products to voluntarily amend methyl bromide product registration 8536–12 to terminate or delete all soil uses. This request does not cover the post harvest uses on the label. The requests would not terminate the last methyl bromide products registered for use in the United States. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the uses are deleted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before March 11, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0123, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005–0123. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or e-mail. The 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4

p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Susan Bartow, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 603–0065; fax number: (703) 308–8090; e-mail address: *bartow.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Background on the Receipt of Requests To Amend Registrations To Delete Uses

This notice announces receipt by EPA of requests from registrants (ICL–IP America, Inc., Great Lakes Chemical Corporation, Shadow Mountain Products Corporation, Hendrix and Dail, Inc., Soil Chemicals Corporation dba Cardinal Professional Products, and Trical, Inc.) to delete certain uses of methyl bromide product registrations. Methyl bromide is a broad-spectrum fumigant chemical that can be used as an acaricide, antimicrobial, fungicide, herbicide, insecticide, nematicide, and vertebrate control agent. It is used most prevalently as a soil fumigant, but is also used as a post harvest treatment of commodities. In letters dated August 24, 2010, August 25, 2010, and August 27, 2010, ICL–IP America, Inc., Great Lakes Chemical Corporation, Shadow Mountain Products Corporation, Hendrix and Dail, Inc., Soil Chemicals Corporation dba Cardinal Professional Products, and Trical, Inc. requested EPA to amend to delete certain uses of pesticide product registrations identified in Table 1A of Unit III. Specifically, the requests would delete all methyl bromide soil uses that do not meet the definition of a "critical use," a "quarantine application," or a "pre-shipment application" (CUE/QPS), as those terms are defined under EPA's regulations at (40 CFR part 82). Subpart A, with the exception of the following uses: (1) Soils to be planted with caneberries, fresh market tomatoes grown in California, fresh market peppers grown in California, Vidalia onions grown in Georgia, ginger grown in Hawaii; (2) soils on golf courses and athletic/recreational fields for resurfacing/replanting of turf, and (3) tobacco seedling trays. These requests are in accordance with a signed agreement dated August 20, 2010 between the Environmental Protection Agency and the registrants of certain pesticide products containing methyl bromide. Also in accordance with the signed agreement the registrants request (1) deletion of the non-CUE/QPS uses of methyl bromide on soil used to grow fresh market tomatoes in California, fresh market peppers in California, Vidalia onion in Georgia, and ginger in Hawaii effective December 31, 2012; (2) deletion of the non-CUE/QPS uses of methyl bromide on soil for resurfacing/replanting turf or sod on golf courses and athletic/recreational fields effective December 31, 2013; and (3) deletion of the non-CUE/QPS uses of methyl bromide on soil to be planted with caneberries and for application to tobacco seedling trays effective December 31, 2014. These requests would not affect post-harvest fumigant products. The requests would not terminate the last methyl bromide products registered for use in the United States.

This notice also announces receipt by EPA of a request from Soil Chemicals Corporation dba Cardinal Professional Products to delete soil uses from methyl bromide product registration 8536–12. In a letter dated December 7, 2010, Soil Chemicals Corporation dba Cardinal Professional Products requested EPA to amend to delete certain uses of pesticide product registration 8536–12 identified in Table 1B of Unit III. Specifically, the request would delete all methyl bromide soil fumigation uses. This request does not cover the post harvest uses on the label. The request would not terminate the last methyl bromide products registered for use in the United States.

III. What action is the agency taking?

This notice announces receipt by EPA of requests from registrants to delete certain uses of methyl bromide product registrations. The affected products and the registrants making the requests are identified in Tables 1A, 1B, and 2 of this unit.

Unless a request is withdrawn by the registrant or if the Agency determines that there are substantive comments that warrant further review of this request, EPA intends to issue an order amending the affected registrations.

TABLE 1A—METHYL BROMIDE PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration No.	Product Name	Company
5785–19	Terr-O-Gas® 70	Great Lakes Chemical Corporation.
5785–22	Terr-O-Gas® 98	Great Lakes Chemical Corporation.
5785–23	Terr-O-Gas® 45	Great Lakes Chemical Corporation.
5785–24	Terr-O-Gas® 67	Great Lakes Chemical Corporation.
5785–25	Terr-O-Gas® 33	Great Lakes Chemical Corporation.
5785–28	Terr-O-Gas® 57	Great Lakes Chemical Corporation.
5785–40	Terr-O-Gas® 75	Great Lakes Chemical Corporation.
5785–42	Brom-O-Gas® 2%	Great Lakes Chemical Corporation.
5785–47	Terr-O-Gas® 80	Great Lakes Chemical Corporation.
5785–48	Terr-O-Gas® 50	Great Lakes Chemical Corporation.
8536–05	Pic-Brom 33	Soil Chemicals Corporation dba Cardinal Professional Products.
8536–06	Pic-Brom 55	Soil Chemicals Corporation dba Cardinal Professional Products.
8536–07	Pic-Brom 43	Soil Chemicals Corporation dba Cardinal Professional Products.
8536–09	Pic-Brom 50	Soil Chemicals Corporation dba Cardinal Professional Products.
8536–11	Pic-Brom 25	Soil Chemicals Corporation dba Cardinal Professional Products.
8536–19	Methyl Bromide 98%	Soil Chemicals Corporation dba Cardinal Professional Products.
8536–20	Pic-Brom 67	Soil Chemicals Corporation dba Cardinal Professional Products.
8622–12	98–2 Soil Fumigant	ICL–IP America, Incorporated.
8622–13	67–33 Preplant Soil Fumigant	ICL–IP America, Incorporated.
8622–14	70–30 Preplant Soil Fumigant	ICL–IP America, Incorporated.
8622–15	75–25 Preplant Soil Fumigant	ICL–IP America, Incorporated.
8622–17	Metabrom 99	ICL–IP America, Incorporated.
8622–39	50–50 Preplant Soil Fumigant	ICL–IP America, Incorporated.
8622–40	57–43 Preplant Soil Fumigant	ICL–IP America, Incorporated.
8622–44	80–20 Preplant Soil Fumigant	ICL–IP America, Incorporated.
8853–1	MBC Soil Fumigant	Hendrix and Dail, Incorporated.
8853–2	MBC Concentrate Soil Fumigant	Hendrix and Dail, Incorporated.
8853–3	MBC–33 Soil Fumigant	Hendrix and Dail, Incorporated.
11220–04	Tri-Con 57/43	Trical, Incorporated.
11220–07	Tri-Con 67/33	Trical, Incorporated.
11220–08	Tri-Con 75/25	Trical, Incorporated.
11220–10	Tri-Con 50/50	Trical, Incorporated.
11220–11	Tri-Con 45/55	Trical, Incorporated.
11220–17	Methyl Bromide 89.5%	Trical, Incorporated.
58266–1	Tri-Con 80/20 Preplant Soil Fumigant.	Shadow Mountain Products Corporation.

TABLE 1B—METHYL BROMIDE PRODUCT REGISTRATION WITH PENDING REQUESTS FOR AMENDMENT

Registration No.	Product name	Company	Uses to be deleted
8536–12	Methyl Bromide 99.5%	Soil Chemicals Corporation dba Cardinal Professional Products.	Soil fumigation uses.

Table 2 of this unit includes the names and addresses of record for the registrants of the products listed in Tables 1A and 1B of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Tables 1A and 1B of this unit.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY AMENDMENTS

EPA Company No.	Company name and address
5785	Great Lakes Chemical Corporation, P.O. Box 2200, West Lafayette, IN 47996–2200.
8536	Soil Chemicals Corporation dba Cardinal Professional Products, P.O. Box 782, Hollister, CA 95024–0782.
8622	ICL–IP America, Incorporated, 95 MacCorkle Avenue, SW., South Charleston, WV 25303.
8853	Hendrix and Dail, Incorporated, P.O. Box 648, Greenville, NC 27835–0648.
11220	Trical, Incorporated, P.O. Box 1327, Hollister, CA 95024–1327.
58266	Shadow Mountain Products Corporation, P.O. Box 1327, Hollister, CA 95024–1327.

IV. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must

provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The methyl bromide registrants have requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 30-day comment period on the proposed requests.

V. Procedures for Withdrawal of Requests

Registrants who choose to withdraw a request for product cancellation or use deletion should submit the withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the action. If the requests for amendments to delete uses are granted, the Agency intends to publish the cancellation order, including the effective date and conditions for the disposition of existing stocks, in the **Federal Register**.

A. For All Products Listed in Table 1A in Unit III

In any order issued in response to these requests for amendments to delete uses, EPA proposes to include the following provisions for the treatment of any existing stocks of the products listed in Table 1A of Unit III.

1. All sale or distribution of existing stocks of methyl bromide products that include soil uses other than uses that meet the definition of a "critical use," a "quarantine application," or a "pre-shipment application;" caneberries; fresh market tomatoes grown in California; fresh market peppers grown in California; Vidalia onions grown in Georgia; ginger grown in Hawaii; golf courses and athletic/recreational fields for resurfacing/replanting of turf; and treatment of tobacco seedling trays is prohibited after publication of the cancellation order, unless that sale or distribution is solely for the purpose of facilitating disposal or export of the product.

Existing stocks may be used until those stocks are exhausted, provided that such use complies with the EPA-approved label and labeling of the product.

2. Existing stocks of methyl bromide products that include the non-CUE/QPS use on fresh market tomatoes (CA), fresh market peppers (CA), Vidalia onions (GA), and ginger (HI) may be sold and distributed for 120 days after the effective date of cancellation (i.e., 120 days after December 31, 2012); and users may continue to use Existing Stocks of such products for production of fresh market tomatoes (CA), fresh market peppers (CA), Vidalia onions (GA), and ginger (HI) until those Existing Stocks are exhausted, provided that no later than August 31, 2012, each Registrant has submitted for each of the Registrant's products labeled for the fresh market tomatoes (CA), fresh market peppers (CA), Vidalia onions (GA), and ginger (HI) uses, an application for amended registration to revise the approved labeling for those products to delete any language allowing use of the product for any of those uses. For any product that does not meet this condition, EPA may issue an amended order that prohibits sale and distribution and use of Existing Stocks as of the effective date of cancellation.

3. Existing Stocks of methyl bromide products that include the non CUE/QPS use on golf courses and athletic/recreational fields uses may be sold and distributed for 120 days after the effective date of cancellation (*i.e.,* 120 days after December 31, 2013); and users may continue to use Existing Stocks of such products for resurfacing/replanting turf and sod on golf courses and athletic/recreational fields until those Existing Stocks are exhausted, provided that no later than August 31, 2013, each Registrant has submitted for each of the Registrant's products labeled for the golf course and athletic/recreational field uses, an application for amended registration to revise the approved labeling for those products to delete any language allowing use of the product for any of those uses. For any product that does not meet this condition, EPA may issue an amended order that prohibits sale and distribution and use of Existing Stocks as of the effective date of cancellation.

4. Existing Stocks of methyl bromide products that include the non-CUE/QPS use on caneberry or tobacco seedling tray uses may be sold and distributed for 120 days after the effective date of cancellation (*i.e.,* 120 days after December 31, 2014); and users may continue to use Existing Stocks of such products on the caneberry and tobacco seedling tray uses until those Existing Stocks are exhausted, provided that no later than August 31, 2014, each Registrant has submitted for each of the Registrant's products labeled for the caneberry or tobacco seedling tray uses, an application for amended registration to revise the approved labeling for those products to delete any language allowing use of the product for any of those uses. For any product that does not meet this condition, EPA may issue an amended order that prohibits sale and distribution and use of Existing Stocks as of the effective date of cancellation.

B. For The Product Listed in Table 1B in Unit III

In any order issued in response to this request for an amendment to delete uses, EPA proposes to include the following provisions for the treatment of any existing stocks of the product listed in Table 1B of Unit III.

All sale or distribution by the registrant of existing stocks is prohibited after publication of the cancellation order, unless that sale or distribution is solely for the purpose of facilitating disposal or export of the product.

Existing stocks may be sold and distributed by persons other than the registrant for 6 months from the date of the cancellation order.

Existing stocks may be used until those stocks are exhausted, provided that such use complies with the EPA-approved label and labeling of the product.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 11, 2011.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011–2872 Filed 2–8–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9264–2]

Status of Motor Vehicle Budgets in Submitted State Implementation Plan for Transportation Conformity Purposes; Maricopa County (Phoenix) PM–10 Nonattainment Area, Arizona Notice of Withdrawal of Adequacy of Motor Vehicle Emissions Budget

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of withdrawal of adequacy.

SUMMARY: EPA is announcing that it has withdrawn its May 30, 2008 adequacy finding of the 2010 particulate matter of ten microns or less (PM–10) motor vehicle emission budget (MVEB) for the Maricopa County (Phoenix) Nonattainment Area. EPA has withdrawn the May 30, 2008 adequacy finding because the State of Arizona withdrew the state implementation plan (SIP) submission containing that MVEB. That SIP revision is no longer pending before EPA. On January 31, 2011, EPA sent letters to the Arizona Department of Environmental Quality (ADEQ) and the Maricopa Association of Governments (MAG) withdrawing the May 30, 2008 adequacy finding of the 2010 PM–10 MVEB. EPA's withdrawal of its May 30, 2008 adequacy finding means that the 2010 PM–10 MVEB is no longer available for transportation conformity purposes.

DATES: EPA's withdrawal of the May 30, 2008 adequacy finding was made in letters dated January 31, 2011 from EPA Region 9 to ADEQ and MAG. This withdrawal of the May 30, 2008 adequacy finding was effective on January 31, 2010.

FOR FURTHER INFORMATION CONTACT: Gregory Nudd, U.S. EPA Region 9, 415–947–4107, *nudd.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms "we," "us," and "our" mean U.S. EPA.

I. Background

On June 6, 2007, EPA found that the Maricopa County (Phoenix) nonattainment area failed to attain the 24-hour PM–10 National Ambient Air Quality Standards (NAAQS) by December 31, 2006 (72 FR 31183) as required by the area's most recent approved PM–10 SIP submission. This 2007 finding required the submittal of a new plan meeting the requirements of section 189(d) [1] of the Clean Air Act (CAA), and referred to herein as the "Five Percent Plan," by December 31, 2007.

On December 21, 2007, the Arizona Department of Environmental Quality (ADEQ) submitted the Five Percent Plan intended to address the CAA requirements in section 189(d). This Five Percent Plan included a PM–10 MVEB of 103.3 metric tons per day (mtpd).

On March 13, 2008, we announced receipt of the Five Percent Plan on the Internet and requested public comment on the adequacy of the motor vehicle emissions budget by April 14, 2008. We did not receive any comments during the comment period. During that time we reviewed the MVEB and determined that it met the adequacy criteria in 40 CFR 93.118(e)(4) and (5). We sent a letter to ADEQ on May 30, 2008 stating that the 2010 motor vehicle PM–10 emissions budget for the Maricopa area in the submitted Five Percent Plan was adequate. Our finding was published in the **Federal Register** on June 16, 2008 (73 FR 34013), effective on July 1, 2008.

EPA proposed to partially approve and partially disapprove the Five Percent Plan on September 9, 2010 (75 FR 54806). On January 25, 2011, prior to any final EPA action, Arizona withdrew the Five Percent Plan from the Agency's consideration.

It is important to note that while EPA had made an adequacy finding for this budget, it was never approved as a SIP revision by EPA. Hence, there is no SIP rulemaking required to be withdrawn by EPA in regard to this MVEB.

Because the MVEB EPA found adequate on May 30, 2008 was contained in the SIP submission that has been withdrawn by the State, that MVEB can no longer be considered adequate for transportation conformity purposes. EPA, therefore, sent letters on January 31, 2011 to ADEQ and MAG withdrawing the May 30, 2008 adequacy finding. Until a new PM–10 SIP is submitted and the motor vehicle emissions budget(s) in that SIP is found adequate or is approved, conformity determinations will be made using the budget of 59.7 metric tons per day from the Serious Area Plan for PM–10 for the Maricopa County Nonattainment Area which was approved by EPA on July 25, 2002 (67 FR 48718).

EPA has withdrawn its May 30, 2008 adequacy finding without prior notice and comment because adequacy findings are not considered rulemakings subject to the procedural requirements of the Administrative Procedures Act. In addition, EPA does not believe notice through EPA's conformity Web site is necessary in advance because the withdrawn SIP is no longer pending before EPA for consideration. Consequently, further public comment would be unnecessary and not in the public interest. By sending the January 28, 2011 letters, EPA has also withdrawn all statements and comments previously made regarding its May 30, 2008 adequacy finding of the MVEBs budgets for transportation conformity purposes.

II. Notice of Withdrawal of MVEB Adequacy Determination

This is an announcement of EPA's withdrawal of its May 30, 2008 adequacy finding. EPA withdrew this adequacy finding in letters dated January 31, 2011 from Deborah Jordan, Director, Air Division, EPA Region 9 to Eric C. Massey, Director, Air Quality Division, ADEQ and Dennis Smith, Executive Director, MAG. The effective date of this withdrawal is January 28, 2011 based on EPA's transportation conformity regulation at 40 CFR 93.118(f)(1)(vi). This announcement will also be made on EPA's Web site: *http://www.epa.gov/otaq/stateresources/transconf/index.htm* (once there, click on the "Adequacy Review of SIP Submissions" button and proceed to the Region 9 page for SIP submissions that have already been found adequate or inadequate).

Dated: January 31, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–2856 Filed 2–8–11; 8:45 am]

BILLING CODE 6560–50–P

[1] In the case of a serious PM–10 nonattainment area in which the PM–10 standard is not attained by the applicable attainment date, section 189(d) requires a state to submit a SIP revision that provides for attainment of the PM–10 standard and for an annual reduction in PM–10 and PM–10 precursor emissions within the area of not less than five percent of the amount of such emissions as reported in the most recent inventory prepared for such area.

FARM CREDIT ADMINISTRATION

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: Farm Credit Administration.

ACTION: Notice of establishment of a new system of records maintained on individuals; request for comment.

SUMMARY: Individuals employed by a depository institution, a subsidiary owned and controlled by a depository institution and regulated by a Federal banking agency, or an institution regulated by the Farm Credit Administration (FCA), who act as residential mortgage loan originators are

required by the Secure and Fair Enforcement for Mortgage Licensing Act (S.A.F.E. Act) to register in the Nationwide Mortgage Licensing System and Registry (NMLSR), to obtain unique identifiers, and to maintain their registrations.

NMLSR is a Web-based system developed and maintained by a non-Federal third party, as discussed below, to satisfy the requirements of the S.A.F.E. Act. NMLSR will allow a number of Federal agencies, including the FCA, to retrieve the registration information by identifying particulars. However, the FCA and the other Federal agencies referenced above will be able to retrieve the registration information by identifying particulars only with respect to employees of the institutions each agency regulates.

To ensure full compliance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended, the FCA is providing notice of the existence and character of records maintained by the NMLSR.

While employees of the financial institutions that the FCA regulates can submit registration information as of January 31, 2011, the FCA has blocked its own retrieval access to the registration information. Thus, there will not be a Privacy Act system of records until this notice becomes effective.

DATES: You may send written comments on or before March 15, 2011. The FCA filed a System Report with Congress and the Office of Management and Budget on February 3, 2011. This notice will become effective without further publication on March 15, 2011, unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESSES: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *E-mail:* Send us an e-mail at *reg-comm@fca.gov*.
- *FCA Web site: http://www.fca.gov*. Select "Public Commenters," then "Public Comments," and follow the directions for "Submitting a Comment."
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey Pienta, Attorney-Advisor, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of comments we receive at our office in McLean, Virginia, or from our Web site at *http://www.fca.gov*. Once you are in the Web site, select "Public Commenters," then "Public Comments," and follow the directions for "Reading Submitted Public Comments." We will show your comments as submitted but, for technical reasons, we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT: Jeffrey Pienta, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4431, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: This publication satisfies any requirement of the Privacy Act of 1974 that agencies publish a system of records notice in the **Federal Register** when there is an establishment of a new system of records. The notice reflects designated points of contact for inquiring about the system, accessing the records, and requesting amendments to the records.

To ensure compliance with 5 U.S.C. 552a(r) of the Privacy Act, as amended, the FCA has sent notice of this proposed system of records to the Office of Management and Budget, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate. The notice is published in its entirety below.

FCA

SYSTEM NAME:

Nationwide Mortgage Licensing System and Registry.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Financial Institution Regulatory Authority, 9509 Key West Avenue, Rockville, MD 20850 (Background Check System data).

HP Enterprise Services Charlotte SMC, 9014 Research Drive, Charlotte, NC 28262 (Production Center).

HP Enterprise Services Plano SMC, 6901 Windcrest Drive, Plano, TX 75024 (Duel Use Test and Disaster Recovery Facility).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Residential mortgage loan originators (MLOs) employed with: A depository institution; a subsidiary owned and controlled by a depository institution and regulated by a Federal banking agency; or an institution regulated by the Farm Credit Administration (FCA).

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains information documenting identity, including name and former names, Social Security number, gender, date of birth, and place of birth; home and business contact information; the date on which the MLO becomes an employee with the institution; criminal history, including the results of a background check; financial services-related employment history; civil, arbitration, regulatory, and disciplinary actions arising out of the MLO's financial services; and licensure revocations and suspensions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1507 of the Secure and Fair Enforcement for Mortgage Licensing Act (S.A.F.E. Act) (12 U.S.C. 5106).

PURPOSE(S):

The system is utilized to register MLOs employed by State and Federally regulated depository institutions (and those regulated by the FCA) in a national registry, as required by the S.A.F.E. Act. The information is maintained to support regulatory supervision while providing the general public with access to certain information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the FCA as a routine use as follows:

1. To the appropriate Federal, State, local, foreign, or self-regulatory organization or agency responsible for investigating, prosecuting, enforcing, implementing, issuing or carrying out a statute, rule, regulation, order, policy or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy or license;

2. To a Federal agency in the executive, legislative, or judicial branch of government, or to a Federal Reserve Bank, in connection with the hiring,

retaining, or assigning of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the receiving entity, or the lawful statutory, administrative, or investigative purpose of the receiving entity to the extent that the information is relevant and necessary to the receiving entity's decision on the matter.

3. To the Department of Justice, a court, an adjudicative body or administrative tribunal, a party in litigation, or a witness if the FCA determines, in its sole discretion, that the information is relevant and necessary to the matter;

4. To a congressional office in response to an inquiry from the congressional office made at the request of the individual to whom the record pertains;

5. To contractors, agents, or others performing work on a contract, service, cooperative agreement, or activity for the FCA and who have a need to access the information in the performance of their duties or activities for the FCA;

6. To appropriate Federal, State, local authorities, and other entities when (a) it is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

7. To depository institutions or their subsidiaries or institutions regulated by the FCA for use in registering employees as MLOs or renewing employee registrations; and

8. To third parties when the information relates to the employment history of, and publically adjudicated disciplinary and enforcement actions against, loan originators that is included in Nationwide Mortgage Licensing System and Registry for access by the public in accordance with section 1507 of the S.A.F.E. Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in electronic media.

RETRIEVABILITY:

Records are retrieved by an individual MLO's name or unique identification number and by the financial institution's name.

SAFEGUARDS:

Records are stored in a locked environment. Access to the system is limited to users who satisfy a comprehensive background check. The extent to which users have access is based on pre-determined roles. All data exchanges take place over an encrypted network.

RETENTION AND DISPOSAL:

There is presently no records control schedule covering the disposition and retention of FCA records maintained in NMLRS. FCA staff will work with the National Archives and Records Administration over the course of the next year to establish disposition and retention authority for FCA records maintained in NMLRS. No data or other FCA records of the system will be destroyed prior to obtaining such disposition and retention authority.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Management Services, 1501 Farm Credit Drive, McLean VA 22102–5090.

NOTIFICATION PROCEDURES:

An individual desiring to learn of the existence of, or to gain access to, his or her record in this system of records shall submit a request in writing to the Privacy Act Officer, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090. The request should contain: (1) A statement that it is made pursuant to the Privacy Act of 1974, (2) the name of the system of records expected to contain the record requested or a concise description of such system of records, (3) necessary information to verify the identity of the requester, and (4) any other information that may assist in the rapid identification of the record for which access is being requested.

RECORD ACCESS PROCEDURES:

Same as "Notification procedures" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedures" above except that the envelope should be clearly marked "Privacy Act Amendment Request." The request for amendment of a record should: (1) Identify the system of records containing the record for which amendment is requested, (2) specify the portion of that record requested to be amended, and (3) describe the nature of and reasons for each requested amendment.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from MLOs who submit information to the registry and the results of FBI background checks.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: February 3, 2011.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2011–2840 Filed 2–8–11; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

February 3, 2011.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before April 11, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of

time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, at *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Formal Complaint Procedures, Preserving the Open Internet and Broadband Industry Practices, Report and Order, GN Docket No. 09–191 and WC Docket No. 07–52.

Form Number: N/A.

Type of Review: New collection.

Respondents: Businesses or other for-profit entities; Not-for profit entities; State, local or tribal governments; Individuals/households.

Number of Respondents and Responses: 10 respondents and 15 responses.

Estimated Time per Response: 2 to 40 hours.

Frequency of Response: On occasion reporting requirement; Third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for the information collection requirements is contained in 47 U.S.C. 151, 152, 153, 154, 201, 218, 230, 251, 254, 256, 257, 301, 303, 304, 307, 309, 316, 332, 403, 503, 522, 536, 548, 1302, and interpret or apply S. Rep. No. 104–23, at 51 (1995).

Total Annual Burden: 239 hours.

Total Annual Cost of Outside Goods and Services: $40,127.

Nature and Extent of Confidentiality: Applicants may request that any information supplied be withheld from public inspection, as set forth in section 8.16 of Appendix B of Preserving the Open Internet and Broadband Industry Practices, Report and Order (OI R&O), GN Docket No. 09–191, WC Docket No. 07–52, FCC 10–201.

Privacy Impact Assessment: Privacy analysis in progress.

Needs and Uses: The rules adopted in the OI R&O establish a formal complaint process to address open Internet disputes that cannot be resolved through other means, including the Commission's informal complaint system. This process will permit individual end users, edge providers, and other interested persons to file a claim alleging that another party has violated a statute or rule, and asking the Commission to rule on the dispute. The formal complaint rules will facilitate prompt and effective enforcement of the rules adopted in the OI R&O, which is crucial to preserving an open Internet and providing clear guidance to stakeholders.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–2786 Filed 2–8–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

February 3, 2011.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before April 11, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Disclosure of Network Management Practices, Preserving the Open Internet and Broadband Industry Practices, Report and Order, GN Docket No. 09–191 and WC Docket No. 07–52.

Form Number: N/A.

Type of Review: New collection.

Respondents: Businesses or other for-profit entities; Not-for profit entities; State, local or tribal governments.

Number of Respondents and Responses: 1,519 respondents; 1,519 responses.

Estimated Time per Response: 10.3 hours (average).

*Frequency of Respo*nse: On occasion reporting requirement; Third-party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for the information collection requirements is contained in 47 U.S.C. 151, 152, 153, 154, 201, 218, 230, 251, 254, 256, 257, 301, 303, 304, 307, 309, 316, 332, 403, 503, 522, 536, 548, 1302. Interpret or apply S. Rep. No. 104–23, at 51 (1995).

Total Annual Burden: 15,646 hours.

Total Annual Cost of Outside Goods and Services: None.

Nature and Extent of Confidentiality: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The rules adopted in the Open Internet and Broadband Industry Practices, Report and Order, GN Docket No. 09–191, WC Docket No. 07–52, FCC 10–201, require all providers of broadband Internet access service to publicly disclose accurate information regarding the network management practices, performance, and commercial terms of their broadband Internet access services sufficient for consumers to make informed choices regarding use of such services and for content, application, service, and device providers to develop, market, and maintain Internet offerings. The rules ensure transparency and continued Internet openness, while making clear that broadband providers can manage their networks effectively. The Commission anticipates that due to the extent and nature of their services small entities may have less of a burden and larger entities may have more of a burden than the average compliance burden.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–2787 Filed 2–8–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2924]

Petitions for Reconsideration of Action in Rulemaking Proceeding

February 2, 2011.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by February 24, 2011. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to oppositions must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Unlicensed Operation in the TV Broadcast Bands (ET Docket No. 04–186).

Number of Petitions Filed: 5.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–2903 Filed 2–8–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 1:54 p.m. on Monday, February 7, 2011, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate and resolution activities.

In calling the meeting, the Board determined, on motion of Director John E. Bowman (Acting Director, Office of Thrift Supervision), seconded by Director Thomas J. Curry (Appointive), concurred in by Vice Chairman Martin J. Gruenberg, Director John G. Walsh (Acting Comptroller of the Currency), and Chairman Sheila C. Bair, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: February 7, 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–3025 Filed 2–7–11; 4:15 pm]

BILLING CODE P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: January 24, 2011.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10328	CommunitySouth Bank & Trust	Easley	SC	1/21/2011
10329	Enterprise Banking Company	McDonough	GA	1/21/2011
10330	The Bank of Asheville	Asheville	NC	1/21/2011
10331	United Western Bank	Denver	CO	1/21/2011

[FR Doc. 2011–2824 Filed 2–8–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time

to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: January 31, 2011.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10332	Evergreen State Bank	Stoughton	WI	1/28/2011
10333	First Community Bank	Taos	NM	1/28/2011
10334	FirsTier Bank	Louisville	CO	1/28/2011
10335	The First State Bank	Camargo	OK	1/28/2011

[FR Doc. 2011–2825 Filed 2–8–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 010050–020.

Title: U.S. Flag Discussion Agreement.

Parties: American President Lines, Ltd.; APL Co. PTE Ltd.; A.P. Moller-Maersk A/S; and Hapag-Lloyd USA, LLC.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment would add Hapag-Lloyd AG as a party to the agreement and update APL's address.

Agreement No.: 010982–048.

Title: Florida-Bahamas Shipowners and Operators Association.

Parties: Bernuth Lines, Ltd.; Crowley Caribbean Services LLC/Crowley Liner Services, Inc.; and Seaboard Marine, Ltd.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment deletes SeaFreight Line, Ltd. as a party to the agreement.

Agreement No.: 011953–010.

Title: Florida Shipowners Group Agreement.

Parties: The member lines of the Caribbean Shipowners Association and the Florida-Bahamas Shipowners and Operators Association.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment deletes SeaFreight Line, Ltd. as a party to the agreement.

Agreement No.: 012061–002.

Title: CMA CGM/Maersk Line Space Charter, Sailing and Cooperative Working Agreement Western Mediterranean-U.S. East Coast.

Parties: CMA CGM, S.A. and A.P. Moller-Maersk A/S.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006.

Synopsis: The amendment revises the vessel provisions and space allocations under the agreement.

By Order of the Federal Maritime Commission.

Dated: February 4, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–2842 Filed 2–8–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by e-mail at *OTI@fmc.gov*.

Aetna Forwarding, Inc. (NVO & OFF), 3572 Lawson Blvd., Oceanside, NY 11572. Officer: Michael Siracusano, President/Secretary (Qualifying Individual). Application Type: Add NVO Service.

Jarvis International Freight, Inc. OFF), 1950 S. Starpoint Drive, Houston, TX 77032. Officer: Walter Krauklis, OTI Compliance Officer (Qualifying Individual), Thomas B. Crowley, Jr., Director/COB. Application Type: QI Change.

Leading Edge Logistics LLC (NVO & OFF), 90 S. Newtown Street Road, Suite 14, Newtown Square, PA 19073. Officer: Thomas D. Torcomian, CEO/Member (Qualifying Individual). Application Type: New NVO & OFF License.

Sofija Gjonbalaj dba Euroship (OFF), 3685 Shore Parkway, #3D, Brooklyn, NY 11235. Officer: Sofija Gjonbalaj, Sole Proprietor (Qualifying Individual). Application Type: New OFF License.

Solomon Emeke dba Desaiah Limited (OFF), 3696 Park Avenue, #300, Ellicott City, MD 21043. Officer: Solomon Emeke, Sole Proprietor (Qualifying Individual). Application Type: New OFF License.

TTS Worldwide, LLC (NVO & OFF), 1764 Quarter Street, West Babylon, NY 11704. Officers: Bernadette Proctor, Vice President (Qualifying Individual), Robert Cole, President. Application Type: QI Change.

Dated: February 3, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–2847 Filed 2–8–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
020445NF	Freight It, Inc., 11222 La Cienega Blvd., Suite 555, Inglewood, CA 90304	November 26, 2010.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011–2843 Filed 2–8–11; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 2226F.
Name: Foley, III, William Cody dba Cody Forwarding Company.
Address: 7015 W. Tidwell Road, Suite G–11A, Houston, TX 77092.
Date Revoked: January 7, 2011.
Reason: Failed to maintain a valid bond.

License Number: 4032F.
Name: Logistics International, Inc.
Address: 10159 East 11th Street, Suite 120, Tulsa, OK 74128.
Date Revoked: January 2, 2011.
Reason: Failed to maintain a valid bond.

License Number: 004441F.
Name: Econoquality Freight Forwarders, Inc. dba EQ Line.
Address: 3201 NW 116th Street, Suite B, Miami, FL 33167.
Date Revoked: January 13, 2011.
Reason: Failed to maintain a valid bond.

License Number: 16795F.
Name: Starlink International, Inc.
Address: 6912 NW 51st Street, Miami, FL 33166.
Date Revoked: February 1, 2011.
Reason: Surrendered license voluntarily.

License Number: 18672N.
Name: Santa Lucia Cargo Inc.
Address: 2960 Kelp Lane, Apt. A, Oxnard, CA 93035–1672.
Date Revoked: January 3, 2011.
Reason: Failed to maintain a valid bond.

License Number: 020577F.
Name: Bosmak, Inc. dba Ocean Breeze Shipping.
Address: 2501 Harford Road, Baltimore, MD 21218.
Date Revoked: January 14, 2011.
Reason: Failed to maintain a valid bond.

License Number: 021275NF.
Name: SDS Global Logistics, Inc.
Address: 52–09 31st Place, Long Island City, NY 11101.
Date Revoked: January 16, 2011.
Reason: Failed to maintain valid bonds.

License Number: 021504F.
Name: Onward Shipping & Clearing Service Inc.
Address: 2305 Oak Lane, Suite 201B, Grand Prairie, TX 75051.
Date Revoked: January 10, 2011.
Reason: Surrendered license voluntarily.

License Number: 022656F.
Name: Clearsky Logistics Management, LLC.
Address: 887 West Marietta Street NW., Suite M–202, Atlanta, GA 30318.
Date Revoked: January 1, 2011.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011–2844 Filed 2–8–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 24, 2011.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Jennifer Wells Steans, Evanston, Illinois, Heather Steans and Robin Steans,* Chicago, Illinois, as trustees of The Steans 1996 Family Trust; The Steans 1996 Family Trust, Chicago, Illinois; Trilogy Investment Group, LLC, Chicago, Illinois; Adeline Steans Morrison, Lake Forest, Illinois; Helen Harrison Morrison, Washington, D.C.; Lois Langdon Morrison, Chicago, Illinois; Justin William Daab, Chicago, Illinois; Margot Morrison Brinley, Charlotte, North Carolina; Charles Edward Brinley, Charlotte, North Carolina, Amy Morrison Heinrich, Grayslake, Illinois; Foursquare Investments, LLC, Chicago, Illinois; Thomas Benton Hunter IV, Lake Forest, Illinois; Willard Morrison Hunter, Lake Bluff, Illinois, individually and as custodian for Willard K. Hunter; Benjamin James Hunter, Chicago, Illinois; Peter Morrison Hunter, New York, New York; Tscharner de Graffenried Hunter, New York, New York; and Thomas Ruffin Hunter, Lake Forest, Illinois, to retain and acquire shares of Taylor Capital Group, Inc., Rosemont, Illinois, and indirectly Cole Taylor Bank, Chicago, Illinois, and thereby join the existing Steans Family Control Group.

Board of Governors of the Federal Reserve System, February 4, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–2864 Filed 2–8–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 7, 2011.

A. Federal Reserve Bank of Atlanta (Clifford Stanford, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. *The BANKshares, Inc.,* Winter Park, Florida, to merge with The Commercial Bancorp, Inc., and thereby acquire, East Coast Community Bank, both of Ormond Beach, Florida.

2. *Hancock Holding Company,* Gulfport, Mississippi, to merge with Whitney Holding Corporation, and thereby acquire, Whitney National Bank, both of New Orleans, Louisiana.

Board of Governors of the Federal Reserve System, February 4, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–2865 Filed 2–8–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission ("Commission" or "FTC").

ACTION: Notice.

SUMMARY: The FTC is seeking public comments on its proposal to extend through August 31, 2014, the current Paperwork Reduction Act ("PRA") clearance for information collection requirements contained in the Children's Online Privacy Protection Act Rule ("COPPA Rule"), which will expire on August 31, 2011.

DATES: Comments must be filed by April 11, 2011.

ADDRESSES: Interested parties may submit written comments electronically or in paper form by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted by using this weblink: *https://ftcpublic.commentworks.com/ftc/coppapra* (and following the instructions on the web-based form). Comments filed in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–113, 600 Pennsylvania Avenue, NW., Washington, DC 20580, in the manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information regarding this proceeding should be addressed to Mamie Kresses, Federal Trade Commission, Bureau of Consumer Protection, Division of Advertising Practices, 600 Pennsylvania Ave., NW., Mail Drop NJ–3212, Washington, DC 20580, (202) 326–2070.

SUPPLEMENTARY INFORMATION: The COPPA Rule, 16 CFR Part 312, requires commercial Web sites to provide notice and obtain parents' consent before collecting, using, and/or disclosing personal information from children under age 13, with limited exceptions.

Request for Comments

Under the PRA, 44 U.S.C. 3501–3521, Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the COPPA Rule. (OMB Control Number 3084–0117). Comments must be received on or before the deadline specified above in the **DATES** section in order to be considered by the Commission.

The FTC invites comments on: (1) Whether the required collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (2) the accuracy of the agency's estimate of the burden of the required collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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.

Comments should refer to "COPPA Rule: FTC File No. P114504" to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC Web site, at *http://www.ftc.gov/os/publiccomments.shtm.*

Because comments will be made public, you are solely responsible for ensuring they do not include any sensitive personal information, such as any individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any "[t]rade secret or any commercial or financial information which is * * * privileged or confidential." *See* Section 6(f) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2).

Comments containing matter for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c).[1]

Please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted using the following weblink: *https://ftcpublic.commentworks.com/ftc/copparulepra* and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink *https://ftcpublic.commentworks.com/ftc/coppapra.* If this Notice appears at *http://www.regulations.gov/search/index.jsp,* you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

The Commission will consider all timely and responsive public comments that it receives. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.shtm.*

Burden Statement

Estimated annual hours burden: 6,100 hours.

(a) *Disclosure Requirements:* 6,000 hours.

The COPPA Rule contains certain statutorily-required notice requirements, which constitute a "collection of information" under the PRA. These are:

(1) Each Web site and online service directed to children, and any Web site or online service with actual knowledge that it is collecting personal information from children, must provide notice of how it collects, uses, and discloses such information and, with limited exceptions, must obtain the prior consent of the child's parent in order to engage in such collection, use, and disclosure;

(2) The operator must provide the parent with notice of the specific types of personal information being collected from the child and give the parent the opportunity to forbid the operator from collecting, using, or maintaining such information, and to provide reasonable means for the parent to obtain access to the information and to direct its deletion; and,

(3) Web site and online service operators must establish procedures that protect the confidentiality, security, and integrity of personal information collected from children.

The FTC staff estimates that roughly 100 new web entrants each year will fall within the Rule's coverage and that, on average, new entrants will spend approximately 60 hours crafting a privacy policy, designing mechanisms to provide the required online privacy notice and, where applicable, the direct notice to parents.[2] Accordingly, staff estimates that complying with the Rule's disclosure requirements will require approximately 6,000 hours (100 new web entrants × 60 hours per entrant). Consistent with prior estimates, FTC staff estimates that the time spent on compliance would be apportioned five to one between legal (lawyers or similar professionals) and technical (computer programmers) personnel. Staff therefore estimates that lawyers or similar professionals who craft privacy policies will account for 5,000 of the 6,000 hours required. Computer programmers responsible for posting privacy policies and implementing direct notices and parental consent mechanisms will account for the remaining 1,000 hours.

Web site operators that have previously created or adjusted their sites to comply with the Rule will incur no further burden associated with the Rule, unless they opt to change their policies and information collection in ways that will further invoke the Rule's provisions. Moreover, staff believes that existing COPPA-compliant operators who introduce additional sites beyond those they already have created will incur minimal, if any, incremental PRA burden. This is because such operators already have been through the start-up phase and can carry over the results of that to the new sites they create.

(b) *Voluntary Reporting Requirements for Safe Harbor Participants:* 100 hours

Operators can comply with the Rule by meeting the terms of industry self-regulatory guidelines that the Commission approves after notice and comment.[3] While the submission of industry self-regulatory guidelines to the agency is voluntary, the Rule includes specific reporting requirements that all safe harbor applicants must provide to receive Commission approval. Staff retains its estimate that it would require, on average, 265 hours per new safe harbor program applicant to prepare and submit its safe harbor proposal in accordance with Section 312.12(c) of the Rule. Industry sources have confirmed that this estimate is reasonable and advised that all of this time would be attributable to the efforts of lawyers. Given that several safe harbor programs are already available to Web site operators, FTC staff believes that it is unlikely that more than one additional safe harbor applicant will submit a request within the next three years of PRA clearance sought. Thus, annualized burden attributable to this requirement would be approximately 88 hours per year (265 hours ÷3 years) or, roughly, 100 hours. Staff believes that most of the records submitted with a safe harbor request would be those that these entities have kept in the ordinary course of business, and that any incremental effort associated with maintaining the results of independent assessments or other records under Section 312.10(d)(3) also would be in the normal course of business. In accordance with the regulations implementing the PRA, the burden estimate excludes effort expended for these activities. 5 CFR 1320.3(b)(2).

Accordingly, FTC staff estimates that total burden per year for disclosure requirements affecting new web entrants and reporting requirements for safe harbor applications would be approximately 6,100 hours.

Estimated annual cost burden:

1. *Labor costs:* Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. Staff assumes hourly rates of $150 and $36, respectively, for lawyers or similar professionals and computer programmers.[4] Based on these inputs,

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

[2] Although the FTC staff cannot determine with certainty the number of new entrants potentially subject to the Rule, the staff believes this estimate is reasonable based upon current trends. The staff retains its estimate of 60 hours per new entrant. This estimate has been published for comment in prior FTC notices regarding renewed clearance for the Rule, and the Commission has not received any comments challenging it. *See, e.g.,* 73 FR 35689 (June 24, 2008); 70 FR 21107 (April 22, 2005).

[3] *See* Section 312.10(c). Approved self-regulatory guidelines can be found on the FTC's Web site at *http://www.ftc.gov/privacy/privacyinitiatives/childrens_shp.html.*

[4] FTC staff estimates average legal costs at $150 per hour, which is roughly midway between Bureau of Labor Statistics (BLS) mean hourly wages shown for attorneys (approximately $56) in the most recent whole-year data (2009) available online and what staff believes more generally reflects hourly attorney costs ($250) associated with Commission information collection activities. The $36 estimate for computer programmers is also based on the most recent whole-year BLS data available online. *See* National Compensation Survey: Occupational Earnings in the United States, 2009, at Table 3,

staff further estimates that associated annual labor costs for new entrants would be $801,000 [(5,100 hours × $150 per hour for legal) + (1,000 hours × $36 per hour for computer programmers)] and $15,000 for safe harbor applicants (100 hours per year × $150 per hour), for a total labor cost of approximately $816,000.

2. *Capital or other non-labor costs:* Because Web sites will already be equipped with the computer equipment and software necessary to comply with the Rule's notice requirements, the predominant costs incurred by the Web sites are the aforementioned estimated labor costs. Similarly, industry members should already have in place the means to retain and store the records that must be kept under the Rule's safe harbor recordkeeping provisions, because they are likely to have been keeping these records independent of the Rule. Capital and start-up costs associated with the Rule are minimal.

Willard K. Tom,

General Counsel.

[FR Doc. 2011–2904 Filed 2–8–11; 8:45 am]

BILLING CODE 6750–01–P

available at http://www.bls.gov/ncs/ocs/sp/nctb1346.pdf.

FEDERAL TRADE COMMISSION

[File Nos. 092 3088, 082 3208, 092 3089]

ACRAnet, Inc.; SettlementOne Credit Corporation, and Sackett National Holdings, Inc.; Fajilan and Associates, Inc., d/b/a Statewide Credit Services, and Robert Fajilan; Analysis of Proposed Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreements in these three matters settle alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis To Aid Public Comment describes both the allegations in each draft complaint and the terms of the consent order—embodied in each consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 7, 2011.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to "ACRAnet, Inc., File No. 092 3088, and/or SettlementOne Credit Corporation, File No. 082 3208, and/or Statewide Credit Services, File No. 092 3089" to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC Web site, at *http://www.ftc.gov/os/publiccomments.shtm.*

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. * * *," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using one of the following weblinks: *https://ftcpublic.commentworks.com/ftc/acranet; https://ftcpublic.commentworks.com/ftc/settlementone; https://ftcpublic.commentworks.com/ftc/statewide,* and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at one of the following weblinks: *https://ftcpublic.commentworks.com/ftc/acranet; https://ftcpublic.commentworks.com/ftc/settlementone; https://ftcpublic.commentworks.com/ftc/statewide.* If this Notice appears at *http://www.regulations.gov/search/index.jsp,* you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Web site at *http://www.ftc.gov/* to read the Notice and the news release describing it.

A comment filed in paper form should include the "to ACRAnet, Inc., File No. 092 3088, and/or SettlementOne Credit Corporation, File No. 082 3208, and/or Statewide Credit Services, File No. 092 3089" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–135 (Annex D), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act ("FTC Act") and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.shtm.*

FOR FURTHER INFORMATION CONTACT: Katherine White (202–326–2252), Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of thirty (30) days. The following

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Analysis To Aid Public Comment describes the terms of the consent agreements, and the allegations in the draft complaints. An electronic copy of the full text of each consent agreement package can be obtained from the FTC Home Page (for February 3, 2011), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* Paper copies can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, three agreements containing consent orders from ACRAnet, Inc. ("ACRAnet"); SettlementOne, Inc. ("SettlementOne"), and its parent corporation Sackett National Holdings, Inc.; and Fajilan and Associates, Inc. d/b/a Statewide Credit Services ("statewide") and its principal Robert Fajilan (collectively "respondents").

The proposed consent orders have been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreements and the comments received, and will decide whether it should withdraw from the agreements and take appropriate action or make final the agreements' proposed orders.

According to the Commission's proposed complaints, respondents contract with the three nationwide consumer reporting agencies, Experian, Equifax, and TransUnion to obtain consumer reports that they assemble and merge into a single "trimerge report." The trimerge reports contain sensitive consumer information such as full name, current and former addresses, social security number, date of birth, employer history, credit account histories and information, and account numbers. Respondents provides the trimerge reports to end user clients through an online portal. Respondents issue credentials to their clients, which consist of a user name and password. The end user clients use these credentials to access respondents' online portals and receive trimerged reports.

The Commission's complaints allege that respondents engaged in a number of practices that, taken together, failed to provide reasonable and appropriate security for consumers' personal information. Among other things, they failed to: (a) Develop and disseminate comprehensive written information security policies; (b) assess the risks of allowing end users with unverified or inadequate security to access consumer reports through their online portals; (c) implement reasonable steps to address these risks by, for example, evaluating the security of end users' computer networks, requiring appropriate information security measures, and training end user clients; (d) implement reasonable steps to maintain an effective system of monitoring access to consumer reports by end users, including by monitoring to detect anomalies and other suspicious activity; and (e) take appropriate action to correct existing vulnerabilities or threats to personal information in light of known risks.

The complaints further allege that hackers were able to exploit vulnerabilities in the computer networks of multiple end user clients, putting all consumer reports in those networks at risk. In multiple breaches, hackers accessed hundreds of consumer reports.

According to the proposed complaints, respondents' practices violated the Gramm-Leach-Bliley ("GLB") Safeguards Rule by, among other things: (1) Failing to design and implement information safeguards to control the risks to customer information; (2) failing to regularly test or monitor the effectiveness of existing controls and procedures; (3) failing to evaluate and adjust the information security programs in light of known or identified risks; and (4) failing to develop, implement, and maintain comprehensive information security programs. In addition, the proposed complaints allege that respondents' conduct violated sections 604 and 607(e) of the Fair Credit Reporting Act ("FCRA"). Further, the proposed complaints allege that respondents' failure to employ reasonable and appropriate measures to secure the personal information they maintain and sell is an unfair practice in violation of Section 5 of the Federal Trade Commission Act.

The proposed orders contain provisions designed to prevent respondents from engaging in similar practices in the future. They also apply to personal information respondents collect from or about consumers. The orders name the resellers themselves, ACRAnet, SettlementOne, and Statewide; in the case of SettlementOne, its parent corporation Sackett National Holdings; and in the case of Statewide, its principal Robert Fajilan.

Part I of the proposed orders requires respondents to establish and maintain a comprehensive information security program that is reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about consumers, including the security, confidentiality, and integrity of personal information accessible to end users.[2] The security program must contain administrative, technical, and physical safeguards appropriate to each respondent's size and complexity, the nature and scope of its activities, and the sensitivity of the personal information collected from or about consumers. Specifically, the orders require respondents to:

- Designate an employee or employees to coordinate and be accountable for the information security program.
- Identify material internal and external risks to the security, confidentiality, and integrity of personal information that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks.
- Design and implement reasonable safeguards to control the risks identified through risk assessment, and regularly test or monitor the effectiveness of the safeguards' key controls, systems, and procedures.
- Develop and use reasonable steps to select and retain service providers capable of appropriately safeguarding personal information they receive from respondents, and require service providers by contract to implement and maintain appropriate safeguards.
- Evaluate and adjust the information security program in light of the results of the testing and monitoring, any material changes to the company's operations or business arrangements, or any other circumstances that they know or have reason to know may have a material impact on the effectiveness of their information security program.

Part II of the proposed orders prohibits respondents from violating any provision of the GLB Safeguards Rule.

[2] The proposed order against Statewide includes an individual respondent, Robert Fajilan. Parts I–VI of this order apply to any business entity that Mr. Fajilan controls.

Part III of the proposed orders requires that respondents, in connection with the compilation, creation, sale or dissemination of any consumer report shall: (1) Furnish such consumer report only to those persons it has reason to believe have a permissible purpose as described in Section 604(a)(3) of the FCRA, or under such other circumstances as set forth in Section 604 of the FCRA; and (2) maintain reasonable procedures to limit the furnishing of such consumer reports to those with a permissible purpose and ensure that no consumer report is furnished to any person when there are reasonable grounds to believe that the consumer report will not be used for a permissible purpose.

Part IV of the proposed orders requires that respondents obtain within 180 days, and on a biennial basis thereafter for twenty (20) years, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that they have in place a security program that provides protections that meet or exceed the protections required by Part I of the proposed order; and their security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of consumers' personal information is protected.[3]

Parts V through IX of the proposed orders are reporting and compliance provisions. Part V requires respondents to retain documents relating to their compliance with the orders. For most records, the orders require that the documents be retained for a five-year period. For the third-party assessments and supporting documents, respondents must retain the documents for a period of three years after the date that each assessment is prepared. Part VI requires dissemination of the orders now and in the future to principals, officers, directors, and managers, and all employees, agents and representatives who engage in conduct related to the subject matter of the order. In the ACRAnet and SettlementOne orders, Part VII ensures notification to the FTC of changes in corporate status. In the Statewide order, Part VII requires the individual respondent to notify the FTC of changes in contact information, business or employment status, and Part VIII requires the corporate respondent to notify the FTC of changes in corporate status. Part VIII of the ACRAnet and SettlementOne orders and Part XI of the Statewide order mandate that respondents submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. The last provision of the orders is a provision "sunsetting" the orders after twenty (20) years, with certain exceptions.

The purpose of the analysis is to aid public comment on the proposed orders. It is not intended to constitute an official interpretation of the proposed orders or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark

Secretary.

[3] The proposed order against SettlementOne and Sackett National Holdings does not require Sackett National Holdings to obtain an assessment for any subsidiary, division, affiliate, successor or assign if the personal information such entities collect, maintain, or store from or about consumers is limited to a first and last name; a home or other physical address, including street name and name of city or town; an e-mail address; a telephone number; or publicly available information regarding property ownership and appraised home value.

Statement of Commissioner Brill, In Which Chairman Leibowitz and Commissioners Rosch and Ramirez Join

In the Matter of SettlementOne Credit Corporation, et al., In the Matter of ACRAnet, Inc., In the Matter of Fajilan and Associates, et al.

The respondents in these three matters are resellers of consumer reports who failed to take reasonable measures to protect sensitive consumer credit information. We fully support staff's work on these matters. We write separately to emphasize that in the future we will call for imposition of civil penalties against resellers of consumer reports who do not take adequate measures to fulfill their obligations to protect information contained in consumer reports, as required by the Fair Credit Reporting Act ("FCRA").

The respondents in these three matters treated their legal obligations to protect consumer information as a paper exercise. Respondents provided only a cursory review of security measures. Thereafter, respondents took no further action to ensure that their customers' security measures adequately protected the information in the consumer reports. Nor did they provide training on security measures to end users. Even after discovering security breaches that should have alerted them to problems with the data security of some customers, respondents failed to implement measures to check the security practices of other clients.

The FCRA requires respondents to take reasonable measures to ensure that consumer reports are given only to entities using the reports for purposes authorized by the statute.[1] As a result of respondents' failure to comply with the FCRA, nearly 2,000 credit reports were improperly accessed. There is not doubt that such unauthorized access can result in grave consumer harm through identity theft.

The significant impact and cost of identity theft are well documented. Although reports regarding the impact of identity theft do not always agree on specific figures, they do reveal tremendous economic and non-economic consequences for both consumers and the economy. The Commission itself issued reports in both 2003[2] and 2007.[3] Our 2007 report estimated that in 2005 alone 8.3 million consumers fell victim to identity theft. We found that 1.8 million of those victims had new accounts opened in their names. One-quarter of the "new account victims" incurred more than $1,000 in out-of-pocket expenses and five percent spent 1,200 hours in dealing with the consequences of the theft. The report concluded that total losses from identity theft in 2006 totaled $15.6 billion. Beyond these financial impacts, we also identified non-economic harm to victims in many forms: Denial of new credit or loans, harassment from collection agencies, the loss of the time involved in resolving the problems, and being subjected to criminal investigation. In view of the hardships and costs brought on by identity theft, measures to prevent it must be rigorously enforced.

While we view the breaches in these cases with alarm, we are also cognizant of the fact that these are the first cases in which the Commission has held resellers responsible for downstream data protection failures.[4] Looking forward, the actions we announce today should put resellers—indeed, all of those in the chain of handling consumer data—on notice of the seriousness with which we view their legal obligations to proactively protect consumers' data.

The Commission should use all of the tools at its disposal to protect consumers from the enormous risks posed by security breaches that may lead to identity theft. In the future, we should not hesitate to use our authority to seek civil penalties under the FCRA[5] to make the protection of consumer data a top priority for those who profit from its collection and dissemination.

[1] 15 U.S.C. 1681b; 15 U.S.C. 1681e(a).

[2] Fed. Trade Comm'n. *Identity Theft Survey Report* (2003), *available at http://www.ftc.gov/os/2003/09/synovatereport.pdf.*

[3] Fed. Trade Comm'n, 2006 *Identity Theft Survey Report* (2007), *available at http://www.ftc.gov/os/2007/11/SynovateFinalReportIDTheft2006.pdf.*

[4] The Commission has previously taken action where the credit reporting agency failed to adequately screen purchasers of consumer credit information. For instance, in *United States* v. *ChoicePoint, Inc.,* 09–CV–0198 (N.D. Ga. Oct. 19, 2009), the Commission alleged that the failure to screen customers led to the sale of 160,000 credit reports to identity thieves posing as customers of ChoicePoint.

[5] The Fair Credit Reporting Act authorizes the Commission to seek civil penalties for violations of the Act. 15 U.S.C. 1681s(a)(2)(A).

[FR Doc. 2011–2790 Filed 2–8–11; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 66 FR 6617, January 22, 2001, and redesignated from Part HN as Part N at 60 FR 56605, November 9, 1995), is amended as set forth below to establish the Office of Portfolio Analysis (OPA) and Office of Program Evaluation and Performance (OPEP) within the Division of Program Coordination, Planning and Strategic Initiative (DPCPSI) within the Office of the Director.

Section N–AW, Organization and Functions, is amended as follows: Immediately after the paragraph headed "Office of Portfolio Analysis and Strategic Initiatives" (N AW6, formerly HN AW6), insert the following:

Office of Portfolio Analysis (N AW7, formerly N AW7) (1) Prepare and analyze data on NIH sponsored biomedical research to inform trans-NIH planning and coordination; (2) serve as a resource for portfolio management at the programmatic level; (3) employ databases, analytic tools, methodologies and other resources to conduct assessments in support of portfolio analyses and priority setting in scientific areas of interest across NIH; (4) research and develop new analytic tools, support systems, and specifications for new resources in coordination with other NIH organizations to enhance the management of the NIH's scientific portfolio; and (5) provide, in coordination with other NIH organizations, training on portfolio analysis tools, procedures, and methodology.

Office of Program Evaluation and Performance (N AW8, formerly N AW8) (1) Plan, conduct, coordinate, and support program evaluations, including IC-specific program and project evaluations and trans-NIH evaluations; (2) manage and administer NIH's Evaluation Set-Aside Program; (3) coordinate and direct the preparation of plans and reports required by the Government Performance and Results Act (GPRA), including the development of required performance measures; (4) identify and advise on emerging national issues within program evaluation and performance, including NIH's response to legislative, regulatory, and policy requirements of the GPRA and administration of the NIH-wide evaluation program.

Delegations of Authority Statement: All delegations and redelegations of authority to officers and employees of NIH that were in effect immediately prior to the effective date of this reorganization and are consistent with this reorganization shall continue in effect, pending further redelegation.

Dated: January 21, 2011.

LaVerene Stringfield,

Associate Director for Management, OD, ES, NIH.

[FR Doc. 2011–2848 Filed 2–8–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–11–10BG]

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 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

National Voluntary Environmental Assessment Information System (NVEAIS)—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC is requesting OMB approval for a National Voluntary Environmental Assessment Information System to collect data from foodborne illness outbreak environmental assessments routinely conducted by local, state, territorial, or tribal food safety programs during outbreak investigations. Environmental assessment data are not currently collected at the national level. The data reported through this information system will provide timely data on the causes of outbreaks, including environmental factors associated with outbreaks, and are essential to environmental public health regulators' efforts to respond more effectively to outbreaks and prevent future, similar outbreaks.

The information system was developed by the Environmental Health Specialists Network (EHS–Net), a collaborative project of federal and state public health agencies. The EHS–Net has developed a standardized instrument for reporting data relevant to foodborne illness outbreak environmental assessments.

State, local, tribal, and territorial food safety programs are the respondents for this data collection. Although it is not possible to determine how many programs will choose to participate, as NVEAIS is voluntary, the maximum potential number of program respondents is approximately 3,000.

However, these programs will be reporting data on outbreaks, not their programs or personnel. It is not possible to determine exactly how many outbreaks will occur in the future, nor where they will occur. However, we can estimate, based on existing data that a maximum of 1,400 foodborne illness outbreaks will occur annually. Only programs in the jurisdictions in which these outbreaks occur would report to NVEAIS. Consequently, we have based our respondent burden estimate on the number of outbreaks likely to occur each year. Assuming each outbreak occurs in a different jurisdiction, there will be one respondent per outbreak. Each respondent will respond only once per outbreak investigated.

There are two activities for which we need to estimate burden for these programs. The first is entering all requested environmental assessment data into NVEAIS. This will be done once for each outbreak. This will take approximately 120 minutes per outbreak.

The second activity requiring a burden estimate is the manager interview that will be conducted at each establishment associated with an

outbreak. Most outbreaks are associated with only one establishment; however, some are associated with multiple establishments. We estimate that a maximum average of 4 manager interviews will be conducted per outbreak. Each interview will take about 20 minutes.

The total estimated annual burden is 4,667 hours (see Table). There is no cost to the respondents other than their time.

ESTIMATED ANNUAL BURDEN HOURS

Respondents	Data collection activity/form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)
Food safety program personnel	Reporting environmental assessment data into electronic system.	1,400	1	2
Food safety program personnel	Manager interview	1,400	4	20/60

Dated: February 3, 2011.

Carol E. Walker,

CDC Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–2817 Filed 2–8–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Board of Scientific Counselors, National Center for Health Statistics, Department of Health and Human Services, has been renewed for a 2-year period through January 19, 2013.

For information, contact Virginia Cain, PhD, Designated Federal Officer, Board of Scientific Counselors, National Center for Health Statistics, Department of Health and Human Services, 3311 Toledo Road, Room 7204, Mailstop P08, Hyattsville, Maryland 20782, telephone 301/458–4395 or fax 301/458–4020.

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 the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 31, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–2820 Filed 2–8–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Enhanced Surveillance for New Vaccine Preventable Disease, Funding Opportunity Announcement (FOA), IP11–010, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92– 463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time And Date: 8 a.m.–5 p.m., March 21, 2011 (Closed).

Place: Sheraton Gateway Hotel Atlanta Airport, 1900 Sullivan Road, Atlanta, Georgia 30337, *Telephone:* (770)997–1100.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Enhanced Surveillance for New Vaccine Preventable Disease, FOA IP11–010, initial review."

CONTACT PERSON FOR MORE INFORMATION: Amy Yang, PhD, Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E60, Atlanta, Georgia 30333, *Telephone:* (404) 498–2733. 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 the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 31, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–2819 Filed 2–8–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Injury Prevention and Control (BSC, NCIPC)

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned board:

Times and Dates: 8:30 a.m.–5 p.m., February 24, 2011; 8:30 a.m.–12 p.m., February 25, 2011.

Place: Atlanta Marriott Century Center, 2000 Century Boulevard, Atlanta, Georgia 30345.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: The Board will: (1) Conduct, encourage, cooperate with, and assist other appropriate public health authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases, and other impairments; (2) assist States and their political subdivisions in preventing and suppressing communicable diseases and other preventable conditions and in promoting health and well-being; and

(3) conduct and assist in research and control activities related to injury.

Matters to be Discussed: The BSC, NCIPC will discuss the recommendations provided by the expert panel on the Research Portfolio Reviews that have been conducted and to discuss research strategies needed to guide the Center's focus. There will be 15 minutes allotted for public comments at the end of the open session.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Dr. Arlene Greenspan, Designated Federal Officer, NCIPC, CDC, 4770 Buford Highway, NE., Mailstop F–63, Atlanta, Georgia 30341, Telephone (770) 488–1430.

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: February 3, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–2818 Filed 2–8–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Plan for States/Territories for FFY 2012–2013 (ACF–118).

OMB No.: 0970–0114.

Description: The Child Care and Development Fund (CCDF) Plan (the Plan) for States and Territories is required from each CCDF Lead agency in accordance with Section 658E of the Child Care and Development Block Grant Act of 1990, as amended (Pub. L. 101–508, Public Law 104–193, and 42 U.S.C. 9858). The implementing regulations for the statutorily required Plan are set forth at 45 CFR 98.10 through 98.18. The Plan, submitted on the ACF–118, is required biennially, and remains in effect for two years. The Plan provides ACF and the public with a description of, and assurance about, the States' and Territories' child care programs. The ACF–118 is currently approved through April 30, 2012, making it available to States and Territories needing to submit Plan Amendments through the end of the FY 2011 Plan Period. However, on July 1, 2011, States and Territories will be required to submit their FY 2012–2013 Plans for approval by September 30, 2011. Consistent with the statute and regulations, ACF requests revision of the ACF–118 with minor corrections and modifications.

The Office of Child Care (OCC) has given thoughtful consideration to the comments received from the 1st Public Notice. OCC has revised the document to reflect some of the changes made to minimize the burden of the collection of information on respondents. The revised document contains revisions to improve the accuracy and clarity of questions in order to improve the quality of information that is collected. This second Public Comment Period provides an opportunity for the public to submit comments to the Office of Management and Budget (OMB). The Tribal Plan (ACF–118a) will be addressed under a separate notice.

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

RESPONDENTS ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–118	56	0.50	162.50	4,550

Estimated Total Annual Burden Hours: 4,550.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285. E-mail: *OIRA_SUBMISSION@OMB.EOP.GOV.* Attn: Desk Officer for the Administration for Children and Families.

Dated: February 2, 2011.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–2799 Filed 2–8–11; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Tribal Plan Preprint—ACF–118–A.

OMB No.: 0970–0198.

Description: The Child Care and Development Fund (CCDF) Plan (the Plan) for Tribes (Indian Tribes, Tribal consortia and Tribal organizations) is required from each CCDF Lead agency in accordance with Section 658E of the Child Care and Development Block Grant Act of 1990, as amended (Pub. L. 101–508, Pub. L. 104–193, and 42 U.S.C. 9858). The implementing regulations for the statutorily required Plan are set forth at 45 CFR 98.10 through 98.18. The Plan, submitted on the ACF 118–A, is required biennially, and remains in effect for two years. The Plan provides ACF and the public with a description of, and assurance about, the Tribal child care program. The ACF 118–A is currently approved through September 30, 2011, making it available to Tribes needing to submit Plan Amendments through the end of the FY 2011 Plan Period. However, on July 1, 2011, Tribes will be required to submit their FY 2012–2013 Plans for approval by

September 30, 2011. Consistent with the statute and regulations, ACF requests revision of the ACF 118–A with minor corrections and modifications.

The Office of Child Care (OCC) has given thoughtful consideration to the comments received from the 1st Public Notice. OCC has revised the document to reflect some of the changes made to minimize the burden of the collection of information on respondents. The revised document contains revisions to improve the accuracy and clarity of questions in order to improve the quality of information that is collected. This second Public Comment Period provides an opportunity for the public to submit comments to the Office of Management and Budget (OMB).

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

Respondents:

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
CCDF Tribal Plan	257	0.5	120	15,420
Estimated Total Annual Burden Hours				15,420

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, E-mail: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Dated: February 2, 2011.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–2798 Filed 2–8–11; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2005–P–0394] (formerly Docket No. 2005P–0168)

Determination That DECASPRAY (Dexamethasone) Topical Aerosol, 0.04%, and AEROSEB-DEX (Dexamethasone) Topical Aerosol, 0.01%, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that DECASPRAY (dexamethasone) Topical Aerosol, 0.04%, and AEROSEB-DEX (dexamethasone) Topical Aerosol, 0.01%, were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for dexamethasone topical aerosol, 0.04% and 0.01%, if all other legal and regulatory requirements are met. However, in considering whether to file an ANDA for dexamethasone topical aerosol, 0.04% and 0.01%, future applicants are advised that they may not be able to obtain DECASPRAY (dexamethasone) Topical Aerosol, 0.04%, or AEROSEB-DEX (dexamethasone) Topical Aerosol, 0.01%, for bioequivalence testing because the products have not been commercially available for a number of years. An ANDA applicant who is unable to obtain DECASPRAY (dexamethasone) Topical Aerosol, 0.04%, or AEROSEB-DEX (dexamethasone) Topical Aerosol, 0.01%, for bioequivalence testing should contact the Office of Generic Drugs for a determination of what is necessary to show bioavailability and same therapeutic effect.

FOR FURTHER INFORMATION CONTACT: Janice Weiner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6304, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products with Therapeutic Equivalence Evaluations," which is known generally as the "Orange Book." Under FDA regulations, drugs are removed from the list if the Agency withdraws or

suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug that has been voluntarily withdrawn from sale was withdrawn for reasons of safety or effectiveness. This determination may be made at any time after the drug has been voluntarily withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

AEROSEB-DEX (dexamethasone) Topical Aerosol, 0.01%, is the subject of ANDA 83–296, held by Allergan Herbert (Allergan) and initially approved on June 15, 1973. AEROSEB-DEX is indicated for relief of the inflammatory and pruritic manifestations of corticosteroid-responsive dermatoses.

In its June 1997 annual report, Allergan notified FDA that AEROSEB-DEX (dexamethasone) Topical Aerosol, 0.01%, was being discontinued, and FDA moved the drug product to the "Discontinued Drug Product List" section of the Orange Book. In a letter dated August 28, 1998, Allergan requested withdrawal of ANDA 83–296 for AEROSEB-DEX (dexamethasone) Topical Aerosol, 0.01%. In the **Federal Register** of June 10, 1999 (64 FR 31226), FDA announced that it was withdrawing approval of ANDA 83–296, effective July 12, 1999.

Acaderm Inc., (Acaderm) submitted a citizen petition dated April 28, 2005 (Docket No. FDA–2005–P–0394), under 21 CFR 10.30, requesting that the Agency determine whether AEROSEB-DEX (dexamethasone) Topical Aerosol, 0.01%, was withdrawn from sale for reasons of safety or effectiveness. Although the citizen petition did not address DECASPRAY (dexamethasone) Topical Aerosol, 0.04%, that dexamethasone topical aerosol product has also been discontinued. On our own initiative, we have also determined whether DECASPRAY (dexamethasone) Topical Aerosol, 0.04%, was withdrawn for safety or effectiveness reasons.

DECASPRAY (dexamethasone) Topical Aerosol, 0.04%, is the subject of NDA 12–731, held by Merck & Co., Inc. (Merck). DECASPRAY, a synthetic adrenocortical steroid, was initially approved on March 29, 1961, solely on the basis of safety. The 1962 amendments to the FD&C Act require that drugs be shown to be effective as well. To accomplish this, FDA initiated the Drug Efficacy Study Implementation (DESI) review to evaluate the effectiveness of drugs that had been previously approved on safety grounds alone. In its DESI review of topical corticosteroids, FDA concluded that NDA 12–731 for dexamethasone topical aerosol was effective for certain indications (*see* 36 FR 7982, April 28, 1971), and it was labeled for relief of the inflammatory and pruritic manifestations of corticosteroid-responsive dermatoses.

In its annual report, Merck notified FDA that DECASPRAY (dexamethasone) Topical Aerosol, 0.04%, was being discontinued, and FDA moved the drug product to the "Discontinued Drug Product List" section of the Orange Book. In a letter dated June 25, 2002, Merck requested withdrawal of NDA 12–731 for DECASPRAY (dexamethasone) Topical Aerosol, 0.04%. In the **Federal Register** of August 18, 2003 (68 FR 49481), FDA announced that it was withdrawing approval of NDA 12–731, effective September 17, 2003.

After considering the citizen petition and comments submitted to the docket, and reviewing Agency records, FDA has determined under § 314.161 that AEROSEB-DEX (dexamethasone) Topical Aerosol, 0.01%, was not withdrawn from sale for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that AEROSEB-DEX (dexamethasone) Topical Aerosol, 0.01%, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of AEROSEB-DEX (dexamethasone) Topical Aerosol, 0.01%, from sale and have found no information that would indicate that this product was withdrawn from sale for reasons of safety or effectiveness.

FDA has also determined under § 314.161 that DECASPRAY (dexamethasone) Topical Aerosol, 0.04%, was not withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of DECASPRAY (dexamethasone) Topical Aerosol, 0.04%, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events and have found no information that would indicate that this product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list DECASPRAY (dexamethasone) Topical Aerosol, 0.04%, and AEROSEB-DEX (dexamethasone) Topical Aerosol, 0.01%, in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to DECASPRAY (dexamethasone) Topical Aerosol, 0.04%, and AEROSEB-DEX (dexamethasone) Topical Aerosol, 0.01%, may be approved by the Agency as long as they meet all other legal and regulatory requirements for approval of ANDAs. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

In considering whether to file an ANDA for this drug product, future applicants should be advised that they may not be able to obtain DECASPRAY (dexamethasone) Topical Aerosol, 0.04%, or AEROSEB-DEX (dexamethasone) Topical Aerosol, 0.01%, for bioequivalence testing because the products have not been commercially available for a number of years. An ANDA applicant who is unable to obtain DECASPRAY (dexamethasone) Topical Aerosol, 0.04%, or AEROSEB-DEX (dexamethasone) Topical Aerosol, 0.01%, for bioequivalence testing should contact the Office of Generic Drugs for a determination of what showing is necessary to satisfy the requirements of section 505(j)(2)(A)(iv) of the FD&C Act. If an ANDA is approved without a showing of bioequivalence, the approved product will not be considered therapeutically equivalent to the reference listed drug, *i.e.,* granted an AB rating, in the Orange Book.

Dated: February 3, 2011.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2011–2890 Filed 2–8–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0063]

Medical Device Innovation Initiative; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document for public comment entitled "Medical Device Innovation Initiative" (the report). The report proposes potential actions for FDA's Center for Devices and Radiological Health (CDRH) to facilitate the development, assessment, and regulatory review of innovative medical devices.

DATES: Submit either electronic or written comments on the report by April 11, 2011.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for electronic access to the report.

Submit electronic comments on the report to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonathan Sackner-Bernstein, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5410, Silver Spring, MD 20993, 301–796–5420, e-mail: *jonathan.sackner-bernstein@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The United States is the global leader in medical device innovation and CDRH is committed to assuring that American patients have timely access to important new technologies and next-generation products without compromising their safety. Each year, millions of American patients benefit from innovative medical devices that reduce suffering, treat previously untreatable conditions, extend lives, and improve public health.

CDRH is responsible for advancing public health and facilitating innovation to help bring novel technologies to market and make the medical devices that are already on the market safer and more effective. Recently, CDRH announced 25 actions it will take in 2011 to strengthen its most widely-used premarket review process—the 510(k) program—and increase its use of emerging science to foster innovation and improve the predictability, consistency, and transparency of its decisionmaking.[1] These actions will not only improve the safety of medical devices but also increase the ability of innovating companies to attract investors, estimate costs, and more quickly bring products to market.

The report proposes actions CDRH might take to help accelerate the development and regulatory evaluation of innovative devices safely and based on sound science. These actions are as follows:

- Facilitate the development and regulatory evaluation of innovative medical devices;
- Strengthen the U.S. research infrastructure and promote high-quality regulatory science; and
- Prepare for and respond to transformative innovative technologies and scientific breakthroughs.

Part of the Medical Device Innovation Initiative would consider the creation of a special Innovation Pathway intended to provide earlier investment of CDRH time and resources in devices that are true pioneering technologies and that have the potential to revolutionize patient care or health care delivery. By front-loading critical aspects, such as identifying clinical endpoints and key scientific questions, and seeking advice from external experts, the Innovation Pathway would facilitate a more efficient regulatory review process for transformative devices.

CDRH is seeking public comment on the proposals contained in the report through an open public docket and will be hosting a public meeting to solicit stakeholder feedback at our White Oak, MD campus on March 15, 2011. Therefore, elsewhere in this issue of the **Federal Register**, FDA is announcing a public meeting entitled "CDRH's Medical Device Innovation Initiative Public Workshop."

CDRH requests public comments on the report in general, as well as the following specific questions and topics:

1. The eligibility criteria for the Innovation Pathway.

2. How should CDRH determine what types of technology should be allowed into the Innovation Pathway and at what point they should no longer be accepted as innovative products? For example, under Expedited Review, if multiple applications for the same type of device offering comparable advantage over existing approved alternatives have been granted expedited review, they are reviewed with priority assigned on a first-in-first-reviewed basis for each review cycle. Furthermore, if one of these applications is approved, the remaining expedited applications will retain their expedited status until a final decision is rendered after which point no additional devices of this type will be granted expedited review status. Should the same process be used for the Innovation Pathway?

3. What are the appropriate timeframes for review of submissions under the Innovation Pathway? Should final regulatory submissions from devices developed under the Innovation Pathway be reviewed on a shortened timeframe? For comparison, the review times to which CDRH has currently committed under the Medical Device User Fee and Modernization Act are available at: *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Overview/MedicalDeviceUserFeeandModernizationActMDUFMA/ucm109319.htm.*

4. Criteria for clinical test center certification.

5. Candidates for interagency or public-private partnerships to foster medical device innovation.

6. Other actions CDRH should take to facilitate the development, assessment, and regulatory review of innovative medical devices while assuring their safety and effectiveness.

II. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the report at *http://www.regulations.gov or http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/ucm241095.htm.*

Dated: February 4, 2011.

Nancy K. Stade,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 2011–2916 Filed 2–8–11; 8:45 am]

BILLING CODE 4160–01–P

[1] See "510(k) and Science Report Recommendations: Summary and Overview of Comments and Next Steps," available at *http://www.fda.gov/downloads/AboutFDA/CentersOffices/CDRH/CDRHReports/UCM239449.pdf;* and "Plan of Action for Implementation of 510(k) and Science Recommendations," available at *http://www.fda.gov/downloads/AboutFDA/CentersOffices/CDRH/CDRHReports/UCM239450.pdf.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0062]

Medical Device Innovation Initiative; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting entitled "CDRH's Medical Device Innovation Initiative Public Workshop." The purpose of the public meeting is to solicit feedback on select actions outlined in the Center for Devices and Radiological Health's (CDRH) document, "Medical Device Innovation Initiative" (report). FDA is seeking input on a number of identified challenges associated with incentivizing innovation, and the proposed solutions. In addition, the Agency requests comments on the Innovation Pathway proposed under the report.

DATES: The public meeting will be held on March 15, 2011, from 8 a.m. to 5:30 p.m. Persons interested in attending and/or participating in the meeting must register by 5 p.m. on March 4, 2011.

ADDRESSES: The public meeting will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31, Rm. 3502, Silver Spring, MD 20993. A live Webcast of this meeting will be viewable on the day of the meeting at *http://fda.yorkcast.com/webcast/Viewer/?peid=fae7c7ac49174d159e49e8d83aaf3b9d*. Closed captioning for this Webcast will be available at *http://www.speche.com/sbload.aspx?Load=Web,All,New&Height=90%&Width=100%&ClientID=31213*.

Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Contact Person: Jonathan Sackner-Bernstein, Food and Drug Administration, Center for Devices and Radiological Health, 10903 New Hampshire Avenue, Bldg. 66, Rm. 5410, Silver Spring, MD 20993, 301–796–5420, e-mail: *jonathan.sackner-bernstein@fda.hhs.gov*.

Registration and Requests for Oral Presentations: If you wish to attend the public meeting, you must register online at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/ucm241095.htm*. Provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone number. Registration requests should be received by March 4, 2011.

If you wish to make an oral presentation during any of the open comment sessions at the meeting, you must indicate this at the time of registration. FDA has included general discussion topics and specific questions for comment in this document. You should also identify which discussion topic you wish to address in your presentation. In order to keep each open session focused on the discussion topic at hand, each oral presentation should address only one discussion topic. FDA will do its best to accommodate requests to speak. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and to request time for a joint presentation. FDA will determine the amount of time allotted to each presenter and the approximate time that each oral presentation is to begin.

Registration is free and will be on a first-come, first-served basis. Early registration is recommended because seating is limited. FDA may limit the number of participants from each organization based on space limitations. Registrants will receive confirmation once they have been accepted. Onsite registration on the day of the public meeting will be provided on a space-available basis beginning at 7 a.m.

Non-U.S. citizens are subject to additional security screening, and they should register as soon as possible. If you need special accommodations due to a disability, please contact Susan Monahan, *susan.monahan@fda.hhs.gov*, 301–796–5661, at least 7 days in advance of the public meeting.

SUPPLEMENTARY INFORMATION:

I. Background

The United States is the global leader in medical device innovation and CDRH is committed to assuring that American patients have timely access to important new technologies and next-generation products without compromising their safety. Each year, millions of American patients benefit from innovative medical devices that reduce suffering, treat previously untreatable conditions, extend lives, and improve public health.

CDRH is responsible for advancing public health and facilitating innovation to help bring novel technologies to market and make the medical devices that are already on the market safer and more effective. Recently, CDRH announced 25 actions it will take in 2011 to strengthen its most widely-used premarket review process—the 510(k) program—and increase its use of emerging science to foster innovation and improve the predictability, consistency, and transparency of its decisionmaking.[1] These actions will not only improve the safety of medical devices but also increase the ability of innovating companies to attract investors, estimate costs, and more quickly bring products to market.

The Medical Device Innovation Initiative proposes the following actions CDRH might take to help accelerate the development and regulatory evaluation of innovative devices safely and based on sound science:

- Facilitate the development and regulatory evaluation of innovative medical devices;
- Strengthen the U.S. research infrastructure and promote high-quality regulatory science; and
- Prepare for, and respond to, transformative innovative technologies and scientific breakthroughs.

Part of the Medical Device Innovation Initiative would consider the creation of a special Innovation Pathway intended to provide earlier investment of CDRH time and resources in devices that are true pioneering technologies and that have the potential to revolutionize patient care or health care delivery. By front-loading critical aspects, such as identifying clinical endpoints and key scientific questions, and seeking advice from external experts, the Innovation Pathway would facilitate a more efficient regulatory review process for transformative devices.

The objective of this public meeting is to receive public input on the proposals to facilitate medical device innovation as set forth in the report. The public meeting's focus includes the following areas:

- The Innovation Pathway and Horizon Scanning (morning session)
- Clinical Test Center Certification, Core Curriculum for Medical Device Development, and Regulatory Science (afternoon session)

During the meeting, FDA staff will present a brief overview of each of the previously listed areas. Each of the FDA presentations will be followed by an open comment session, during which members of the public may present oral comments related to the topic under

[1] See "*510(k) and Science Report Recommendations: Summary and Overview of Comments and Next Steps*." Available at *http://www.fda.gov/downloads/AboutFDA/CentersOffices/CDRH/CDRHReports/UCM239449.pdf*, and "Plan of Action for Implementation of 510(k) and Science Recommendations." Available at *http://www.fda.gov/downloads/AboutFDA/CentersOffices/CDRH/CDRHReports/UCM239450.pdf*.

discussion. As described previously in this document, individuals who are interested in making an oral presentation during any of the open comment sessions must indicate this at the time of registration, must identify which discussion topic they intend to address (*see Registration and Requests for Oral Presentations*), and must submit their presentations in advance. In order to keep each open session focused on the discussion topic at hand, each oral presentation should address only one discussion topic. Commenters are free to submit comments on any discussion topic(s) to the open docket (*see* II. Comments). FDA will schedule speakers for each open session as time permits.

After each of the open comment sessions, there will be a panel discussion between FDA staff and selected participants representing a range of constituencies. The participants in the panel discussions will reflect on the presentations and comments, engage in a dialogue with each other and FDA staff, and provide closing thoughts for each session. The participants will not be asked to develop consensus opinions during the discussion, but rather to provide their individual perspectives. Others in attendance at the meeting will have an opportunity to listen to the panel discussions.

In advance of the meeting, additional information, including a meeting agenda with a speakers' schedule for each open comment session, will be made available on the Internet. This information will be placed on file in the public docket (docket number found in brackets in the heading of this document), which is available at *http://www.regulations.gov*. This information will also be available at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/ucm241095.htm*.

II. Comments

FDA is holding this public meeting to obtain information on a number of questions regarding medical device innovation. The deadline for submitting comments related to this public meeting is March 15, 2011.

Regardless of attendance at the public meeting, interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. In addition, when responding to specific questions as outlined in this document, please identify the question you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

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 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.

Dated: February 4, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–2915 Filed 2–8–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Organ Transplantation; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Organ Transplantation.

Date and Times: March 8, 2011, 7:30 a.m. to 5 p.m.

Place: Georgetown University Hotel and Conference Center, 3800 Reservoir Road, NW., Washington, DC 20057.

Status: The meeting will be open to the public.

Purpose: Under the authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, and 42 CFR 121.12 (2000), ACOT was established to assist the Secretary in enhancing organ donation, ensuring that the system of organ transplantation is grounded in the best available medical science, and assuring the public that the system is as effective and equitable as possible, and, thereby, increasing public confidence in the integrity and effectiveness of the transplantation system. ACOT is composed of up to 25 members, including the Chair. Members are serving as Special Government Employees and have diverse backgrounds in fields such as organ donation, health care public policy, transplantation medicine and surgery, critical care medicine and other medical specialties involved in the identification and referral of donors, non-physician transplant professions, nursing, epidemiology, immunology, law and bioethics, behavioral sciences, economics and statistics, as well as representatives of transplant candidates, transplant recipients, organ donors, and family members.

Agenda: The Committee will hear reports from two ACOT Work Groups: Declining Rates of Donation/Geographical and Other Variations in Organ Distribution and Alignment of CMS Regulatory Requirements with OPTN. ACOT also will hear presentations on disease transmission and informed consent, transplant tourism, organ donation and transplantation alliance, a report on an intensive DMV outreach project demonstrating significant increases in Michigan donor registration, and OPO performance metrics for quality improvement. Agenda items are subject to change as priorities indicate.

After the presentations and Committee discussions, members of the public will have an opportunity to provide comments. Because of the Committee's full agenda and the timeframe in which to cover the agenda topics, public comment will be limited. All public comments will be included in the record of the ACOT meeting. Meeting summary notes will be made available on the Department's donation Web site at *http://www.organdonor.gov/acot.html.*

The draft meeting agenda is available on the Department's donation Web site at *http://www.organdonor.gov/acot.html* and at *http://www.team-psa.com/dot/spring2011/ACOT/.*

Registration can be completed electronically at *http://www.team-psa.com/dot/spring2011/ACOT/* or submitted by facsimile to HRM/Professional and Scientific Associates (PSA), the logistical support contractor for the meeting, at fax number (703) 234–1701 ATTN: Brittany Carey. Individuals without access to the Internet who wish to register may call Brittany Carey with HRM/PSA at (703) 889–9033.

FOR FURTHER INFORMATION CONTACT: Patricia A. Stroup, MBA, MPA, Executive Secretary, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 12–105, Rockville, Maryland 20857; telephone (301) 443–1127 or e-mail to *pstroup@hrsa.gov.*

Dated: February 2, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–2839 Filed 2–8–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 Child Health and Human Development Initial Review Group; Population Sciences Subcommittee.

Date: March 3, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Carla T. Walls, PhD, Scientific Review Officer, Division Of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6898, *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 3, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2858 Filed 2–8–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee.

Date: March 8, 2011.

Time: 11 a.m. to 3:30 p.m.

Agenda: The NIH Recombinant DNA Advisory Committee (RAC) will review and discuss selected human gene transfer protocols and discuss related data management activities. Please check the meeting agenda at *http://oba.od.nih.gov/rdna_rac/rac_meetings.html* for more information.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Chezelle George, Office of Biotechnology Activities, Office of Science Policy/OD, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892, 301–496–9838, *georgec@od.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://oba.od.nih.gov/rdna/rdna.html,* where an agenda and any additional information for the meeting will be posted when available.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: February 3, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2857 Filed 2–8–11; 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 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 Mental Health Special Emphasis Panel; Biobehavioral Research Awards for Innovative New Scientists (BRAINS).

Date: March 1, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Arlington Gateway, 801 N. Glebe Road, Arlington, VA 22203.

Contact Person: Megan Libbey, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9609, Rockville, MD 20852–9609, 301–402–6807, *libbeym@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Scalable Assays for Unbiased Analysis of Neurobiological Function.

Date: March 7, 2011.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Mandarin Oriental, 1330 Maryland Avenue, SW., Washington, DC 20024.

Contact Person: Vinod Charles, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606, *charlesvi@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: February, 3, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2853 Filed 2–8–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Interagency Breast Cancer and Environmental Research Coordinating Committee Research Process Subcommittee.

These meetings will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance or reasonable accommodations, should inform the Contact Person listed below at least 10 days in advance of the meeting.

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee (IBCERC) Research Process Subcommittee.

Date: March 3, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: The purpose of the meeting is to continue the work of the Research Process Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC including: Setting research priorities, decreasing redundancies across Federal and non-governmental organizations, developing a process for soliciting research, fostering collaborations, highlighting peer review issues, and identifying the most appropriate models for agencies to work together. The meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/.*

Place: Conference Call: This meeting will be conducted remotely, via conference call. To attend the meeting, please RSVP via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee (IBCERC) Research Process Subcommittee.

Date: March 28, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: The purpose of the meeting is to continue the work of the Research Process Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC including: Setting research priorities, decreasing redundancies across Federal and non-governmental organizations, developing a process for soliciting research, fostering collaborations, highlighting peer review issues, and identifying the most appropriate models for agencies to work together. The meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/.*

Place: Conference Call: This meeting will be conducted remotely, via conference call. To attend the meeting, please RSVP via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee (IBCERC) Research Process Subcommittee.

Date: April 21, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: The purpose of the meeting is to continue the work of the Research Process Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC including: Setting research priorities, decreasing redundancies across Federal and non-governmental organizations, developing a process for soliciting research, fostering collaborations, highlighting peer review issues, and identifying the most appropriate models for agencies to work together. The meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/.*

Place: Conference Call: This meeting will be conducted remotely, via conference call. To attend the meeting, please RSVP via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Any member of the public interested in presenting oral comments to the committee should submit their remarks in writing at least 10 days in advance of the meeting. Comments in document format (*i.e.* WORD, Rich Text, PDF) may be submitted via e-mail to *ibcercc@niehs.nih.gov* or mailed to the Contact Person listed on this notice. You do not need to attend the meeting in order to submit comments.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: February 3, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2851 Filed 2–8–11; 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, Member Conflict: BMIT/CMIP/MEDI Imaging Applications.

Date: February 23, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting.)

Contact Person: Weihua Luo, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892. (301) 435–1170. *luow@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Skeletal, Oral and Skin Biology.

Date: March 3–4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting.)

Contact Person: Rajiv Kumar, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892. 301–435–1212. *kumarra@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Cardiovascular Sciences.

Date: March 3–4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Mark Hopkins Hotel, 999 California Street, San Francisco, CA 94108.

Contact Person: Lawrence E Boerboom, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892. (301) 435–8367. *boerboom@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowship: Genes, Genomes, and Genetics.

Date: March 10–11, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Contact Person: Michael A Marino, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2216, MSC 7890, Bethesda, MD 20892. (301) 435–0601. *marinomi@csr.nih.gov*.

(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, 993.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 3, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2850 Filed 2–8–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

Commercial Wind Lease Issuance and Site Characterization Activities; Atlantic Outer Continental Shelf Offshore NJ, DE, MD, and VA

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Notice of Intent to Prepare an Environmental Assessment for Mid-Atlantic Wind Energy Areas.

SUMMARY: This notice is being published as an initial step for the purpose of involving Federal agencies, States, Tribes, local government, wind power developers, and the public in the Department of the Interior's (DOI) "Smart from the Start" wind energy initiative, to identify areas for wind energy leasing proposals, and to provide public notice of the Department's commitment to analyze the initiative's siting, leasing and site assessment decisions in accordance with the DOI regulations implementing the provisions of the National Environmental Policy Act (NEPA) of 1969 as amended (42 U.S.C. 4321 *et seq.*). On November 23, 2010, Secretary of the Interior Ken Salazar announced the "Smart from the Start" renewable energy initiative to accelerate responsible renewable wind energy development on the Atlantic Outer Continental Shelf (OCS) by using appropriate identified areas, coordinated environmental studies, large-scale planning and expedited approval processes. This notice identifies Wind Energy Areas (WEAs) offshore New Jersey, Delaware, Maryland, and Virginia that the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) has found, in consultation with other Federal agencies and State Renewable Energy Task Forces, to be suitable for consideration for wind energy development.

Authority: The NOI of the preparation of an environmental assessment is published pursuant to 43 CFR 46.305.

FOR FURTHER INFORMATION CONTACT: Michelle Morin, BOEMRE Office of Offshore Alternative Energy Programs, 381 Elden Street, MS 4090, Herndon, Virginia 20170–4817, (703) 787–1722 or *michelle.morin@boemre.gov.*

SUPPLEMENTARY INFORMATION:

1. The OCS Renewable Energy Development Process

There are generally three phases of renewable energy development on the OCS: lease issuance, site assessment, and construction and operation of a renewable energy facility. A renewable energy lease gives the lessee an exclusive right to apply for subsequent approvals that are necessary to advance to the next stage of the renewable energy development process. The second phase is BOEMRE review and approval of a site assessment plan (SAP) that allows the construction and installation of a meteorological tower and buoys. *See* 30 CFR 285.600-.601; .605-.618. After the lessee has collected sufficient site characterization and assessment data the lessee may submit a construction and operations plan (COP), approval of which would authorize the actual construction and operation of a renewable energy facility. *See* 30 CFR 285.620-.629. Although BOEMRE does not authorize site characterization activities (*i.e.,* geological and geophysical surveys and core samples), a lessee must submit the results of such surveys before BOEMRE can consider approving its COP. *See* 30 CFR 285.626.

By this notice, BOEMRE is soliciting comment on the environmental effects of reasonably foreseeable site characterization surveys that may be undertaken if BOEMRE issues a lease or leases in any or all of the identified WEAs. Consistent with the provisions of 43 CFR 46.305 (public involvement in the environmental assessment process), the Department "must, to the extent practicable, provide for public notification and public involvement when an Environmental Assessment is being prepared." Although scoping is not required for the preparation of an environmental assessment (EA) (CEQ regulations at 40 CFR 1501.7 specifically reference the preparation of an Environmental Impact Statement (EIS)), the Department recognizes and encourages the use of scoping where appropriate as it does represent a form of public involvement. See 43 CFR 46.305(a)(2), *73 FR 61292, 61306* (Oct. 15, 2008). BOEMRE intends to prepare a regional EA to analyze the environmental impacts of issuing renewable energy leases in the geographic areas offshore the States of New Jersey, Delaware, Maryland, and Virginia (identified as WEAs in Section 3 of this Notice), including environmental impacts associated site characterization activities that may take place on these leases. The EA will also analyze the potential environmental consequences associated with the approval of site assessment activities on these leases pursuant to the approval of SAPs.

The proposed action is the issuance of renewable energy leases within the

WEAs described in Section 3 of this Notice, and approval of site assessment activities on those leases. The regional EA will consider the environmental consequences associated with reasonably foreseeable leasing scenarios, reasonably foreseeable site characterization scenarios in these lease areas (including geophysical, geotechnical, archeological and biological surveys), and reasonably foreseeable site assessment scenarios (including the installation and operation of meteorological towers and buoys) on the potential leaseholds. At a minimum, the alternatives that will be considered are no action (*i.e.,* no issuance of leases or approval of site assessment activities), and the issuance of leases and approval of certain site assessment activities within the areas described in Section 3 of this Notice.

Federal, State, and local government agencies, Tribal governments, and other interested parties may assist BOEMRE in determining the important issues and any additional alternatives to be analyzed in the regional EA. Input is also requested on measures (*e.g.,* limitations on activities based on technology, distance from shore, or timing) that would mitigate impacts to environmental resources and socioeconomic conditions that could result from leasing, site characterization, and site assessment in and around the WEAs described below. It may become appropriate to analyze one or more WEAs in separate EAs. Consultation with other Federal agencies, Tribal governments, and affected States will be carried out during the EA process and will be completed before a final decision is made on whether any particular lease will be issued or site assessment activities on those leases approved.

2. Background for Analysis of Wind Energy Areas

On November 6, 2007, BOEMRE published a Notice of Availability in the **Federal Register** (72 FR 62,672) of the Programmatic Environmental Impact Statement for Alternative Energy Development and Production and Alternate Use of Facilities on the Outer Continental Shelf, Final Environmental Impact Statement (OCS Report MMS 2007–046) (Programmatic EIS). On June 26, 2009, BOEMRE published a Notice of Availability in the **Federal Register** (74 FR 30,616) of the EA for Issuance of Leases for Wind Resource Data Collection on the Outer Continental Shelf Offshore Delaware and New Jersey (OCS EIS/EA MMS 2009–025) (Interim Policy EA). BOEMRE has seen very strong interest in offshore renewable energy projects on the OCS and is working closely with several states regarding the identification of offshore energy development proposals through Federal-state task forces. More information on the task forces and the "Smart from the Start" initiative can be found at *http://www.boemre.gov/offshore/RenewableEnergy/StateActivities.htm* and *http://www.doi.gov/news/pressreleases/Salazar-Launches-Smart-from-the-Start-Initiative-to-Speed-Offshore-Wind-Energy-Development-off-the-Atlantic-Coast.cfm.*

BOEMRE will incorporate the environmental and socioeconomic analyses of site characterization and assessment activities from the Programmatic EIS, Interim Policy EA, and other public information to inform its analysis in the Regional EA. This Regional EA will focus on the environmental consequences of a reasonably foreseeable renewable energy lease issuance scenario, and the site characterization and site assessment activities that would likely take place within these lease areas as potential lessees developed their COP proposals. Site characterization activities include geophysical, geotechnical, archeological and biological surveys. Site assessment activities include those activities that must be submitted in a SAP for approval by BOEMRE, including the installation and operation of meteorological towers and buoys. The Regional EA will be developed using many of the principles of coastal and marine spatial planning, such as comprehensive interagency coordination, to identify information needs for COP submittals necessary for future decision-making regarding wind power development. If BOEMRE determines during the Regional EA process that issuing leases and conducting site characterization and assessment activities offshore New Jersey, Delaware, Maryland, and Virginia would result in significant environmental impacts, then BOEMRE would publish a Notice of Intent to prepare an EIS for the issuance of renewable energy leases in these WEAs. If BOEMRE determines during the Regional EA process that issuing leases and conducting site characterization and assessment activities in these WEAs would not result in significant environmental impacts, then BOEMRE would issue a Finding of No Significant Impact (FONSI). After either a FONSI is issued or the EIS process is completed, BOEMRE may issue one or more renewable energy leases in the WEAs. In the event that a particular lease is issued, and the lessee submits a SAP, BOEMRE will determine whether the Regional EA adequately considers the environmental consequences of the activities proposed in the lessee's SAP. If the analysis in the Regional EA adequately addresses these consequences, then no further NEPA would be required before the SAP is approved. If that analysis is inadequate, an additional NEPA analysis would be prepared before the SAP could be approved.

If and when a lessee is ready to begin the third phase of renewable energy development, construction and operations of a renewable energy facility, it will submit a COP. If a COP is submitted for a particular leasehold, a separate NEPA analysis will be prepared. This will likely take the form of an EIS and will provide additional opportunities for public involvement. Pursuant to 30 CFR Part 285, a lessee may only submit a COP once it has gathered the necessary information through conducting site characterization and site assessment activities. Such an EIS process will provide the public and Federal officials with comprehensive site- and project-specific information regarding potential environmental impacts of the project that the lessee is proposing. These potential impacts will be taken into account when deciding whether to approve the construction and operation of a new commercial wind facility.

3. Description of the Wind Energy Areas

BOEMRE, in consultation with other Federal agencies and State Renewable Energy Task Forces, has identified the following WEAs in which BOEMRE is proposing to begin the commercial lease issuance process and subsequent SAP approval process:

New Jersey: The proposed area offshore New Jersey begins 7 nautical miles from the shore and extends roughly 23 nautical miles seaward (or the approximate 100 ft depth contour) and extends 72 nautical miles along the Federal/state boundary from Seaside Park south to Hereford Inlet. The entire area is approximately 418 square nautical miles and contains approximately 43 whole OCS blocks and 34 partial blocks.

Delaware: The proposed area offshore Delaware rests between the incoming and outgoing shipping routes for Delaware Bay, and is made up of 10 whole OCS blocks and 17 partial blocks. The closest point to shore is approximately 7.5 miles due east from Rehoboth Beach, Delaware. Bluewater Wind Delaware, LLC already owns an Interim Policy lease in this area to

construct a meteorological tower and associated structures on its leasehold (equivalent to structures and devices requiring SAP approval). BOEMRE is requesting comment on the reasonably foreseeable environmental effects associated with issuing a commercial lease in this area and with the lessee conducting additional site characterization activities on such a lease.

Maryland: The proposed area offshore Maryland is made up of 29 whole OCS blocks and 4 partial blocks. The entire area is approximately 207 square nautical miles; 175,069 acres; or 70,848 hectares. The western edge is approximately 10 nautical miles from the Ocean City, Maryland coast, and the eastern edge is approximately 27 nautical miles from the Ocean City, Maryland coast.

Virginia: The proposed area offshore Virginia is made up of 22 OCS lease blocks and 5 partial blocks. The Western edge of the area is approximately 20 nautical miles from Virginia Beach, and the Eastern edge is approximately 37 nautical miles from Virginia Beach. The entire area is approximately 165 square nautical miles; 139,855 acres; or 56,597 hectares.

A map of the WEAs described above is available on the BOEMRE website at *http://www.boemre.gov/offshore/RenewableEnergy/*. In 2010, BOEMRE began publishing Requests for Interest and Calls for Information for the areas above pursuant to 30 CFR 285.210–211 of the Competitive Lease Process. As a result of comments received on these notices and the analysis in the Regional EA, the WEAs offshore New Jersey, Maryland, Delaware, and Virginia may be further refined or modified. In addition, it may become appropriate to analyze one or more WEAs in separate EAs.

4. Cooperating Agencies

BOEMRE invites other Federal agencies and State, tribal, and local governments to consider becoming cooperating agencies in the preparation of the Regional EA. The Council of Environmental Quality (CEQ) regulations implementing the procedural provisions of NEPA define cooperating agencies as those with "jurisdiction by law or special expertise" (40 CFR 1508.5). Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and to remember that an agency's role in the environmental analysis neither enlarges nor diminishes the final decisionmaking authority of any other agency involved in the NEPA process.

Upon request, BOEMRE will provide potential cooperating agencies with a draft Memorandum of Agreement that includes a schedule with critical action dates and milestones, mutual responsibilities, designated points of contact, and expectations for handling predecisional information. Agencies should also consider the "Factors for Determining Cooperating Agency Status" in Attachment 1 to CEQ's January 30, 2002, Memorandum for the Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the NEPA. A copy of this document is available at *http://ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html*

and *http://ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagencymemofactors.html.*

BOEMRE, as the lead agency, will not provide financial assistance to cooperating agencies. Even if an organization is not a cooperating agency, opportunities will exist to provide information and comments to BOEMRE during the normal public input phases of the NEPA/EA process.

5. Comments

Federal, state, local government agencies, Tribal governments, and other interested parties are requested to send their written comments on BOEMRE's scoping of the Regional EA (including important issues, alternatives related to lease issuance, and site assessment activities that should be addressed) in one of the following ways:

1. *Electronically: http://www.regulations.gov.* In the entry titled "Enter Keyword or ID," enter BOEM–2010–0077, then click search. Follow the instructions to submit public comments and view supporting and related materials available for this document.

2. *In written form, delivered by hand or by mail, enclosed in an envelope labeled "Comments on Mid Atlantic WEA Regional EA"* to Program Manager, Office of Offshore Alternative Energy Programs (MS 4090), Bureau of Ocean Energy Management, Regulation and Enforcement, 381 Elden Street, Herndon, Virginia 20170. Comments should be submitted no later than March 11, 2011.

Dated: January 27, 2011,

L. Renee Orr,

Acting Associate Director for Offshore Energy and Minerals Management.

[FR Doc. 2011–2774 Filed 2–8–11; 8:45 am]

BILLING CODE 4310–MR–W–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

Outer Continental Shelf (OCS), Western and Central Planning Areas of the Gulf of Mexico (GOM), Oil and Gas Lease Sales for 2012–2017

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS) and Notice of Scoping Meetings.

1. Authority

This Notice of Intent (NOI) and notice of scoping meetings is published pursuant to the regulations (40 CFR 1501.7) implementing the provisions of the National Environmental Policy Act (NEPA) of 1969 as amended (42 U.S.C. 4321 *et seq.* (1988)).

2. Purpose of Notice of Intent

Pursuant to the regulations implementing the procedural provisions of NEPA, BOEMRE is announcing its intent to prepare an EIS on the 2012–2017 oil and gas leasing proposals in the Western and Central Planning Areas of the GOM, off the States of Texas, Louisiana, Mississippi, and Alabama. The NOI also serves to announce the scoping process for this EIS. Throughout the scoping process, Federal, State, and local government agencies, and other interested parties have the opportunity to aid BOEMRE in determining the significant issues and alternatives to be analyzed in the EIS. BOEMRE will use and coordinate the NEPA commenting process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (16 U.S.C. 470f), as provided for in 36 CFR 800.2(d)(3).

The EIS analysis will focus on the potential environmental effects of oil and natural gas leasing, exploration, development, and production in the areas identified through the Area Identification Procedure as the proposed lease sale areas. In addition to the no action alternative (*i.e.,* cancel the sale), other alternatives may be considered for each sale such as deferring certain areas from the proposed lease sales.

BOEMRE is also preparing a Programmatic EIS on the 5–Year OCS Oil and Gas Leasing Program for 2012–2017 in the draft proposed Outer Continental Shelf Oil and Gas Leasing Program: 2012–2017 (*See* FR Vol. 75, No. 63, Page 16828, April 2, 2010). BOEMRE is combining scoping meetings for the Programmatic and Gulf

of Mexico Multisale EISs in Houston, Texas; New Orleans, Louisiana; and Mobile, Alabama. Information concerning the Leasing Program and Programmatic EIS can be accessed at: *http://www.BOEMRE.gov/5-year/.*

3. Supplemental Information

Federal regulations allow for several proposals to be analyzed in one EIS (40 CFR 1502.4). Since each sale proposal and projected activities are very similar each year for each sale area, BOEMRE is proposing to prepare a single EIS (Multisale EIS) for the several Western and Central Planning Areas lease sales to be held annually, scheduled for 2012–2017. The Multisale EIS approach allows for subsequent NEPA analysis to focus on changes in the proposed sales and on new issues and information. The Multisale EIS will eliminate the repetitive issuance of draft and final EISs for each sale area. The resource estimates and scenario information for the EIS analyses will be presented as a range that would encompass the resources and activities estimated for any of the 10 proposed lease sales. No final decision will be made until the end of the EIS process to allow for full consultation with Federal agencies, affected States, and the public. At the completion of this EIS process, BOEMRE will make decisions only for the first proposed sale in each sale area, scheduled to be held in 2012 (Western) and 2013 (Central). Subsequent to these first sales, BOEMRE will complete the NEPA process for each of the other proposed lease sales in the 2012–2017 Leasing Program. Formal consultation with other Federal agencies, affected States, and the public will be carried out to assist in the determination of whether or not the information and analyses in the original Multisale EIS are still valid. These consultations and NEPA reviews will be completed before decisions are made on the subsequent sales. For more information on the proposed sales or the Multisale EIS, you may contact Mr. Gary D. Goeke, Chief, Environmental Assessment Section, Leasing and Environment (Mail Stop 5410), Bureau of Ocean Energy Management, Regulation and Enforcement, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394 or e-mail *MultisaleEIS@BOEMRE.gov.* You may also contact Mr. Goeke by telephone at (504) 736–3233.

4. Cooperating Agency

BOEMRE invites other Federal agencies and State, tribal, and local governments to consider becoming cooperating agencies in the preparation of the Multisale EIS. We invite qualified government entities to inquire about cooperating agency status for the EIS. Following the guidelines from the Council on Environmental Quality (CEQ), qualified agencies and governments are those with "jurisdiction by law or special expertise." Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and remember that an agency's role in the environmental analysis neither enlarges nor diminishes the final decisionmaking authority of any other agency involved in the NEPA process. Upon request, BOEMRE will provide potential cooperating agencies with a written summary of ground rules for cooperating agencies, including time schedules and critical action dates, milestones, responsibilities, scope and detail of cooperating agencies' contributions, and availability of predecisional information. BOEMRE anticipates this summary will form the basis for a Memorandum of Agreement between BOEMRE and each cooperating agency. Agencies should also consider the "Factors for Determining Cooperating Agency Status" in Attachment 1 to CEQ's January 30, 2002, Memorandum for the Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act. A copy of this document is available at: *http://nepa.fhwa.dot.gov/ReNEPA/ReNepa.nsf/All+Documents/D155918ABFA4EB3A85256BF20071E9AE/$FILE/Cooperating%20Agencies%20Memorandum.1.30.02.doc* and *http://nepa.fhwa.dot.gov/ReNEPA/ReNepa.nsf/All+Documents/D155918ABFA4EB3A85256BF20071E9AE/$FILE/Cooperating%20Agency%20Memo%20Factors.1.30.02.doc.*

BOEMRE, as the lead agency, will not provide financial assistance to cooperating agencies. Even if an organization is not a cooperating agency, opportunities will exist to provide information and comments to BOEMRE during the normal public input phases of the NEPA/EIS process. If further information about cooperating agencies is needed, please contact Mr. Gary D. Goeke at (504) 736–3233.

5. Comments

Federal, State, and local government agencies, and other interested parties are requested to send their written comments on the scope of the Multisale EIS, significant issues that should be addressed, and alternatives that should be considered one of the following three ways:

1. In written form enclosed in an envelope labeled "Comments on the Multisale EIS" and mailed (or hand carried) to Mr. Gary D. Goeke, Chief, Environmental Assessment Section, Leasing and Environment (MS 5410), Bureau of Ocean Energy Management, Regulation and Enforcement, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394;

2. By e-mail BOEMRE e-mail address: *MultisaleEIS@BOEMRE.gov;* or

3. Online at: *http://ocs5yeareis.anl.gov.*

Comments should be submitted no later than March 28, 2011.

Because BOEMRE is combining scoping meetings for the Programmatic and Gulf of Mexico Multisale EISs, interested parties are reminded that written scoping comments on the Programmatic EIS will be accepted until March 31, 2011, and may be submitted to: Mr. J. F. Bennett, Chief, Branch of Environmental Assessment, Bureau of Ocean Energy Management, Regulation and Enforcement, 381 Elden Street, Mail Stop 4042, Herndon, Virginia 20170–4817.

6. Scoping Meetings

BOEMRE will hold scoping meetings to obtain additional comments and information regarding the scope of the Multisale EIS. The scoping meetings are scheduled as follows:

- Tuesday, February 15, 2011, Houston Airport Marriott at George Bush Intercontinental, 18700 John F. Kennedy Boulevard, Houston, Texas, 1 p.m. CST.
- Wednesday, February 16, 2011, New Orleans, Louisiana, Hilton New Orleans Airport, 901 Airline Drive, Kenner, Louisiana, 1 p.m. CST.
- Thursday, February 17, 2011, 5 Rivers—Alabama's Delta Resource Center, 30945 Five Rivers Blvd., Spanish Fort, Alabama, 1 p.m. CST.

Dated: January 12, 2011.

L. Renee Orr,

Acting Associate Director for Offshore Energy and Minerals Management.

[FR Doc. 2011–2821 Filed 2–8–11; 8:45 am]

BILLING CODE 4310–MR–W–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

Notice on Outer Continental Shelf Oil and Gas Lease Sales

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement, Interior.

ACTION: List of Restricted Joint Bidders; Correction.

SUMMARY: The Bureau of Ocean Energy Management, Regulation and Enforcement published a notice in the **Federal Register** on January 24, 2011, entitled: "List of Restricted Joint Bidders" that contained an error. We are correcting the names of oil companies listed under Group VIII in that notice.

FOR FURTHER INFORMATION CONTACT: Samuel T. Cable, 703–787–1322.

Correction

In the **Federal Register** of January 24, 2011, in FR Doc. 2011–1319, on page 4129, correct "Summary: Group VIII" section to read:

Group VIII. Statoil ASA, Statoil Gulf of Mexico LLC; Statoil USA E&P, Inc.; Statoil Gulf Properties Inc.

Dated: January 31, 2011.

Michael R. Bromwich,

Director, Bureau of Ocean Energy Management, Regulation and Enforcement.

[FR Doc. 2011–2791 Filed 2–8–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Environmental Impact Statement for the Proposed Mississippi Band of Choctaw Casino, Jackson County, MS

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of cancellation.

SUMMARY: This notice announces that the Bureau of Indian Affairs (BIA) intends to cancel all work on the environmental impact statement (EIS) for the proposed Mississippi Band of Choctaw Casino, Jackson County Mississippi.

FOR FURTHER INFORMATION CONTACT: Kurt G. Chandler, Regional Environmental Scientist, telephone (615) 564–6832.

SUPPLEMENTARY INFORMATION: The BIA is canceling work on this EIS because the Mississippi Band of Choctaw Indians have decided not to pursue Indian gaming on the property that is the subject of the EIS at this time. The notice of intent to prepare the EIS, which included a description of the proposed action, was published in the **Federal Register** on October 3, 2006 (71 FR 58427). On October 18, 2006, a public scoping meeting was held in Ocean Springs, Jackson County, Mississippi. The Draft EIS had not yet been published.

Dated: January 31, 2011.

George Skibine,

Deputy Assistant Secretary—Management.

[FR Doc. 2011–2822 Filed 2–8–11; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDB00100 LF10000PP.HT0000 LXSS024D0000 4500019829]

Notice of Public Meeting, Boise District Resource Advisory Council, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Boise District Resource Advisory Council (RAC) will hold a meeting as indicated below.

DATES: The meeting will be held March 2, 2011 at the Boise District Office, located at 3948 S. Development Avenue, Boise, Idaho, beginning at 9 a.m. and adjourning at 4:30 p.m. Members of the public are invited to attend. A public comment period will be available.

FOR FURTHER INFORMATION CONTACT: MJ Byrne, Public Affairs Officer and RAC Coordinator, BLM Boise District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3393.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in southwestern Idaho. Items on the agenda include reports by the RAC's Resource Management Plan Subgroup on the RAC Symposium, "How Collaborative Resource Management Can Break the Current Fire Cycle." The agenda also includes election of officers for 2011 and identification of FY 2011 priorities for the Boise District. Also included are updates on actions related to implementation of the Owyhee Public Lands Management Act and actions in each field office. Agenda items and location may change due to changing circumstances. The public may present written or oral comments to members of the Council. At each full RAC meeting, time is provided in the agenda for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance should contact the BLM Coordinator as provided above.

Dated: January 31, 2011.

Aden L. Seidlitz,

District Manager.

[FR Doc. 2011–2849 Filed 2–8–11; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDC00000.L10200000.MK0000.241A.0; 4500019640]

Notice of Public Meeting, Coeur d'Alene District Resource Advisory Council Meeting; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Coeur d'Alene District Resource Advisory Council (RAC) will meet as indicated below.

DATES: March 22, 2011. The meeting will start at 8 a.m. and end at about 3:30 p.m. with the public comment period from 1 p.m. to 1:30 p.m. The meeting will be held at the BLM Coeur d'Alene District Office, 3815 Schreiber Way, Coeur d'Alene, Idaho 83815.

FOR FURTHER INFORMATION CONTACT: Lisa Wagner, RAC Coordinator, BLM Coeur d'Alene District, 3815 Schreiber Way, Coeur d'Alene, Idaho 83815 or telephone at (208) 769–5004.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. The agenda will include the Election of Officers; update on field office projects including Blue Creek Bay, and an update on the proposed M3 land exchange. Additional agenda topics or changes to the agenda will be announced in local press releases. More information is available at *http://*

www.blm.gov/id/st/en/res/resource_advisory.html.

All meetings are open to the public. The public may present written comments to the RAC in advance of or at the meeting. Each formal RAC meeting will also have time allocated for receiving public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM as provided above.

Dated: February 1, 2011.

Gary D. Cooper,

District Manager.

[FR Doc. 2011–2846 Filed 2–8–11; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO2600000 L10600000 XQ0000]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The Advisory Board will meet on Thursday, March 10, 2011, from 1 p.m. to 5 p.m. and on Friday, March 11, 2011 from 8 a.m. to 5 p.m., local time. This will be a 2-day meeting.

ADDRESSES: This Advisory Board meeting will take place in Phoenix, Arizona at the Sheraton Phoenix Downtown Hotel, 340 N. 3rd Street, Phoenix, Arizona, 85004. The hotel phone number for reservations is 602–817–5307.

Written comments pertaining to the March 10–11, 2011 Advisory Board meeting can be mailed to National Wild Horse and Burro Program,WO–260, *Attention:* Ramona DeLorme, 1340 Financial Boulevard, Reno, Nevada 89502–7147, or sent electronically to the BLM through the Wild Horse and Burro Web site at: *http://www.blm.gov/wo/st/en/prog/wild_horse_and_burro/wh_b_contact_us/enhanced_feedback_form.html*). All comments should be submitted no later than close of business March 3, 2011.

FOR FURTHER INFORMATION CONTACT: Ramona DeLorme, Wild Horse and Burro Administrative Assistant, at 75–861–6583. Individuals who use a telecommunications device for the deaf (TDD) may reach Ms. DeLorme at any time by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief of the U.S. Forest Service, on matters pertaining to the management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the 2-day event is:

I. Advisory Board Public Meeting

Thursday, March 10, 2011 (1 p.m.—5 p.m.)

1 p.m. Call to Order & Introductions
Old Business
Approval of June 15, 2010 Minutes
Program Updates
Gathers
Adoptions
Budget
Facilities
Break (2:20 p.m.—2:45 p.m.)
2:45 p.m. Program Updates (continued)
5 p.m. Adjourn

II. Public Meeting Continued

Friday, March 11, 2011 (8 a.m.—5 p.m.)

8 a.m. WH&B Proposed Management Strategy Overview
9 a.m. Public Comments on WH&B Program and Proposed Strategy
Lunch (12 p.m.—1 p.m.)
1 p.m. Board Recommendations
Recap/Summary/Next Meeting/Date/Site
5 p.m. Adjourn

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as an interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** 2 weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal Advisory Committee Management Regulations [41 CFR 101–6.1015(b),] require BLM to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

III. Public comment procedures

On Friday, March 11, 2011, members of the public will have the opportunity to make comments to the Board on the Wild Horse and Burro Program and Proposed Strategy from 9 am to noon local time. Persons wishing to make comments during the Friday meeting should register with the BLM by 8:30 am on March 11, 2011, in person, at the meeting location. Depending on the number of comments, the Advisory Board may limit the length of comment. At previous meetings, comments have been limited to 3 minutes in length; however, this time may vary. Commenters should address the specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, the BLM will make them available in their entirety, including your name and address. 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. The BLM will release all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, in their entirety, including names and addresses.

Dated: February 3, 2011.

Edwin L. Roberson,

Assistant Director, Renewable Resources and Planning.

[FR Doc. 2011–2788 Filed 2–8–11; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Dinosaur National Monument, Dinosaur, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Dinosaur National Monument, Dinosaur, CO, has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the remains and any present-day tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact Dinosaur National Monument. Disposition of the human remains and associated funerary objects to the tribes stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact Dinosaur National Monument at the address below by March 11, 2011.

ADDRESSES: Any tribe that believes it has a cultural affiliation with the human remains should contact Mary Risser, Superintendent, Dinosaur National Monument, 4545 Highway 40, Dinosaur, CO 81610, telephone (970) 374–3001.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession and control of Dinosaur National Monument, Dinosaur, CO. The human remains and associated funerary objects were removed from six sites in Moffat County, CO, and Uintah County, UT.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the Superintendent, Dinosaur National Monument.

Consultation

A detailed assessment of the human remains was made by Dinosaur National Monument professional staff in consultation with representatives of the Arapahoe Tribe of the Wind River Reservation, Wyoming; Comanche Nation, Oklahoma; Crow Tribe of Montana; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Zia, New Mexico; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah. The Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (formerly Pueblo of San Juan); Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes) [formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)]; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Taos, New Mexico; San Juan Southern Paiute Tribe of Arizona; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; and the Zuni Tribe of the Zuni Reservation, New Mexico, were contacted for consultation purposes but did not attend the consultation meetings.

History and Description of the Remains

In 1965, human remains representing a minimum of one individual were removed from the Deluge Shelter site, in Uintah County, UT, during professional archeological investigations under the direction of David Breternitz. No known individual was identified. No associated funerary objects are present.

In 1965, human remains representing a minimum of one individual were removed from the Arrowhead Point site, in Uintah County, UT, during professional archeological excavations under the direction of David Breternitz. No known individual was identified. No associated funerary objects are present.

In 1965, human remains representing a minimum of two individuals were removed from the Burnt House Village site, in Uintah County, UT, during professional archeological excavations under the direction of David Breternitz. No known individuals were identified. No associated funerary objects are present.

In 1989, human remains representing a minimum of two individuals were removed from the Pool Creek site, in Moffat County, CO, during pedestrian archeological survey work under the direction of J.A. Truesdale. No known individuals were identified. The 177 associated funerary objects are 169 faunal remains, 2 corn cobs, 2 pieces of juniper bark and 4 corn kernels. The remains were radiocarbon dated to 1300 + or −; 80 years before present.

In 1989, human remains representing a minimum of one individual were removed from the Juniper Ledge site, in Uintah County, UT, during pedestrian archeological survey work under the direction of J.A. Truesdale. No known individuals were identified. The four associated funerary objects are three metate fragments and one juniper mat.

In 1989, human remains representing a minimum of one individual were removed from a rock shelter site, Daniels Canyon, in Uintah County, UT, during rock art documentation and professional archeological survey work under the direction of J.A. Truesdale. An adobe storage facility may be associated with the burial. No known individuals were identified. No associated funerary objects are present.

Determinations Made by Dinosaur National Monument

- Based on the age of the remains and the archeological contexts from which they were removed, the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- Multiple lines of evidence, including treaties and Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.
- The "Treaty with the Ute," signed on March 3, 1868 (Stat. L, XV, 619),

recognizes the "Uta (Tabeguache, Muache, Capote, Weeminuchi, Yampa, Grand River, and Uintah bands)" for both Moffat County, CO, and Uintah County, UT. The present-day tribes are identified as the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

• An Executive Order signed on October 3, 1861, recognizes the "Uintah Uta" tribe for both Moffat County, CO, and Uintah County, UT. The present-day tribe is identified as the Ute Indian Tribe of the Uintah & Ouray Reservation, Utah.

• An Executive Order signed on November 22, 1875, recognizes the "Uta" tribe for Moffat County, CO. The present-day tribes are identified as the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

• An Executive Order signed on January 5, 1882, recognizes the "Uta (Uncompahgre)" for Uintah County, UT. The present-day tribes are identified as the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

• Neither the Arapahoe Tribe of the Wind River Indian Reservation, Wyoming, nor the Pueblo of Zia, New Mexico, are recognized as aboriginal to the area from which the human remains and associated funerary objects were removed. However, the disposition agreement, finalized in consultation with the Indian tribes that are recognized as aboriginal to the area from which the human remains and associated funerary objects were removed (Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah) includes both the Arapahoe Tribe of the Wind River Indian Reservation, Wyoming, and the Pueblo of Zia, New Mexico. Therefore, the aboriginal land tribes have reached an agreement and do not object to inclusion of the Arapahoe Tribe of the Wind River Indian Reservation, Wyoming, and Pueblo of Zia, New Mexico, in the disposition of these human remains and associated funerary objects.

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of eight individuals of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(3)(A), the 181 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains is to the Arapahoe Tribe of the Wind River Indian Reservation, Wyoming; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Ute Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; and the Pueblo of Zia, New Mexico. The National Park Service intends to convey the 181 associated funerary objects to the tribes pursuant to 16 U.S.C. 18f–2.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact Mary Risser, Superintendent, Dinosaur National Monument, 4545 Highway 40, Dinosaur, CO 81610, telephone (970) 374–3001, before March 11, 2011. Disposition of the human remains to Arapahoe Tribe of the Wind River Indian Reservation, Wyoming; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Ute Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; and the Pueblo of Zia, New Mexico may proceed after that date if no additional requestors come forward.

Dinosaur National Monument is responsible for notifying the Arapahoe Tribe of the Wind River Reservation, Wyoming; Comanche Nation, Oklahoma; Crow Tribe of Montana; Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (formerly Pueblo of San Juan); Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes) [formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)]; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; San Juan Southern Paiute Tribe of Arizona; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; and the Zuni Tribe of the Zuni Reservation, New Mexico, that this notice has been published.

Dated: February 3, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–2793 Filed 2–8–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated November 1, 2010, and published in the **Federal Register** on November 15, 2010, 75 FR 69705, Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Methamphetamine (1105)	II
Phenylacetone (8501)	II
Opium, raw (9600)	II
Concentrate of Poppy Straw (9670).	II

The company plans to import the listed controlled substances to manufacture bulk controlled substances for sale to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Chattem Chemicals, Inc. to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or

protocols in effect on May 1, 1971. DEA has investigated Chattem Chemicals, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: February 2, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–2829 Filed 2–8–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated October 8, 2010, and published in the **Federal Register** on October 20, 2010, 75 FR 64743, Johnson Matthey, Inc., Pharmaceutical Materials, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Phenylacetone (8501)	II
Coca Leaves (9040)	II
Thebaine (9333)	II
Opium, raw (9600)	II
Noroxymorphone (9668)	II
Concentrate of Poppy Straw (9670).	II

The company plans to import the listed controlled substances as raw materials for use in the manufacture of bulk controlled substances for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Johnson Matthey, Inc. to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Johnson Matthey, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: February 2, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–2828 Filed 2–8–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 8, 2010 and published in the **Federal Register** on October 20, 2010, 75 FR 64745, Noramco, Inc., 500 Swedes Landing Road, Wilmington, Delaware 19801–4417, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Codeine-N-oxide (9053)	I
Dihydromorphine (9145)	I
Morphine-N-oxide (9307)	I
Methylphenidate (1724)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium, powdered (9639)	II
Opium, granulated (9640)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Tapentadol (9780)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Noramco, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Noramco, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 USC § 823(a), and in accordance with 21 CFR § 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: February 2, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–2826 Filed 2–8–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

United States Parole Commission

Public Announcement; Pursuant to The Government in The Sunshine Act (Pub. L. 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 10 a.m., February 10, 2011.

PLACE: 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

STATUS:

Open

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of Minutes for October, November and December 2010 Quarterly Business Meetings.

2. Reports from the Chairman, Commissioners and Section Administrators.

AGENCY CONTACT: Patricia W. Moore, Staff Assistant to the Chairman, United States Parole Commission, (301) 492–5933.

Dated: February 1, 2011.

Rockne J. Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 2011–2670 Filed 2–8–11; 8:45 am]

BILLING CODE 4410–31–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[11–013]

NASA Advisory Council; Science Committee; Planetary Science Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Planetary Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Tuesday, March 1, 2011, 1 p.m. to 3 p.m., Local Time.

ADDRESSES: This meeting will take place telephonically and by WebEx. Any interested person may call the USA toll free conference call number 800–369–3170, pass code PSS, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/*, meeting number 991 023 661, and password PSS_March1.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following topics:

—Update on NASA's Fiscal Year 2012 President's Budget Request and Impact to Planetary Science Division

—Discussion and Formulation of the Planetary Science Subcommittee's Response to the Fiscal Year 2012 Budget Request.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: February 3, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–2792 Filed 2–8–11; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0255]

Office of New Reactors; Proposed Revision 1 to Standard Review Plan, Section 13.5.1.1 on Administrative Procedures—General

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Solicitation of public comment.

SUMMARY: The NRC is soliciting public comment on NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," on a proposed Revision 1 to Standard Review Plan (SRP), Section 13.5.1.1 on "Administrative Procedures—General," (Agencywide Documents Access and Management System (ADAMS) Accession No. ML110100193). The previous version of this SRP section was published in July 19, 2010, as proposed revision 1 (ADAMS Accession No. ML101340264). Since then, the NRC staff has made substantial changes to that guidance and it is being re-noticed for comments (Enclosure 1, ADAMS Accession No. ML110100212). A redline document comparing the version of the previous SRP Section 13.5.1.1, Revision 1 that was issued for public comments and the current version can be found under ADAMS Accession No. ML101340165.

The NRC staff issues notices to facilitate timely implementation of the current staff guidance and to facilitate activities associated with the review of amendment applications and review of design certification and combined license applications for the Office of New Reactors. The NRC staff intends to incorporate the final approved guidance into the next revision of NUREG–0800, SRP Section 13.5.1.1, Revision 1 and Regulatory Guide 1.206, "Combined License Applications for Nuclear Power Plants (LWR Edition)," June 2007.

DATES: Comments must be filed no later than 30 days from the date of publication of this notice in the **Federal Register**. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2010–0255 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site at *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0255. Address questions about NRC dockets to Carol Gallagher at 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*

Mail comments to: Cindy K. Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at 301–492–3446.

The NRC ADAMS provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *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 Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr.resources@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. William F. Burton, Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone at 301–415–6332 or e-mail at *william.burton@nrc.gov.*

The NRC staff is issuing this notice to solicit public comments on the proposed SRP Section 13.5.1.1, Revision 1. After the NRC staff considers any public comments, it will make a determination regarding the proposed SRP Section 13.5.1.1, Revision 1.

Dated at Rockville, Maryland, this 25th day of January 2011.

For the Nuclear Regulatory Commission,

William F. Burton,

Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2011–2881 Filed 2–8–11; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63830; File Nos. SR–SCCP–2011–001; BSECC–2011–001]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Boston Stock Exchange Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Stockholders' Agreement Between The NASDAQ OMX Group, Inc. and Investor AB

February 3, 2011.

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 January 19, 2011, Stock Clearing Corporation of Philadelphia, Inc. ("SCCP") and Boston Stock Exchange Clearing Corporation ("BSECC") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I and II below, which Items have been prepared by SCCP and BSECC. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of the Substance of the Proposed Rule Changes

SCCP and BSECC are filing the proposed rule changes regarding a stockholders' agreement between SCCP's and BSECC's parent corporation, The NASDAQ OMX Group, Inc. ("NASDAQ OMX"), and Investor AB, a corporation organized under the laws of Sweden ("Investor Stockholders' Agreement"). SCCP and BSECC will implement these changes upon filing of these proposed rule changes with the Commission. There is no proposed rule text.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, SCCP and BSECC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. SCCP and BSECC have prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 16, 2010, NASDAQ OMX entered into an agreement to repurchase approximately 22.8 million shares of NASDAQ OMX common stock, $0.01 par value per share, for $21.82 per share (approximately $497 million in aggregate) from Borse Dubai Limited ("Borse Dubai") ("Stock Repurchase"). Also on December 16, 2010, Nomura International plc ("Nomura") agreed to purchase 8 million shares of NASDAQ OMX common stock from Borse Dubai ("Nomura Purchase"). The Stock Repurchase and Nomura Purchase closed on December 21, 2010.

On December 16, 2010, NASDAQ OMX and Investor AB also entered into the Investor Stockholders' Agreement, relating to 8 million shares of NASDAQ OMX common stock that Investor AB may purchase pursuant to a forward share purchase agreement with Nomura. The Investor Stockholders' Agreement will generally become effective after all applicable regulatory reviews or consents have been completed or obtained and the purchase by Investor AB of 8 million shares of NASDAQ OMX common stock from Nomura has been completed ("Transaction"). After the completion of the Transaction, it is anticipated that Investor AB would be the beneficial owner of approximately 9.7% of the outstanding capital stock of NASDAQ OMX.

The NASDAQ OMX shares to be acquired by Investor AB from Nomura are subject to Article Four of NASDAQ OMX's Restated Certificate of Incorporation,[3] which provides that no person who is the beneficial owner of voting securities of NASDAQ OMX in excess of 5% of the then-outstanding shares of stock generally entitled to vote ("Excess Securities") may vote such Excess Securities.

Prior to the closing of the Stock Repurchase and the Nomura Purchase, under the existing Stockholders' Agreement between NASDAQ OMX and Borse Dubai ("Borse Dubai Stockholders' Agreement") Borse Dubai had the right to recommend two persons reasonably acceptable to the NASDAQ OMX Nominating Committee (or any successor committee serving such function) ("Nominating Committee") to serve as directors of NASDAQ OMX ("Borse Dubai Designees"). In addition, under the Borse Dubai Stockholders' Agreement, NASDAQ OMX had agreed to use reasonable best efforts to cause appointment of one of the Borse Dubai Designees to the Audit, Executive, Finance, and Management Compensation committees of the Board and to cause the appointment of another person designated by Borse Dubai to serve on the Nominating Committee but in each case only if such designees met the requirements for service on such committee. By operation of the Borse Dubai Stockholders' Agreement, the sale of approximately 30.8 million shares of NASDAQ OMX common stock by Borse Dubai resulted in a reduction in the Borse Dubai Designees from two to one and in the forfeit of the right to designate a member to the specified Board committees.[4] As a result, as of December 21, 2010, Borse Dubai is entitled to nominate one Borse Dubai Designee to serve as a director of NASDAQ OMX and has no rights with regard to Board committee membership.

Under the Investor Stockholders' Agreement, among other things, Investor AB will have the right to recommend one person reasonably acceptable to the Nominating Committee to serve as a director of NASDAQ OMX ("Investor Board Designee"). NASDAQ OMX will: (i) Include the Investor Board Designee on each slate of nominees proposed by management of NASDAQ OMX; (ii) recommend the election of the Investor Board Designee to the stockholders of NASDAQ OMX; and (iii) otherwise use reasonable best efforts to cause the Investor Board Designee to be elected to the Board. NASDAQ OMX also has agreed to use reasonable best efforts to: (i) Cause the appointment of the Investor Board Designee to a committee of the Board reasonably agreed by Investor AB and NASDAQ OMX and (ii) cause the appointment of one person designated by Investor AB who shall not be an Investor Board Designee and who shall be reasonably acceptable to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As amended most recently on May 11, 2009. Securities Exchange Act Release No. 59858 (May 4, 2009), 74 FR 22191 (May 12, 2009) (SR–NASDAQ–2009–039).

[4] The provisions relating to the Borse Dubai Designees remained in effect as long as Borse Dubai maintained at least 50% of 42,901,148 shares of NASDAQ OMX common stock that had been acquired by Borse Dubai Limited. As long as Borse Dubai maintains at least 25% of these shares, it will be entitled to propose one director for nomination, but will have no rights with regard to committees.

Nominating Committee to a committee of the Board reasonably agreed to by Investor AB and NASDAQ OMX ("Additional Committee Designee") in each of the foregoing subject to applicable law, regulation, stock exchange listing standard, or committee composition standards. The provisions relating to the Investor Board Designee and committee membership remain in effect as long as Investor AB beneficially owns at least 5% of the outstanding capital stock of NASDAQ OMX.

The Investor Stockholders' Agreement relates solely to the Board of NASDAQ OMX and not to the boards of any of its subsidiaries including the Board of Directors of SCCP and BSECC. Nevertheless, the provisions of the Investor Stockholders' Agreement described above could be considered a proposed rule change of a subsidiary that is a self-regulatory organization ("SRO") if the provisions were viewed as affecting the influence that a significant stockholder of the parent corporation might be seen as exercising over the business and affairs of the SRO in its capacity as a wholly owned subsidiary of the parent corporation. Accordingly, senior management of The NASDAQ Stock Market LLC ("Exchange"), NASDAQ OMX PHLX LLC ("PHLX") and NASDAQ OMX BX, Inc. ("BX"), through delegated authority of their governing boards, have determined that the proposed change should be filed with the Commission, and the governing boards of SCCP and BSECC have each reviewed the proposed change and determined that it should be filed with the Commission.[5]

In general, directors of NASDAQ OMX, including the Investor Board Designee, must be nominated by a Nominating Committee,[6] the composition of which is subject to the requirements of the NASDAQ OMX By-Laws and Exchange Rule 5605(e),[7] and must then be elected by the stockholders of NASDAQ OMX. The NASDAQ OMX Board is currently composed of 15 members and is expected to increase to 16 members upon the closing of the Transaction. Thus, the Investor Board Designee would represent approximately 6% of the NASDAQ OMX Board.

Board committees are subject to compositional requirements established by the NASDAQ OMX By-Laws; moreover, the Audit, Management Compensation, and Nominating Committees are subject to independence requirements established by Exchange Rule 5605 and in the case of the Audit Committee by SEC Section 10A and Rule 10A–3 of the Act.[8] Thus, the affiliations of the Investor Board Designee and Additional Committee Designee and the judgment of the NASDAQ OMX Board of Directors with regard to his or her independence will be taken into account in considering eligibility for service on these committees.

2. Statutory Basis

SCCP and BSECC believe that the proposed rule change is consistent with the provisions of Section 17A of the Act,[9] in general, and with Section 17A(b)(3)(A) of the Act,[10] in particular, in that they are designed to ensure that SCCP and BSECC are so organized and have the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions. SCCP and BSECC believe that the proposed rule changes will result in no substantive change to the corporate ownership structure of its parent NASDAQ OMX.

B. Self-Regulatory Organizations' Statement on Burden on Competition

SCCP and BSECC do not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

SCCP and BSECC have not solicited or received written comments relating to the proposed rule change. SCCP and BSECC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule changes do not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the dates on which they were filed, or such shorter time as the Commission may designate, they have become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under 19b–4(f)(6) may not become operative prior to 30 days after the date of filing unless the Commission designates a shorter time if such action is consistent with the protection of investors and the public interest.[13] SCCP and BSECC have requested that the Commission waive the 30-day operative delay set forth in Rule 19b–4(f)(6)(iii) under the Act[14] to ensure that the filing is effective and therefore does not delay the closing of the Transaction. The parties to the Transaction expect all regulatory actions necessary for the closing of the Transaction to be completed as early as January 2011. The Commission believes that the earlier operative date is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposal to be operative upon filing with the Commission.[15]

At any time within 60 days of the filing of the respective proposed rule change by SCCP and BSECC, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[5] The Exchange, PHLX, BX, BSECC and SCCP are each submitting this filing pursuant to Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A)(iii).

[6] An exception to the requirement of nomination by the Nominating Committee exists for nominations by a stockholder who is conducting a proxy contest and who complies with the strict requirements of the NASDAQ OMX By-Laws governing direct stockholder nomination. The Investor Board Designee would not be nominated by Investor AB under these provisions.

[7] The NASDAQ OMX By-Laws provide that the Nominating Committee shall be appointed annually by the Board of Directors and shall consist of four or five directors, each of whom shall be an independent director within the meaning of the rules of the Exchange. The number of Non-Industry Directors (*i.e,* directors without material ties to the securities industry) on the Nominating Committee shall equal or exceed the number of Industry Directors, and at least two members of the committee shall be Public Directors (*i.e.,* directors who have no material business relationship with a broker or dealer, NASDAQ OMX or its affiliates, or FINRA). Exchange Rule 5605(e), which governs NASDAQ OMX as a company whose securities are listed on the Exchange, requires Nominating Committee members to satisfy the definition of "independence" in Exchange Rule 5605 and IM–5605 and to otherwise be deemed independent by the Board of Directors.

[8] 17 CFR 240.10A–3.

[9] 15 U.S.C. 78q–1.

[10] 15 U.S.C. 78q–1(b)(3)(A).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a SRO 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 Commission notes that SCCP and BSECC have satisfied the five-day pre-filing notice requirement.

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule changes are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–SCCP–2011–001 or SR–BSECC–2011–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–SCCP–2011–001 or SR–BSECC–2011–001. Either of these file numbers 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 offices of SCCP and BSECC's (*http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/*) and SCCP's Web sites (*http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/*). 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 Nos. SR–SCCP–2011–001 or SR–BSECC–2011–001, and should be submitted on or before March 2, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[16]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–2795 Filed 2–8–11; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2011–0028]

Pipeline Safety: Dangers of Abnormal Snow and Ice Build-Up on Gas Distribution Systems

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: This advisory bulletin advises owners and operators of petroleum gas and natural gas facilities of the need to take the appropriate steps to prevent damage to pipeline facilities from accumulated snow or ice. Past events on natural gas distribution system facilities appear to have been related to either the stress of snow and ice or the malfunction of pressure control equipment due to ice blockage of pressure control equipment vents. This advisory reminds owners and operators of the need to take precautionary actions to prevent adverse events.

FOR FURTHER INFORMATION CONTACT: Linda Daugherty, Deputy Associate Administrator for Policy and Programs at 202–366–4595 or by e-mail at *Linda.Daugherty@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The accumulation of snow and ice increases the potential for damage to meters and regulators and other aboveground pipeline facilities and components. Incidents have occurred in past winters on natural gas distribution system facilities that appear to have been related to either the stress of snow and ice or malfunction of pressure control equipment due to ice blockage of pressure control equipment vents. Exposed piping at metering and pressure regulating stations, at service regulators, and at propane tanks, are at greatest risk. Damage may result from the stresses imposed by the additional loading of the snow or ice. Damage to facilities may also result from the impact of snow or ice falling from roofs, ice forming in or on regulators preventing their proper operation, or shoveling snow from roofs to protect dwellings from abnormal snow accumulation.

II. Advisory Bulletin (ADB–11–02)

To: Owners and Operators of Petroleum Gas and Natural Gas Facilities in Areas Subject to Heavy Snowfall or Abnormally Icy Weather.

Subject: Dangers of Abnormal Snow and Ice Build-up on Gas Distribution Systems.

Purpose: To remind owners and operators of the need to (1) monitor the potential impact of excessive snow and ice on these facilities; and (2) inform the public about possible hazards from snow and ice accumulation on regulators and other pipeline facilities.

Advisory: PHMSA is advising operators of petroleum gas and natural gas pipeline facilities, regardless of whether those facilities are regulated by PHMSA or state agencies, to consider the following steps to address the safety risks from accumulated snow and ice on pipeline facilities:

1. Notify customers and other entities of the need for caution associated with excessive accumulation and removal of snow and ice. Notice should include the need to clear snow and ice from exhaust and combustion air vents for gas appliances to:

(a) Prevent accumulation of carbon monoxide in buildings; or

(b) Prevent operational problems for the combustion equipment.

2. Pay attention to snow and ice related situations that may cause operational problems for pressure control and other equipment.

3. Monitor the accumulation of moisture in equipment and snow or ice blocking regulator or relief valve vents which could prevent regulators and relief valves from functioning properly.

4. The piping on service regulator sets is susceptible to damage that could result in failure if caution is not exercised in cleaning snow from around the equipment. Where possible, use a broom instead of a shovel to clear snow off regulators, meters, associated piping, propane tanks, tubing, gauges or other propane system appurtenances.

5. Remind the public to contact the gas company or designated emergency response officials if there is an odor of gas present or if gas appliances are not functioning properly. Also, remind the public that they should leave their residence immediately if they detect a gas or propane odor and report the odor

[16] 17 CFR 200.30–3(a)(12).

to their gas company, propane operator or designated emergency response officials.

Authority: 49 U.S.C. chapter 601; 49 CFR 1.53.

Issued in Washington, DC, on February 3, 2011.

Linda Daugherty,

Deputy Associate Administrator for Policy and Programs.

[FR Doc. 2011–2837 Filed 2–8–11; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35453]

Elkhart & Western Railroad Co.—Trackage Rights Exemption—Fulton County, LLC, d/b/a Fulton County Railroad

Pursuant to a written trackage rights agreement, Fulton County, LLC, d/b/a Fulton County Railroad (FCRR) has agreed to grant local trackage rights to Elkhart & Western Railroad Co. (EWR) over approximately 11.7 miles of rail line between milepost I–108.6 near Argos and milepost I–96.9 at Rochester, in Marshall and Fulton Counties, Ind.[1]

The transaction is scheduled to be consummated on February 24, 2011.

The purpose of the transaction is to allow EWR to provide continued rail service to FCRR customers and to allow direct interchange of FCRR customers' traffic with Norfolk Southern Railway Co. at Argos.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease and Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by February 16, 2011 (at least 7 days before the exemption becomes effective).

[1] By letter filed on January 26, 2011, EWR amended its notice to correct the milepost designations and the mileage for the rail line, and to include the proposed consummation date of the transaction. It also clarified that the transaction involves local trackage rights.

An original and 10 copies of all pleadings, referring to Docket No. FD 35453, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Daniel A. LaKemper, General Counsel, Elkhart & Western Railroad Co., 1318 S. Johanson Road, Peoria, IL 61607.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 3, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–2816 Filed 2–8–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Proposed Privacy Act Systems of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of proposed Privacy Act systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury, Departmental Offices gives notice of a proposed system of records entitled, "Treasury/DO .225 —TARP Fraud Investigation Information System."

DATES: Comments must be received no later than March 11, 2011. The proposed new system of records will be effective March 11, 2011 unless comments are received which would result in a contrary determination.

ADDRESSES: Written comments should be sent to the Department of the Treasury, ATTN: Supervisory Fraud Specialist, Office of Financial Stability, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The Department will make such comments available for public inspection and copying in the Department's Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Daylight Time. You can make an appointment to inspect comments by telephoning (202) 622–0990. All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Brian Bressman, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 927–9219 (fax) or via electronic mail at *Brian.Bressman@do.treas.gov.*

SUPPLEMENTARY INFORMATION: The Department established the Office of Financial Stability (OFS) to manage the Troubled Asset Relief Program (TARP). TARP was established under the Emergency Economic Stabilization Act of 2008 (EESA) with the specific goal of stabilizing the United States financial system and preventing a systemic collapse. Treasury established a series of initiatives under the TARP that include the Making Home Affordable Program, Hardest Hit Fund, Capital Purchase Program, American International Group (AIG) Program, Consumer and Business Lending Initiative, Public-Private Investment Program, Capital Assistance Program, Asset Guarantee Program, Targeted Investment Program, and the Automotive Industry Financing Program. These programs aim to stabilize the financial system, restore the flow of credit to consumers and businesses, and mitigate the effects of the foreclosure crisis to keep millions of Americans in their homes. OFS is establishing the TARP Fraud Investigation Information System to assist the Department in carrying out its responsibilities under EESA. The TARP Fraud Investigation Information System maintains information relevant to background inquiries conducted on individuals that seek, receive or are entrusted with the TARP funds, and to complaints received and collected as part of investigations pertaining to alleged fraud, waste, and/or abuse committed against the TARP programs. Information in the system will assist investigators in determining whether to: (a) Refer matters to the Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) for further investigation and resolution; (b) refer matters to OFS Financial Agents and others for compliance review; or (c) close matters with no further action to be taken. The OFS Fraud Investigation Information System is important to the success of the OFS mission.

In a notice of proposed rulemaking, which is published separately in the **Federal Register**, the Office of Financial Stability is proposing to exempt records maintained in several systems from certain of the Privacy Act's requirements pursuant to 5 U.S.C. 552a(k)(2).

The report of a new system of records, as required by 5 U.S.C. 552a(r) of the

Privacy Act, has been provided to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget.

The proposed new system of records, entitled "Treasury/DO .225—TARP Fraud Investigation Information System" is published in its entirety below.

Dated: January 25, 2011.

Melissa Hartman,

Deputy Assistant Secretary for Privacy, Transparency and Records.

Treasury/DO .225

SYSTEM NAME:

TARP Fraud Investigation Information System.

SYSTEM LOCATION:

Office of Financial Stability, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The TARP Fraud Investigation Information System contains information about:

(a) Individuals that seek, receive or are entrusted with TARP funds;

(b) Individuals that are:

1. Known perpetrators or suspected perpetrators of a known or possible fraud committed or attempted against TARP programs;

2. Directors, officers, partners, proprietors, employees, and agents, of a business entity;

3. Named as possible witnesses;

4. Actual or potential victims of fraud, including but not limited to mortgage fraud; and

5. Individuals or entities who have applied to any of the TARP programs, recipients of TARP program funds and/or benefits, OFS contractors, OFS agents; or

6. Individuals or entities who have or might have information about reported matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information on individuals or entities who seek, receive or are entrusted with TARP funds, are the subject of an investigation or in connection with an investigation, undertaken by OFS into allegations of actual or suspected TARP program fraud, waste, and/or abuse. Typically, these records include, but are not limited to, the individual's name, date of birth, social security number, telephone number(s), residential address(es), e-mail or web address(es), driver's license number, vehicle ownership records, prior criminal history, and other exhibits and documents collected during an investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 5211 and 18 U.S.C. 1031.

PURPOSE(S):

The purpose of this system of records is to maintain a database of investigative materials consisting of complaints, inquiries, and investigative referrals pertaining to alleged fraud, waste, and/or abuse committed or alleged to have been committed by third parties against the TARP programs, and of background inquiries conducted on individuals seeking, receiving or entrusted with TARP funds. Information in the system will allow investigators to determine whether to refer matters to the appropriate authority for further investigation and possible criminal, civil, or administrative action.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used:

1. To disclose pertinent information to appropriate Federal, foreign, State, local, Tribal or other public authorities or self-regulatory organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a potential violation of civil or criminal law or regulation.

2. Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

3. Disclose information to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Federal Government is a party to the judicial or administrative proceeding. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a court of competent jurisdiction and agency "Touhy" regulations are followed. See 31 CFR 1.8 et seq.

4. To disclose information to the National Archives and Records Administration (NARA) for use in its records management inspections and its role as an Archivist.

5. To disclose information to the United States Department of Justice (DOJ), for the purpose of representing or providing legal advice to the Department of the Treasury (Department) in a proceeding before a court, adjudicative body, or other administrative body before which the Department is authorized to appear, when such proceeding involves:

(a) The Department or any component thereof;

(b) Any employee of the Department in his or her official capacity;

(c) Any employee of the Department in his or her individual capacity where the DOJ or the Department has agreed to represent the employee; or

(d) The United States, when the Department determines that litigation is likely to affect the Department or any of its components; and the use of such records by the DOJ is deemed by the DOJ or the Department to be relevant and necessary to the litigation provided that the disclosure is compatible with the purpose for which records were collected.

6. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Department, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to Department officers and employees.

7. To appropriate agencies, entities, and persons when: (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise that there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

8. To disclose information to the appropriate Federal, foreign, State, local, Tribal, or other public authority or self regulatory organization for the purpose of consulting as to the propriety of access to or amendment or correction of information obtained from that authority or organization, or verifying the identity of an individual who has requested access to or amendment or correction of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in both an electronic media and paper records.

RETRIEVABILITY:

These records may be retrieved by various combinations of employer name and or individual name.

SAFEGUARDS:

Where feasible, data in electronic format is encrypted or password protected. Access to data and records is limited to only those employees within the Office of Financial Stability whose duties require access. Physical records are kept securely locked at a controlled, limited-access facility. Personnel screening and training are employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

The records will be maintained indefinitely until a record disposition schedule submitted to the National Archives Records Administration has been approved.

SYSTEM MANAGER(S) AND ADDRESS:

Supervisory Fraud Specialist, Office of Financial Stability, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Address inquiries to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(k)(2).

RECORD ACCESS PROCEDURE:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURE:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from mortgage servicers, other government agencies or self regulatory organizations, Treasury's financial agents, commercial databases, and/or witnesses or other third parties having information relevant to an investigation. Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(k)(2).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (e)(4)(H), (I) and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

[FR Doc. 2011–2871 Filed 2–8–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Entities Pursuant to Executive Order 13382

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of 4 newly-designated entities and one newly-designated individual whose property and interests in property are blocked pursuant to Executive Order 13382 of June 28, 2005, "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters."

DATES: The designation by the Director of OFAC of the 4 entities and one individual identified in this notice pursuant to Executive Order 13382 is effective on December 21, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/offices/enforcement/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA"), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the "Order"), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On December 21, 2010, the Director of OFAC, in consultation with the Departments of State, Justice, and other relevant agencies, designated 4 entities and one individual whose property and interests in property are blocked pursuant to Executive Order 13382.

The list of additional designees is as follows:

Entities

1. BONYAD TAAVON SEPAH; AKA: Bonyad-e Ta'avon-e Sepah; AKA: IRGC Cooperative Foundation; AKA: Sepah Cooperative Foundation; Address: Niayes Highway, Seoul Street, Tehran, Iran [NPWMD] [IRGC].

2. ANSAR BANK; AKA: Ansar Finance and Credit Fund; AKA: Ansar Financial and Credit Institute; FKA: Ansar Institute; FKA: Ansar al-Mojahedin No-Interest Loan Institute; FKA: Ansar Saving and Interest Free-Loans Fund; Address: Building No. 539, North Pasdaran Street, Tehran 19575–497, Iran [NPWMD] [IFSR].

3. MEHR BANK; AKA: Mehr Interest-Free Bank; AKA: Mehr Finance and Credit Institute; Address: 204 Taleghani Ave., Tehran, Iran [NPWMD] [IRGC] [IFSR].

4. MOALLEM INSURANCE COMPANY, No 56, Haghani Boulevard, Vanak Square, Tehran 1517973511, Iran; Business Registration Document # 110465 (Iran) issued 1994; Web site www.mic-ir.com; Telephone: 9821887791835; Telephone: 982184223; Telephone: 9821887950512; Telephone: 982188870682; Fax: 982188771245 [NPWMD] [IFSR].

Individual

1. FATTAH, Parviz; AKA: FATTAH–QAREHBAGHI, Parviz; DOB: 1961; Alt DOB: 1962; POB: Urmia, Iran [NPWMD] [IRGC].

Dated: February 3, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–2887 Filed 2–8–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Privacy Act of 1974, as Amended; System of Records

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury, Office of Thrift Supervision (OTS), gives notice of a proposed new system of records entitled "Mass Communication System—Treasury/OTS.013."

DATES: Comments must be received no later than March 11, 2011. This new system of records will be effective March 21, 2011 unless OTS receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to the Director of Security, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) Appointments may be scheduled on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the request. All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Ronald Bell, Director of Security, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20052. Phone number: 202–906–6240.

SUPPLEMENTARY INFORMATION: The proposed system will allow the OTS to send messages to the OTS workforce and receive confirmation back from staff in order to help senior management access the availability of staff during times of emergency.

The system is being provided through a Software-As-A Service (SAAS) vendor. The system has been populated with the official business contact information of all OTS employees. Employees will have the opportunity to register their personal contact information with the service. As part of the registration process, employees will login to a secured Web site and enter their personal contact information to include: Home phone number, personal cell phone number and e-mail address. Providing this personal contact information is voluntary and employees have the right to decline participation. Employees can also login to the Web site in order to update their contact information. In the event of an emergency or security incident the Security staff will send instruction or guidance to OTS personnel using the contact information provided. This service will be used to communicate with staff during local, regional or national emergencies and security incidents, to help senior management assess the availability of staff during an emergency or security incident, and to provide time-sensitive information to staff.

The report of a new system of records, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been provided to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget.

The proposed new system of records entitled "Treasury/OTS.013—Mass Communication System" is published in its entirety below.

Dated: January 25, 2011.

Melissa Hartman,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

Treasury/OTS .013

SYSTEM NAME:

Mass Communication System.

SYSTEM LOCATION:

The system is hosted at a contractor site in Burbank, California. The address of the contractor may be obtained by writing to the system manager below.

CATEGORIES OF INDIVIDUALS COVERED:

All employees of The Office of Thrift Supervision.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, home phone number, personal cell phone number, personal e-mail address, official business phone number, official business e-mail address, official business cell phone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12148, *Federal Emergency Management.*

PURPOSE:

The Office of Thrift Supervision's (OTS) Security Office will use the Mass Communication System to communicate with OTS personnel during and after local, regional or national emergency events, communicate with staff during and after security incidents, disseminate time sensitive information to staff, provide Human Resources and OTS Leadership with employee accountability status during emergency events, and conduct communication tests. The system is a managed service that is hosted at a contractor site. The system will allow Security staff and other authorized individuals to send messages to the OTS workforce and receive confirmation back from staff in order to help senior management assess the availability of staff during times of emergency. Employees have the right to decline to provide personal information, however, their official business contact information is entered into the system by the human resources manager.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information in these records may be used to:

(1) Make disclosures to a congressional office from the records of an individual in response to an inquiry made at the request of the individual to whom the record pertains;

(2) Representatives of the National Archives and Records Administration (NARA) who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906.

(3) A contractor for the purpose of full filling a contract, compiling, organizing, analyzing, programming, or otherwise refining records to accomplish an agency function subject to the same limitations applicable to U.S. Department of Treasury officers and employees under the Privacy Act.

(4) Disclose information to the appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic format at the service provider's site.

RETRIEVABILITY:

Records are retrieved by OTS office and individual name.

SAFEGUARDS:

Safeguards in place to prevent misuse of data include: role-based user access, the use of user ID and authorization code to access the Web site, monitoring of application access and database access, encryption of passwords stored in the database, and physical access controls to the building housing the system.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with National Archives and Records Administration General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Security, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20052.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system or to gain access to records maintained in the system must submit a written request that (1) Identifies the record system; (2) identifies the category and type of records sought; and (3) provides (i) A signature, (ii) an address, and (iii) one other item of identification such as a photocopy of a driver's license or other official document bearing the individual's signature. See 31 CFR part 1, subpart C, Appendix L. Address inquiries to FOIA Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

RECORDS ACCESS PROCEDURE:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

The individual and the agency's human resources system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–2886 Filed 2–8–11; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Privacy Act of 1974, as Amended; System of Records

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury, Office of Thrift Supervision (OTS), gives notice of a proposed new system of records entitled "Treasury/OTS.015 —Retiree Billing System."

DATES: Comments must be received no later than March 11, 2011. This new system of records will be effective March 11, 2011 unless OTS receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to the Principal Director, HR Programs and Services, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) Appointments may be scheduled on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the request. All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Avelino Rodriquez, Principal Director, HR Programs and Services, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20052. Phone number: 202–906–7141.

SUPPLEMENTARY INFORMATION: Pursuant to the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989, the Office of Regulatory Activities (ORA) and its twelve examination districts became a part of OTS. OTS assumed the cost of ORA's retirement system, which is part of the Financial Institutions Retirement Fund (FIRF). Under this private retirement fund, FIRF retirees are entitled to continue health and life insurance after they retire from OTS. OTS also offers a private group life insurance plan to its employees. Employees who opt to participate in the OTS life insurance plan are also entitled to continue this life insurance after they retire from OTS.

The report of a new system of records, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated November 30, 2000.

The proposed new system of records entitled "Treasury/OTS.015—Retiree Billing System" is published in its entirety below.

Dated: January 25, 2011.

Melissa Hartman,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

Treasury/OTS .015

SYSTEM NAME:

Retiree Billing System.

SYSTEM LOCATION:

Office of Thrift Supervision, 1700 G St., NW., Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED:

OTS Financial Institutions Retirement Fund (FIRF) retirees and OTS employees retiring under the Civil Service Retirement System or the Federal Employees Retirement System and who participate in the OTS-sponsored life insurance plan.

CATEGORIES OF RECORDS IN THE SYSTEM:

Retirees' names, home phone numbers, mailing addresses, email addresses, and bank account numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 12 U.S.C. 1462a (h).

PURPOSE:

The Retiree Billing system is used to bill insurance premiums to both Financial Institutions Retirement Fund (FIRF) employees and employees who retire from OTS and have the OTS sponsored life insurance. The system is used by Payroll Accounting Specialists in the Human Resources office. Retiree name and bank account information is shared with the Financial Management Services (FMS), which is another bureau of the Treasury Department, so that retirees can be properly billed for health/insurance premiums. FMS provides Automated Clearing House (ACH) debit services on behalf of OTS; OTS provides FMS with retiree information so that FMS can perform a debit on the bank account of the retiree for the funds owed to OTS and deposit the money into an OTS account.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information in these records may be used to:

(1) Make disclosures to a congressional office from the records of an individual in response to an inquiry made at the request of the individual to whom the record pertains;

(2) Representatives of the National Archives and Records Administration (NARA) who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906.

(3) A contractor for the purpose of full filling a contract, compiling, organizing, analyzing, programming, or otherwise refining records to accomplish an agency function subject to the same limitations applicable to U.S. Department of Treasury officers and employees under the Privacy Act.

(4) Disclose information to the appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic and paper format.

RETRIEVABILITY:

Records are retrieved by retirees' names or social security numbers.

SAFEGUARDS:

Safeguards in place to prevent misuse of data include: role-based user access, the use of userid and authorization code to access the system, and locking paper files when not in use.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with National Archives and Records Administration General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Managing Director, Human Capital, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20052.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system or to gain access to records maintained in the system must submit a written request that (1) Identifies the record system; (2) identifies the category and type of records sought; and (3) provides (i) a signature, (ii) an address, and (iii) one other item of identification such as a photocopy of a driver's license or other official document bearing the individual's signature. See 31 CFR part 1, subpart C, Appendix L. Address inquiries to FOIA Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

RECORDS ACCESS PROCEDURE:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

OTS retirees and OTS payroll and personnel systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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Part II

Department of the Interior

Fish and Wildlife Service
50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Arroyo Toad; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2009–0069; MO 92210–0–0009–B4]

RIN 1018–AV89

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Arroyo Toad

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 the arroyo toad (*Anaxyrus californicus, Bufo californicus*). We are designating approximately 98,366 acres (ac) (39,807 hectares (ha)) of habitat in Santa Barbara, Ventura, Los Angeles, San Bernardino, Riverside, Orange, and San Diego Counties, California, as critical habitat for the arroyo toad. This final revised designation constitutes an increase of approximately 86,671 ac (35,074 ha) from the 2005 designation of critical habitat for the arroyo toad. A taxonomic name change has occurred and been accepted for the arroyo toad. Throughout the remainder of this document we will use the currently recognized name for the listed entity, *Anaxyrus californicus,* for references to the arroyo toad.

DATES: This rule becomes effective on March 11, 2011.

ADDRESSES: The final rule, final economic analysis, and map of critical habitat will be available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2009–0069, *http://www.fws.gov/ventura/*, and *http://www.fws.gov/carlsbad/.* Comments and materials received, as well as supporting documentation used in preparing this final rule, will be 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 Noda, Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (*see* **ADDRESSES** section) or Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; telephone 760–431–9440; facsimile 760–431–9624. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

We intend to discuss only those topics directly relevant to the designation of revised critical habitat for the arroyo toad under the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*), in this final rule. For more information on the taxonomy, biology, and ecology of the arroyo toad, refer to the final listing rule published in the **Federal Register** on December 16, 1994 (59 FR 64859); the final critical habitat rule published in the **Federal Register** on February 7, 2001 (66 FR 9414); the final revised critical habitat rule published in the **Federal Register** on April 13, 2005 (70 FR 19562); and the proposed revised critical habitat rule published in the **Federal Register** on October 13, 2009 (74 FR 52612). Additionally, information on this species can be found in the Recovery Plan for the Arroyo Southwestern Toad (*Bufo microscaphus californicus*) finalized on July 24, 1999 (Service 1999). The nomenclature for the listed entity has changed to "arroyo toad (*Anaxyrus californicus*)" but this change does not alter the description or distribution of the animals.

Change in Taxonomic Nomenclature

When we made the proposed revised critical habitat for the arroyo toad available on October 13, 2009 (74 FR 52612), we proposed a nomenclature change to the arroyo toad from *Bufo californicus* to *Anaxyrus californicus* and for that change to be published in the Code of Federal Regulations (CFR). Based on the information presented in the proposed revised rule (*see Taxonomy and Nomenclature* of the proposed rule (74 FR 52612; October 13, 2009)) and acceptance by the scientific community, we make that change and are amending the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h) to identify the listed entity as "arroyo toad (*Anaxyrus californicus*)."

New Information on Species' Description, Life History, Ecology, Habitat and Range

We did not receive any new information pertaining to the description, ecology, or habitat of the arroyo toad following the 2009 proposed rule to revise critical habitat (74 FR 52612; October 13, 2009). However, the following paragraphs discuss new information that we received regarding the species' life history and status, and the areas needed for arroyo toad conservation.

Life History

The following additional information and clarifications on the life history of the arroyo toad are based on comments from peer reviewers (*see* **Peer Review** section below) received on the proposed revised rule (74 FR 52612; October 13, 2009).

We stated in the revised proposed rule that most arroyo toads become sexually mature in the spring following metamorphosis. However, we should clarify that unlike males, female arroyo toads generally do not become sexually mature until 2 years of age (Sweet 1992, p. 52).

In the proposed revised rule, we stated that arroyo toads need breeding pools that are less than 12 inches (in.) (30 centimeters (cm)) deep. However, a peer reviewer pointed out that pools "less than 12 in. (30 cm) deep" may not include any suitable breeding habitat in some cases. Breeding pools need a band of current-free water near the shoreline that is 2 to 4 feet (ft) (0.6 to 1.2 meters (m)) wide and less than 4 in. (10 cm) deep. The peer reviewer has found that arroyo toad egg clutches are laid entirely or mostly in water less than 4 in. (10 cm) deep with minimal current velocity because egg strands are not attached to any substrate features and can be swept away by even very small currents. Additionally, egg strands or portions of strands that end up in water over about 6 in. (15 cm) deep are often attacked by fungus and fail to hatch (Sweet 1992, p. 57). Based on the above information, we now specify that arroyo toads need breeding pools that are no more than 6 in. (15 cm) deep. We have also made changes as appropriate to the primary constituent elements (PCEs) in this final rule (*see* the "*Primary Constituent Elements for the Arroyo Toad*" section below). For more life history information, please *see* the "*Life History*" section in the proposed revised critical habitat designation published in the **Federal Register** on October 13, 2009 (74 FR 52612).

Reasons for Decline and Threats

Comments we received on the proposed revised rule (74 FR 52612; October 13, 2009) provided additional information and clarifications on threats to the arroyo toad.

In the 2009 proposed rule under the "*Reasons for Decline and Threats*" section, we stated that the introduction of aquatic species not native to southern California watercourses has been facilitated by construction of the California Aqueduct and other sources of inter-basin water transport (Service 1999, p. 48). We also stated that

currently, the California Aqueduct is linked directly to the Santa Ynez River, Santa Clara River, San Jacinto River, and Mojave River Basins. However, one peer reviewer noted that the Santa Ynez River is connected to the California Aqueduct only via many tens of kilometers of buried pipeline, with numerous pump stations. It is far less likely that macroscopic, nonnative organisms will survive such transport than is the case for the Santa Clara, San Jacinto and Mojave drainage connectors, so the threat posed to the San Ynez River populations from aqueduct transfer is not of the same order of magnitude as for the other systems.

In the 2009 proposed rule under the "*Reasons for Decline and Threats*" section, we also noted that nonnative species that compete for resources with or prey on arroyo toads pose a serious threat to arroyo toads. Nonnative amphibians, such as bullfrogs (*Lithobates catesbeianus*) and African clawed frogs (*Xenopus laevis*), are known to feed on arroyo toads at various life stages (Ramirez 2007, p. 102). Arroyo toad tadpoles are also subject to predation by introduced fish species, especially green sunfish (*Lepomis cyanellus*) and prickly sculpin (*Cottus asper*), whereas mosquitofish (*Gambusia affinis*) and crayfish (*Procambarus clarkii*) have been observed to prey on arroyo toad eggs in addition to tadpoles. The presence of deep and persistent pools during summer and fall constitute a threat to arroyo toads because such pools provide refuge and breeding habitat for nonnative predators such as crayfish, various warm-water fish species, African clawed frogs, and bullfrogs. Artificially sustained flow regimes and activities that create ponds (including the introduction of beaver (*Castor canadensis*) into central and southern coastal montane regions) make habitat more suitable for bullfrogs and African clawed frogs than for arroyo toads (Sweet 1992, p. 156). For example, the presence of bullfrogs is an indicator of how the natural hydrology of a stream drainage has been altered. Bullfrog tadpoles mature more slowly than arroyo toads and many other amphibians and require permanent water for a full year (Hecnar and M'Closkey 1997, p.146), whereas arroyo toads are essentially a terrestrial species and need aquatic habitats with shallow pools and minimal current only during the breeding season. In stream habitats with pools that predominately persist through the summer and then dry up by the fall, arroyo toads would be at an advantage in comparison to nonnative species. In a modified system with deep pools that persist year-round, both species must rely on the same habitat for breeding, even though their biological needs differ, which allows bullfrogs more opportunity to prey on essentially all life stages of arroyo toads.

We have also received new information on the threat that feral pigs (*Sus scrofa*) pose not only to amphibians in general, but in particular to arroyo toads in critical habitat units 15, 16, 17, and 18. The Forest Service is studying the effects of feral pigs in the San Diego River where pigs were released approximately 3 years ago on tribal lands. According to a forest biologist on the Cleveland National Forest, feral pigs have now spread as far north as Lake Henshaw and east into Cuyamaca State Park, possibly into the San Luis Rey River, San Vincente Creek, and Sweetwater River (Winter *in litt.* 2010). In a recent study by Jolley *et al.* (2010, p. 519), wild pigs were found to negatively affect almost all aspects of ecosystem structure and function. Their rooting disturbs soil layers and natural decomposition cycles. Typically traveling in groups, areas where pigs have rooted appear as if rototilled, leaving large areas of bare earth that can be easily colonized by invasive weeds. In addition to rooting and habitat alteration, wild pigs prey on reptiles and amphibians, although the extent of predation has not been quantified (Jolley *et al.* 2010, p. 520).

In recent decades, large fires in the West have become more frequent, more widespread, and potentially more deadly (Joint Fire Science Program (JFSP) 2007, pp. 1–12). Wildfire has always been a periodic visitor to southern California forests, as part of the cycle of natural dynamics that influences the composition of our forests (JFSP 2007, p. 1). However, recently there has been a shift to more severe fires in some locations and wildfire effects are often exacerbated by drought and insect attack. In addition, fire suppression activities such as fire line construction, hand line construction, bulldozing, water withdrawal using helicopters and pumps, backfiring, and fire camp and safety zone construction pose a threat to the arroyo toad.

Direct mortality to arroyo toads can result from construction of fuelbreaks and safety zones in stream terraces where arroyo toads are burrowed. Bulldozing operations can also severely degrade other essential upland habitats. For example, in response to the Zaca Fire that occurred on the Los Padres National Forest in 2007, a number of broad fuelbreaks and safety zones were bulldozed in several areas, including the lower portions of Mono and Indian Creeks (Sweet 2007a, pp. 1–9; 2007b, p. 1). Based on research along Mono and Indian Creeks prior to the fire (Sweet 1992, pp. 1–198; 1993, pp. 1–73), juvenile and adult arroyo toads were known to make extensive use of the stream terraces where several of the fuelbreaks and safety zones were constructed. In August and September of 2007 when construction occurred, a large proportion of the population would have been within burrows on the terraces and any toads that were in those burrows were very likely killed by the bulldozing (Sweet 2007a, p. 1). In addition to causing direct mortality, Sweet (2007a, p. 1) reported that the bulldozing operations severely degraded essential upland habitat by removing shade and the opportunity for toads to select microclimates based on soil temperature, moisture content, and ground cover. The bulldozing also created substantial barriers to toad movement through the placement of large piles of woody debris between the creek bed and the terraces. This formed ideal conditions for the terraces to become invaded by nonnative weeds, in particular yellow star thistle (*Centaurea solstitialis*), and thus created unsuitable habitat for arroyo toads because they are unable to dig burrows for shelter or aestivation in terraces where yellow star thistle is well-established (Sweet 2007a, p. 1). Based on the above information, we believe arroyo toads suffer direct mortality and habitat loss from fire suppression activities.

Previous Federal Action

On July 20, 2007 (Service 2007, pp. 1–2), we announced that we would review the April 13, 2005, final rule after questions were raised about the integrity of scientific information used and whether the decision made was consistent with the appropriate legal standards. Based on our review of the previous final critical habitat designation, we determined it was necessary to revise critical habitat, and we published a proposal to revise the designation on October 13, 2009 (74 FR 52612). Additionally, on December 19, 2007, the Center for Biological Diversity filed a complaint in the U.S. District Court for the Southern District of California challenging our 2005 designation of critical habitat for the arroyo toad (*Center for Biological Diversity* v. *U.S. Fish and Wildlife Service,* Case No. 07–2380–JM–AJB). On June 5, 2008, the court entered a consent decree requiring a proposed revised critical habitat rule to be submitted to the **Federal Register** by October 1, 2009,

and a final revised critical habitat designation to be submitted to the **Federal Register** by October 1, 2010. On June 29, 2010, we published in the **Federal Register** a notice reopening the comment period on the proposed rule and making available the draft economic analysis (75 FR 37358). On August 10, 2010, the U.S. District Court granted a motion to modify the stipulated settlement agreement to submit the final revised critical habitat determination to the **Federal Register** on January 21, 2011. For more information on previous Federal actions concerning the arroyo toad, refer to the proposed revisions to critical habitat published in the **Federal Register** on October 13, 2009 (74 FR 52612).

Summary of Changes From the 2005 Critical Habitat Designation

On April 28, 2004 (69 FR 23254), we proposed to designate 138,713 ac (56,133 ha) of critical habitat for the arroyo toad in 23 units. On April 13, 2005 (70 FR 19562), we designated approximately 11,695 ac (4,733 ha) of critical habitat for the arroyo toad in six units. We proposed to revise this designation to approximately 109,110 ac (44,155 ha) in 22 units on October 13, 2009 (74 FR 52612). This final revised critical habitat designation includes approximately 98,366 ac (39,807 ha) in 21 units, after excluding portions of Units/Subunits 6b, 8, 9, 10a, 10b, 11a, 13b, 13c, 14, 15, 16d, 17a, 18c, and 19a (approximately 11,697 ac (4,734 ha)) based on consideration of economic, national security, and other relevant impacts (*see* **Exclusions Under Section 4(b)(2) of the Act** section below). The areas identified in this final revised rule constitute revisions of areas excluded and designated as critical habitat for the arroyo toad on April 13, 2005 (70 FR 19562; Figure 1), and proposed revisions to that rule published on October 13, 2009 (74 FR 52612). This final revised critical habitat designation includes approximately 98,366 ac (39,807 ha) of land in Santa Barbara, Ventura, Los Angeles, San Bernardino, Riverside, Orange, and San Diego Counties, California. Table 1 below outlines the differences between the 2005 final critical habitat rule (70 FR 19562; April 13, 2005), the 2009 proposed revisions to the critical habitat designation (74 FR 52612; October 13, 2009), and this final revised critical habitat designation for the arroyo toad. For more information on the differences between the 2005 critical habitat rule and the 2009 proposed revised critical habitat rule, please *see* the **Summary of Changes From Previously Designated Critical Habitat** section of the proposed revised critical habitat rule published in the **Federal Register** on October 13, 2009 (74 FR 52612).

TABLE 1—CHANGES BETWEEN THE APRIL 13, 2005, ARROYO TOAD REVISED CRITICAL HABITAT DESIGNATION; THE OCTOBER 13, 2009 AND THE JUNE 29, 2010, PROPOSED REVISED DESIGNATION; AND THIS REVISED FINAL DESIGNATION. ACREAGE VALUES ARE APPROXIMATE AND MAY NOT TOTAL DUE TO ROUNDING

Critical habitat unit in this final rule	County	2005 Designation of revised critical habitat and ac (ha)	2009 and 2010 Proposed revisions to the critical habitat designation and ac (ha)	2010 Final revised critical habitat designation and ac (ha)
1. San Antonio River	Monterey	Entire Unit excluded under 4(b)(2) for national security reasons.	Entire Unit exempted under 4(a)(3).	Entire Unit exempted under 4(a)(3).
2. Sisquoc River	Santa Barbara	Designated as Unit 2: 4,800 (1,942).	Included as Unit 2: 3,775 (1,528).	Designated as Unit 2: 3,775 (1,528).
3. Upper Santa Ynez River Basin.	Santa Barbara	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 3: 3,032 (1,227).	Designated as Unit 3: 3,032 (1,227).
4. Sespe Creek	Ventura	Designated as Unit 4: 4,008 (1,622).	Included as Unit 4: 2,760 (1,117).	Designated as Unit 4: 2,760 (1,117).
5. Piru Creek	Ventura	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 5: 2,507 (1,015).	Designated as Unit 5: 2,507 (1,015).
5a.			Included as Subunit 5a: 1,358 (550).	Designated as Subunit 5a: 1,358 (550).
5b.			Included as Subunit 5b: 1,149 (465).	Designated as Subunit 5b: 1,149 (465).
6. Upper Santa Clara River Basin.	Los Angeles	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 6: 3,795 (1,537).	Designated as Unit 6: 2,802 (1,134).
6a.			Included as Subunit 6a: 520 (210).	Designated as Subunit 6a: 520 (210).
6b.			Included as Subunit 6b: 1,995 (807).	Designated as Subunit 6b: 1,003 (406).
6c.			Included as subunit 6c: 1,279 (518).	Designated as Subunit 6c: 1,279 (518).
7. Upper Los Angeles River Basin.	Los Angeles	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 7: 1,190 (482).	Designated as Unit 7: 1,190 (482).
8. Lower Santa Ana River Basin.	Orange	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 8: 2,182 (883).	Designated as Unit 8: 737 (298).
9. San Jacinto River Basin	Riverside	Designated as Unit 9: 700 (283).	Included as Unit 9: 2,406 (974).	Designated as Unit 9: 2,391 (968).
9a.			Included as Subunit 9a: 1,226 (496).	Designated as Subunit 9a: 1,226 (496).
9b.			Included as Subunit 9b: 1,180 (478).	Designated as Subunit 9b: 1,166 (472).

TABLE 1—CHANGES BETWEEN THE APRIL 13, 2005, ARROYO TOAD REVISED CRITICAL HABITAT DESIGNATION; THE OCTOBER 13, 2009 AND THE JUNE 29, 2010, PROPOSED REVISED DESIGNATION; AND THIS REVISED FINAL DESIGNATION. ACREAGE VALUES ARE APPROXIMATE AND MAY NOT TOTAL DUE TO ROUNDING—Continued

Critical habitat unit in this final rule	County	2005 Designation of revised critical habitat and ac (ha)	2009 and 2010 Proposed revisions to the critical Habitat designation and ac (ha)	2010 Final revised critical habitat designation and ac (ha)
10. San Juan Creek Basin	Orange, Riverside.	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 10: 5,667 (2,293).	Designated as Unit 10: 3,496 (1,415).
10a.			Included as Subunit 10a: 4,728 (1,913).	Designated as Subunit 10a: 3,096 (1,253).
10b.			Included as Subunit 10b: 939 (380).	Designated as Subunit 10b: 399 (161).
11. San Mateo Creek Basin	Orange, San Diego.	Entire Unit either excluded under 4(b)(2) for economic reasons or exempted under 4(a)(3).	Included as Unit 11: 1,878 (758).	Designated as Unit 11: 1,820 (737).
11a.			Included as Subunit 11a: 1,034 (418).	Designated as Subunit 11a: 975 (395).
11b.			Included as Subunit 11b: 844 (341).	Designated as Subunit 11b: 844 (341).
12. Lower Santa Margarita River Basin.	San Diego	Entire Unit either excluded under 4(b)(2) for economic reasons or exempted under 4(a)(3).	Included as Unit 12: 1,009 (408).	Designated as Unit 12: 1,009 (408).
12a.			Included as Subunit 12a: 394 (159).	Designated as Subunit 12a: 394 (159).
12b.			Included as Subunit 12b: 615 (248).	Designated as Subunit 12b: 615 (248).
13. Upper Santa Margarita River Basin.	Riverside, San Diego.	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 13: 8,137 (3,293).	Designated as Unit 13: 7,863 (3,182).
13a.			Included as Subunit 13a: 1,155 (467).	Designated as Subunit 13a: 1,155 (467).
13b.			Included as Subunit 13b: 4,756 (1,925).	Designated as Subunit 13b: 4,731 (1,914).
13c.			Included as Subunit 13c: 2,226 (901).	Designated as Subunit 13c: 1,977 (800).
14. Lower and Middle San Luis Rey River Basin.	San Diego	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 14: 12,906 (5,223).	Designated as Unit 14: 10,115 (4,093).
15. Upper San Luis Rey River Basin.	San Diego	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 15: 12,977 (5,252).	Designated as Unit 15: 8,368 (3,336).
16. Santa Ysabel Creek Basin	San Diego	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 16: 15,494 (6,270).	Designated as Unit 16: 15,370 (6,220).
16a.			Included as Subunit 16a: 13,967 (5,652).	Designated as Subunit 16a: 13,865 (5,611).
16d.			Included as Subunit 16d: 1,527 (618).	Designated as Subunit 16d: 1,504 (609).
17. San Diego River Basin/ San Vicente Creek.	San Diego	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 17: 4,263 (1,725).	Designated as Unit 17: 4,171 (1,688).
17a.			Included as Subunit 17a: 1,241 (502).	Designated as Subunit 17a: 1,149 (465).
17b.			Included as Subunit 17b: 1,865 (755).	Designated as Subunit 17b: 1,865 (754).
17d.			Included as Subunit 17d: 1,158 (469).	Designated as Subunit 17d: 1,158 (469).
18. Sweetwater River Basin	San Diego	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 18: 4,783 (1,936).	Designated as Unit 18: 4,624 (1,871).
18a.			Included as Subunit 18a: 4,156 (1,682).	Designated as Subunit 18a: 4,156 (1,682).
18c.			Included as Subunit 18c: 627 (254).	Designated as Subunit 18c: 470 (189).
19. Cottonwood Creek Basin	San Diego	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 19: 14,375 (5,817).	Designated as Unit 19: 14,344 (5,804).
19a.			Included as Subunit 19a: 5,847 (2,366).	Designated as Subunit 19a: 5,816 (2,353).

TABLE 1—CHANGES BETWEEN THE APRIL 13, 2005, ARROYO TOAD REVISED CRITICAL HABITAT DESIGNATION; THE OCTOBER 13, 2009 AND THE JUNE 29, 2010, PROPOSED REVISED DESIGNATION; AND THIS REVISED FINAL DESIGNATION. ACREAGE VALUES ARE APPROXIMATE AND MAY NOT TOTAL DUE TO ROUNDING—Continued

Critical habitat unit in this final rule	County	2005 Designation of revised critical habitat and ac (ha)	2009 and 2010 Proposed revisions to the critical Habitat designation and ac (ha)	2010 Final revised critical habitat designation and ac (ha)
19b.			Included as Subunit 19b: 5,129 (2,076).	Designated as Subunit 19b: 5,129 (2,076).
19c.			Included as Subunit 19c: 1,511 (611).	Designated as Subunit 19c: 1,511 (611).
19d.			Included as Subunit 19d: 938 (380).	Designated as Subunit 19d: 938 (380).
19e.			Included as Subunit 19e: 950 (384).	Designated as Subunit 19e: 950 (384).
20. Upper Santa Ana River Basin/Cajon Wash.	San Bernardino.	Designated as Unit 20: 1,119 (453).	Included as Unit 20: 1,775 (718).	Designated as Unit 20: 1,775 (718).
21. Little Rock Creek Basin	Los Angeles	Designated as Unit 21: 734 (297).	Included as Unit 21: 612 (248).	Designated as Unit 21: 612 (248).
22. Upper Mojave River Basin	San Bernardino.	Entire Unit excluded under 4(b)(2) for economic reasons.	Included as Unit 22: 5,919 (2,395).	Designated as Unit 22: 5,602 (2,267).
22a.			Included as Subunit 22a: 5,684 (2,300).	Designated as Subunit 22a: 5,602 (2,267).
22c.			Included as Subunit 22c: 235 (95).	Entire Subunit removed—does not meet the definition of critical habitat.
23. Whitewater River Basin	Riverside	Designated as Unit 23: 333 (135).	Included as Unit 23: 1,355 (548).	Entire Unit removed—does not meet the definition of critical habitat.
Total *		11,695 (4,733)	112,765 (45,634)	98,366 (39,807)

* Values in table may not sum due to rounding.

Summary of Changes From the 2009 Proposed Rule To Revise Critical Habitat

The most significant changes between the October 2009 proposed revision and this final revised rule are outlined in Table 1 above and include:

(1) In the document making available the draft economic analysis of revised critical habitat designation for the Arroyo toad (DEA) (75 FR 37358; June 29, 2010), we stated we were considering exclusion of the entirety of Subunit 6b from critical habitat based on the many conservation measures included in the Natural River Management Plan that protect the arroyo toad and its habitat on Newhall Ranch lands in Subunit 6b, the conservation easement lands that have already been conveyed to California Department of Fish and Game (CDFG) and are planned in the future in this subunit, and the valuable conservation partnership we have developed over the years with Newhall Ranch. We have now made a final determination that the benefits of exclusion outweigh the benefits of inclusion for the lands covered by the conservation easements already conveyed to the CDFG and exclusion of these lands will not result in extinction of the species. Therefore, the Secretary is exercising his discretion to exclude approximately 330 ac (134 ha) of private land in Unit 6 under section 4(b)(2) of the Act (*see* **Exclusions Under Section 4(b)(2) of the Act** section below).

(2) In the proposed revised critical habitat rule (74 FR 52612), we erroneously identified some of the upland habitat areas bordering the river corridors of the Santa Clara River and Castaic Creek as critical habitat in Subunit 6b. Upon closer examination, we have found that little of these lands remain as native habitats that would be useable as foraging areas by arroyo toads because these lands are either developed, used for intensive agriculture, or inaccessible to arroyo toads due to busy roads or steep slopes. We now find that these areas do not contain the physical or biological features that are essential to the conservation of the arroyo toad, and therefore we have removed approximately 662 ac (268 ha) from Subunit 6b.

(3) In the 2009 proposed revised rule, we included lands that encompass Santiago Creek from just below the confluence with Black Star Creek downstream to Irvine Lake in Unit 8. Following public comment, we reevaluated this area and determined that this area is unsuitable for arroyo toads because water from Irvine Lake frequently backs up into this area and creates conditions favorable for arroyo toad predators, and therefore it does not contain the physical or biological features essential to the conservation of the arroyo toad. Additionally, we removed other areas that do not contain the physical or biological features such as developed areas and roads. Therefore, we removed approximately 185 ac (75 ha) from Unit 8.

(4) In the 2009 proposed revised rule, we stated we were considering lands owned by or under the jurisdiction of the permittees of the Orange County Central-Coastal Subregional NCCP/HCP (Orange County Central-Coastal NCCP/HCP) and 670 ac (271 ha) of land in the associated North Ranch Policy Plan Area (NRPPA) for exclusion under section 4(b)(2) of the Act. We have now made a final determination that the benefits of exclusion outweigh the benefits of inclusion of these lands and the exclusion will not result in extinction of the species. Therefore, the Secretary is exercising his discretion to exclude a total of approximately 1,259 ac (508 ha) of land covered by the Orange County Central-Coastal NCCP/HCP plan area (including those lands associated with the NRPPA) in Unit 8 in this final designation. For a complete

discussion of the benefits of inclusion and exclusion *see* **Exclusions Under Section 4(b)(2) of the Act** section below.

(5) In the 2009 proposed revised rule, we stated we were considering lands owned by or under the jurisdiction of the permittees of the Southern Orange County Natural Community Conservation Plan (NCCP)/Master Streambed Alteration Agreement/HCP (Southern Orange HCP), now known as the Orange County Southern Subregion HCP, for exclusion under section 4(b)(2) of the Act. We have now made a final determination that the benefits of exclusion outweigh the benefits of inclusion of lands conserved and managed by Orange County Southern Subregion HCP permittees and the exclusion will not result in extinction of the species. Therefore, the Secretary is exercising his discretion to exclude approximately 2,179 ac (882 ha) of lands conserved and managed consistent with the Orange County Southern Subregion HCP in Units 10 and 11 in this final designation. For a complete discussion of the benefits of inclusion and exclusion, *see* **Exclusions Under Section 4(b)(2) of the Act** section below.

(6) In the 2009 proposed revised rule, we erroneously identified some areas as critical habitat in Subunit 10b. Upon closer examination, we determined that approximately 31 ac (13 ha) are developed (such as highways or buildings) and do not contain the physical or biological features essential to the conservation of the arroyo toad. Therefore, we removed these areas from Subunit 10b.

(7) In the 2009 proposed revised rule, we inadvertently included approximately 20 ac (8 ha) of land within Marine Corps Base Camp Pendleton in Subunit 11a. We have now exempted these areas from Subunit 11a. For a complete discussion of exemptions under section 4(a)(3)(B) of the Act, *see* **Exemptions** section below.

(8) In the 2009 proposed revised rule, we stated we were considering lands owned by or under the jurisdiction of the permittees of the Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP) for exclusion under section 4(b)(2) of the Act. We have now made a final determination that the benefits of exclusion outweigh the benefits of inclusion of those lands owned by or under the jurisdiction of Western Riverside County MSHCP permittees that are conserved and managed, and that the exclusion will not result in extinction of the species. Therefore, the Secretary is exercising his discretion to exclude approximately 289 ac (118 ha) of lands conserved and managed consistent with the Western Riverside County MSHCP in Units 9 and 13 in this final designation. For a complete discussion of the benefits of inclusion and exclusion, *see* **Exclusions Under Section 4(b)(2) of the Act** section below.

(9) In the 2009 proposed revised rule, we included approximately 57 ac (23 ha) of lands that fall within the Meadowwood project site (within Unit 14) north of State Route 76 along the San Luis Rey River in San Diego County. Following public comment, we reevaluated this area and determined that it does not contain suitable breeding or aestivation habitat and therefore does not contain the physical or biological features essential to the conservation of the arroyo toad. Thus, we removed these areas from critical habitat. We did not remove all lands north of State Route 76, as arroyo toads may access these other areas via Horse Ranch Creek, which flows underneath State Route 76 and connects with the San Luis Rey River.

(10) In the 2009 proposed revised rule, we erroneously identified some areas as critical habitat in Subunit 16a. Upon closer examination, we determined that approximately 101 ac (40 ha) do not contain the physical or biological features essential to the conservation of the arroyo toad, as these lands are developed and, in one area, the mapping did not accurately follow the boundaries of the essential features and does not contain suitable habitat. Therefore, we removed these areas from Subunit 16a.

(11) In the proposed revised rule, we stated we were considering excluding 4,046 ac (1,636 ha) of arroyo toad habitat in Units 14, 16, 17, and 18 under section 4(b)(2) of the Act. These areas overlap with tribal lands that are owned or managed by the following tribes: The Rincon Band of Luiseño Mission Indians of the Rincon Reservation (Rincon Band of Luiseño Mission Indians); the Pala Band of Luiseño Mission Indians of the Pala Reservation (Pala Band of Luiseño Mission Indians); Sycuan Band of the Kumeyaay Nation; the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation (Mesa Grande Band of Diegueno Mission Indians); and the Barona Group of Capitan Grande Band of Mission Indians and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians, which jointly manage the Capitan Grande Band of Diegueno Mission Indians Reservation (Capitan Grande Reservation). We have now made a final determination that the benefits of exclusion outweigh the benefits of inclusion of some of these tribal lands (*i.e.,* tribal trust lands and those off-reservation lands (fee-owned) within the Sycuan Band of the Kumeyaay Nation that are currently in the process of being transferred to trust) and the exclusion will not result in extinction of the species. We have not concluded that the benefits of exclusion outweigh the benefits of inclusion for the remaining 1,046 ac (423 ha) of off-reservation, fee-owned lands, and these lands are included in this final revised critical habitat designation (included in Table 2 within the private land ownership totals). Therefore, the Secretary is exercising his discretion under section 4(b)(2) of the Act to exclude a total of 3,000 ac (1,214 ha) as follows: 2,733 ac (1,103 ha) of tribal lands in Unit 14; 23 ac (9 ha) in Unit 16; 92 ac (37 ha) in Unit 17; and 152 ac (62 ha) in Unit 18 based on our government-to-government relationship with the tribes, and impacts to current and future partnerships with the affected tribes and other tribes we coordinate with on threatened and endangered species issues (*see* **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section below).

(12) In the 2009 proposed revised rule, we stated we were considering lands owned by or under the jurisdiction of the permittees of the San Diego Multiple Species Conservation Program (MSCP) for exclusion under section 4(b)(2) of the Act. After considering the relevant impacts, the Secretary is declining to exercise his discretion to exclude these lands. Therefore, we included approximately 9,339 ac (3,779 ha) of land owned by or under the jurisdiction of the permittees of the San Diego MSCP in Units 16, 17, 18 and 19 in this final designation.

(13) In the 2009 proposed revised rule, we erroneously identified some areas as critical habitat in Subunit 18c. Upon closer examination, we determined that a road exists on approximately 6 ac (2 ha), and we have determined that these lands do not contain the physical or biological features essential to the conservation of the arroyo toad. Therefore, we removed these areas from Subunit 18c.

(14) In the document that made available the draft economic analysis of revised critical habitat designation for the Arroyo Toad (DEA) published in the **Federal Register** on June 29, 2010 (75 FR 37358), we stated we were considering exclusion of the Department of Defense (DOD) Remote Training Site Warner Springs and Camp Morena from critical habitat designation for reasons of national security. We have now made a final determination that the benefits of exclusion outweigh the benefits of

inclusion for these lands and exclusion of these lands will not result in extinction of the species. Therefore, the Secretary is exercising his discretion to exclude approximately 4,640 ac (1,878 ha) of Bureau of Land Management (BLM) and U.S. Forest Service (Forest Service) lands leased to the DOD in Unit 15 and Unit 19 for reasons of national security under section 4(b)(2) of the Act (*see* **Exclusions Under Section 4(b)(2) of the Act—Impacts to National Security** section below).

(15) Based on information submitted by Summit Valley Ranch during the initial public comment period from October 13, 2009, to December 14, 2009, we removed approximately 82 ac (33 ha) of private land from Subunit 22a. The lands in question are located north of State Road 138 on Summit Valley Ranch, San Bernardino County. We included this area in the proposed revised critical habitat designation because we believed it contained suitable upland habitat for arroyo toads; however, it has come to our attention that: (1) Surveys have never detected arroyo toads in the area, (2) the area lacks the PCEs for the arroyo toad, and (3) State Route 138 serves as a barrier for arroyo toads to disperse into the area. Consequently, we determined that the area north of State Route 138 does not contain the physical or biological features essential to the conservation of arroyo toads and, therefore, does not meet the definition of critical habitat for the arroyo toad.

(16) We removed Subunit 22c (approximately 234 ac (95 ha)) from the final revised critical habitat designation. Subunit 22c is within the geographical area occupied by the species at the time of listing; however, this subunit was erroneously included in the 2009 revised proposed rule (74 FR 52612; October 13, 2009). Although we were not aware of this issue when we published the proposed rule, the existence of Cedar Springs Dam upstream of this subunit has altered the hydrology of the 1-mile (1.6 km) reach of the upper West Fork of the Mojave River to the upper end of Silverwood Lake to such an extent that it does not contain the features essential to the conservation of the species and, therefore, does not meet the definition of critical habitat for the arroyo toad.

(17) We removed lands within the jurisdiction of the Coachella Valley Multiple Species Conservation Plan (Coachella Valley MSHCP; Unit 23 (approximately 1,355 ac (548 ha)) from the final revised critical habitat designation. This unit was erroneously included in the proposed revised rule (74 FR 52612; October 13, 2009). Following examination of data used to map Unit 23 in the proposed rule and discussions with species experts regarding identification records, we determined that these records are not arroyo toads and do not support a determination that this area meets the definition of critical habitat. Therefore, Unit 23 is not included in this final revised critical habitat rule.

(18) A number of comments we received suggested editorial changes and technical corrections to sections of the rule pertaining to the **Background** and "*Criteria Used To Identify Critical Habitat*" sections of our proposed revised rule. These changes were recommended to improve clarity, include additional information, and correct minor errors. They have been incorporated into this final revised rule where appropriate.

(19) In the document making available the draft economic analysis (75 FR 37358; June 29, 2010), we added approximately 1,068 ac (432 ha) to proposed Subunit 11b, approximately 951 ac (385 ha) to proposed Unit 15, approximately 1,831 ac (741 ha) to proposed Subunit 16a, and approximately 96 ac (39 ha) to proposed Subunit 16d. For a complete discussion of these revisions, *see* **Changes to Proposed Revised Critical Habitat** in the document making available the draft economic analysis (75 FR 37358; June 29, 2010).

(20) To prepare final critical habitat maps, we overlay maps of those lands we are excluding from this critical habitat designation on polygons that were used to delineate the areas proposed as critical habitat. This process can leave small fragments (generally less than an acre and not contiguous with designated critical habitat) of a proposed critical habitat unit or subunit that are not included in the excluded acreage but are instead removed due to discrepancies in the mapping process (such as differences in GIS layers that are mapped at different scales). These fragments in Unit 8, Subunit 10a, and Unit 14 were not included in the final revised critical habitat designation. As a result, the sum of the areas designated and excluded is slightly reduced in this final revised critical habitat designation compared to the size of the total proposed designation due to removal of these small artifacts or fragments created by the mapping discrepancies.

Critical Habitat

Background

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 species or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management, such as research; census; law enforcement; habitat acquisition and maintenance; propagation; live trapping and transplantation; and in the extraordinary case where population pressures within a given ecosystem cannot otherwise be relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing activities that are likely to result in the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by private landowners. Where a landowner seeks or requests Federal agency funding or authorization of an activity 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 Federal action agency's and the applicant's obligation under section 7(a)(2) of the Act is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, habitat within the

geographical area occupied by the species at the time it was listed must contain the physical or 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, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat), focusing on the principal biological or physical constituent elements (primary constituent elements) within an area that are essential to the conservation of the species (such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type). Primary constituent elements are the elements of physical or biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are 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, upon a determination that such areas are essential for the conservation of the species. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species. When the best available scientific data do not demonstrate that the conservation needs of the species require such additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species. An area currently occupied by the species but that was not occupied at the time of listing may, however, be essential for the conservation of the species and may be included in the critical habitat designation.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species and any previous designations of critical habitat. Additional information sources may include the recovery plan for the species, 5-year reviews 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 dynamic, and species may move from one area to another over time. Climate change will be a particular challenge for biodiversity conservation because the interaction of additional stressors associated with climate change and current stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah *et al.* 2005, p.4). Current climate change predictions for terrestrial areas in the Northern Hemisphere indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1–3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; Intergovernmental Panel on Climate Change 2007, p. 11; Cayan *et al.* 2009, p. xi). However, predictions of climatic conditions for smaller sub-regions, such as California, remain uncertain. It is unknown at this time if climate change in California will result in a warmer trend with localized drying, higher precipitation events, or other conditions. Thus, the information currently available on the effects of global climate change and increasing temperatures does not make sufficiently precise estimates of the location and magnitude of the effects. Nor are we currently aware of any climate change information specific to the habitat of the arroyo toad that would indicate what areas may become important to the species in the future. Therefore, we are unable to determine what additional areas, if any, may be appropriate to include in the revised critical habitat for this species. Additionally, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated critical habitat area is unimportant or may not be required for recovery of the species.

Areas that are important to the conservation of the arroyo toad, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical and Biological Features

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12 (b), in determining which areas within the geographical area occupied at the time of listing to designate as revised critical habitat, we consider the physical and biological features that are essential to the conservation of the species that may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, and rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical and biological features required for conservation of the arroyo toad from studies of this species' habitat, ecology,

and life history, as described below and in proposed revisions to critical habitat published in the **Federal Register** on October 13, 2009 (74 FR 52612). We have determined that the arroyo toad requires the following physical and biological features:

Space for Individual and Population Growth, and for Normal Behavior

The arroyo toad is found along medium-to-large streams in coastal and desert drainages in central and southern California, and Baja California, Mexico. It occupies aquatic, riparian, and upland habitats in a number of the remaining suitable drainages within its range. Suitable habitat for the arroyo toad is created and maintained by the fluctuating hydrological, geological, and ecological processes that naturally occur in riparian ecosystems and adjacent uplands (Campbell *et al.* 1996, pp. 13–15; Sweet 1992, 1993 *in* Service 1999, p. 39). Periodic flooding that modifies stream channels, redistributes channel sediments, and alters pool location and form, coupled with upper terrace stabilization by vegetation, is required to keep a stream segment suitable for all life stages of the arroyo toad (Campbell *et al.* 1996, p. 13; Sweet 1992, 1993 *in* Service 1999, p. 39). This natural flooding regime helps maintain areas of open, sparsely vegetated, sandy stream channels and terraces.

The substrate in habitats preferred by arroyo toads consists primarily of sand, fine gravel, or pliable soil, with varying amounts of large gravel, cobble, and boulders. Areas that are damp and have less than 10 percent vegetation cover provide the best conditions for juvenile survival and rapid growth of the arroyo toad (Campbell *et al.* 1996, p. 12; Sweet 1992 *in* Service 1999, pp. 32–34). Arroyo toads breed in the quiet margins of open streams and avoid sites with deep or swift water, tree canopy cover, or steeply incised banks. Larvae occupy shallow areas of open streambeds on substrates ranging from silt to cobble, with preferences for sand or gravel. Newly metamorphosed arroyo toads and juveniles remain on sparsely vegetated sand and gravel bars bordering the natal pool for 3 to 5 weeks (Sweet 1992, p. 52).

Arroyo toads must be able to move between the stream and upland foraging sites, as well as up and down the stream corridor. Juveniles and adult arroyo toads require and spend much of their lives in riparian and upland habitats adjacent to breeding locations (Campbell *et al.* 1996, p. 12). Riparian habitats used for foraging and burrowing include sand bars, alluvial terraces, and streamside benches that lack vegetation, or are sparsely to moderately vegetated. Upland habitats used by arroyo toads during both the breeding and non-breeding seasons include alluvial scrub, coastal sage scrub, chaparral, grassland, and oak woodland.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Arroyo toad tadpoles eat microscopic algae, bacteria, and protozoans consumed from the spaces among pebbles, gravel, and sand, or abraded from stones (Sweet 1992, p. 82). Juveniles and adults eat insects, although ants are preferred. When foraging, arroyo toads are often found around the drip lines of oak trees. These areas often lack vegetation, yet have levels of prey that will support arroyo toads. When active at night, toads often are observed near ant trails feeding on ants, beetles, and other prey.

Cover or Shelter

During the day and other periods of inactivity, arroyo toads seek shelter by burrowing into sand. Thus, areas of sandy or friable (readily crumbled) soils are necessary, but these soils can be interspersed with gravel or cobble deposits. Additionally, arroyo toads may seek temporary shelter under rocks or debris and have been found in mammal burrows on occasion. Upland sites with compact soils can also be used for foraging and dispersal (Holland 2000, *in litt.* p. 2).

Sites for Breeding, Reproduction, and Rearing or Development of Offspring

The arroyo toad has specialized breeding habitat requirements. Arroyo toads are unusual in that females deposit their eggs at the male's calling site, rather than the behavior common in other toad species where the female transports the male to a deposition site of her choosing (Sweet 1992, p. 57). Because male toads stand on the substrate to call and their throats must be above water, eggs are laid in very shallow water. Female arroyo toads lay their eggs in water less than 4 in. (10 cm) (Sweet 1992, p. 37) but not greater than 6 in. (15 cm) deep over substrates of sand, gravel, or cobble in open sites such as overflow pools, old flood channels, and shallow pools along streams. These shallow pools are associated with open sand and gravel channels along low-gradient (typically less than 6 percent) reaches of medium-to-large streams (Campbell *et al.* 1996, p. 12; Sweet 1992, p. 28). In at least some portions of its range, the species also breeds in smaller streams and canyons where low-gradient breeding sites are more patchily distributed. Streams where arroyo toads breed can have either intermittent or perennial streamflow and typically experience periodic flooding that scours vegetation and replenishes fine sediments. Such habitats rarely have closed canopies over the lower banks of the stream channel due to periodic flood events. Heavily shaded pools are generally unsuitable for larval and juvenile arroyo toads because of lower water and soil temperatures and poor algal mat development.

Because the suitability of breeding pools may vary from year to year due to the dynamics of southern California riparian systems and flood regimes, adult arroyo toads may move up or down stream in search of suitable breeding pools, or not breed in certain years (Campbell *et al.* 1996, p. 14). Pools less than 6 in. (15 cm) deep with clear water, flow rates less than 0.2 ft per second (5 cm per second), and bottoms composed of sand or well-sorted fine gravel are favored by adults for breeding and egg deposition (Sweet 1992, pp. 29–37). Breeding pools, especially those formed along intermittent streams, must persist a minimum of 2 months for the completion of larval development (Campbell *et al.* 1996, p. 6). When warm rainy conditions occur in January, February, and March, arroyo toads become active and begin to forage on stream terraces and in channel margins. Breeding usually begins in late March at lower elevations but male calling peaks in early to mid-April and extends through late May, sometimes even into late June (Sweet 1992, p. 50). Breeding may occur on several dates at a single site, and eggs may be deposited over a period of 7 to 8 weeks (Campbell *et al.* 1996, p. 6; Griffin and Case 2001, p. 634). Although egg strings are laid in very slow-moving water, larvae (tadpoles) can be found in water velocities of up to 1.0 to 1.3 ft per second (30 to 40 cm per second) (Sweet 1992, p. 29). Larvae usually hatch in 4 to 6 days at water temperatures of 54 to 59 degrees Fahrenheit (12 to 16 degrees Celsius) (Sweet 1992, p. 71). Tadpoles disperse from the pool margin into the surrounding shallow water, where they spend an average of 10 weeks (Sweet 1992, p. 50). After metamorphosis, the juvenile arroyo toads remain on the bordering gravel bars until the pool dries out (usually from 8 to 12 weeks depending on the site and rainfall) (Sweet 1992, p. 52).

Primary Constituent Elements for the Arroyo Toad

Under the Act and its implementing regulations, we are required to identify

the physical or biological features essential to the conservation of the arroyo toad in areas occupied at the time of listing (including areas currently occupied that based on biology we believe were likely occupied at the time of listing), focusing on the features' primary constituent elements. We consider primary constituent elements to be the elements of physical or biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Based on our current knowledge of the biology, and ecology of the species, and the habitat requirements for sustaining the essential life-history functions of the species, we determined the arroyo toad's PCEs are:

(1) Rivers or streams with hydrologic regimes that supply water to provide space, food, and cover needed to sustain eggs, tadpoles, metamorphosing juveniles, and adult breeding toads. Breeding pools must persist a minimum of 2 months for the completion of larval development. However, due to the dynamic nature of southern California riparian systems and flood regimes, the location of suitable breeding pools may vary from year to year. Specifically, the conditions necessary to allow for successful reproduction of arroyo toads are:

- Breeding pools that are less than 6 in (15 cm) deep;
- Areas of flowing water with current velocities less than 1.3 ft per second (40 cm per second); and
- Surface water that lasts for a minimum of 2 months during the breeding season (a sufficient wet period in the spring months to allow arroyo toad larvae to hatch, mature, and metamorphose).

(2) Riparian and adjacent upland habitats, particularly low-gradient (typically less than 6 percent) stream segments and alluvial streamside terraces with sandy or fine gravel substrates that support the formation of shallow pools and sparsely vegetated sand and gravel bars for breeding and rearing of tadpoles and juveniles; and adjacent valley bottomlands that include areas of loose soil where toads can burrow underground, to provide foraging and living areas for juvenile and adult arroyo toads.

(3) A natural flooding regime, or one sufficiently corresponding to natural, that: (A) Is characterized by intermittent or near-perennial flow that contributes to the persistence of shallow pools into at least mid-summer; (B) Maintains areas of open, sparsely vegetated, sandy stream channels and terraces by periodically scouring riparian vegetation; and (C) Also modifies stream channels and terraces and redistributes sand and sediment, such that breeding pools and terrace habitats with scattered vegetation are maintained.

(4) Stream channels and adjacent upland habitats that allow for movement to breeding pools, foraging areas, overwintering sites, upstream and downstream dispersal, and connectivity to areas that contain suitable habitat.

In summary, the need for space for individual and population growth and normal behavior is met by PCEs 1 and 4; the need for food, water, and physiological requirements is met by PCE 1; cover and shelter requirements are met by PCE 2; areas for breeding, reproduction, and rearing of offspring are met by PCEs 1, 2, and 3; and habitats representative of the historical, geographical, and ecological distributions of a species are met by PCE 4.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied at the time of listing contain the physical or biological features essential to the conservation of the arroyo toad that may require special management considerations or protection.

The area designated as revised critical habitat may require some level of management or protection to address current and future threats to the arroyo toad and maintain the physical and biological features essential to the conservation of the species. Special management may be required in all units to ensure that aquatic and riparian upland habitats provide abundant breeding and non-breeding areas, prey species, shelter, and connectivity within the landscape.

A detailed discussion of threats to the arroyo toad and its habitat can be found in the final listing rule (59 FR 64859, December 16, 1994); the first critical habitat designation (66 FR 9414, February 7, 2001); the previous revised critical habitat designation (70 FR 19562, April 13, 2005); the proposed revised critical habitat designation (74 FR 52612, October 13, 2009); and the 1999 recovery plan (Service 1999, pp. 1–119). Maintaining the physical and biological features essential to the conservation of the arroyo toad may require special management considerations or protection to reduce effects that may result from the following threats, among others: Habitat destruction and alteration due to short- and long-term changes in river hydrology, including construction of dams and water diversions that alter natural water flow regimes; agriculture and urbanization; construction of roads; off-highway vehicle use and other recreational activities; mining activities; introduced nonnative predators (such as bullfrogs and predatory fish); drought; periodic fires and fire suppression activities; unseasonal water releases from dams; livestock grazing; and light and noise pollution from adjacent developments and campgrounds. These threats may cause habitat alteration, degradation, or fragmentation and the direct or indirect loss of arroyo toad eggs, juveniles, or adults.

Criteria Used To Identify Critical Habitat

As required by section 4(b) of the Act, we used the best scientific and commercial data available in determining those areas that, within the geographical area occupied by the species at the time of listing (*see* "*Geographic Range*" section in the 2009 proposed revised critical habitat rule (74 FR 52612)), possess those physical or biological features essential to the conservation of the arroyo toad and which may require special management considerations or protection. We also considered the area outside the geographical area occupied by the species at the time of listing for any areas that are essential for the conservation of the arroyo toad. In designating critical habitat for the arroyo toad, we reviewed the relevant information available, including peer-reviewed journal articles, unpublished reports and materials (such as survey results and expert opinions), the final listing rule, the 2004 proposed critical habitat rule, the arroyo toad recovery plan (Service 1999, pp. 1–119), the 5-year review for the arroyo toad (Service 2009, pp. 1–51), and regional GIS coverages. We analyzed this information to develop criteria for identifying areas that contain the PCEs in the appropriate quantity and spatial arrangement essential to the conservation of the arroyo toad that may require special management considerations or protection, or that are essential for the conservation of the arroyo toad. The process we used is described below.

(1) To begin our analysis, we first examined the California Natural Diversity Database (CNDDB) current and historical records to get an indication of the habitat where arroyo toads are present; the CNDDB is a continually refined and updated inventory of location information gathered during species surveys and observations. We then examined the arroyo toad recovery

plan (Service 1999, pp. 1–119), which has a recovery strategy focused on providing sufficient breeding and upland habitat to maintain self-sustaining populations of arroyo toads (defined as populations that require little or no direct human assistance such as captive breeding or rearing, or translocation between sites) throughout the historical range of the species, and on minimizing or eliminating impacts and threats to arroyo toad populations (Service 1999, p. 67). The recovery plan states that in-stream and riparian habitats that support breeding, as well as upland habitats that provide foraging and overwintering habitat, need to be managed to maintain and enhance populations throughout the range of the arroyo toad (Service 1999, p. 68). The recovery plan divides the range of the arroyo toad into three large recovery units—northern, southern, and desert—and we considered the conservation of the arroyo toad in each of these as well as the species as a whole in our analysis. Using the recovery plan as our guide, we analyzed areas within the geographical area occupied by the arroyo toad at the time of listing to determine which areas contained the PCEs laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species (the physical and biological features).

(2) In determining the specific areas containing the essential physical and biological features, based on the recovery plan, 5-year review, previous critical habitat proposals for the arroyo toad, scientific literature, and results of studies that have been conducted since the species was listed, we made sure that we proposed critical habitat that would provide for the conservation of the species. Criteria for critical habitat units we used to assist our process included: (1) Representation of locations throughout the current geographical, elevational, and ecological distribution of the species; (2) maintenance of the appropriate population structure across the species' range; (3) retention or provision of the connectivity between breeding sites that allows for the continued existence of essential metapopulations (a group of subpopulations in somewhat geographically isolated patches, interconnected through patterns of gene flow, extinction, and recolonization (Soule 1987, p. 7), despite fluctuations in the status of subpopulations); and (4) presence of upland habitat around each breeding location to allow for survival and recruitment to maintain a breeding population over the long term.

We also evaluated the area outside the geographical area occupied by the species at the time of listing to identify any areas that are essential for the conservation of the arroyo toad. We looked at areas that may have been historically occupied by arroyo toads based on CNDDB records but were no longer occupied at the time of listing. We considered areas that may have the physical and biological features essential for the conservation of the species but have never been occupied. Based on our evaluation, we believe that areas currently occupied by arroyo toads are sufficient for the recovery of the species. The recovery plan for the arroyo toad also determined that occupied areas are sufficient for recovery and did not include any unoccupied areas. Therefore, based on available scientific information, we determined that there are no areas outside the geographical area occupied by the species at the time of listing that are essential for the conservation of the arroyo toad.

(3) To identify and map areas that we determined meet the definition of critical habitat, we used data on known arroyo toad locations and data on movement distances by arroyo toads. The main source for arroyo toad locations was the CNDDB (2008); we also obtained data on locations that have not yet been entered into the CNDDB directly from the biologists that collected them.

Areas meeting the definition of critical habitat for the arroyo toad include occupied areas on stream reaches containing suitable breeding and upland habitat. To determine the extent of suitable arroyo toad habitat as discussed in the "*Habitat*" section of the 2009 proposed revised critical habitat rule (74 FR 52612; October 13, 2009), we used spatial data on stream gradients with grades less than 6 percent, aerial photography, surveys of habitat suitability, and site visits. Additionally, we included higher gradient areas between breeding habitat because these areas are used by toads during the non-breeding period and allow toads to disperse between breeding areas. To delineate upland habitat areas, we used a GIS-based modeling procedure to identify alluvial terraces, valley bottomlands, and upland habitats adjacent to stream reaches occupied by the arroyo toad. Lacking spatially explicit data on geomorphology, we used elevation above the stream channel as an indicator of the extent of alluvial and upland foraging habitat. Based on the results of the GIS habitat model that incorporated average movement distances of arroyo toads, we determined that areas up to 82 ft (25 m) in elevation above the stream channel were most likely to contain the riparian and upland habitat elements essential to arroyo toads. Most arroyo toad activity and movement occurred within these areas; therefore, steeper slopes away from the stream were eliminated. However, we truncated the upland habitat delineation in flat areas at 4,921 ft (1,500 m) from the stream channel (a distance based on known movement of arroyo toads, *see* below) if the 82-ft (25-m) elevation limit had not yet been reached at that point. The 82-ft (25-m) elevation limit was reached at distances less than 4,921 ft (1,500 m) from the mapped stream channel along the majority of the stream reaches, so the distance limit was often not a factor. These model parameters are based on the best scientific data available and are the same as those used in the 2004 proposed critical habitat designation (69 FR 23254; April 28, 2004), which was also included in the review process for the 2009 proposed critical habitat designation (74 FR 52612; October 13, 2009).

(4) To evaluate our critical habitat model, we assessed its effectiveness at capturing documented toad locations from studies that focused specifically on surveying toads in upland habitats and studies involving radio telemetry. Holland and Sisk (2000, pp. 1–28) established extensive pitfall trap arrays at discrete distances from two stream courses and operated these arrays at various periods throughout the year. They had 466 captures of arroyo toads, 35 (7.5 percent) of which were identified as being in upland areas. The low percentage of toads captured in upland areas may be because the vast majority of captures (98.7 percent) were during the months from January to September, when breeding and metamorphosis occurs and when toads would likely be in close proximity to the stream. Nevertheless, toads were captured at distances that ranged from 49 to 3,855 ft (15 to 1,175 m) from the upland-riparian ecotone (boundary) (Holland and Sisk 2000, pp. 1–28). For the two areas sampled in that study (Cristianitos Creek and the upper Santa Margarita River, San Diego County), we found that our critical habitat boundaries encompassed all of the pitfall trapping stations where arroyo toads were detected.

We also assessed studies that involved the tracking of arroyo toads with radio telemetry equipment. For example, in a number of studies by Ramirez (2002a, p. 10; 2002b, p. 50; 2002c, p. 23; 2003, pp. 72–81), arroyo toads were tracked from the end of

breeding activity until the commencement of aestivation, generally May through September. Cumulatively, these four studies involved tracking 77 adult arroyo toads in three separate critical habitat units in Orange, San Bernardino, and Los Angeles Counties. All but one of the numerous burrow sites chosen by these arroyo toads fell within our proposed revised critical habitat boundaries.

(5) To provide legal boundaries for the critical habitat areas, critical habitat boundaries for all drainages were mapped as contiguous blocks of 98-ft by 98-ft (30-m by 30-m) cells that conform to a Universal Transverse Mercator (UTM) grid. Due to the conversion of GIS data from two different geographic projections (UTM zone 10 and zone 11) and conversion of the data to acres and hectares, some rounding adjustments may be reflected in the total acreage of the units.

When determining revisions to critical habitat boundaries for this final rule, we made every effort to avoid developed areas, such as lands covered by buildings, pavement, and other structures, because such lands lack PCEs for the arroyo toad. We did not designate some areas if habitat was highly degraded and not likely restorable, nor did we designate areas that were highly fragmented or isolated. Such areas provide little or no long-term conservation value and do not support the physical and biological features essential to the conservation of the arroyo toad. Agricultural lands may have been included if they were within areas identified as necessary for dispersal or connectivity between known occurrences. However, we avoided known areas of intensive agriculture that lacked the PCEs for the arroyo toad. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this revised critical habitat are excluded by text in this final rule. Therefore, Federal action involving these lands 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.

Final Revised Critical Habitat Designation

We are designating approximately 98,366 ac (39,807 ha) as critical habitat for the arroyo toad within 21 units, identified as Units 2 through 22. The area identified as critical habitat Unit 1 (6,453 ac (2,612 ha)) was exempted in its entirety under section 4(a)(3) of the Act and, therefore, was not proposed. Table 2 outlines the areas included and excluded from this final revised critical habitat designation by land ownership. Units designated as critical habitat are discussed in detail below. The areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the arroyo toad.

TABLE 2—CRITICAL HABITAT UNITS FOR THE ARROYO TOAD BY LAND OWNERSHIP NOTING THE AREAS DESIGNATED AND EXCLUDED FROM THE CRITICAL HABITAT DESIGNATION

Critical habitat units and subunits	Land ownership	Total area proposed ac (ha)	Total area removed ac (ha)	Total area excluded ac (ha)	Total area designated ac (ha)
1. San Antonio River—exempt	Federal	0	0	0	0
2. Sisquoc River	Federal	1,700 (688)	0	0	1,700 (688)
	Private	2,073 (839)	0	0	2,073 (839)
3. Upper Santa Ynez River Basin	Federal	2,214 (896)	0	0	2,214 (896)
	Private	818 (331)	0	0	818 (331)
4. Sespe Creek	Federal	2,498 (1,011)	0	0	2,498 (1,011)
	Private	262 (106)	0	0	262 (106)
5. Piru Creek	Federal	2,105 (852)	0	0	2,105 (852)
	Private	402 (163)	0	0	402 (163)
5a.	Federal	1,277 (517)	0	0	1,277 (517)
	Private	81 (33)	0	0	81 (33)
5b.	Federal	828 (335)	0	0	828 (335)
	Private	321 (130)	0	0	321 (130)
6. Upper Santa Clara River Basin	Federal	443 (179)	0	0	443 (179)
	Private	3,351 (1,356)	662 (268)	330 (134)	2,359 (955)
6a.	Federal	284 (115)	0	0	284 (115)
	Private	236 (96)	0	0	236 (96)
6b.	Private	1,995 (807)	662 (268)	330 (134)	1,003 (406)
6c.	Federal	159 (64)	0	0	159 (64)
	Private	1,120 (453)	0	0	1,120 (453)
7. Upper Los Angeles River Basin	Federal	1,113 (451)	0	0	1,113 (451)
	Private	77 (31)	0	0	77 (31)
8.Lower Santa Ana River Basin	Federal	54 (22)	0	0	54 (22)
	Private	2,128 (861)	185 (75)	1,259 (508)	683 (276)
9. San Jacinto River Basin	Federal	505 (204)	0	0	545 (221)
	State	210 (85)	0	0	232 (94)
	Private	1,691 (684)	0	14 (6)	1,614 (653)
9a.	Federal	72 (29)	0	0	72 (29)
	Private	1,154 (467)	0	0	1,154 (467)
9b.	Federal	433 (175)	0	0	473 (191)
	State	210 (85)	0	0	232 (94)
	Private	537 (217)	0	14 (6)	461 (187
10. San Juan Creek Basin	Federal	558 (225)	0	0	558 (225)
	Local	1,909 (773)	16 (6)	1,854 (750	38 (15)
	Private	3,200 (1,295)	15 (6)	285 (115)	2,900 (1,174)
10a.	Federal	547 (221)	0	0	547 (221)
	Local	1,406 (569)	0	1,403 (568)	3 (1)

TABLE 2—CRITICAL HABITAT UNITS FOR THE ARROYO TOAD BY LAND OWNERSHIP NOTING THE AREAS DESIGNATED AND EXCLUDED FROM THE CRITICAL HABITAT DESIGNATION—Continued

Critical habitat units and subunits	Land ownership	Total area proposed ac (ha)	Total area removed ac (ha)	Total area excluded ac (ha)	Total area designated ac (ha)
	Private	2,775 (1,123)	1 (<1)	228 (92)	2,547 (1,031)
10b.	Federal	11 (4)	0	0	11 (4)
	Local	503 (204)	16 (6)	452 (183)	35 (14)
	Private	425 (172)	14 (6)	57 (23)	353 (143)
11. San Mateo Creek Basin	Federal	844 (341)	0	0	844 (341)
	Private	1,034 (418)	0	39 (16)	975 (395)
11a.	Private	1,034 (418)	0	39 (16)	975 (395)
11b.	Federal	844 (341)	0	0	844 (341)
12. Lower Santa Margarita River Basin	State	5 (2)	0	0	5 (2)
	Private	1,004 (406)	0	0	1,004 (406)
12a.	Private	394 (159)	0	0	394 (159)
12b.	State	5 (2)	0	0	5 (2)
	Private	610 (247)	0	0	610 (247)
13. Upper Santa Margarita River Basin*	Federal	454 (184)	0	0	454 (184)
	Private	7,682 (3,109)	0	275 (111)	7,409 (2,998)
13a.	Federal	337 (136)	0	0	337 (136)
	Private	813 (329)	0	0	818 (331)
13b.	Federal	117 (47)	0	0	117 (47)
	Private	4,640 (1,878)	0	26 (11)	4,614 (1,867)
13c.	Private	2,226 (901)	0	249 (101)	1,977 (800)
14. Lower and Middle San Luis Rey River Basin	Federal	4 (2)	0	0	4 (2)
	State	10 (4)	0	0	10 (4)
	Pala Tribe	2,385 (963)	0	1,662 (673)	**0
	Rincon Tribe	1,155 (467)	0	1,071 (433)	**0
	Private	9,351 (3,785)	58 (23)	0	10,101 (4,088)
15. Upper San Luis Rey River Basin	Federal	1,467 (594)	0	771 (312)	695 (281)
	Private	11,511 (4,658)	0	3,838 (1,553)	7,673 (3,105)
16. Santa Ysabel Creek Basin	Federal	190 (77)	0	0	190 (77)
	State	182 (74)	1 (<1)	0	175 (71)
	Local	143 (58)	0	0	143 (58)
	Tribal	23 (9)	0	23 (9)	0
	Private	14,956 (6,053)	100 (40)	0	14,862 (6,014)
16a.	Federal	190 (77)	0	0	190 (77)
	State	182 (74)	1 (<1)	0	175 (71)
	Local	143 (58)	0	0	143 (58)
	Private	13,452 (5,444)	100 (40)	0	13,357 (5,405)
16d.	Mesa Grande Tribe.	23 (9)	0	23 (9)	0
	Private	1,504 (609)	0	0	1,504 (609)
17. San Diego River Basin/San Vicente Creek	Federal	425 (172)	0	0	425 (172)
	Tribal	92 (37)	0	92 (37)	0
	Private	3,746 (1,516)	0	0	3,746 (1,516)
17a.	Federal	354 (143)	0	0	354 (143)
Capitan Grande Tribe	92 (37)	0	92 (37)	0	
	Private	795 (322)	0	0	795 (322)
17b.	Federal	48 (19)	0	0	48 (19)
	Private	1,817 (735)	0	0	1,817 (735)
17d.	Federal	23 (9)	0	0	23 (9)
	Private	1,134 (459)	0	0	1,134 (459)
18. Sweetwater River Basin	Federal	556 (225)	0	0	556 (225)
	State	1,659 (671)	0	0	1,659 (671)
	Tribal	391 (158)	0	152 (62)	**0
	Private	2,178 (882)	6 (2)	0	2,410 (975)
18a.	Federal	553 (224)	0	0	553 (224)
	State	1,554 (629)	0	0	1,554 (629)
	Private	2,049 (829)	0	0	2,049 (829)
18c.	Federal	3 (1)	0	0	3 (1)
	State	105 (42)	0	0	105 (42)
	Sycuan Tribe	391 (158)	0	152 (62)	**0
	Private	129 (53)	6 (2)	0	362 (146)
19. Cottonwood Creek Basin	Federal	4,118 (1,666)	0	0	4,118 (1,666)
	Local	1,482 (600)	0	31 (13)	1,476 (597)
	Private	8,778 (3,551)	0	0	8,751 (3,541)
19a.	Federal	2,128 (861)	0	0	2,128 (861)
	Local	1,482 (600)	0	31 (13)	1,476 (597)
	Private	2,237 (905)	0	0	2,212 (895)
19b.	Federal	209 (84)	0	0	209 (84)
	Private	4,921 (1991)	0	0	4,921 (1991)
19c.	Federal	809 (327)	0	0	809 (327)

TABLE 2—CRITICAL HABITAT UNITS FOR THE ARROYO TOAD BY LAND OWNERSHIP NOTING THE AREAS DESIGNATED AND EXCLUDED FROM THE CRITICAL HABITAT DESIGNATION—Continued

Critical habitat units and subunits	Land ownership	Total area proposed ac (ha)	Total area removed ac (ha)	Total area excluded ac (ha)	Total area designated ac (ha)
	Private	703 (284)	0	0	703 (284)
19d.	Federal	910 (368)	0	0	910 (368)
	Private	28 (11)	0	0	28 (11)
19e.	Federal	61 (25)	0	0	61 (25)
	Private	889 (360)	0	0	889 (360)
20. Upper Santa Ana River Basin/Cajon Wash	Federal	711 (288)	0	0	711 (288)
	Private	1,065 (431)	0	0	1,065 (431)
21. Little Rock Creek Basin	Federal	612 (248)	0	0	612 (248)
22. Upper Mojave River Basin*	Federal	2,186 (885)	43 (17)	0	2,143 (867)
	State	238 (96)	191 (77)	0	47 (19)
	Private	3,494 (1,414)	82 (33)	0	3,412 (1,381)
22a.	Federal	2,143 (867)	0	0	2,143 (867)
	State	47 (19)	0	0	47 (19)
	Private	3,494 (1,414)	82 (33)	0	3,412 (1,381)
22c.	Federal	43 (17)	43 (17)	0	0
	State	191 (77)	191 (77)	0	0
23. Whitewater River Basin	Federal	783 (317)	783 (317)	0	0
	Private	572 (231)	572 (231)	0	0
Total***		112,765 (45,634)	2,702 (1,091)	11,697 (4,734)	98,366 (39,807)

* Land ownership values differ from the proposed rule due to updated ownership data.
** Off-reservation lands (fee-owned) were not excluded and are included within the Private land ownership total.
*** Values in table may not sum due to rounding.

We present brief descriptions of all units and reasons why they meet the definition of critical habitat for the arroyo toad below. The units are grouped by recovery unit as described in the recovery plan (Service 1999) and listed in order geographically north to south and west to east within each recovery unit. For more information about the areas excluded from critical habitat, please *see* **Exclusions Under Section 4(b)(2) of the Act** section of this final rule.

Northern Recovery Unit

As described in the recovery plan (Service 1999, pp. 1–119), maintaining arroyo toad populations in the areas described by the following seven unit descriptions is necessary to conserve the species in the northern recovery unit. Because the toad populations in this recovery unit have been reduced in size and their habitat fragmented by road construction, dams, agriculture, and urbanization, it is important to protect all of them and safeguard against the loss of any one population due to random natural or human-caused events. The Forest Service is the primary landowner of revised critical habitat within the northern recovery unit.

Unit 1: San Antonio River: (6,453 ac (2,612 ha))

All lands in Unit 1 (approximately 6,453 ac (2,612 ha)) were exempted under section 4(a)(3)(B) of the Act in the October 2009 proposed revised designation for the arroyo toad (74 FR 52612; October 13, 2009) because they are subject to the 2007 Service-approved Integrated Natural Resources Management Plan (INRMP) for Fort Hunter Liggett. The INRMP provides a benefit to the arroyo toad, including monitoring arroyo toad population status, reducing public and military vehicle encroachment into arroyo toad habitats, reducing bullfrogs and other invasive species, and integrating species management and conservation with Fort Hunter Liggett training and maintenance activities. Please refer to the **Application of Section 4(a)(3) of the Act** section below for details on the INRMP and the benefits it provides to the arroyo toad.

Unit 2: Sisquoc River (3,775 ac (1,528 ha))

This unit is located in Santa Barbara County and encompasses approximately 33 miles (mi) (54 kilometers (km)) of the Sisquoc River and adjacent uplands from Sycamore Campground downstream to just below the confluence with La Brea Creek. Upper stretches of the river are within the Los Padres National Forest and mostly within the San Rafael Wilderness Area. Below the National Forest boundary, the river and adjacent uplands are on rural private lands. The unit consists of 1,700 ac (688 ha) of Federal land and 2,073 ac (839 ha) of private land. This long, undammed river is one of the few remaining major rivers in southern California with a natural flow regime, and supports a core population of arroyo toads that is important for maintaining the genetic diversity of the species. Unit 2 contains the physical and biological features that are essential to the conservation of the species, including breeding pools in low-gradient stream segments with sandy or fine gravel substrates (PCEs 1 and 2), seasonal flood flows (PCE 3), and relatively undisturbed riparian and upland habitat for foraging and dispersal (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from the removal and alteration of habitat due to sand and gravel mining, livestock overgrazing of riparian habitats, and limited recreational activities.

Unit 3: Upper Santa Ynez River Basin (3,032 ac (1,227 ha))

This unit is located in Santa Barbara County upstream of Gibraltar Reservoir and encompasses approximately 27 mi (43 km) of the upper Santa Ynez River, Indian Creek, Mono Creek, and adjacent uplands. The unit consists of 2,214 ac (896 ha) of Federal land and 818 ac (331 ha) of private land within the Los Padres National Forest, and supports a

large and well-studied arroyo toad population that likely experiences precipitation and soil moisture conditions not faced by toads at drier sites (Sweet 1992, pp. 1–198; 1993, pp. 1–73). Potential adaptations to these conditions make this unit important for maintaining the genetic diversity of the species. Unit 3 contains the physical and biological features that are essential to the conservation of the species, including breeding pools in low-gradient stream segments with sandy or fine gravel substrates (PCEs 1 and 2), seasonal flood flows (PCE 3), and relatively undisturbed riparian and upland habitat for foraging and dispersal (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats, primarily along the lower Santa Ynez River and lower Mono Creek, from nonnative species, recreation, and problems associated with an upstream dam (such as sediment trapping, altered hydrological regime, and temperature changes).

Unit 4: Sespe Creek (2,760 ac (1,117 ha))

This unit is located in Ventura County and encompasses approximately 27 mi (43 km) of Sespe Creek and adjacent uplands, from the lower end of Sespe Gorge (elevation approximately 3,530 ft (1,076 m)) downstream to the confluence with Alder Creek. The unit consists of 2,498 ac (1,011 ha) of Federal land and 262 ac (106 ha) of private land. This unit supports one of the largest arroyo toad populations on the Los Padres National Forest along Sespe Creek, which is undammed and retains its natural flooding regime. Up to several hundred adult arroyo toads inhabit this reach of the Sespe Creek (Sweet 1992, p. 192), and during years of successful reproduction, such as 2003, thousands of juveniles can be found as well (Murphy 2008, pers. comm.). Arroyo toads have been found up to 3,300 ft (1,000 m) in elevation in this area, which is one of the highest known occurrences in the northern recovery unit. Unit 4 contains the physical and biological features that are essential to the conservation of the species, including numerous suitable breeding pools (shallow, sand- or gravel-based pools with a minimum of vegetation along one or both margins during the breeding season from late March to June (Sweet 1992, p. 28)) and an abundance of sandy substrates (PCEs 1 and 2), unimpeded seasonal flood flows (PCE 3), and relatively undisturbed riparian habitat and upland benches for foraging and dispersal (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from recreational activities and nonnative predators.

Unit 5: Piru Creek (2,507 ac (1,015 ha))

This unit is located in Ventura and Los Angeles Counties and consists of two subunits totaling 2,105 ac (852 ha) of Federal land and 402 ac (163 ha) of private inholdings.

Subunit 5a

Subunit 5a encompasses approximately 17 mi (27 km) of Piru Creek and adjacent uplands from the confluence with Lockwood Creek downstream to Pyramid Reservoir. The subunit consists of 1,277 ac (517 ha) of Federal land and 81 ac (33 ha) of private land. As recently as 2003, the upper portion of Subunit 5a was documented to be free of nonnative vertebrate predators, and the substantial arroyo toad population supported by this subunit was documented to be increasing and expanding over the course of several years (Uyehara 2003, pers. comm.). Subunit 5a contains the physical and biological features that are essential to the conservation of the species, including breeding pools in low-gradient stream segments with sandy substrates (PCEs 1 and 2), seasonal flood flows (PCE 3), and riparian habitat and upland benches for foraging and dispersal (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from livestock grazing and recreational activities.

Subunit 5b

Subunit 5b is primarily within the Sespe Wilderness and encompasses approximately 15 mi (24 km) of Piru Creek from the confluence with Fish Creek downstream to Lake Piru, as well as Agua Blanca Creek from Devil's Gateway downstream to the confluence with Piru Creek. The subunit supports a substantial arroyo toad population and consists of 828 ac (335 ha) of Federal land and 321 ac (130 ha) of private land. Subunit 5b contains the physical and biological features that are essential to the conservation of the species, including breeding pools in low-gradient stream segments with sandy substrates (PCEs 1 and 2), seasonal flood flows (modified to some extent below Pyramid Dam) (PCE 3), and riparian habitat and upland benches for foraging and dispersal (PCE 4). Because lower Piru Creek in Subunit 5b is downstream of a large dam, the habitat there has experienced some degradation over the years from perennial water releases, rapid changes in flow volume, excessive flows during the breeding season, and an increased presence of nonnative predators. However, in 2005, the California Department of Water Resources proposed to permanently change the water release schedule for Pyramid Dam to one that more closely mimics the pre-dam hydrograph and benefitted downstream habitat for the arroyo toad (State Water Board 2008, p. 3). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative predators and recreational activities.

Unit 6: Upper Santa Clara River Basin (2,802 ac (1,134 ha))

This unit is located in northwestern Los Angeles County and consists of three subunits totaling 443 ac (179 ha) of Federal land and 2,359 ac (955 ha) of private land.

Subunit 6a

Subunit 6a encompasses approximately 7 mi (12 km) of Castaic Creek from Bear Canyon downstream to Castaic Lake, and 0.7 mi (1.2 km) of Fish Creek from Cienaga Spring to the confluence with Castaic Creek. The subunit consists of 284 ac (115 ha) of Federal land and 236 ac (96 ha) of private land. Subunit 6a contains the physical and biological features that are essential to the conservation of the species, including breeding pools in low-gradient stream segments with sandy substrates (PCEs 1 and 2), seasonal flood flows (PCE 3), and riparian habitat and upland benches for foraging and dispersal (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from urban development, agriculture, recreation, mining, and nonnative predators.

Subunit 6b

Subunit 6b encompasses: (1) Approximately 2.6 mi (4.2 km) of Castaic Creek from the downstream edge of The Old Road right-of-way (adjacent to Interstate 5) down to the confluence with the Santa Clara River; and (2) 4 mi (6.4 km) of the Santa Clara River from the confluence with San Francisquito Creek down to the confluence with Castaic Creek. Subunit 6b consists of

1,003 ac (406 ha) of private land. This subunit allows for natural population expansion and fluctuation of the Santa Clara River population by connecting arroyo toad habitat in Castaic Creek with San Francisquito Creek and the occupied reach of the Santa Clara River. Subunit 6b contains the physical and biological features that are essential to the conservation of the species, including breeding pools in low-gradient stream segments with sandy substrates (PCEs 1 and 2), seasonal flood flows (PCE 3), and riparian habitat and upland benches for foraging and dispersal (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from urban development, agriculture, recreation, mining, and nonnative predators.

The Secretary is exercising his discretion under section 4(b)(2) of the Act to exclude 330 ac (134 ha) of Subunit 6b that we proposed as revised critical habitat. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of these areas will not result in extinction of the species (*see* **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts** section below).

Additionally, based on closer examination of some upland areas that we proposed in the revised critical habitat proposal (74 FR 52612, October 13, 2009) and that we believed met the definition of critical habitat, we have found that these lands are either developed, used for intensive agriculture, or are inaccessible to arroyo toads due to busy roads or steep slopes. We now find that little of these lands remain as native habitats that would be useable as foraging areas by arroyo toads, do not contain the physical and biological features that are essential to the conservation of the arroyo toad, and therefore, do not meet the definition of critical habitat. Therefore, we have removed approximately 662 ac (268 ha) from Subunit 6b.

Subunit 6c

Subunit 6c encompasses approximately 11 mi (18 km) of upper Santa Clara River from Arrastre Canyon downstream to the confluence with Bee Canyon Creek. The subunit consists of 159 ac (64 ha) of Federal land and 1,120 ac (453 ha) of private land. This subunit is important for maintaining the arroyo toad metapopulation in the upper Santa Clara River Basin. Additionally, the upper portion of the Santa Clara River in this subunit supports a breeding population of arroyo toads (Farris 2001, pers. comm.; Hovore 2001, *in litt.;* Sandburg 2001, *in litt.*) that has the potential to greatly increase in size. Subunit 6c contains the physical and biological features that are essential to the conservation of the species, including breeding pools in low-gradient stream segments with sandy substrates (PCEs 1 and 2), seasonal flood flows (PCE 3), and riparian habitat and upland benches for foraging and dispersal (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from urban development, agriculture, recreation, mining, and nonnative predators.

Unit 7: Upper Los Angeles River Basin (1,190 ac (482 ha))

This unit is located in central Los Angeles County and encompasses: (1) Approximately 8 mi (13 km) of upper Big Tujunga Creek from immediately above Big Tujunga Reservoir upstream to approximately 1.2 mi (2 km) above the confluence with Alder Creek, (2) almost 3.7 mi (6 km) of Mill Creek from the Monte Cristo Creek confluence downstream to Big Tujunga Creek, and (3) approximately 1.9 mi (3 km) of Alder Creek from the Mule Fork confluence downstream to Big Tujunga Creek. The unit consists of 1,113 ac (451 ha) of Forest Service land and 77 ac (31 ha) of private land. This unit supports an arroyo toad population in the Big Tujunga Creek Canyon watershed in the Upper Los Angeles River Basin within the Angeles National Forest. This population is important because it occurs at a relatively high elevation that is atypical for arroyo toads, and it is the only known substantial population remaining in the coastal foothills of the San Gabriel Mountains. Unit 7 contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from nonnative predators, such as crayfish, bullfrogs, and nonnative plants, such as *Arundo donax* (giant reed grass).

Southern Recovery Unit

As described in the recovery plan (Service 1999, pp. 1–119), maintaining arroyo toad populations in the areas described by the following 12 unit descriptions is necessary to conserve the species in the southern recovery unit. These critical habitat units consist of a range of geographic locations from coastal regions to interior mountains. Arroyo toads likely occurred throughout each of these river and creek basins, but are now found only in segments of the rivers and creeks due to loss or change of habitat and nonnative predators. Conserving arroyo toad populations in these river basins is necessary for preserving the species' full range of genetic and phenotypic variation.

Unit 8: Lower Santa Ana River Basin (737 ac (298 ha))

This unit is located in east-central Orange County and encompasses: (1) Approximately 5.8 mi (9 km) of Santiago Creek from just below the town of Modjeska downstream to the confluence with Black Star Creek, (2) approximately 2 mi (3 km) of Black Star Creek downstream to the confluence with Santiago Creek, (3) an approximately 2.4-mi (4-km) stretch of lower Baker Canyon downstream to the confluence with Santiago Creek, and (4) approximately 7.3 mi (12 km) of Silverado Creek from the eastern edge of section 11 (T05S, R07W) in the Cleveland National Forest downstream to the confluence with Santiago Creek. As proposed, Unit 8 included a total of 2,182 ac (883 ha). Of these lands, we have now removed approximately 185 ac (75 ha), as we determined that these lands do not contain the physical or biological features essential to the conservation of the arroyo toad (*see* numbers 3 and 20 in **Summary of Changes from the 2009 Proposed Rule To Revise Critical Habitat** section above for a detailed discussion). The Secretary is exercising his discretion to exclude from this final revised critical habitat designation, under section 4(b)(2) of the Act, portions of Unit 8 totaling 1,259 ac (508 ha). The portion of Unit 8 we are designating as critical habitat consists of 54 ac (22 ha) of Forest Service land and 683 ac (276 ha) of private land. This unit contains a vital arroyo toad population in central Orange County that may represent one of the last remnants of a greater historical population from the Santa Ana River Basin that was mostly extirpated due to urbanization of the greater Los Angeles metropolitan area. It is also possible that this population belongs to a larger metapopulation that extends across the lower coastal mountain slopes of the Santa Ana Mountains from Santiago Creek to San Mateo Creek (including Units 10 and 11 discussed below). Unit 8 contains the physical and biological features that are essential to the

conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from nearby residential activities and degraded habitat conditions due to past commercial sand and gravel removal operations.

As indicated above, the Secretary is exercising his discretion to exclude approximately 1,259 ac (508 ha) that are owned by or are under the jurisdiction of the permittees of the Orange County Central–Coastal NCCP/HCP and the associated NRPPA. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion and that exclusion of these areas will not result in extinction of the species (*see* **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts** section below for a detailed discussion).

Unit 9: San Jacinto River Basin (2,391 ac (968 ha))

This unit is located in west-central Riverside County and consists of two subunits totaling 14 ac (5 ha) of BLM land, 531 ac (215 ha) of Forest Service land, 232 ac (94 ha) of State land, and 1,614 ac (653 ha) of private land. This unit supports the most northeastern arroyo toad populations within the coastal region of the species' range. This unit also is geographically isolated from other known toad populations to the south in the Santa Margarita Watershed, to the west in the San Juan Watershed, and from residual populations to the north in the Santa Ana Watershed. Therefore, this location is important to maintain the current geographic extent of the species.

Subunit 9a

Subunit 9a encompasses approximately 6.3 mi (10 km) of the San Jacinto River from the Sand Canyon confluence downstream to the Soboba Indian Reservation border. The subunit consists of 64 ac (26 ha) of Forest Service land, 8 ac (3 ha) of BLM land, and 1,154 ac (467 ha) of private land. Subunit 9a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from human activities, including direct mortality from vehicular traffic, trampling by people during recreational activities or trash dumping, and collection (Ortega 2009, *in litt.* p. 1; Wilcox 2009, pers. comm.).

Subunit 9b

Subunit 9b encompasses approximately 7.4 mi (12 km) of Bautista Creek from near the eastern edge of section 20 (T6S, R2E) downstream to approximately the middle of section 27 (T5S, R1E), where the stream enters a debris basin. As proposed, Subunit 9b included a total of 1,180 ac (478 ha). The Secretary is exercising his discretion to exclude from this final revised critical habitat designation, under section 4(b)(2) of the Act, portions of Subunit 9b totaling 14 ac (6 ha). The portion of Subunit 9b we are designating as critical habitat consists of 467 ac (189 ha) of Forest Service land, 6 ac (2 ha) of BLM land, 232 ac (94 ha) of State land, and 461 ac (187 ha) of private land. Subunit 9b contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from recreation and vehicular traffic (U.S. Geological Survey (USGS) 2001, p. 8).

As indicated above, the Secretary is exercising his discretion to exclude approximately 14 ac (6 ha) that are owned by or are under the jurisdiction of the permittees of the Western Riverside County MSHCP. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion and that exclusion of these areas will not result in extinction of the species (*see* **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts** section below for a detailed discussion).

Unit 10: San Juan Creek Basin (3,496 ac (1,415 ha))

This unit is located in southern Orange County and southwestern Riverside County and consists of two subunits totaling 558 ac (226 ha) of Forest Service land, 38 ac (15 ha) of local government land, and 2,900 ac (1,174 ha) of private land. This unit supports a large arroyo toad population in the San Juan Creek Basin, and arroyo toad populations in this unit may function as an important linkage between toads in Santiago Creek (Unit 8) to the north and the San Mateo Creek Basin (Unit 11) to the south.

Subunit 10a

This subunit is located in southern Orange County and southwestern Riverside County. Subunit 10a encompasses: (1) Approximately 5 mi (8 km) of San Juan Creek from immediately above the Upper San Juan Campground downstream to Interstate 5, (2) approximately 9.9 mi (16 km) of Bell Canyon from the southern half of section 8 (T06S, R06W) in the Cleveland National Forest downstream to the confluence with San Juan Creek, and (3) approximately 1.2 mi (2 km) of an unnamed tributary to the west of Bell Canyon in sections 8 and 18 (T06S, R06W) downstream to the confluence with Bell Creek. As proposed, Subunit 10a included a total of 4,728 ac (1,913 ha). Of these lands, we have now removed approximately 1 ac (<1 ha), as we determined that these lands do not contain the physical or biological features essential to the conservation of the arroyo toad (*see* number 20 in **Summary of Changes from the 2009 Proposed Rule To Revise Critical Habitat** section above for a detailed discussion). The Secretary is exercising his discretion to exclude from this final revised critical habitat designation, under section 4(b)(2) of the Act, portions of Subunit 10a totaling 1,631 ac (660 ha). The portions of Subunit 10a we are designating as critical habitat consist of 547 ac (221 ha) of Forest Service land, 3 ac (1 ha) of local government land, and 2,547 ac (1,031 ha) of private land. Subunit 10a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative predators (bullfrogs), water diversions, and residual effects of recent gravel mining operations (Bloom 1998, p. 2).

As indicated above, the Secretary is exercising his discretion to exclude approximately 1,631 ac (660 ha) that are owned by or are under the jurisdiction of the permittees of the Southern Orange County NCCP/Master Streambed Alteration Agreement/HCP. This

exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion and that exclusion of these areas will not result in extinction of the species (*see* **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts** section below for a detailed discussion).

Subunit 10b

This subunit is located in southern Orange County. Subunit 10b encompasses 5.2 mi (8 km) of Trabuco Creek downstream from approximately the middle of section 6 (T06S, R06W) in the Cleveland National Forest. As proposed, Subunit 10b included a total of 939 ac (380 ha). Of these lands, we have now removed approximately 31 ac (13 ha), as we determined that these lands do not contain the physical or biological features essential to the conservation of the arroyo toad (*see* number 6 in **Summary of Changes from the 2009 Proposed Rule To Revise Critical Habitat** section above for a detailed discussion). The Secretary is exercising his discretion to exclude from this final revised critical habitat designation, under section 4(b)(2) of the Act, portions of Subunit 10b totaling 509 ac (206 ha). The portion of Subunit 10b we are designating as critical habitat consists of 11 ac (4 ha) of Forest Service land, 35 ac (14 ha) of local government land, and 353 ac (143 ha) of private land. Subunit 10b contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative predators (bullfrogs), water diversions, and residual effects of recent gravel mining operations (Bloom 1998, p. 2).

As indicated above, the Secretary is exercising his discretion to exclude approximately 509 ac (206 ha) that are owned by or are under the jurisdiction of the permittees of the Southern Orange County NCCP/Master Streambed Alteration Agreement/HCP. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion and that exclusion of these areas will not result in extinction of the species (*see* **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts** section below for a detailed discussion).

Unit 11: San Mateo Creek Basin (1,820 ac (737 ha))

This unit is located in northwestern San Diego County, southern Orange County, and southwestern Riverside County and consists of two subunits totaling 844 ac (341 ha) of Forest Service land and 975 ac (395 ha) of private land. This unit supports large arroyo toad populations in close proximity to the coast. Nearly all of the other near-coastal, historical populations of arroyo toad were extirpated due to extensive urbanization and river channelization along the coastal regions of southern California. Distinctive climatic conditions near the coast may provide different selective pressures on toads in this area, and favor specific genetic characteristics that help maintain the genetic diversity of the species.

We exempted approximately 6,014 ac (2,427 ha) of military land under section 4(a)(3)(B) of the Act because the lands are subject to the 2007 INRMP for Marine Corps Base Camp Pendleton, and the INRMP provides a benefit to the arroyo toad (*see* the **Application of Section 4(a)(3) of the Act** section below for details on the INRMP and the benefits it provides to the arroyo toad).

Subunit 11a

Subunit 11a encompasses: (1) Approximately 1.7 mi (3 km) of Cristianitos Creek from just above Gabino Creek downstream to the MCB Camp Pendleton boundary; (2) approximately 3.1 mi (5 km) of Gabino Creek upstream from its confluence with Cristianitos Creek, including about 0.6 mi (1 km) of La Paz Creek; and (3) approximately 4 mi (6 km) of Talega Creek upstream from its confluence with Cristianitos Creek and beyond the boundaries of MCB Camp Pendleton. As proposed, Subunit 11a included a total of 1,034 ac (418 ha). Of these lands, we have now exempted approximately 20 ac (8 ha) (*see* number 7 in **Summary of Changes from the 2009 Proposed Rule To Revise Critical Habitat** section above for a detailed discussion). The Secretary is exercising his discretion to exclude from this final revised critical habitat designation, under section 4(b)(2) of the Act, a portion of Subunit 11a totaling 39 ac (16 ha). The portion of Subunit 11a we are designating as critical habitat totals 975 ac (395 ha), and is comprised entirely of private land. Subunit 11a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from human activities, including direct mortality from vehicle collisions and vehicular crossings of streambeds, grazing, and nonnative predators (Bloom 1996, pp. 4–5; Bloom 1998, *in litt.*, pp. 1, 3).

As indicated above, the Secretary is exercising his discretion to exclude approximately 39 ac (16 ha) that are owned by or are under the jurisdiction of the permittees of the Southern Orange County NCCP/Master Streambed Alteration Agreement/HCP. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion and that exclusion of these areas will not result in extinction of the species (*see* **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts** section below for a detailed discussion).

Subunit 11b

Subunit 11b encompasses: (1) Approximately 9.3 mi (15 km) of San Mateo Creek from Los Alamos Canyon downstream to MCB Camp Pendleton, and (2) approximately 2.4 mi (4 km) of Los Alamos Canyon downstream to the confluence with San Mateo Creek. The subunit consists of 844 ac (341 ha) of Forest Service land. Subunit 11b contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from habitat conditions favorable for nonnative predators (ECORP 2004, p. 16).

Unit 12: Lower Santa Margarita River Basin (1,009 ac (408 ha))

This unit is located in northwestern San Diego County and consists of two subunits totaling 5 ac (2 ha) of State land and 1,004 ac (406 ha) of private land. This unit supports large arroyo toad populations in proximity to other large arroyo toad populations to the north (Unit 11), and provides potential connectivity to populations in the upper Santa Margarita River Basin (Unit 13). We exempted approximately 7,239 ac (2,929 ha) of military land (7,016 ac (2,839 ha) on MCB Camp Pendleton and 223 ac (90 ha) on Fallbrook Naval

Weapons Station) in this unit under section 4(a)(3)(B) of the Act in the October 2009 proposed revised designation for the arroyo toad (74 FR 52612) because the lands are subject to the 2007 INRMP for MCB Camp Pendleton and the 2006 INRMP for the Fallbrook Naval Weapons Station, and each INRMP provides a benefit to the arroyo toad. Please refer to the **Application of Section 4(a)(3) of the Act** section below for details on the INRMPs and the benefits they provide to the arroyo toad.

Subunit 12a

Subunit 12a encompasses approximately 2.1 mi (3 km) of De Luz Creek from the town of De Luz downstream to the MCB Camp Pendleton boundary. The subunit consists of 394 ac (159 ha) of private land. Subunit 12a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from cumulative impacts to the species' habitat from recreation, nonnative predators, and nonnative plants (CNDDB 2008, EO 26).

Subunit 12b

Subunit 12b encompasses approximately 5.5 mi (9 km) of the Santa Margarita River upstream from the MCB Camp Pendleton boundary. The subunit consists of 5 ac (2 ha) of State land and 610 ac (247 ha) of private land. Subunit 12b contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from cumulative impacts to the species' habitat from nonnative predators, nonnative plants, and vehicular traffic (Varanus Biological Services, Inc. 1999, pp. 34–35).

Unit 13: Upper Santa Margarita River Basin (7,863 ac (3,182 ha))

This unit is located in southern Riverside County and northern San Diego County and consists of three subunits totaling 22 ac (9 ha) of BLM land, 432 ac (174 ha) of Forest Service land, and 7,409 ac (2,998 ha) of private land. This unit provides potential links to arroyo toad populations in the lower Santa Margarita River Basin (Unit 12) and other nearby drainages containing suitable habitat.

Subunit 13a

Subunit 13a encompasses approximately 7.3 mi (12 km) of Arroyo Seco Creek from just south of the San Diego-Riverside County boundary downstream to Vail Lake. The subunit consists of 337 ac (136 ha) of Forest Service land and 818 ac (331 ha) of private land. Subunit 13a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative predators and campground activities (USGS 2000, p. 3).

Subunit 13b

Subunit 13b encompasses approximately 16.3 mi (26 km) of Temecula Creek from Dodge Valley downstream to Vail Lake. As proposed, Subunit 13b included a total of 4,756 ac (1,925 ha). The Secretary is exercising his discretion to exclude from this final revised critical habitat designation, under section 4(b)(2) of the Act, portions of Subunit 13b totaling 26 ac (11 ha). The portion of Subunit 13b we are designating as critical habitat consists of 95 ac (38 ha) of Forest Service land, 22 ac (9 ha) of BLM land, and 4,614 ac (1,867 ha) of private land. Subunit 13b contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from road maintenance and sand-mining operations (HELIX 2004, p. 1).

As indicated above, the Secretary is exercising his discretion to exclude approximately 26 ac (11 ha) that are owned by or are under the jurisdiction of the permittees of the Western Riverside County MSHCP. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion and that exclusion of these areas will not result in extinction of the species (*see* **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts** section below for a detailed discussion).

Subunit 13c

Subunit 13c encompasses approximately 6.5 mi (10 km) of Wilson Creek from the confluence with Cahuilla Creek downstream to Vail Lake. As proposed, Subunit 13c included a total of 2,226 ac (901 ha). The Secretary is exercising his discretion to exclude from this final revised critical habitat designation, under section 4(b)(2) of the Act, portions of Subunit 13c totaling 249 ac (101 ha). The portion of Subunit 13c we are designating as critical habitat totals 1,977 ac (800 ha), and is comprised entirely of private land. Subunit 13c contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from direct mortality and habitat degradation from off-highway vehicular traffic, and upstream sedimentation caused by urbanization, agriculture, or wildfire (R. Haase, MCAS Camp Pendleton, *in litt.* 2009b, p. 1).

As indicated above, the Secretary is exercising his discretion to exclude approximately 249 ac (101 ha) that are owned by or are under the jurisdiction of the permittees of the Western Riverside County MSHCP. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion and that exclusion of these areas will not result in extinction of the species (*see* **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts** section below for a detailed discussion).

Unit 14: Lower and Middle San Luis Rey River Basin (10,115 ac (4,093 ha))

This unit is located in northern San Diego County and encompasses approximately 30 mi (48 km) of the San Luis Rey River from the western edge of the La Jolla Indian Reservation downstream to the confluence with Guajome Creek near the City of Oceanside. It also includes approximately 3.4 mi (5.5 km) of Pala Creek and 1.7 mi (2.7 km) of Keys Creek upstream from the confluence with the

San Luis Rey River. As proposed, Unit 14 included a total of 12,906 ac (5,223 ha). Of these lands, we have now removed approximately 58 ac (23 ha), as we determined that these lands do not contain the physical or biological features essential to the conservation of the arroyo toad (*see* numbers 9 and 20 in **Summary of Changes from the 2009 Proposed Rule To Revise Critical Habitat** section above for a detailed discussion). The Secretary is exercising his discretion to exclude from this final revised critical habitat designation, under section 4(b)(2) of the Act, portions of Unit 14 totaling 2,733 ac (1,106 ha). The portion of Unit 14 we are designating as critical habitat consists of approximately 4 ac (2 ha) of BLM land, 10 ac (4 ha) of State land, and 10,101 ac (4,088 ha) of private land. This unit supports one of the largest contiguous river reaches that is occupied by the species. Unit 14 contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from dams and water diversions, intensive urbanization, agriculture, and nonnative predators and plants.

As indicated above, the Secretary is exercising his discretion to exclude approximately 1,071 ac (433 ha) of Rincon Band of Luiseño Mission Indians Tribal Lands and approximately 1,662 ac (673 ha) of Pala Band of Luiseño Mission Indians Tribal Lands. These exclusions are based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of these areas will not result in extinction of the species (*See* **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section below.

Unit 15: Upper San Luis Rey River Basin (8,368 ac (3,386 ha))

This unit is located in northern San Diego County and encompasses: (1) Approximately 8.6 mi (14 km) of the West Fork of the San Luis Rey River from Barker Valley downstream to the upper end of Lake Henshaw, (2) approximately 3.5 mi (6 km) of Cañada Aguanga from just below Lake Jean downstream to the confluence with the San Luis Rey River, (3) approximately 11.4 mi (18 km) of the upper San Luis Rey River from the Indian Flats area downstream to the upper end of Lake Henshaw, and (4) approximately 6.9 mi (11 km) of Agua Caliente Creek from the western edge of section 13 (T10S, R3E) to the confluence with the San Luis Rey River. As proposed, Unit 15 included a total of 12,977 ac (5,252 ha). The Secretary is exercising his discretion to exclude from this final revised critical habitat designation, under section 4(b)(2) of the Act, portions of Unit 15 totaling 4,609 ac (1,865 ha). The portion of Unit 15 we are designating as critical habitat consists of 695 ac (281 ha) of Forest Service land and 7,673 ac (3,105 ha) of private land. This unit supports a unique assemblage of small, disjunct, high-elevation arroyo toad populations and one significant population on Agua Caliente Creek (Gergus 1992, *in litt.,* p. 1; Ervin 2000, *in litt.,* pp. 2–3, 5; CNDDB 2008, Element Occurrences (EOs) 27, 32) in an area where in-stream and overland dispersal between populations likely still is possible. Unit 15 contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from groundwater pumping on private lands, nonnative predators, feral pigs, and grazing (Winter *in litt.* 2010).

As indicated above, the Secretary is exercising his discretion to exclude approximately 4,609 ac (1,865 ha) within the existing and proposed Remote Training Site Warner Springs. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion and that exclusion of these areas will not result in extinction of the species (*see* **Exclusions Under Section 4(b)(2) of the Act—Impacts to National Security** section below for a detailed discussion).

Unit 16: Santa Ysabel Creek Basin (15,370 ac (6,220 ha))

This unit is located in north-central San Diego County and consists of two subunits totaling 6 ac (2 ha) of BLM land, 184 ac (74 ha) of Forest Service land, 175 ac (71 ha) of State land, 143 ac (58 ha) of local government land, and 14,862 ac (6,014 ha) of private land. This unit supports large amounts of suitable habitat connecting large populations with several additional populations, thereby promoting the long-term persistence of the species in the area.

Subunit 16a

Subunit 16a encompasses: (1) Approximately 16.9 mi (27 km) of Santa Ysabel Creek from the northwestern quarter of section 24 (T12S, R01E) in the Cleveland National Forest downstream to the confluence with the San Dieguito River, (2) approximately 10 mi (16.1 km) of Guejito Creek from the 2,000 ft (610 m)-elevation contour downstream to the confluence with Santa Ysabel Creek, (3) approximately 2.5 mi (4.0 km) of Boden Canyon upstream from the Santa Ysabel Creek confluence, (4) approximately 4.3 mi (7 km) of Temescal Creek from the northern edge of Pamo Valley to the confluence with Santa Ysabel Creek, (5) approximately 9.1 mi (15 km) of Santa Maria Creek from the west side of Ramona to the confluence with Santa Ysabel Creek, and (6) approximately 1 mi (2 km) of the San Dieguito River upstream from the confluence with Santa Ysabel Creek. As proposed, Subunit 16a included a total of 13,967 ac (5,653 ha). Of these lands, we have now removed approximately 101 ac (40 ha), as we determined that these lands do not contain the physical or biological features essential to the conservation of the arroyo toad (*see* number 10 in **Summary of Changes from the 2009 Proposed Rule To Revise Critical Habitat** section above for a detailed discussion). The subunit consists of 184 ac (74 ha) of Forest Service land, 6 ac (2 ha) of BLM land, 175 ac (71 ha) of State land, 143 ac (58 ha) of local government land, and 13,357 ac (5,405 ha) of private land. Subunit 16a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from grazing, nonnative predators, feral pigs, and urbanization (Tierra Environmental Services 2001, *in litt.;* CNDDB 2008, EOs 59, 61; Winter *in litt.* 2010).

Subunit 16d

Subunit 16d encompasses approximately 6.2 mi (10 km) of Santa Ysabel Creek about 0.5 mi (0.8 km) east of Highway 79 downstream to Sutherland Reservoir. As proposed, Subunit 16d included a total of 1,527 ac (609 ha). The Secretary is exercising his discretion to exclude from this final revised critical habitat designation, under section 4(b)(2) of the Act, a

portion of Subunit 16d totaling 23 ac (9 ha). The portion of Subunit 16b we are designating as critical habitat totals 1,504 ac (609 ha), and is comprised entirely of private land. Subunit 16d contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from grazing and feral pigs (CNDDB 2008, EO 62; Winter *in litt.* 2010).

As indicated above, the Secretary is exercising his discretion to exclude approximately 23 ac (9 ha) of Mesa Grande Band of Diegueno Mission Indians Tribal Land. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of these areas will not result in extinction of the species (*See* **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section below.

Unit 17: San Diego River Basin/San Vicente Creek (4,171 ac (1,688 ha))

This unit is located in central San Diego County and consists of three subunits totaling 35 ac (14 ha) of BLM land, 390 ac (158 ha) of Forest Service land, and 3,746 ac (1,516 ha) of private land. This unit supports suitable habitat for population expansion, thus increasing the probability of the long-term persistence of these populations.

Subunit 17a

Subunit 17a encompasses: (1) Approximately 8.7 mi (14 km) of the San Diego River from Temescal Creek downstream to the upper edge of El Capitan Reservoir, and (2) approximately 1 mi (2 km) of lower Cedar Creek. As proposed, Subunit 17a included a total of 1,241 ac (502 ha). The Secretary is exercising his discretion to exclude from this final revised critical habitat designation, under section 4(b)(2) of the Act, portions of Subunit 17a totaling 92 ac (37 ha). The portion of Subunit 17a we are designating as critical habitat consists of 354 ac (143 ha) of Forest Service land, and 795 ac (322 ha) of private land. Subunit 17a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from urbanization, nonnative predators, and feral pigs (Winter *in litt.* 2010).

As indicated above, the Secretary is exercising his discretion to exclude approximately 92 ac (37 ha) of Capitan Grande Band of Diegueno Mission Indians Tribal Lands. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of these areas will not result in extinction of the species (*See* **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section below.

Subunit 17b

Subunit 17b encompasses approximately 7.2 mi (12 km) of the San Diego River downstream from El Capitan Reservoir. The subunit consists of 12 ac (5 ha) of BLM land, 36 ac (15 ha) of Forest Service land, and 1,817 ac (735 ha) of private land. Subunit 17b contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from urbanization, agriculture, nonnative predators, and harmful water releases (based on timing or amount) from the El Capitan Reservoir.

Subunit 17d

Subunit 17d encompasses approximately 7.6 mi (12 km) of San Vicente Creek upstream from San Vicente Reservoir. The subunit consists of 23 ac (9 ha) of BLM land and 1,134 ac (459 ha) of private land. Subunit 17d contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from urbanization, agriculture, nonnative predators, feral pigs, and harmful water releases (based on timing or amount) from the Sutherland/San Vicente Aqueduct (Varanus Biological Services, Inc. 1999, p. 20; RECON 2008, pp. 1, 3–4; Winter *in litt.* 2010).

Unit 18: Sweetwater River Basin (4,624 ac (1,871 ha))

This unit is located in south-central San Diego County and consists of two subunits totaling 553 ac (224 ha) of Forest Service land, 3 ac (1 ha) of San Diego National Wildlife Refuge land, 1,659 ac (671 ha) of State land, and 2,410 ac (975 ha) of private land. This unit supports several large populations over large stretches of rivers and streams (Gergus 1992, *in litt.,* p. 1; Ervin 1997, *in litt.,* pp. 3–5; Varanus Biological Services, Inc. 1999, pp. 4–16; CNDDB 2008, EOs 38, 43, 67, 73, 77, 85, 99, 100). These populations may function as an important linkage between toads in the San Diego River Basin (Unit 17) to the north and Cottonwood Creek Basin (Unit 19) to the south.

Subunit 18a

Subunit 18a encompasses: (1) Approximately 26.6 mi (43 km) of the Sweetwater River from the top of Upper Green Valley in Cuyamaca Rancho State Park downstream to the top of Loveland Reservoir, (2) approximately 4.3 mi (7 km) of Viejas Creek from the western border of the Viejas Indian Reservation downstream to the confluence with the Sweetwater River, and (3) approximately 1.5 mi (2 km) of Peterson Canyon from just east of the Taylor Creek confluence downstream to the top of Loveland Reservoir. The subunit consists of 553 ac (224 ha) of Forest Service land, 1,554 ac (629 ha) of State land, and 2,049 ac (829 ha) of private land. Subunit 18a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from vehicular traffic, including off- highway vehicular traffic; horse-riding activities; nonnative predators; reservoir inundation; feral pigs; and direct mortality from trampling or dumping trash (Varanus Biological Services, Inc. 1999, p. 14; Mendelsohn *et al.* 2005, pp. 10–11; Winter *in litt.* 2010).

Subunit 18c

Subunit 18c encompasses approximately 5.8 mi (9.3 km) of the Sweetwater River from immediately below Loveland Dam downstream to just above the Sycuan Resort. As

proposed, Subunit 18c included a total of 627 ac (254 ha). Of these lands, we have now removed approximately 6 ac (2 ha), as we determined that these lands do not contain the physical or biological features essential to the conservation of the arroyo toad (*see* number 13 in **Summary of Changes from the 2009 Proposed Rule To Revise Critical Habitat** section above for a detailed discussion). The Secretary is exercising his discretion to exclude from this final revised critical habitat designation, under section 4(b)(2) of the Act, portions of Subunit 18c totaling 152 ac (62 ha). The portion of Subunit 18c we are designating as critical habitat consists of 3 ac (1 ha) of San Diego National Wildlife Refuge land, 105 ac (42 ha) of State land, and 362 ac (146 ha) of private land. Subunit 18c contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from harmful water releases (based on timing or amount) from the Loveland Reservoir and gravel mining operations (Madden-Smith *et al.* 2003, pp. 15, 17).

As indicated above, the Secretary is exercising his discretion to exclude approximately 152 ac (62 ha) of Sycuan Band of the Kumeyaay Nation Tribal Lands. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of these areas will not result in extinction of the species (see **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section below).

Unit 19: Cottonwood Creek Basin (14,344 ac (5,804 ha))

Unit 19 is located in southern San Diego County and consists of five subunits totaling 190 ac (77 ha) of BLM land, 3,927 ac (1,588 ha) of Forest Service land, 1,476 ac (597 ha) of local government land, and 8,751 ac (3,541 ha) of private land. This unit encompasses a large number of arroyo toad occurrences (Gergus 1992, *in litt.;* Varanus Biological Services, Inc. 1999, pp. 2–3; Gergus 2000, *in litt.;* CNDDB 2008, EOs 20–22, 30, 40, 44, 63–65, 69, 79) in an area where in-stream and overland dispersal between populations likely still is possible and where there is room for population expansion. Additionally, this unit may function as an important linkage between toads in the Sweetwater River Basin (Unit 18) to the north and populations to the south in Mexico, as populations in this unit represent the most southern arroyo toad populations in the species' range within the United States.

Subunit 19a

Subunit 19a encompasses: (1) Approximately 7 mi (11.2 km) of Cottonwood Creek from Buckman Springs (near Interstate 8) downstream to Morena Reservoir, (2) approximately 2.8 mi (4.5 km) of Morena Creek downstream to the Cottonwood Creek confluence, (3) approximately 0.5 mi (1 km) of an unnamed tributary of Morena Creek in section 35 (T16S, R04E) downstream to the confluence with Morena Creek, (4) approximately 5 mi (8 km) of Kitchen Creek downstream to the Cottonwood Creek confluence, and (5) approximately 3.8 mi (6 km) of La Posta Creek downstream to the Cottonwood Creek confluence. As proposed, Subunit 19a included a total of 5,847 ac (2,366 ha). The Secretary is exercising his discretion to exclude from this final revised critical habitat designation, under section 4(b)(2) of the Act, portions of Subunit 19a totaling 31 ac (13 ha). The portion of Subunit 19a we are designating as critical habitat consists of 2,128 ac (861 ha) of Forest Service land, 1,476 ac (597 ha) of local government land, and 2,212 ac (895 ha) of private land. Subunit 19a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from grazing, recreational activities, and nonnative plants and predators (Ervin 2000, *in litt.;* TAIC 2005, p. 1; CNDDB 2008, EOs 20, 44, 69).

As indicated above, the Secretary is exercising his discretion to exclude approximately 31 ac (13 ha) within Camp Morena. This exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion and that exclusion of these areas will not result in extinction of the species (*see* **Exclusions Under Section 4(b)(2) of the Act—Impacts to National Security** section below for a detailed discussion).

Subunit 19b

Subunit 19b encompasses approximately 12.7 mi (20 km) of Cottonwood Creek from immediately below Barrett Lake downstream to the U.S.–Mexico border and includes 10.3 mi (17 km) of Potrero Creek from approximately the 2,466-ft (752-m) elevation benchmark downstream to the confluence with Cottonwood Creek. The subunit consists of 80 ac (32 ha) of Forest Service land, 129 ac (52 ha) of BLM land, and 4,921 ac (1,991 ha) of private land. Subunit 19b contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from grazing, and nonnative plants and predators (Ervin 1997, *in litt.;* TAIC 2005, pp. 1, 3; CNDDB 2008, EOs 40, 64, 65, 79).

Subunit 19c

Subunit 19c encompasses: (1) Approximately 7.6 mi (12 km) of Pine Valley Creek from the north edge of section 12 (T15S, R4E) downstream to approximately 0.6 mi (1 km) south of Interstate 8, (2) approximately 0.6 mi (1 km) of Noble Creek downstream to the confluence with Pine Valley Creek, (3) approximately 2.4 mi (4 km) of Scove Canyon downstream to the confluence with Pine Valley Creek, and (4) approximately 1.3 mi (2 km) of an unnamed tributary upstream of Scove Canyon in sections 25 and 36 (T15S, R04E). The subunit consists of 809 ac (327 ha) of Forest Service land and 703 ac (284 ha) of private land. Subunit 19c contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from urbanization, vehicular traffic, and nonnative predators (Holland and Sisk 2001, p. 9; CNDDB 2008, EOs 21, 22, 30).

Subunit 19d

Subunit 19d encompasses approximately 8 mi (13 km) of Pine Valley Creek from the Nelson Canyon confluence downstream to Barrett Reservoir and approximately 1.6 mi (3 km) of Horsethief Canyon downstream

to the confluence with Pine Valley Creek. The subunit consists of 910 ac (368 ha) of Forest Service land and 28 ac (11 ha) of private land. Subunit 19d contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from U.S. Border Patrol activities (Varanus Biological Services, Inc. 1999, p. 2).

Subunit 19e

Subunit 19e encompasses approximately 4.4 mi (7 km) of Campo Creek from Campo Lake downstream to the U.S.-Mexico border. The subunit consists of 61 ac (25 ha) of BLM land and 889 ac (360 ha) of private land. Subunit 19e contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from fire management activities along the U.S.–Mexico border (LEI 2008, p. 2).

Desert Recovery Unit

As described in the recovery plan (Service 1999, pp. 1–119), maintaining arroyo toad populations in the areas described by the following four unit descriptions is necessary to conserve the species in the desert recovery unit. Each of these units is isolated from each other and from any other recovery units, making the issues of inbreeding, fragmentation, and random negative impacts of great concern. However, this recovery unit also represents unique ecological conditions for arroyo toads, such as extremes in aridity, heat, and cold, and likely harbors important genetic diversity.

Unit 20: Upper Santa Ana River Basin/Cajon Wash (1,775 ac (718 ha))

This unit is located in southwestern San Bernardino County and encompasses approximately 7.9 mi (13 km) of Cajon Wash from approximately 0.2 mi (0.3 km) north of United States Highway 138 downstream to approximately 0.3 mi (0.5 km) northwest of the Interstate 15 crossing. The unit consists of 711 ac (288 ha) of Forest Service land and 1,065 ac (431 ha) of private land. This unit supports a population that may represent some of the last vestiges of a much greater population that historically existed along the upper Santa Ana River Basin, but was almost entirely extirpated due to urbanization of the greater Los Angeles area. Therefore, this location is important to maintain the current geographic extent of the species. Unit 20 contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from recreational activities.

Unit 21: Little Rock Creek Basin (612 ac (248 ha))

This unit is located in central Los Angeles County and encompasses: (1) Approximately 5.9 mi (9.5 km) of Little Rock Creek from the South Fork confluence downstream to the upper end of Little Rock Reservoir (in the vicinity of Rocky Point Picnic Ground), and (2) approximately 1.1 mi (1.8 km) of Santiago Creek upstream from the confluence with Little Rock Creek in the Little Rock Creek Basin. The unit consists of 612 ac (248 ha) of Forest Service land. This unit is on the periphery of the species' range in the Mojave Desert and geographically isolated from other known arroyo toad populations; therefore, it is important for maintaining the current geographic extent of the species. Unit 21 contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from recreational activities.

Unit 22: Upper Mojave River Basin (5,602 ac (2,267 ha))

This unit is located in San Bernardino County and consists of one subunit totaling 2,143 ac (867 ha) of Federal land, 47 ac (19 ha) of State land, and 3,412 ac (1,381 ha) of private land.

Subunit 22a

Subunit 22a includes: (1) Approximately 9.3 mi (18 km) of Deep Creek from near Holcomb Creek downstream to the confluence with the West Fork; (2) approximately 4 mi (6 km) of Little Horsethief Creek upstream from its confluence with Horsethief Creek; (3) approximately 4 mi (6 km) of Horsethief Creek from approximately 1 mi (1.6 km) above the Little Horsethief Creek confluence downstream to the West Fork confluence; (4) approximately 6 mi (10 km) of the West Fork of the Mojave River from Highway 173 downstream to Mojave River Forks Dam; (5) approximately 1 mi (1.6 km) of the Mojave River below Mojave River Forks Dam; (6) approximately 1.4 mi (2.2 km) of Grass Valley Creek upstream from the confluence with the West Fork; and (7) approximately 2.8 mi (4.5 km) of Kinley Creek upstream from the Deep Creek confluence. Subunit 22a consists of 2,143 ac (867 ha) of Federal land, 3,412 ac (1,381 ha) of private land, and 47 ac (19 ha) of State land. This subunit contains Summit Valley, which encompasses the lower portions of Horsethief Creek and the West Fork of the Mojave River, a broad, flat, alluvial valley that supports a substantial arroyo toad population (Ramirez 2003, pp. 16–17). Additionally, the downstream portion of this subunit contains the driest conditions of any unit proposed for arroyo toad critical habitat (Teale Data Center 1998, p. 1; CIMS 2000, p. 1), Subunit 22a contains the physical and biological features that are essential to the conservation of the species, including aquatic habitat for breeding and non-breeding activities (PCEs 1, 2, and 3) and upland habitat for foraging and dispersal activities (PCE 4). The physical and biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats from nonnative species, urban development, and recreation.

Based on information submitted by Summit Valley Ranch during the initial public comment period from October 13, 2009, to December 14, 2009, we removed approximately 82 ac (33 ha) of private land from Subunit 22a. The lands in question are located north of State Road 138 on Summit Valley Ranch, San Bernardino County. We included this area in the proposed revised critical habitat designation because we believed it contained suitable upland habitat for arroyo toads; however, it has come to our attention that (1) surveys have never detected arroyo toads in the area, (2) the area

lacks the PCEs for the arroyo toad, and (3) State Route 138 serves as a barrier for arroyo toads to disperse into the area. Consequently, we determined that the area north of State Route 138 does not contain the physical and biological features essential to the conservation of arroyo toads and therefore does not meet the definition of critical habitat for the arroyo toad.

Additionally, we removed Subunit 22c (approximately 234 ac (915 ha)) within Unit 22 from our revised critical habitat designation. Subunit 22c is within the geographical area occupied at the time of listing; however, this subunit was erroneously included in the proposed revised rule (74 FR 52612; October 13, 2009). Although we were not aware of this issue when we published the proposed rule, the existence of Cedar Springs Dam upstream of this subunit has altered the hydrology of the 1-mi (1.6-km) reach of the upper West Fork of the Mojave River above Silverwood Lake that extends to the upper end of the lake to such an extent that it does not contain the features essential to the conservation of the species and therefore does not meet the definition of critical habitat for the arroyo toad.

Unit 23: Whitewater River Basin

We removed Unit 23 (approximately 1,355 ac (548 ha)) from the final revised critical habitat designation. This unit was erroneously included in the proposed revised rule (74 FR 52612; October 13, 2009). Following examination of data used to map Unit 23 in the proposed rule and discussions with species experts regarding identification records, we determined that these records are not arroyo toads and do not support a determination that this area meets the definition of critical habitat. Therefore, Unit 23 is not included in this final revised critical habitat rule.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the Fifth and Ninth Circuit Courts of Appeal have invalidated our definition of "destruction or adverse modification" (50 CFR 402.02) (*see Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442F (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species. Section 7(a)(2) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

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. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require 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 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of this consultation, we document compliance with the requirements of section 7(a)(2) of the Act through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

An exception to the concurrence process referred to in (1) above occurs in consultations involving National Fire Plan projects. In 2004, the Forest Service and the BLM reached agreements with the Service to streamline a portion of the section 7 consultation process (BLM–ACA 2004, pp. 1–8; FS–ACA 2004, pp. 1–8). The agreements allow the Forest Service and the BLM the opportunity to make "not likely to adversely affect" determinations for projects implementing the National Fire Plan. Such projects include prescribed fire, mechanical fuels treatments (thinning and removal of fuels to prescribed objectives), emergency stabilization, burned area rehabilitation, road maintenance and operation activities, ecosystem restoration, and culvert replacement actions. The Forest Service and the BLM will insure staff is properly trained and both agencies will submit monitoring reports to the Service to determine if the procedures are being implemented properly and effects to endangered species and their habitats are being properly evaluated. As a result we do not believe the alternative consultation processes being implemented as a result of the National Fire Plan will differ significantly from those consultations being conducted by the Service.

If we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define "reasonable and prudent alternatives" at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a

reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected, and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the PCEs to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features (PCEs) to an extent that appreciably reduces the conservation value of critical habitat for the arroyo toad. As discussed above, the role of critical habitat is to support life-history needs of the species and to provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may adversely affect critical habitat and, therefore, should result in consultation for the arroyo toad include, but are not limited to, the following:

(1) Actions that alter water chemistry or temperature. Such activities include, but are not limited to: Release of chemicals, biological pollutants, or heated effluents into the surface water or into connected groundwater at a point source or by dispersed release (non-point source). These activities can alter water conditions beyond the tolerances of the arroyo toad and result in direct or cumulative adverse effects to these individuals and their life cycles.

(2) Actions that increase sediment deposition within the stream channel or disturb upland foraging and dispersal habitat. Such activities include, but are not limited to: Excessive sedimentation from livestock overgrazing, road construction, commercial or urban development, channel alteration, timber harvest, off-highway vehicle use or recreational activity, and other watershed and floodplain disturbances. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of the arroyo toad by increasing the sediment deposition to levels that would adversely affect the arroyo toad's ability to complete its life cycles.

(3) Actions that alter channel morphology or geometry. Such activities include, but are not limited to: Construction and operation of flood control and water diversion structures, such as dams and reservoirs that regulate stream flows and trap sediments, direct groundwater extraction, channelization, impoundment, road and bridge construction, development, mining, dredging, and destruction of riparian vegetation. These activities may lead to changes to the hydraulic functioning of the stream by altering the timing, duration, quantity and levels of water flows and may result in degradation or elimination of the arroyo toad and its habitat. These actions can also lead to increased sedimentation and degradation in water quality to levels that are beyond the tolerances of the arroyo toad and provide habitat for nonnative species that prey on arroyo toads.

(4) Actions that eliminate upland foraging, aestivating, or dispersal habitat for the arroyo toad. Such activities include, but are not limited to: Road construction, commercial or urban development, timber harvest, off-highway vehicle use or recreational activity, and other watershed and floodplain disturbances. These actions could affect the species' habitat through erosion; siltation; soil compaction; water quality degradation from urban runoff containing contaminants, fertilizers, and pesticides; and the spread of introduced nonnative plants.

(5) Actions that lead to introducing, spreading, or augmenting nonnative aquatic species in stream segments used by arroyo toad. Possible actions include, but are not limited to: Fish stocking for sport, nonnative aquatic plant species for aesthetics, or other related actions. These activities could affect the growth and reproduction of the arroyo toad by subjecting eggs, larvae, tadpoles, and adult arroyo toads to increased predation pressure or limit the amount of habitat available for the species through competition, which would adversely affect the arroyo toad's ability to complete its life cycle.

Note that the scale of these activities is a crucial factor in determining whether, in any instance, they would directly or indirectly alter critical habitat to the extent that the value of the critical habitat would be appreciably diminished in providing for the physical or biological features essential to the conservation of the arroyo toad.

We consider all of the final revised critical habitat units and subunits to contain features essential to the conservation of the arroyo toad. All units are within the geographical area occupied by the species at the time it was listed, and are currently occupied by arroyo toads. To ensure that their actions do not jeopardize the continued existence of the arroyo toad, Federal agencies already consult with us on activities in areas currently occupied by the arroyo toad, or in unoccupied areas if the species may be affected by their actions.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) 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."

We consult with the military on the development and implementation of INRMPs for installations with federally listed species. Any INRMPs developed by military installations located within the range of the arroyo toad and that contain those features essential to the species' conservation were to ensure they provided a benefit to the arroyo toad in order to allow us to determine if those military installations qualified for exemption under section 4(a)(3)(B) of the Act.

Fort Hunter Liggett Military Reservation, Marine Corps Base Camp Pendleton (MCB Camp Pendleton), and Naval Weapons Station Seal Beach—Detachment Fallbrook (Fallbrook Naval Weapons Station) have Service-approved INRMPs that address the arroyo toad, and these DOD installations have committed to work closely with us and the CDFG to continually refine the existing INRMPs as part of the Sikes Act's INRMP review process. Based on the above considerations and rationales provided below, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the INRMPs will provide a benefit to the arroyo toad occurring in habitats within or adjacent to these installations. Therefore, approximately 19,706 ac (7,956 ha) of habitat subject to the Service-approved INRMPs on Fort Hunter Liggett Military Reservation, MCB Camp Pendleton, and Fallbrook Naval Weapons Station are exempt from this revised critical habitat designation for the arroyo toad under section 4(a)(3) of the Act. See the following individual military sections below for information on the history of the INRMPs and how each INRMP provides a benefit to arroyo toad and its habitat.

Although Remote Training Site Warner Springs and Camp Morena had not completed the INRMP process by the time this critical habitat rule was finalized, the Secretary is exercising his discretion to exclude lands within these military facilities under section 4(b)(2) of the Act for reasons of national security (*see* **Exclusions Under Section 4(b)(2) of the Act—Impacts to National Security** section below).

Fort Hunter Liggett Military Reservation

Fort Hunter Liggett was established in 1940 as Hunter Liggett Military Reservation, when the Army purchased lands belonging to William Randolph Hearst and other private landowners. The installation was used intensively to prepare troops for World War II, the Korean and Vietnam conflicts, and the Cold War; as a training ground for the 7th Infantry Division formerly stationed at Fort Ord; and as a Test and Experimentation Command Center. Fort Hunter Liggett occupies approximately 163,000 ac (66,000 ha) of varied habitats within the Santa Lucia Mountains in southern Monterey County, California. Currently, the installation is used for training by the 40th Mechanized Infantry Division of the California Army National Guard; reserve units from several branches of the Armed Forces; active components of the Army Rangers, Special Forces, Navy Seabees, and Marines; and other government agencies.

The Fort Hunter Liggett INRMP is a planning document that guides the management and conservation of natural resources under the installation's control. The INRMP was prepared to ensure that natural resources are managed in support of the Fort Hunter Liggett military training mission and that all activities are consistent with Federal stewardship requirements. The Fort Hunter Liggett INRMP was completed in 2005, followed by a revised and updated version in 2007, to address conservation and management of its natural resources, including conservation measures for the arroyo toad (U.S. Army Reserve Command 2007, pp. 171–174). The INRMP is Fort Hunter Liggett's adaptive plan for managing natural resources to support and be consistent with the military mission while protecting and enhancing the biological integrity of lands under its use (U.S. Army 2004, p. iv). Fort Hunter Liggett is committed to an ecosystem management approach for its natural resources program by integrating all components of natural resource management into a comprehensive and coordinated effort. An integrated approach to ecosystem management will help protect the biological diversity found at Fort Hunter Liggett.

The INRMP identifies the following management and protection measures for the arroyo toad: (1) Implement monitoring that will meet the Service's criteria to demonstrate population status of arroyo toads on Fort Hunter Liggett; (2) reduce public and military vehicle encroachment into sandy riverine habitat, particularly during the breeding season for the arroyo toad; (3) minimize adverse effects to arroyo toads from roads and borrow sites (sites where soil and other material is removed for construction purposes); (4) gain an understanding of the timing of arroyo toad upland use, extent of upland use and distance traveled from breeding sites, characteristics of preferred upland habitat to include micro- and macro-habitats and substrate of burrowing sites, and use of rodent burrows; (5) identify threat posed by noxious weeds and reduce noxious weed presence to improve native habitat and site diversity; (6) obtain geomorphology information that will provide a foundation for development of management strategies for arroyo toad habitat and a better idea of habitat sustainability for arroyo toads; (7) identify the threats posed by nonnative beavers in the San Antonio River in arroyo toad breeding habitat and outlying areas and implement control if threats warrant; (8) reduce bullfrog abundance in areas most likely to benefit arroyo toads; (9) prevent introduction and spread of disease at Fort Hunter Liggett; (10) maintain a viable population of arroyo toads and suitable habitat on Fort Hunter Liggett; (11) evaluate current management goals and actions and adapt to meet species management requirements; (12) integrate species management and conservation with Fort Hunter Liggett training and maintenance activities; (13) provide for adaptive management in accordance with the Fort Hunter Liggett INRMP; and (14) monitor mortality in order to augment the Service's ability to determine effects of Fort Hunter Liggett activities on arroyo toad and identify mortality factors at Fort Hunter Liggett.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the 2005 INRMP and 2007 updated INRMP for Fort Hunter Liggett provide a benefit to the arroyo toad and features essential to its conservation, and will benefit arroyo toads occurring in habitats on the installation. This includes habitat located in the Salinas River Basin (Service 1999, p. 14). Therefore, lands subject to the INRMP for the Fort Hunter Liggett Military Reservation are exempt from critical habitat designation under section 4(a)(3)(B) of the Act, and we are not

including approximately 6,453 ac (2,612 ha) of habitat in this final revised critical habitat designation because of this exemption.

Marine Corps Base (MCB) Camp Pendleton

MCB Camp Pendleton is the Marine Corps' premier amphibious training installation and its only west coast amphibious assault training center. The installation has been conducting air, sea, and ground assault training since World War II. MCB Camp Pendleton occupies over 125,000 ac (50,586 ha) of coastal southern California in the northwest corner of San Diego County. Aside from nearly 10,000 ac (4,047 ha) that is developed, most of the installation is largely undeveloped land that is used for training. MCB Camp Pendleton is situated between two major metropolitan areas: Los Angeles, 82 miles (132 kilometers) to the north, and San Diego, 38 miles (61 kilometers) to the south. Nearby communities include Oceanside to the south, Fallbrook to the east, and San Clemente to the northwest. Aside from a portion of the installation's border that is shared with the San Mateo Wilderness Area and the Fallbrook Naval Weapons Station, surrounding land use is urban development, rural residential development, and agricultural farming and ranching. The largest single leaseholder on the installation is California State Parks, which includes a 50-year real estate lease granted on September 1, 1971, for 2,000 ac (809 ha) that encompasses San Onofre State Beach.

The MCB Camp Pendleton INRMP is a planning document that guides the management and conservation of natural resources under the installation's control. The INRMP was prepared to assist installation staff and users in their efforts to conserve and rehabilitate natural resources consistent with the use of MCB Camp Pendleton to train Marines and set the agenda for managing natural resources on MCB Camp Pendleton. MCB Camp Pendleton completed its INRMP in 2001, followed by a revised and updated version in 2007 to address conservation and management recommendations within the scope of the installation's military mission, including conservation measures for the arroyo toad (MCB Camp Pendleton 2007, Appendix F, Section F.1, pp. F1–F5). Additionally, according to the 2007 INRMP, California State Parks is required to conduct its natural resources management consistent with the philosophies and supportive of the objectives of the revised 2007 INRMP (MCB Camp Pendleton 2007, Chapter 2, p. 31).

The arroyo toad receives programmatic protection from training and other installation activities within the riparian component of its habitat, as outlined and required in the Riparian Ecosystem Conservation Plan (MCB Camp Pendleton 2007, Appendix C). Management and protection measures for the arroyo toad identified in Appendix C of the INRMP include, but are not limited to, the following: (1) Eliminating nonnative, invasive species (such as *Arundo donax*) on the installation and off the installation in partnership with upstream landowners to enhance ecosystem value; (2) providing viable riparian corridors and promoting connectivity of native riparian habitats; (3) maintaining natural floodplain processes and extent of these areas by avoiding and minimizing further permanent loss of floodplain habitats; (4) maintaining to the extent practicable stream and river flows needed to support riparian habitat; (5) monitoring and maintaining groundwater levels and basin withdrawals to avoid loss and degradation of habitat quality; (6) restoring areas to their original condition after disturbance, such as following project construction or fire damage; and (7) promoting increased arroyo toad populations in watersheds through perpetuation of natural ecosystem processes and programmatic instruction application for avoidance and minimization of impacts (MCB Camp Pendleton 2007, Appendix C, pp. C5–C8).

Current environmental regulations and restrictions apply to all endangered and threatened species on the installation (including the arroyo toad) and are provided to all users of ranges and training areas to guide activities and protect the species and its habitat. First, specific conservation measures are applied to arroyo toad and its habitat that include: (1) Controlling nonnative animal species (such as bullfrogs) and nonnative plant species (such as *Arundo donax* and *Rorippa* spp. (watercress)); and (2) restricting military-related traffic use within riparian areas to existing roads, trails, and crossings. Second, MCB Camp Pendleton's environmental security staff reviews projects and enforces existing regulations and orders that, through their implementation, avoid and minimize impacts to natural resources, including the arroyo toad and its habitat. Third, MCB Camp Pendleton provides training to personnel on environmental awareness for sensitive resources on the base, including the arroyo toad and its habitat. As a result of these regulations and restrictions, activities occurring on MCB Camp Pendleton are currently conducted in a manner that minimizes impacts to arroyo toad habitat.

MCB Camp Pendleton's INRMP also benefits the arroyo toad through ongoing monitoring and research efforts. The installation conducts annual monitoring to track arroyo toad populations and has conducted a study to examine arroyo toad use of habitat dominated by *Arundo donax* (although analysis of this study is not yet complete). Data are provided to all necessary personnel through MCB Camp Pendleton's GIS database on sensitive resources and in their published resource atlas. Additionally, MCB Camp Pendleton collaborated with the U.S. Geological Survey's Biological Resources Division to develop and implement a rigorous, science-based monitoring protocol for arroyo toad populations throughout the installation, including surveying for presence of eggs and larvae (Atkinson *et al.* 2003, pp. 4–5).

We are consulting with the Marine Corps under section 7 of the Act to programmatically address potential upland impacts to the arroyo toad (and several other species) as a result of military training and other activities on MCB Camp Pendleton. Upon completion of this consultation, we expect additional measures that benefit the arroyo toad will be incorporated into the INRMP for MCB Camp Pendleton. This consultation is currently in progress, and we did not rely on any proposed measures in our consideration of the INRMP under section 4(a)(3)(B) of the Act. However, upland habitat conservation measures being considered include, but are not limited to: (1) Implementing programmatic measures to avoid and minimize impacts to upland habitats adjacent to riparian habitats occupied by arroyo toads, and (2) compensating for impacts to upland habitats used by arroyo toads by implementing ongoing installation-wide upland habitat enhancement programs (such as nonnative vegetation control, erosion control, and upland habitat restoration).

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the 2007 INRMP for MCB Camp Pendleton provide a benefit to the arroyo toad and its habitat. This includes habitat located in the following areas: San Mateo Creek, San Onofre Creek, and Santa Margarita River Basins (names of areas used follow those used in the recovery plan (Service 1999, pp.

25–27)). Therefore, lands subject to the INRMP for MCB Camp Pendleton, which includes the lands leased from the Department of Defense by other parties, are exempt from critical habitat designation under section 4(a)(3)(B) of the Act, and we are not including approximately 13,030 ac (5,273 ha) of habitat in this final revised critical habitat designation because of this exemption.

Naval Weapons Station Seal Beach—Detachment Fallbrook (Fallbrook Naval Weapons Station)

The Naval Weapons Station Seal Beach, Detachment Fallbrook (Fallbrook Naval Weapons Station), is the primary west coast supply point of ordnance for the U.S. Marine Corps and the large deck amphibious assault ships of the Pacific Fleet. The Fallbrook Naval Weapons Station also has the only west coast maintenance facility for air-launched missiles for the Pacific Fleet. The installation encompasses approximately 8,852 acres (3,582 ha) and is located within the southern foothills of the Santa Ana Mountains of northern San Diego County, adjacent to the city of Fallbrook, California. It is bounded to the north, west, and much of the south by MCB Camp Pendleton, with the Santa Margarita River forming the common border on the north between the two properties. Other than training lands on MCB Camp Pendleton, surrounding land use includes semi-rural agricultural lands that include plant nurseries, avocado and citrus groves, vineyards, and limited urban development.

The Fallbrook Naval Weapons Station INRMP is a planning document that guides the management and conservation of natural resources under the installation's control. The INRMP was prepared to assist installation staff and users in their efforts to support mission operations and accommodate increased military mission requirements for national security and emergency homeland security, while meeting all environmental compliance responsibilities. The INRMP also provides ecosystem-based management to preserve, protect, and enhance natural resources on the installation, and provides the organizational support and communication links necessary for effective planning, implementation, and administration of the installation's natural resources. The Fallbrook Naval Weapons Station completed its INRMP in 2006 (which was updated from an INRMP developed by the Naval Ordnance Center Pacific Division in 1996) to address conservation and management of its natural resources, including conservation measures for the arroyo toad (Fallbrook Naval Weapons Station 2006, Chapter 3, pp. 108–110).

The arroyo toad primarily receives protection from installation activities because no training occurs on the installation, and maintenance and potential development activities typically do not occur in arroyo toad habitat due to the steep sloping topography along the Santa Margarita River that immediately surrounds the suitable habitat. However, some impacts could occur associated with activities (such as fuel break grading, fire management, and possible infrastructure) that may impact the arroyo toad and thus require implementation of specified protection measures. The INRMP identifies the following management and protection measures for the arroyo toad: (1) Avoidance and minimization measures, applied to infrastructure development and maintenance to protect the arroyo toad, that are part of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) approval process; (2) placement of riparian filter strip and buffer along firebreaks that lead into riparian zones where arroyo toads may be active; (3) avoidance of firebreak maintenance and fire suppression activities (where possible); (4) avoidance of discing for firebreaks leading to the Santa Margarita River during arroyo toad dispersal periods; (5) implementation of erosion and sediment control; (6) timing and location protections associated with prescribed burns; (7) implementation of nonnative vegetation control measures, including removal of *Arundo donax;* (8) implementation of standardized survey methods; (9) evaluation and control of nonnative bullfrogs; and (10) implementation of long-term monitoring activities, including upland sites (Fallbrook Naval Weapons Station 2006, Chapter 3, pp. 108–110).

The ongoing monitoring efforts outlined in the INRMP (as listed above) include surveys of sites at two or more locations along the Santa Margarita River, which includes upland surveys conducted every 5 years, offset from breeding surveys by 2 years. Surveys are also conducted after major alteration of the flow regime (natural or anthropogenic). Finally, the installation conducts annual monitoring to track arroyo toad populations as part of the fire plan activities, with survey data available since 2001 (Fallbrook Naval Weapons Station 2006, Chapter 3, p. 109).

Environmental regulations and restrictions apply to all endangered and threatened species on the installation (including the arroyo toad) and are provided to all users of the installation to guide activities and protect the species and its habitat (Fallbrook Naval Weapons Station 2006, Chapter 5, p. 25). Biennial meetings are held with the Service to evaluate all management items associated with endangered and threatened species, including the arroyo toad.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the 2006 INRMP for the Fallbrook Naval Weapons Station provide a benefit to the arroyo toad, and will benefit arroyo toads occurring on the installation, which includes habitat located in the Santa Margarita River Basin (as identified in the recovery plan (Service 1999, pp. 26–27)). Therefore, lands subject to the INRMP for the Fallbrook Naval Weapons Station are exempt from critical habitat designation under section 4(a)(3)(B) of the Act, and we are not including approximately 223 ac (90 ha) of habitat in this final revised critical habitat designation because of this exemption.

Exclusions Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

In the following paragraphs, 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 may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the

benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; implementation of an existing conservation plan; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat. The designation of critical habitat may strengthen or reinforce some of the provisions in other State and Federal laws, such as the California Environmental Quality Act (CEQA) or the National Environmental Policy Act (NEPA). These laws analyze the potential for projects to significantly affect the environment. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in long-term conservation; the continuation, strengthening, or encouragement of partnerships that result in conservation of listed species; or implementation of a management plan that provides equal or more conservation that a critical habitat designation would provide.

When we evaluate a conservation plan, we consider a variety of factors, including but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical and biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to determine whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

In the case of the arroyo toad, based on the detailed analyses presented below, the Secretary is exercising his discretion to exclude the following areas from this final revised critical habitat designation:

(1) Tribal lands or trust resources on the following reservations: Rincon Band of Luiseño Mission Indians; Pala Band of Luiseño Mission Indians; Sycuan Band of the Kumeyaay Nation; the Barona Group of Capitan Grande Band of Mission Indians and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians, which jointly manage the Capitan Grande Band of Diegueno Mission Indians Reservation (Capitan Grande Reservation); and Mesa Grande Band of Diegueno Mission Indians.

(2) Federal lands leased by the U.S. Navy for Remote Training Site Warner Springs and Camp Morena. Because Remote Training Site Warner Springs and Camp Morena are part of Naval Base Coronado, they are included in a 2009 update to the Naval Base Coronado INRMP, which identifies measures that the Navy is currently implementing to provide conservation benefits to the arroyo toad. As the 2009 update to the INRMP is still being reviewed by the Service and is not yet approved, these lands are not exempt under section 4(a)(3) of the Act. Thus, these lands were considered for exclusion under section 4(b)(2) of the Act.

(3) Certain lands covered by three completed HCPs for the arroyo toad, including the following: Western Riverside County MSHCP, the Orange County Southern Subregion HCP, and the Orange County Central—Coastal NCCP/HCP. No HCPs or conservation plans covering the species in the proposed critical habitat areas have been approved since the publication of the proposed revised designation in the **Federal Register** on October 13, 2009 (74 FR 52612).

(4) Certain lands in conservation easement owned and managed by the Newhall Land and Farming Company for the conservation of the arroyo toad.

Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

Benefits of Excluding Lands with HCPs

The benefits of excluding lands with approved HCPs from critical habitat designation, such as HCPs that cover listed plant species, include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed as a result of the critical habitat designation. Many HCPs take years to develop, and upon completion, are consistent with the recovery objectives for listed species that are covered within the plan area. Many conservation plans also provide conservation benefits to unlisted sensitive species.

A related benefit of excluding lands covered by approved HCPs from critical habitat designation is the unhindered, continued ability it gives us to seek new partnerships with future plan participants, including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. Habitat conservation plans often cover a wide range of species, including listed plant species and species that are not State or federally listed and would otherwise receive little protection from development. By excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

We also note that permit issuance in association with HCP applications requires consultation under section 7(a)(2) of the Act, which would include the review of the effects of all HCP-covered activities that might adversely impact the species under a jeopardy standard, including possibly significant habitat modification (*see* definition of "harm" at 50 CFR 17.3), even without the critical habitat designation. In addition, all other Federal actions that may affect the listed species would still require consultation under section 7(a)(2) of the Act, and we would review these actions for possibly significant habitat modification in accordance with the definition of harm referenced above.

The information provided in the previous section applies to the

following discussions of exclusions of HCP lands under section (4)(b)(2) of the Act. The arroyo toad is covered under the Western Riverside County MSHCP, the Orange County Southern Subregion HCP, and the Orange County Central—Coastal NCCP/HCP.

Other conservation or management plans considered in the following discussions of exclusions include the 2002 Naval Base Coronado INRMP that is being revised for Remote Training Site Warner Springs and Camp Morena; tribal land management for arroyo toads by Rincon Band of Luiseño Mission Indians, Pala Band of Luiseño Mission Indians, Sycuan Band of the Kumeyaay Nation, the Barona Group of Capitan Grande Band of Mission Indians and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians, which jointly manage the Capitan Grande Band of Diegueno Mission Indians Reservation (Capitan Grande Reservation), and Mesa Grande Band of Diegueno Mission Indians; and non-Federal lands managed by the Newhall Land and Farming Company.

The areas for which the Secretary is exercising his discretion to exclude under section 4(b)(2) of the Act are listed in Table 3 below and described in detail in the following sections. Below are brief descriptions of each plan and lands excluded from critical habitat covered by each plan. Additional details on these areas can be found in the proposed rule (74 FR 52612; October 13, 2009).

TABLE 3—AREAS BEING EXCLUDED UNDER SECTION 4(b)(2) OF THE ACT FROM THIS REVISED CRITICAL HABITAT DESIGNATION

Unit/subunit	Area excluded under Section 4(b)(2) of the Act
Newhall Land and Farming Company	
Subunit 6b. [Upper Santa Clara River Basin]	330 ac (134 ha)
Western Riverside County MSHCP	
Unit 9. [San Jacinto River Basin]	14 ac (6 ha)
Unit 13. [Upper Santa Margarita River Basin]	275 ac (112 ha)
Subtotal Western Riverside County MSHCP	289 ac (118 ha)
Orange County Central-Coastal NCCP/HCP	
Unit 8. [Lower Santa Ana River Basin]	1,259 ac (508 ha)
Orange County Southern Subregion HCP	
Subunit 10a. [San Juan Creek Basin]	1,632 ac (660 ha)
Subunit 10b. [San Juan Creek Basin]	509 ac (206 ha)
Subunit 11a. [San Mateo Creek Basin]	39 ac (16 ha)
Subtotal for Orange County Southern Subregion HCP	2,179 ac (882 ha)
Tribal Lands	
Unit 14. [Lower and Middle San Luis Rey River Basin], Rincon Reservation, Pala Reservation	2,733 ac (1,103 ha)
Subunit 16d. [Santa Ysabel Creek Basin], Mesa Grande Reservation	23 ac (9 ha)
Subunit 17a. [San Diego River Basin/San Vicente Creek], Capitan Grande Reservation	92 ac (37 ha)
Subunit 18c. [Sweetwater River Basin], Sycuan Reservation and future reservation land	152 ac (62 ha)
Subtotal for Tribes	3,000 ac (1,214 ha)
Military Lands	
Unit 15. [Upper San Luis Rey River Basin], Remote Training Site Warner Springs	4,609 ac (1,865 ha)
Subunit 19a. [Cottonwood Creek Basin], Camp Morena	31 ac (13 ha)
Subtotal for Military Lands	4,640 ac (1,878 ha)
Total	11,697 ac (4,734 ha)*

*Values in this table may not sum due to rounding.

Newhall Land and Farming Company (Newhall LFC) Natural River Management Plan

In the October 13, 2009, proposed revised critical habitat designation (74 FR 52612), we erroneously reported that Subunit 6b consists of 159 ac (65 ha) of Federal land and 1,995 ac (807 ha) of private land. In actuality, in the proposed rule Subunit 6b should have been described as consisting only of 1,995 ac (807 ha) of private land owned by the Newhall Land and Farming Company (Newhall LFC).

We determined that approximately 1,003 ac (405 ha) of land in Subunit 6b owned by Newhall LFC meet the definition of critical habitat under the Act. In making our final decision with regard to these lands, we considered several factors, including our relationships with the landowner and other stakeholders, conservation measures and management that are in place on these lands, and impacts to current and future partnerships. Under section 4(b)(2) of the Act, for the reasons discussed in the following sections, the Secretary is exercising his discretion to exclude 330 ac (133 ha) of land

conserved and managed by Newhall LFC within Subunit 6b from this final revised critical habitat designation. The Secretary is declining to exercise his discretion to exclude 672 ac (272 ha) of Newhall LFC lands within Subunit 6b in this final revised critical habitat designation. As described in our analysis below, this conclusion was reached after considering the relevant impacts of specifying the area as critical habitat.

Newhall LFC developed the Natural River Management Plan (NRMP) (Valencia Company 1998) for the long-term conservation and management of the biological resources within their lands, including the arroyo toad and its habitat; the NRMP was approved by the U.S. Army Corps of Engineers and CDFG in 1998. The NRMP provides management measures designed to protect, restore, monitor, manage, and enhance habitat for multiple species, including the arroyo toad, that occur along the mainstem of the Santa Clara River, Castaic Creek, and San Francisquito Creek including the portion within Subunit 6b. Protective measures for arroyo toad habitat in the NRMP include: (1) The creation of new riverbed areas, including planting wetland mitigation sites; (2) revegetation of riparian areas; (3) removal of invasive plants such as giant reed (*Arundo donax*) and tamarisk (*Tamarix* sp.); (4) protecting wetlands from urban runoff by establishing a revegetated upland buffer between developed areas and the River; (5) implementing a Drainage Quality Management Plan with Best Management Practices to ensure water quality within the River corridor; and (6) implementing the biological mitigation measures for the Newhall Ranch Specific Plan that includes restricting pets and off-road vehicles from the area and restricting access to the River corridor by limiting hiking and biking to the River trail system.

Of particular importance to the conservation of the arroyo toad and its habitat under the NRMP is the inclusion of substantial conservation easements, which when completed will protect almost all of the arroyo toad's breeding habitat and riparian river corridor on Newhall LFC lands and will eventually total 1,201 ac (486 ha). At the present time, Newhall LFC has finalized the placing of a conservation easement on 541 ac (219 ha) over portions of the Santa Clara River corridor and Castaic Creek, of which 330 ac (133 ha) were within proposed revised critical habitat in proposed Subunit 6b. This conservation easement has been conveyed to CDFG and will be conserved and managed under the NRMP. An additional conservation easement of 330 ac (133 ha) covering the Santa Clara River corridor and San Francisquito Creek is awaiting approval by CDFG, and 330 (133 ha) acres west of Interstate 5 along the Santa Clara River and Castaic Creek will be part of future easement dedications to CDFG. Ultimately, these easements will extend along every river mile of Castaic Creek, San Francisquito Creek, and the Santa Clara River within Subunit 6b (Valencia Company 1998).

The 330 ac (133 ha) of the conservation easement within proposed Subunit 6b boundaries that has already been conveyed to the CDFG over portions of the Santa Clara River corridor and Castaic Creek will ensure that arroyo toad habitat within the easement will remain in a natural condition in perpetuity. Use of the easement is limited to the preservation and enhancement of native species and their habitats, including the arroyo toad and its habitat. Based on the placement of the conservation easement, the physical and biological features that are essential to the conservation of the species, including breeding pools in low-gradient stream segments with sandy substrates (PCEs 1 and 2), seasonal flood flows (PCE 3), and riparian habitat and upland benches for foraging and dispersal (PCE 4), are protected along Castaic Creek and the mainstem of the Santa Clara River within proposed Subunit 6b. This conservation easement provides greater protection of crucial arroyo toad breeding and foraging habitat in this area than could be gained through the designation of critical habitat. Additionally, we have already completed section 7 consultation on the effects of the NRMP on the arroyo toad and found that it would not jeopardize the continued existence of the species.

In summary, the conservation easement under the NRMP provides permanent protection to approximately 330 ac (133 ha), or 33 percent, of Newhall LFC lands within proposed Subunit 6b. Approximately 672 ac (272 ha), or 67 percent, of Newhall LFC lands in Subunit 6b are not currently conserved and managed.

Below is an analysis of the relative benefits of inclusion and exclusion of 330 ac (133 ha) in Subunit 6b for which the Secretary is exercising his discretion to exclude from this final revised critical habitat designation.

Benefits of Inclusion—Newhall LFC Natural River Management Plan

The principal benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. 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 (including the arroyo toad), 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.

Any protections provided by critical habitat that are redundant with protections already in place reduce the benefits of inclusion in critical habitat. The consultation provisions under section 7(a)(2) of the Act constitute the regulatory benefits of designating lands as critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Critical habitat may provide a regulatory benefit for the arroyo toad when there is a Federal nexus present for a project that might adversely modify critical habitat. Specifically, we expect projects in wetland areas would require a 404 permit under the Clean Water Act from the U.S. Army Corps of Engineers. Therefore, critical habitat will have an additional regulatory benefit to the conservation of the arroyo toad by prohibiting adverse modification of habitat essential to the conservation of this species. Approximately 33 percent of lands we proposed for designation within Subunit 6b are conserved and

managed under Newhall LFC's NRMP and associated conservation easement; therefore, Federal actions that could adversely affect the arroyo toad or its habitat are unlikely to occur in these areas. If such actions do occur, it is likely that the protections provided the species and its habitat under section 7(a)(2) of the Act would be largely redundant with the protections offered by the NRMP and conservation easement. Thus, we expect the regulatory benefit of including these areas in critical habitat would be minimal. In contrast, approximately 67 percent of land within Subunit 6b are not conserved in easements, and we believe there are regulatory benefits of critical habitat designation in these areas.

Another possible benefit of including lands in critical habitat is public education regarding the potential conservation value of an area that may help focus conservation efforts on areas of high conservation value for certain species. Any information about the arroyo toad and its habitat that reaches a wide audience, including parties engaged in conservation activities, is valuable. The inclusion of lands in the arroyo toad proposed and final revised critical habitat designation that are not conserved and managed is beneficial to the species because the proposed and final rules identify those lands that require management for the conservation of the arroyo toad. The process of proposing and finalizing revised critical habitat provided the opportunity for peer review and public comment on habitat we determined meets the definition of critical habitat. This process is valuable to land owners and managers in prioritizing conservation and management of identified areas. Because 330 ac (133 ha) of arroyo toad habitat within proposed Subunit 6b is conserved and managed under the NRMP and associated conservation easement, no educational benefits would be realized in these areas. The remaining 67 percent of Newhall LFC land proposed as revised critical habitat within Subunit 6b is not in easements, and there are educational benefits of including these areas (such as informing the public about essential habitat and potentially refining the broader conservation goals for arroyo toad under the NRMP by focusing conservation in other areas essential to the recovery of the species).

The designation of arroyo toad critical habitat may also strengthen or reinforce some of the provisions in other State and Federal laws, such as CEQA or NEPA. These laws analyze the potential for projects to significantly affect the environment. In Los Angeles County, the additional protections associated with critical habitat may be beneficial in areas not currently conserved. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws.

In summary, we believe that designating critical habitat would provide minimal regulatory benefits under section 7(a)(2) of the Act in areas meeting the definition of critical habitat that are conserved and managed. We further believe that few, if any, additional educational benefits would be realized under these circumstances. In areas that are not currently conserved and managed, we believe there are regulatory and educational benefits of critical habitat designation.

Benefits of Exclusion—Newhall LFC Natural River Management Plan

We believe conservation benefits would be realized by foregoing designation of critical habitat for the arroyo toad on lands covered by the NRMP and associated conservation easement including: (1) Continuance and strengthening of our effective working relationship with Newhall LFC to promote voluntary, proactive conservation of the arroyo toad and its habitat as opposed to reactive regulation; (2) allowance for continued meaningful collaboration and cooperation in working toward species recovery, including conservation benefits that might not otherwise occur; and (3) encouragement of additional conservation easements and other conservation and management plan development in the future on Newhall LFC's other lands for this and other federally listed and sensitive species.

The NRMP and associated conservation easement provides substantial protection and management for the arroyo toad and the physical and biological features essential to the conservation of the species, and addresses conservation issues from a coordinated, integrated perspective rather than a piecemeal, project-by-project approach (as would occur under section 7 of the Act), thus resulting in coordinated landscape-scale conservation that can contribute to genetic diversity by preserving covered species populations, habitat, and interconnected linkage areas that support recovery of the arroyo toad and other listed species. Additionally, many landowners perceive critical habitat as an unfair and unnecessary regulatory burden given the expense and time involved in developing and implementing conservation and management plans on private lands. Exclusion of Newhall LFC lands that are conserved and managed by the NRMP and associated conservation easement will also strengthen the partnership between the Service and Newhall LFC, which may encourage other conservation partnerships between our two entities in the future.

In summary, we believe excluding land covered by the NRMP and associated conservation easement from critical habitat could provide the significant benefit of maintaining our existing partnership and fostering new ones.

Weighing Benefits of Exclusion Against Benefits of Inclusion—Newhall LFC Natural River Management Plan

We reviewed and evaluated the benefits of inclusion and benefits of exclusion for all lands owned by Newhall LFC proposed as critical habitat for arroyo toad. The benefits of including conserved and managed lands in the critical habitat designation are small. The conservation easement on portions of the Santa Clara River mainstem and Castaic Creek that encompass approximately 330 ac (133 ha), or 33 percent, of Subunit 6b, are already managed and conserved under the NRMP, and provide a benefit to arroyo toad. There is also no educational or ancillary benefit of designating critical habitat in this conservation easement; education information regarding the importance of the easement was identified during the development and implementation of Newhall LFC's NRMP and potential ancillary benefits are negligible. Similarly, the regulatory benefit provided by a critical habitat designation is small because it is partially redundant with the existing protection within the conservation easement under the NRMP. Therefore, we do not believe critical habitat designation for the arroyo toad within the conservation easement will provide significant regulatory, educational, or ancillary benefits for these areas.

In contrast, including Newhall LFC lands within Subunit 6b in the final revised critical habitat designation for arroyo toad that are not conserved and managed will provide additional protection under section 7(a) of the Act when there is a Federal nexus, and designation may act as an educational tool for the public regarding the conservation of arroyo toad and the physical and biological features essential to the conservation of the species. Therefore designation of these areas will provide an educational benefit by focusing attention on the

specific lands covered by the NRMP that are essential to the species' recovery so that conservation efforts are directed toward those areas. We also anticipate a potential regulatory benefit from designation for activities on these lands with a Federal nexus, and some ancillary benefit from other laws such as CEQA and NEPA from designating these areas as critical habitat.

The exclusion of conserved areas in Subunit 6b will benefit the partnership that we have with Newhall LFC and other participating property owners, and encourage the conservation of lands associated with the development and implementation of future conservation management plans.

In summary, we find that excluding from critical habitat areas that are receiving long-term conservation and management for the purpose of protecting the arroyo toad in Subunit 6b will preserve our partnership with Newhall LFC and encourage the conservation of lands associated with development. These partnership benefits are significant and outweigh the small potential regulatory, educational, and ancillary benefits of including these portions of Subunit 6b in final revised critical habitat for the arroyo toad. We find that including lands as critical habitat that are not yet receiving long-term conservation and management within Subunit 6b will provide additional regulatory protection under section 7(a) of the Act when there is a Federal nexus, and will provide an educational benefit by focusing conservation efforts by Newhall LFC on conservation and management of these specific essential habitat areas for the arroyo toad and educating the public about the importance of these areas for the conservation of this species. Designation may also result in some ancillary benefits under other laws. Therefore, designating these areas as critical habitat for the arroyo toad will provide educational as well as some regulatory and ancillary benefits to the species. While we acknowledge that excluding these areas under section 4(b)(2) of the Act would provide a benefit to the partnership that we have with Newhall LFC, we have not concluded that the benefits of exclusion outweigh the educational benefit along with the potential regulatory and ancillary benefits to the conservation of the species in these areas of Subunit 6b. Therefore, the Secretary is declining to exercise his discretion to exclude 672 ac (272 ha) of Newhall LFC lands within Subunit 6b from this final revised critical habitat designation.

Exclusion Will Not Result in Extinction of the Species—Newhall LFC Natural River Management Plan

We determined that exclusion of 330 ha (133 ha) of land in Subunit 6b from the final revised critical habitat designation for the arroyo toad will not result in extinction of the species. These areas are permanently conserved and managed to provide a benefit to arroyo toad and its habitat, thus providing assurances that the species will not go extinct as a result of exclusion from critical habitat designation. Therefore, based on the above discussion, the Secretary is exercising his discretion to exclude approximately 330 ha (133 ha) of land in Subunit 6b from this final revised critical habitat designation.

Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP)

We determined that approximately 6,386 ac (2,583 ha) of land in Units 9 and 13 owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP meet the definition of critical habitat under the Act. In making our final decision with regard to these lands, we considered several factors including our relationships with participating jurisdictions and other stakeholders, conservation measures and management that are in place on these lands, and impacts to current and future partnerships. Under section 4(b)(2) of the Act, for the reasons discussed in the following sections, the Secretary is exercising his discretion to exclude 289 ac (118 ha) of conserved and managed land, or 5 percent of land within the Western Riverside County MSHCP plan area in Units 9 and 13 from this final revised critical habitat designation. The Secretary is declining to exercise his discretion to exclude 6,097 ac (2,467 ha), or 95 percent, of land within the Western Riverside County MSHCP plan area in Units 9 and 13 in this final revised critical habitat designation, as these areas contain features essential to the conservation of the species that are not permanently conserved and managed. As described in our analysis below, this conclusion was reached after considering the relevant impacts of specifying these areas as critical habitat.

The Western Riverside County MSHCP is a regional, multi-jurisdictional HCP encompassing approximately 1.26 million ac (510,000 ha) of land in western Riverside County. We proposed approximately 6,386 ac (2,583 ha) of critical habitat for the arroyo toad in Units 9 and 13 within the plan area. The Western Riverside County MSHCP is a multi-species conservation program designed to minimize and mitigate the effects of expected habitat loss and associated incidental take of 146 "covered species", including the arroyo toad. On June 22, 2004, we issued a single incidental take permit under section 10(a)(1)(B) of the Act to 22 permittees under the Western Riverside County MSHCP for a period of 75 years (Service 2004, TE–088609–0). We concluded in our biological opinion (Service 2004, p. 164) that implementation of the plan, as proposed, was not likely to jeopardize the continued existence of the arroyo toad. Our determination was based on our conclusion that 48 percent of the arroyo toad modeled habitat, including the majority of each known arroyo toad population in western Riverside County, will be protected or will remain within the Western Riverside County MSHCP Conservation Area. In addition, required surveys for the arroyo toad may result in newly discovered occurrences being included in the Western Riverside County MSHCP Conservation Area (Service 2004, p. 164).

The Western Riverside County MSHCP, when fully implemented, will establish approximately 153,000 ac (61,917 ha) of new conservation lands (called the Additional Reserve Lands) to complement the approximately 347,000 ac (140,426 ha) of pre-existing natural and open space areas (Public/Quasi-Public (PQP) lands). These PQP lands include those under ownership of public or quasi-public agencies, primarily the Forest Service and BLM, as well as permittee-owned or controlled open-space areas managed by the State of California and Riverside County. Collectively, the Additional Reserve Lands and PQP lands form the overall Western Riverside County MSHCP Conservation Area. The configuration of the 153,000 ac (61,916 ha) of Additional Reserve Lands (ARL) is not mapped or precisely delineated ("hard-lined") in the Western Riverside County MSHCP. Instead, the ARL are textual descriptions of habitat conservation necessary to meet the conservation goals for all covered species within the bounds of the approximately 310,000-ac (125,453-ha) Criteria Area and are determined as implementation of the Western Riverside County MSHCP takes place.

Specific conservation objectives in the Western Riverside County MSHCP for the arroyo toad include providing 9,695 ac (3,914 ha) of occupied or suitable habitat for the species in the MSHCP Conservation Area along portions of San Juan Creek (Subunit 10a), Los Alamos Creek (Subunit 11b), San Jacinto River

(Subunit 9a), Indian Creek, Bautista Creek (Subunit 9b), Wilson Creek (Subunit 13c), Temecula Creek (Subunit 13b), Arroyo Seco (Subunit 13a), and Vail Lake, and including 93 percent of the known arroyo toad occurrences as of 2004 (Service 2004, pp. 162–163). Approximately 3,793 ac (1,531 ha) of occupied or suitable habitat will remain on existing PQP lands and 5,902 ac (2,383 ha) will be conserved within the Additional Reserve Lands. These 5,902 ac (2,383 ha) can be attained through acquisition or other dedications of land assembled from within the Criteria Area or the Arroyo Toad Survey Area (as these lands are acquired they become part of the Additional Reserve Lands). Additionally, areas within the Western Riverside County MSHCP where there is potential suitable habitat for arroyo toad that is not yet protected are subject to the Additional Survey Needs and Procedures Policy (*see* Additional Survey Needs and Procedures, Western Riverside County MSHCP, Volume 1, section 6.3.2 in Dudek and Associates, Inc. 2003). In these areas, surveys for the arroyo toad are required as part of the project review process for public and private projects where suitable habitat is present (*see* Amphibian Species Survey Area Map, Figure 6–3 of the Western Riverside County MSHCP, Volume I in Dudek and Associates, Inc. 2003). For locations with positive survey results, 90 percent of those portions of the property that provide long-term conservation value for the species will be avoided until it is demonstrated that the conservation objectives for the species are met (*see* Additional Survey Needs and Procedures, Western Riverside County MSHCP, Volume 1, section 6.3.2 in Dudek and Associates, Inc. 2003). Once species-specific objectives are met, avoided areas would be evaluated to determine whether they should be released for development or included in the MSHCP Conservation Area.

Preservation and management of approximately 5,902 ac (2,383 ha) of arroyo toad habitat under the Western Riverside County MSHCP within Additional Reserve Lands will contribute to the conservation and ultimate recovery of this species. Additionally, cooperative management and monitoring are anticipated on existing PQP lands. The arroyo toad is threatened primarily by alterations of stream hydrology and geomorphology as a result of mining, reservoirs, and flood control activities; development; agriculture, including livestock grazing; recreational activities; and nonnative species (Service 2004, pp. 156–158). The Western Riverside County MSHCP will remove and reduce threats to the arroyo toad and the physical and biological features essential to the conservation of the species as the plan is implemented by preserving large blocks of suitable habitat. Within the MSHCP Conservation Area, breeding populations will be maintained at a minimum of 80 percent of the conserved breeding locations as measured by the presence/absence of juvenile toads, tadpoles, or egg masses across any 5 consecutive years. Additionally, the Western Riverside County MSHCP will maintain ecological processes within the MSHCP Conservation Area given existing constraints and activities covered under the MSHCP along portions of San Juan Creek, San Jacinto River, Indian Creek, Bautista Creek, Wilson Creek, Temecula Creek, Arroyo Seco, and Vail Lake. The plan also generates funding for long-term management of conserved lands for the benefit of the species they protect.

Approximately 14 ac (6 ha) of Subunit 9b within the Western Riverside County MSHCP is covered by the 10-Year Habitat Management Plan for the Cactus Valley Habitat Management Unit (Cactus Valley Habitat Management Plan). These lands, known as the Kirchner/Searl property, were transferred in 2007 from the landowner to the County of Riverside to be conserved and managed in Western Riverside County MSHCP's Additional Reserve Lands. Additionally, the Cactus Valley Habitat Management Plan was developed in conformance with the Western Riverside County MSHCP, and identifies management goals, including but not limited to: (1) Completion of initial evaluations of acquired properties within the first 4 years following acquisition; (2) controlling unauthorized public access; (3) maintaining and enhancing upland habitats; (4) maintaining and enhancing wetland habitats; (5) initiating adaptive management should target species locations fall below 75 percent of locations indicated in the Western Riverside County MSHCP species accounts; and (6) managing disturbance regimes, including but not limited to, fire, exotic species invasions, sedimentation, and erosion (County of Riverside 2009a, pp. 1, 7). After 10 years, if not sooner, the management plan will be revised. Thus, these areas within the Cactus Valley Habitat Management Unit are permanently protected and managed within Additional Reserve Lands pursuant to the Western Riverside County MSHCP.

Approximately 117 ac (47 ha) of Subunits 13b and 13c within the Western Riverside County MSHCP is covered by the 10-Year Habitat Management Plan for the Sage Habitat Management Unit (Sage Habitat Management Plan). These lands, known as the Geller #2 Phase I, Odegaard, Wilson Creek/J Street, and Mulder properties, were transferred in 2006 and 2008 from the landowners to the County of Riverside to be conserved and managed in Western Riverside County MSHCP's Additional Reserve Lands. Additionally, the Sage Habitat Management Plan was developed in conformance with the Western Riverside County MSHCP, and identifies management goals, including but not limited to: (1) Completion of initial evaluations of acquired properties within the first 4 years following acquisition; (2) controlling unauthorized public access; (3) maintaining and enhancing upland habitats; (4) maintaining and enhancing wetland habitats; (5) initiating adaptive management should target species locations fall below 75 percent of locations indicated in the Western Riverside County MSHCP species accounts; and (6) managing disturbance regimes, including but not limited to, fire, exotic species invasions, sedimentation, and erosion (County of Riverside 2009b, pp. 1, 9). After 10 years, if not sooner, the management plan will be revised. Thus, these areas within the Sage Habitat Management Unit are permanently protected and managed within Additional Reserve Lands under the Western Riverside County MSHCP.

Approximately 158 ac (64 ha) of Subunit 13c is covered by the Management Plan for the Wilson Creek Conservation Bank (Wilson Creek Management Plan) consistent with the Western Riverside County MSHCP. The Wilson Creek Conservation Bank, an approximately 890 ac (360 ha) conserved property in the unincorporated community of Aguanga, was established as mitigation for development projects elsewhere in western Riverside County (CNLM 2006, p. 1). The Wilson Creek Management Plan outlines specific long-term preserve management practices, including: (1) Annual biological resource monitoring to identify changes in habitat and trends in species composition, diversity, and abundance; (2) use of buffers and barriers to minimize the influence of neighboring properties that may reduce the quality and integrity of the ecosystem; (3) maintenance and enhancement of habitat; (4) identification of habitat enhancement opportunities; and (5)

development of a fire management program in consultation with the Riverside County Fire Marshall and appropriate wildlife agencies (CNLM 2006, pp. 1–2). Thus, the Wilson Creek Management Plan provides protection to the arroyo toad and its proposed critical habitat through the conservation and management of an area that may otherwise be left unprotected.

Below is an analysis of the relative benefits of inclusion and exclusion of lands within Units 9 and 13 for which the Secretary is exercising his discretion to exclude from this final revised critical habitat designation.

Benefits of Inclusion—Western Riverside County MSHCP

The principal benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. 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 (including the arroyo toad), 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.

Any protections provided by critical habitat that are redundant with protections already in place reduce the benefits of inclusion in critical habitat. The consultation provisions under section 7(a)(2) of the Act constitute the regulatory benefits of designating lands as critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Critical habitat may provide a regulatory benefit for the arroyo toad when there is a Federal nexus present for a project that might adversely modify critical habitat. Specifically, we expect projects in wetland areas would require a 404 permit under the Clean Water Act (CWA) from the U.S. Army Corps of Engineers (Corps). Therefore, critical habitat will have an additional regulatory benefit to the conservation of the arroyo toad by prohibiting adverse modification of habitat essential to the conservation of this species. Approximately 5 percent of lands proposed for designation in Units 9 and 13 within the plan area for the Western Riverside County MSHCP (Additional Reserve Lands identified above and Wilson Creek Conservation Bank) are conserved and managed under the Western Riverside County MSHCP; therefore, Federal actions that could adversely affect the arroyo toad or its habitat are unlikely to occur in these areas. If such actions do occur, it is likely that the protections provided the species and its habitat under section 7(a)(2) of the Act would be largely redundant with the protections offered by the Western Riverside County MSHCP. Thus, we expect the regulatory benefit of including these areas in critical habitat would be minimal. Approximately 95 percent of lands meeting the definition of critical habitat within the Western Riverside County MSHCP plan area are not currently conserved and managed. Thus, we believe there are regulatory benefits of critical habitat designation in these areas.

Another possible benefit of including lands in critical habitat is public education regarding the potential conservation value of an area that may help focus conservation efforts on areas of high conservation value for certain species. Any information about the arroyo toad and its habitat that reaches a wide audience, including parties engaged in conservation activities, is valuable. The inclusion of lands in the arroyo toad proposed and final revised critical habitat designation that are not conserved and managed is beneficial to the species because the proposed and final rules identify those lands that require management for the conservation of the arroyo toad. The process of proposing and finalizing revised critical habitat provided the opportunity for peer review and public comment on habitat we determined meets the definition of critical habitat. This process is valuable to land owners and managers in prioritizing conservation and management of identified areas. Because the habitat identified above in Additional Reserve Lands and Wilson Creek Conservation Bank within Units 9 and 13 is already conserved and managed under the Western Riverside County MSHCP (approximately 5 percent of land within the Western Riverside County MSHCP plan area meeting the definition of critical habitat), no educational benefits would be realized in these areas. The remaining 95 percent of land proposed as revised critical habitat within the Western Riverside County MSHCP plan area is not currently conserved and managed, and there are educational benefits of including these areas.

The designation of arroyo toad critical habitat may also strengthen or reinforce some of the provisions in other State and Federal laws, such as the California Environmental Quality Act (CEQA) or National Environmental Policy Act (NEPA). These laws analyze the potential for projects to significantly affect the environment. In Riverside County, the additional protections associated with critical habitat may be beneficial in areas not currently conserved. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws.

In summary, we believe that designating critical habitat would provide minimal regulatory benefits under section 7(a)(2) of the Act in areas meeting the definition of critical habitat that are conserved and managed, nor will any additional educational benefits be realized under these circumstances. In areas that are not currently conserved and managed, we believe there are regulatory and educational benefits of critical habitat designation.

Benefits of Exclusion—Western Riverside County MSHCP

We believe conservation benefits would be realized by forgoing designation of critical habitat for the arroyo toad on lands covered by the Western Riverside County MSHCP including: (1) Continuance and strengthening of our effective working relationships with all Western Riverside County MSHCP jurisdictions and stakeholders to promote conservation of the arroyo toad, its habitat, and 145 other species covered by the HCP and their habitat; (2) allowance for continued meaningful collaboration and cooperation in working toward protecting and recovering this species

and the many other species covered by the HCP, including conservation benefits that might not otherwise occur; (3) encouragement for local jurisdictions to fully participate in the Western Riverside County MSHCP; and (4) encouragement of additional HCP and other conservation plan development in the future on other private lands for this and other federally listed and sensitive species.

In the case of arroyo toad in Riverside County, the partnership and commitment by the permittees of the Western Riverside County MSHCP resulted in lands being conserved and managed for the long term that will contribute to the recovery of the species.

We developed a close partnership with the permittees of the Western Riverside County MSHCP through the development of the HCP, which incorporates protections (conserved lands) and management for the arroyo toad, its habitat, and the physical and biological features essential to the conservation of this species. Additionally, many landowners perceive critical habitat as an unfair and unnecessary regulatory burden given the expense and time involved in developing and implementing complex regional and jurisdiction-wide HCPs, such as the Western Riverside County MSHCP (as discussed further in Comments 26 below in the **Summary of Comments and Recommendations** section of this rule). Exclusion of Western Riverside County MSHCP lands could help preserve the partnerships we developed with the County of Riverside and other local jurisdictions in the development of the HCP, foster future partnerships and development of future HCPs, and encourage the establishment of future conservation and management of habitat for the arroyo toad and other sensitive species.

The Western Riverside County MSHCP provides substantial protection and management for the arroyo toad and the physical and biological features essential to the conservation of the species, and addresses conservation issues from a coordinated, integrated perspective rather than a piecemeal, project-by-project approach (as would occur under sections 7 of the Act or smaller HCPs), thus resulting in coordinated landscape-scale conservation that can contribute to genetic diversity by preserving covered species populations, habitat, and interconnected linkage areas that support recovery of the arroyo toad and other listed species. It is important that we encourage participation in such plans and encourage voluntary coverage of listed plant species in such plans. Additionally, many landowners perceive critical habitat as an unfair and unnecessary regulatory burden given the expense and time involved in developing and implementing complex regional and jurisdiction-wide HCPs, such as the Western Riverside County MSHCP. Exclusion of Western Riverside County MSHCP lands would help preserve the partnerships we developed with the County of Riverside and other local jurisdictions in the development of the HCP, and foster future partnerships and development of future HCPs.

In summary, we believe excluding land covered by the Western Riverside County MSHCP from critical habitat could provide the significant benefit of maintaining existing regional HCP partnerships and fostering new ones.

Weighing Benefits of Exclusion Against Benefits of Inclusion—Western Riverside County MSHCP

We reviewed and evaluated the benefits of inclusion and exclusion from critical habitat designation for the arroyo toad for lands owned by or under the jurisdiction of Western Riverside County MSHCP permittees. The benefits of including conserved and managed lands in the critical habitat designation are small. Approximately 14 ac (6 ha) of land in Subunit 9b covered by the Cactus Valley Habitat Management Plan, approximately 117 ac (47 ha) of land in Subunits 13b and 13c covered by the Sage Habitat Management Plan, and approximately 158 ac (64 ha) of land in Subunit 13c covered by the Wilson Creek Management Plan are already managed and conserved, and provide a conservation benefit to the arroyo toad. There is also no educational or ancillary benefit of designating critical habitat in these conserved areas; educational information regarding the importance of these areas was identified during the development and implementation of the Western Riverside County MSHCP, and potential ancillary benefits are negligible. Similarly, the regulatory benefit provided by a critical habitat designation is small because it is partially redundant with the existing protection of these areas under the Western Riverside County MSHCP. Therefore, we do not believe critical habitat designation for the arroyo toad within these areas will provide significant regulatory, educational, or ancillary benefits for these areas.

In contrast, including lands within the Western Riverside County MSHCP plan area in the final revised critical habitat designation for arroyo toad that are not currently conserved and managed will provide additional protection under section 7(a) of the Act when there is a Federal nexus, and designation may act as an educational tool for the public regarding the conservation of arroyo toad and the physical and biological features essential to the conservation of the species. None of the remaining lands within the Western Riverside County MSHCP plan area in Units 9 and 13 are currently both conserved and managed to benefit the arroyo toad, and the broad conservation goals for this species under the Western Riverside County MSHCP do not explicitly require and assure protection of the specific lands included in Units 9 and 13. Therefore designation of these units will provide an educational benefit by focusing attention on the specific lands within the Western Riverside County MSHCP plan area that are essential to the species' recovery so that conservation efforts are directed toward those areas. We also anticipate a potential regulatory benefit from designation for activities on these lands with a Federal nexus and some ancillary benefit from other laws such as CEQA and NEPA from designating these areas as critical habitat.

Excluding those portions of lands within Units 9 and 13 that are conserved and managed from critical habitat designation will further our existing partnerships with permittees under the Western Riverside County MSHCP and encourage future voluntary conservation efforts for this species by relieving landowners of any additional regulatory burden stemming from designation. We consider this a significant benefit of excluding these lands.

In summary, we find that excluding from critical habitat areas that are receiving long-term conservation and management for the purpose of protecting the arroyo toad in Units 9 and 13 will help preserve our partnership with the County of Riverside and other permittees in the Western Riverside County MSHCP and encourage the conservation of lands associated with development and implementation of future HCPs. These partnership benefits are significant and outweigh the small potential regulatory, educational, and ancillary benefits of including conserved and managed lands within Units 9 and 13 in critical habitat for the arroyo toad. We find that including lands as critical habitat that are not yet receiving long-term conservation and management within Units 9 and 13 will provide additional regulatory protection under section 7(a) of the Act when there is a Federal nexus, and will provide an educational benefit by focusing conservation efforts

by the Western Riverside County MSHCP permittees on conservation and management of these specific essential habitat areas for the arroyo toad and educating the public about importance of these areas for the conservation of this species. Designation may also result in some ancillary benefits under other laws. Therefore, designating these areas as critical habitat for the arroyo toad will provide educational as well as some regulatory and ancillary benefits to the species. While we acknowledge that excluding these areas under section 4(b)(2) of the Act would provide a benefit to the partnership that we have with the County of Riverside and other permittees under the Western Riverside County MSHCP, we have not concluded that the benefits of exclusion outweigh the educational benefit along with the potential regulatory and ancillary benefits to the conservation of the species in these areas of Units 9 and 13. Therefore, the Secretary is declining to exercise his discretion to exclude 6,097 ac (2,467 ha) of land within the Western Riverside County MSHCP plan area in Units 9 and 13 from this final revised critical habitat designation.

Exclusion Will Not Result in Extinction of the Species—Units 9 and 13, Western Riverside County MSHCP

We determined exclusion of 289 ac (118 ha) of land in Units 9 and 13 within the Western Riverside County MSHCP plan area from the final revised critical habitat designation for the arroyo toad will not result in extinction of the species. These areas are permanently conserved and managed to provide a benefit to arroyo toad and its habitat, thus providing assurances that the species will not go extinct as a result of exclusion from critical habitat designation. Therefore, based on the above discussion, the Secretary is exercising his discretion to exclude approximately 289 ac (118 ha) of land in Units 9 and 13 owned by or under the jurisdiction of Western Riverside County MSHCP permittees from this final revised critical habitat designation.

Orange County Central-Coastal Subregional Habitat Conservation Plan/ Natural Community Conservation Plan (Orange County Central-Coastal NCCP/ HCP)

We determined that approximately 641 ac (259 ha) of land in Unit 8 owned by or under the jurisdiction of the permittees of the Orange County Central-Coastal NCCP/HCP and approximately 670 ac (271 ha) of land in Unit 8 in the associated North Ranch Policy Plan Area (NRPPA) meet the definition of critical habitat under the Act. In making our final decision with regard to these lands, we considered several factors including our relationships with participating jurisdictions and other stakeholders, conservation measures and management that are in place on these lands, and impacts to current and future partnerships. Under section 4(b)(2) of the Act, for the reasons discussed in the following sections, the Secretary is exercising his discretion to exclude a total of 1,259 ac (508 ha), or 96 percent, of land within the Orange County Central-Coastal NCCP/HCP plan area (including those lands associated with the NRPPA) within Unit 8 from this final revised critical habitat designation. The Secretary is declining to exercise his discretion to exclude 52 ac (21 ha), or 4 percent, of land within the Orange County Central-Coastal NCCP/HCP plan area within Unit 8 in this final revised critical habitat designation. As described in our analysis below, this conclusion was reached after considering the relevant impacts of specifying the area as critical habitat.

The Orange County Central-Coastal NCCP/HCP in central Orange County (including lands within a portion of Unit 8) was developed in cooperation with numerous local and State jurisdictions and agencies, and participating landowners, including Southern California Edison; Transportation Corridor Agencies; The Irvine Company; California Department of Parks and Recreation; Metropolitan Water District of Southern California; Orange County; and the cities of Anaheim, Costa Mesa, Irvine, Orange, and San Juan Capistrano. Approved in 1996, the Orange County Central-Coastal NCCP/HCP provides for the establishment of approximately 38,738 ac (15,677 ha) of reserve lands for 39 covered species within the 208,713-ac (84,463-ha) planning area. We concluded in our biological opinion (Service 1996, p. 66) that implementation of the plan, as proposed, was not likely to jeopardize the continued existence of the arroyo toad. We also issued an incidental take permit to the permittes of the plan under section 10(a)(1)(B) of the Act that provides conditional incidental take authorization for the arroyo toad for all areas within the Orange County Central-Coastal Subregion, except the NRPPA which is addressed in more detail below. This take authorization only applies to smaller arroyo toad populations, reintroduced populations, or populations that have expanded due to NCCP/HCP reserve management. It also requires creation and implementation of a project-specific mitigation plan if a planned activity would result in take of arroyo toads. The HCP requires the mitigation plan to: (1) Address design modifications, minimize impacts, and provide appropriate protections for arroyo toad; (2) provide for arroyo toad relocation to an acceptable location where habitat will be management and enhanced as needed; and (3) provide for monitoring and adaptive management of arroyo toads and their habitat.

The Orange County Central-Coastal NCCP/HCP provides for monitoring and adaptive management of covered species and their habitat, including the arroyo toad, within this reserve system. To date, monitoring and management related to arroyo toad has included reserve-wide herpetofauna surveys conducted from 1997 through 2001 and ongoing control of invasive nonnative vegetation in the upland environment.

Approximately 589 ac (238 ha) of the portion of Unit 8 within the Orange County Central-Coastal NCCP/HCP plan area is covered by the Irvine Ranch Northern Open Space Recreation and Resource Management Plan (Irvine Ranch Northern Open Space Management Plan). These lands were transferred in 2010 from the landowner (i.e., the Irvine Company, who is also a permittee of the Orange County Central-Coastal NCCP/HCP) to the County of Orange to be conserved and managed in Orange County Central-Coastal NCCP/ HCP's reserve system. Additionally, the Irvine Ranch Northern Open Space Management Plan was developed in conformance with the Orange County Central-Coastal NCCP/HCP, and identifies actions needed to maintain long-term habitat value by addressing key challenges such as management of increased wildfire frequency, nonnative plants and animals, and unauthorized activities by individuals or groups (LSA and IRC 2010, pp. 66–67; Service 2010, p. 1).

Approximately 670 ac (271 ha) of Unit 8 within NRPPA is covered by the Resource Plan for East Orange Conservation Easement Property (East Orange Management Plan), the Resource Plan for Fremont/Blind Easement Property (Fremont/Blind Management Plan), and the Resource Plan for Silmod Conservation Easement Property (Silmod Management Plan). As noted above, the NRPPA was not included in the Orange County Central-Coastal NCCP/HCP based on a lack of biological information and a lack of specific conservation commitments at the time of adoption of the plan. The landowner (i.e., The Irvine Company) agreed to continue to work with CDFG and the

Service to address the conservation needs of multiple sensitive species in the NRPPA, including the arroyo toad. As a result, conservation easements held by the Nature Conservancy and managed by the Irvine Company were established (which includes approximately 670 ac (271 ha) of lands within the arroyo toad proposed revised critical habitat area). Management and monitoring of this area includes a $10 million management endowment and addresses various adaptive management activities that provide a benefit to the arroyo toad and its habitat. The management program addresses management from an ecosystem-based approach, including activities such as restoration of habitat through removal of invasive species, erosion control, and an on-going biological monitoring program that benefits an adaptive management strategy.

In summary, Orange County Central-Coastal NCCP/HCP's reserve system and the conservation easement within the NRPPA provides permanent protection to approximately 1,259 ac (508 ha), or 96 percent, of land within the Orange County Central-Coastal NCCP/HCP plan area in Unit 8. Approximately 52 ac (21 ha), or 4 percent, of land within the Orange County Central-Coastal NCCP/HCP plan area in Unit 8 are not conserved and managed.

Below is an analysis of the relative benefits of inclusion and exclusion of lands within Unit 8 for which the Secretary is exercising his discretion to exclude from this final revised critical habitat designation.

Benefits of Inclusion—Orange County Central-Coastal NCCP/HCP

The principal benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. 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 (including the arroyo toad), 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.

Any protections provided by critical habitat that are redundant with protections already in place reduce the benefits of inclusion in critical habitat. The consultation provisions under section 7(a)(2) of the Act constitute the regulatory benefits of designating lands as critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Critical habitat may provide a regulatory benefit for the arroyo toad when there is a Federal nexus present for a project that might adversely modify critical habitat. Specifically, we expect projects in wetland areas would require a 404 permit under the Clean Water Act from the U.S. Army Corps of Engineers. Therefore, critical habitat will have an additional regulatory benefit to the conservation of the arroyo toad by prohibiting adverse modification of habitat essential to the conservation of this species. Approximately 96 percent of lands proposed for designation within Orange County Central-Coastal NCCP/HCP's reserve system and associated NRPPA in Unit 8 are conserved and managed under the Orange County Central-Coastal NCCP/HCP and associated management plans; therefore, Federal actions that could adversely affect the arroyo toad or its habitat are unlikely to occur in these areas. If such actions do occur, it is likely that the protections provided the species and its habitat under section 7(a)(2) of the Act would be largely redundant with the protections offered by the Orange County Central-Coastal NCCP/HCP and associated management plans. Thus, we expect the regulatory benefit of including these areas in critical habitat would be minimal. Approximately 4 percent of land within the Orange County Central-Coastal NCCP/HCP plan area in Unit 8 are not conserved and managed. Thus, we believe there are regulatory benefits of critical habitat designation in these areas.

Another possible benefit of including lands in critical habitat is public education regarding the potential conservation value of an area that may help focus conservation efforts on areas of high conservation value for certain species. Any information about the arroyo toad and its habitat that reaches a wide audience, including parties engaged in conservation activities, is valuable. The inclusion of lands in the arroyo toad proposed and final revised critical habitat designation that are not conserved and managed is beneficial to the species because the proposed and final rules identify those lands that require management for the conservation of the arroyo toad. The process of proposing and finalizing revised critical habitat provided the opportunity for peer review and public comment on habitat we determined meets the definition of critical habitat. This process is valuable to land owners and managers in prioritizing conservation and management of identified areas. Because the habitat identified in Orange County Central-Coastal NCCP/HCP's reserve system and associated NRPPA within Unit 8 is already conserved and managed under the Orange County Central-Coastal NCCP/HCP and associated management plans (approximately 96 percent of land proposed as critical habitat within the Orange County Central-Coastal NCCP/HCP plan area), no educational benefits would be realized in these areas. The remaining 4 percent of land proposed as revised critical habitat within the Orange County Central-Coastal NCCP/HCP plan area is not conserved and managed, and there are educational benefits of including these areas (such as informing the public about essential habitat and potentially refining the broader conservation goals for arroyo toad under the Orange County Central-Coastal NCCP/HCP by focusing conservation on the specific areas essential to the recovery of the species).

The designation of arroyo toad critical habitat may also strengthen or reinforce some of the provisions in other State and Federal laws, such as CEQA or NEPA. These laws analyze the potential for projects to significantly affect the environment. In Orange County, the additional protections associated with critical habitat may be beneficial in areas not currently conserved. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws.

In summary, we believe that designating critical habitat would

provide minimal regulatory benefits under section 7(a)(2) of the Act in areas meeting the definition of critical habitat that are conserved and managed, nor will any additional educational benefits be realized under these circumstances. In areas that are not currently conserved and managed, we believe there are regulatory and educational benefits of critical habitat designation.

Benefits of Exclusion—Orange County Central-Coastal NCCP/HCP

We believe conservation benefits would be realized by forgoing designation of critical habitat for the arroyo toad on lands covered by the Orange County Central-Coastal NCCP/HCP and associated NRPPA including: (1) Continuance and strengthening of our effective working relationships with all Orange County Central-Coastal NCCP/HCP jurisdictions and stakeholders (including the Irvine Company with relation to the NRPPA) to promote voluntary, proactive conservation of the arroyo toad and its habitat as opposed to reactive regulation; (2) allowance for continued meaningful collaboration and cooperation in working toward species recovery, including conservation benefits that might not otherwise occur; (3) encouragement for local jurisdictions to fully participate in the Orange County Central-Coastal NCCP/HCP; and (4) encouragement of additional HCP and other conservation plan development in the future on other private lands for this and other federally listed and sensitive species.

In the case of arroyo toad in Orange County, the partnership and commitment by the Orange County Central-Coastal NCCP/HCP jurisdictions and stakeholders resulted in lands being conserved and managed for the long term that will contribute to the recovery of the species.

We developed close partnerships with all participating entities through the development of the Orange County Central-Coastal NCCP/HCP and the associated conservation easement established under the NRPPA, which incorporates substantial protections and management for the arroyo toad, its habitat, and the features essential to the conservation of this species. Additionally, many landowners perceive critical habitat as an unfair and unnecessary regulatory burden given the expense and time involved in developing and implementing complex regional and jurisdiction-wide HCPs, such as the Orange County Central-Coastal NCCP/HCP and associated conservation with the NRPPA (as discussed further in Comment 27 below in the **Summary of Comments and Recommendations** section of this rule). Exclusion of lands under the Orange County Central-Coastal NCCP/HCP and associated NRPPA could help preserve the partnership we developed with County of Orange and other participants in the development of the HCP, and foster future partnerships and development of future HCPs, and encourage the establishment of future conservation and management of habitat for the arroyo toad and other sensitive species.

The Orange County Central-Coastal NCCP/HCP and associated conservation with the NRPPA provides substantial protection and management for the arroyo toad and the physical and biological features essential to the conservation of the species, and addresses conservation issues from a coordinated, integrated perspective rather than a piecemeal, project-by-project approach (as would occur under sections 7 of the Act or smaller HCPs), thus resulting in coordinated landscape-scale conservation that can contribute to genetic diversity by preserving covered species populations, habitat, and interconnected linkage areas that support recovery of the arroyo toad and other listed species. It is important that we encourage participation in such plans and encourage voluntary coverage of listed plant species in such plans. Additionally, many landowners perceive critical habitat as an unfair and unnecessary regulatory burden given the expense and time involved in developing and implementing complex regional and jurisdiction-wide HCPs, such as the Orange County Central-Coastal NCCP/HCP and associated conservation with the NRPPA. Exclusion of Orange County Central-Coastal NCCP/HCP and associated conservation with the NRPPA lands would help preserve the partnerships we developed with the County of Orange and other participating property owners in the development of the HCP, and foster future partnerships and development of future HCPs.

In summary, we believe excluding land covered by the Orange County Central-Coastal NCCP/HCP and closely associated NRPPA from critical habitat could provide the significant benefit of maintaining existing regional HCP and management plan partnerships, and fostering new ones.

Weighing Benefits of Exclusion Against Benefits of Inclusion—Orange County Central-Coastal NCCP/HCP

We reviewed and evaluated the benefits of inclusion and benefits of exclusion for all lands owned by or under the jurisdiction of Orange County Central-Coastal NCCP/HCP permittees, including the Irvine Company with regard to the NRPPA, proposed as critical habitat for arroyo toad. The benefits of including conserved and managed lands in the critical habitat designation are small. The Orange County Central-Coastal NCCP/HCP's reserve system and the conservation easement within the NRPPA encompass approximately 1,259 ac (508 ha), or 96 percent, of the Orange County Central-Coastal NCCP/HCP plan area within Unit 8, are already managed and conserved, and provide a benefit to arroyo toad. There is also no educational or ancillary benefit of designating critical habitat in these conserved areas; educational information regarding the importance of these areas was identified during the development and implementation of the Orange County Central-Coastal NCCP/HCP, and potential ancillary benefits are negligible. Similarly, the regulatory benefit provided by a critical habitat designation is small because it is partially redundant with the existing protection of these areas under the Orange County Central-Coastal NCCP/HCP. Therefore, we do not believe critical habitat designation for the arroyo toad within these areas will provide significant regulatory, educational, or ancillary benefits for these areas.

In contrast, including lands within the Orange County Central-Coastal NCCP/HCP plan area in the final revised critical habitat designation for arroyo toad that are not conserved and managed will provide additional protection under section 7(a) of the Act when there is a Federal nexus, and designation may act as an educational tool for the public regarding the conservation of arroyo toad and the physical and biological features essential to the conservation of the species. Therefore designation of these areas will provide an educational benefit by focusing attention on the specific lands within Orange County Central-Coastal NCCP/HCP that are essential to the species' recovery so that conservation efforts are directed toward those areas. We also anticipate a potential regulatory benefit from designation for activities on these lands with a Federal nexus and some ancillary benefit from other laws such as CEQA and NEPA from designating these areas as critical habitat.

Approximately 1,259 ac (508 ha) are currently being managed under management plans developed in part because the area is a participating NCCP/HCP jurisdiction. The exclusion

of conserved areas in Unit 8 within the Orange County Central-Coastal NCCP/HCP plan area will benefit the partnership that we have with the County of Orange and other participating property owners, and encourage the conservation of lands associated with the development and implementation of future HCPs.

An example of a recognized benefit of the importance of the Orange County Central-Coastal NCCP/HCP and the partnerships with the permittees is the establishment of the conservation easement in the NRPPA. During the development stage of the Orange County Central-Coastal NCCP/HCP (as described above), the permittees, CDFG, and the Service recognized there was a lack of biological information and conservation commitments to include the area now known as the NRPPA into the HCP. The HCP permittees decided to address this area separately to prevent stalling the anticipated conservation afforded by the finalization of the Orange County Central-Coastal NCCP/HCP. The participating permittee and owner of the NRPPA, the Irvine Company, agreed to not only commit to the conservation strategy of the Orange County Central-Coastal NCCP/HCP, but also to continue to work with the CDFG and Service to develop an ecosystem-based conservation plan for the NRPPA. As a result of this commitment, a conservation easement was established with management and monitoring of the area in perpetuity, which includes protection of arroyo toad habitat identified as essential to the conservation of the species. Therefore, conservation associated with the Orange County Central-Coastal NCCP/HCP permittees, including the Irvine Company who committed to conserving NRPPA lands, may not have been realized had it not been for the continued conservation commitment made by the permittees.

In summary, we find that excluding from critical habitat areas that are receiving long-term conservation and management for the purpose of protecting the arroyo toad (Unit 8) will preserve our partnership with the permittees in the Orange County Central-Coastal NCCP/HCP and encourage the conservation of lands associated with development and implementation of future HCPs. These partnership benefits are significant and outweigh the small potential regulatory, educational, and ancillary benefits of including these portions of Unit 8 in critical habitat for the arroyo toad. We find that including lands as critical habitat that are not yet receiving long-term conservation and management within Unit 8 will provide additional regulatory protection under section 7(a) of the Act when there is a Federal nexus, and will provide an educational benefit by focusing conservation efforts by the Orange County Central-Coastal NCCP/HCP permittees on conservation and management of these specific essential habitat areas for the arroyo toad and educating the public about importance of these areas for the conservation of this species. Designation may also result in some ancillary benefits under other laws. Therefore, designating these areas as critical habitat for the arroyo toad will provide educational as well as some regulatory and ancillary benefits to the species. While we acknowledge that excluding these areas under section 4(b)(2) of the Act would provide a benefit to the partnership that we have with the permittees under the Orange County Central-Coastal NCCP/HCP, we have not concluded that the benefits of exclusion outweigh the educational benefit along with the potential regulatory and ancillary benefits to the conservation of the species in these areas of Unit 8. Therefore, the Secretary is declining to exercise his discretion to exclude 52 ac (21 ha) of land within the Orange County Central-Coastal NCCP/HCP plan area in Unit 8 from this final revised critical habitat designation.

Exclusion Will Not Result in Extinction of the Species—Unit 8, Orange County Central-Coastal NCCP/HCP

We determined exclusion of 1,259 ac (508 ha) of land in Unit 8 within the Orange County Central-Coastal NCCP/HCP planning area from the final revised critical habitat designation for the arroyo toad will not result in extinction of the species. These areas are permanently conserved and managed to provide a benefit to arroyo toad and its habitat, thus providing assurances that the species will not go extinct as a result of exclusion from critical habitat designation. Therefore, based on the above discussion, the Secretary is exercising his discretion to exclude approximately 1,259 ac (508 ha) of land in Unit 8 from this final critical habitat designation.

Orange County Southern Subregion HCP

We determined that approximately 4,915 ac (1,984 ha) of land in Subunits 10a, 10b, and 11a owned by or under the jurisdiction of the permittees of the Orange County Southern Subregion HCP meet the definition of critical habitat under the Act. In making our final decision with regard to these lands, we considered several factors including our relationships with participating jurisdictions and other stakeholders, conservation measures and management that are in place on these lands, and impacts to current and future partnerships. Under section 4(b)(2) of the Act, for the reasons discussed in the following sections, the Secretary is exercising his discretion to exclude 2,179 ac (882 ha), or 44 percent, of land within the Orange County Southern Subregion HCP plan area in Subunits 10a, 10b, and 11a from this final revised critical habitat designation. The Secretary is declining to exercise his discretion to exclude 2,736 ac (1,107 ha), or 56 percent, of land within the Orange County Southern Subregion HCP plan area in Subunits 10a and 11a in this final revised critical habitat designation. As described in our analysis below, this conclusion was reached after considering the relevant impacts of specifying these areas as critical habitat.

The Orange County Southern Subregion HCP is a large-scale HCP encompassing approximately 86,021 ac (34,811 ha) in southern Orange County (including lands within portions of Subunits 10a, 10b, and 11a). Originally developed as the Southern Subregion Natural Community Conservation Plan/Master Streambed Alteration Agreement/Habitat Conservation Plan, we now refer to the plan as the Orange County Southern Subregion HCP. Although the plan is intended to be a subregional plan under the State of California's Natural Community Conservation Planning (NCCP) Act of 2001, the NCCP has not yet been permitted by the California Department of Fish and Game. On January 10, 2007, the Service approved the Habitat Conservation Plan and issued incidental take permits (TE144105–0, TE144113–0, and TE144140–0) under section 10(a)(1)(B) of the Act to the three permittees for a period of 75 years. We concluded in our biological opinion (Service 2007, p. 66) that implementation of the plan, as proposed, was not likely to jeopardize the continued existence of the arroyo toad. Our determination was based on permanent protection of arroyo toad populations within the Orange County Southern Subregion HCP plan area combined with long-term management and monitoring actions within its habitat reserve that will help sustain arroyo toad in the area and contribute to the range-wide conservation of the species (Service 2007, p. 67).

The Orange County Southern Subregion HCP was developed by the County of Orange (County), Rancho Mission Viejo, LLC (Rancho Mission Viejo), and the Santa Margarita Water

District (Water District) to address impacts resulting from residential and associated infrastructure development to 32 species including the arroyo toad. The Orange County Southern Subregion HCP is a multi-species conservation program that minimizes and mitigates expected habitat loss and associated incidental take of covered species.

The Orange County Southern Subregion HCP addresses development and associated infrastructure on Rancho Mission Viejo lands, installation and maintenance of infrastructure by the Water District, expansion of Prima Deshecha Landfill by the County, and monitoring and adaptive management of covered species on reserve lands.

The Orange County Southern Subregion HCP will establish approximately 30,426 ac (12,313 ha) of habitat reserve, which will consist primarily of land owned by Rancho Mission Viejo and three pre-existing County parks (Service 2007, pp. 10 and 19). The HCP provides for a large, biologically diverse and permanent habitat reserve that will protect: (1) Large blocks of natural vegetation communities that provide habitat for the covered species; (2) "important" and "major" populations of the covered species in key locations; (3) wildlife corridors and habitat linkages that connect the large habitat blocks and covered species populations to each other, the Cleveland National Forest, and the adjacent Orange County Central-Coastal NCCP/HCP; and (4) the underlying hydrogeomorphic processes that support the major vegetation communities providing habitat for the covered species (Service 2007, p. 10).

The overall habitat reserve will be managed and monitored according to the collective Habitat Reserve Management and Monitoring Program (Habitat Reserve Management Program). The Habitat Reserve Management Program focuses on the development and implementation of a coordinated monitoring and management program to sustain and enhance species populations, including arroyo toad, and their habitats over the long term, while adapting management actions to new information and changing habitat conditions. The management program is comprised of two components: (1) An ongoing management program on County park lands within the habitat reserve; and (2) an adaptive management program that will be implemented on the Rancho Mission Viejo portion of the habitat reserve and on selected portions of the County park lands within the habitat reserve (Service 2007, p. 12).

In addition to the creation of a habitat reserve, the following conservation measures specific to arroyo toad and its habitat include:

(1) Potential impacts to arroyo toads associated with construction activities on Rancho Mission Viejo will be avoided and minimized through preparation of Biological Resources Construction Plans in coordination with the Service;

(2) Potential impacts to arroyo toad habitat from grazing activities will be addressed through implementation of the Grazing Management Plan, which includes the management of grazing activities and restoration of upland habitat with native grasses and coastal sage scrub;

(3) Implementation of the Invasive Species Control Plan on Rancho Mission Viejo will result in removal of nonnative plant species that degrade aquatic habitats and removal of aquatic predators of the arroyo toad;

(4) Through Water Quality Management Plans, flow duration (which influences channel morphology) and water quality will be maintained such that hydrologic conditions of concern such as erosion or sedimentation or pollutants of concern will be addressed;

(5) A detailed monitoring program for the arroyo toad at a species-specific level and also habitat-landscape level will be developed in coordination with the Service (Service 2007, pp. 62–64); and

(6) Removal of nonnative plant species that degrade aquatic habitats occupied by the arroyo toad will be conducted on County lands to offset impacts to aquatic habitat associated with expansion of the County's Prima Deshecha Landfill.

Below is a brief overview of the lands in Subunits 10a, 10b, and 11a that, based on the reasoning provided in the following sections, the Secretary is exercising his discretion to exclude under section 4(b)(2) of the Act, and how these areas are conserved and managed consistent with the Orange County Southern Subregion HCP.

Approximately 1,608 ac (651 ha) of County park lands in Subunit 10a within the Ronald W. Caspers Wilderness Park (Caspers Wilderness Park) is covered by the Ronald W. Caspers Wilderness Park General Development Plan Phase III Habitat Conservation Program (Caspers Wilderness Park Program). The Caspers Wilderness Park Program functions as an operational program to ensure protection of existing biological communities and sensitive plant and animal species through implementation of, at minimum: (1) An ongoing review of sensitive habitat areas; and (2) identification of site specific operational directives for the protection of habitats, which include a mechanism for review and adjustment of directives in light of new information (Lewis 1987, pp. 1–1 and 2–11). Approximately 509 ac (206 ha) of County parks lands in Subunit 10b within O'Neill Regional Park is covered by the O'Neill Regional Park Resource Management Plan. The goals of this plan are: (1) To insure the protection and preservation of the natural and cultural resources within the park through the development of recommended management tools (such as resource management checklists, interpretive programs, mitigation programs, and the hiring of a resource monitor); and (2) to maintain a viable ecosystem, a recreational opportunity, and visual quality inherent to the park by developing a comprehensive understanding of park resource systems and interrelationships, and directing future planning efforts to insure their protection (County of Orange 1989, pp. 1–1, 11–3 and 11–4). Therefore, the Caspers Wilderness Park Program and the O'Neill Regional Park Resource Management Plan provide protection to proposed arroyo toad critical habitat through the conservation and management of these areas that may otherwise be left unprotected.

Approximately 23 ac (9 ha) of the portion of Subunit 10a within the Orange County Southern Subregion HCP plan area is conserved and managed in Planning Area 1 Open Space. These lands are owned by Rancho Mission Viejo and consist of two areas: (1) An area placed under a perpetual conservation easement; and (2) an area subject to a declaration of irrevocable covenant, both recorded on January 14, 2010 (County of Orange 2010a, p. 1; County of Orange 2010b, pp. 1–9; County of Orange 2010c, pp. 1–32). The preservation of Rancho Mission Viejo open space lands in the San Juan Creek watershed (Subunit 10a) is occurring under the Orange County Southern Subregion HCP under a phased dedication program consisting of a two-step process including: (1) The phased recordation of irrevocable covenants by affected landowners on or before the commencement of each new development phase, at which time the areas subject to the irrevocable covenants will be enrolled in the habitat reserve and become subject to the Habitat Reserve Management Program, followed by (2) the phased recordation of conservation easements as soon as practicable but no later than 3 years

following recordation of the corresponding irrevocable covenants (Dudek and Associates 2007, Attachment 1, p. 1). Thus, these areas within Planning Area 1 Open Space are permanently protected and managed in the habitat reserve pursuant to the Orange County Southern Subregion HCP (Dudek and Associates 2007, pp. 20 and 71).

Approximately 39 ac (16 ha) of Subunit 11a within Orange County Southern Subregion HCP is conserved and managed in Donna O'Neill Land Conservancy. The Donna O'Neill Land Conservancy was established in 1990 to offset impacts associated with nearby development in the City of San Clemente. This approximately 1,200 ac (484 ha) property is owned by Rancho Mission Viejo and permanently conserved under a conservation easement deed held by the Donna O'Neill Land Conservancy, a non-profit conservancy group. Management is funded through a non-wasting endowment, grants, and membership dues. Additionally, the conservation easement will be transferred to the Rancho Mission Viejo Land Conservancy (a non-profit entity responsible for collection, investment, and distribution of funding for the benefit, preservation, and enhancement of habitat reserve lands within Rancho Mission Viejo), pending approval by the San Clemente City Council. The city council recently voted 5–0 to approve the transfer in concept, subject to formal documents being provided to the council for review and approval. Once transferred, these lands will be enrolled in the habitat reserve and therefore become subject to the Habitat Reserve Management Program under the Orange County Southern Subregion HCP (Dudek and Associates 2007, p. 35). Thus, the Donna O'Neill Land Conservancy provides protection to the arroyo toad and its proposed critical habitat through the conservation and management of an area that may otherwise be left unprotected.

Below is an analysis of the relative benefits of inclusion and exclusion of lands within Subunits 10a, 10b, and 11a for which the Secretary is exercising his discretion to exclude from this final revised critical habitat designation.

Benefits of Inclusion—Orange County Southern Subregion HCP

The principal benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. 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 (including the arroyo toad), 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.

Any protections provided by critical habitat that are redundant with protections already in place reduce the benefits of inclusion in critical habitat. The consultation provisions under section 7(a)(2) of the Act constitute the regulatory benefits of designating lands as critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Critical habitat may provide a regulatory benefit for the arroyo toad when there is a Federal nexus present for a project that might adversely modify critical habitat. Specifically, we expect projects in wetland areas would require a 404 permit under the Clean Water Act from the U.S. Army Corps of Engineers. Therefore, critical habitat would have an additional regulatory benefit to the conservation of the arroyo toad by prohibiting adverse modification of habitat essential to the conservation of this species. Approximately 44 percent of lands proposed for designation within the Orange County Southern Subregion HCP plan area (i.e., County park lands, Planning Area 1 Open Space conserved lands, and Donna O'Neill Land Conservancy lands) in Subunits 10a, 10b, and 11a are conserved and managed under the Orange County Southern Subregion HCP; therefore, Federal actions that could adversely affect the arroyo toad or its habitat are unlikely to occur in these areas. If such actions do occur, it is likely that the protections provided the species and its habitat under section 7(a)(2) of the Act would be largely redundant with the protections offered by the Orange County Southern Subregion HCP. Thus, we expect the regulatory benefit of including these areas in critical habitat would be minimal. Approximately 56 percent of land proposed for designation within the Orange County Southern Subregion HCP plan area are not conserved and managed. Thus, we believe there are regulatory benefits of critical habitat designation in these areas for the arroyo toad because it may provide a regulatory benefit when there is a Federal nexus present for a project that might adversely modify critical habitat.

Another possible benefit of including lands in critical habitat is public education regarding the potential conservation value of an area that may help focus conservation efforts on areas of high conservation value for certain species. Any information about the arroyo toad and its habitat that reaches a wide audience, including parties engaged in conservation activities, is valuable. The inclusion of lands in the arroyo toad proposed and final revised critical habitat designation that are not conserved and managed is beneficial to the species because the proposed and final rules identify those lands that require management for the conservation of the arroyo toad. The process of proposing and finalizing revised critical habitat provided the opportunity for peer review and public comment on habitat we determined meets the definition of critical habitat. This process is valuable to land owners and managers in prioritizing conservation and management of identified areas. Because the habitat identified in County park lands, Planning Area 1 Open Space conserved lands, and Donna O'Neill Land Conservancy within Subunits 10a, 10b, and 11a is already conserved and managed under the Orange County Southern Subregion HCP (approximately 44 percent of land within the Orange County Southern Subregion HCP plan area that meets the definition of critical habitat), no educational benefits would be realized in this area. The remaining 56 percent of land proposed as revised critical habitat within the Orange County Southern Subregion HCP plan area is

not conserved and managed, and there are educational benefits of including these areas because designation may act as a tool for the public regarding the conservation of arroyo toad and the physical and biological features essential to the conservation of the species.

The designation of arroyo toad critical habitat may also strengthen or reinforce some of the provisions in other State and Federal laws, such as CEQA or NEPA. These laws analyze the potential for projects to significantly affect the environment. In Orange County, the additional protections associated with critical habitat may be beneficial in areas not currently conserved. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws.

In summary, we believe that designating critical habitat would provide minimal regulatory benefits under section 7(a)(2) of the Act in areas meeting the definition of critical habitat that are conserved and managed, nor will any additional educational benefits be realized under these circumstances. In areas that are not currently conserved and managed, we believe there are regulatory and educational benefits of critical habitat designation.

Benefits of Exclusion—Orange County Southern Subregion HCP

We believe conservation benefits would be realized by forgoing designation of critical habitat for the arroyo toad on lands covered by the Orange County Southern Subregion HCP including: (1) Continuance and strengthening of our effective working relationships with all Orange County Southern Subregion HCP stakeholders to promote conservation of the arroyo toad and its habitat; (2) allowance for continued meaningful collaboration and cooperation in working toward species recovery, including conservation benefits that might not otherwise occur; (3) encouragement of local jurisdictions to fully participate in the Orange County Southern Subregion HCP; and (4) encouragement of additional HCP and other conservation plan development in the future on other lands for this and other federally listed and sensitive species. In the case of arroyo toad in Orange County, the partnership and commitment by the permittees of the Orange County Southern Subregion HCP resulted in lands being conserved and managed for the long term that will contribute to the recovery of the species.

We developed close partnerships with all participating entities through the development of the Orange County Southern Subregion HCP, which incorporates substantial protections and management for the arroyo toad, its habitat, and the features essential to the conservation of this species. Additionally, many landowners perceive critical habitat as an unfair and unnecessary regulatory burden given the expense and time involved in developing and implementing complex regional and jurisdiction-wide HCPs, such as the Orange County Southern Subregion HCP (as discussed further in Comment 29 below in the **Summary of Comments and Recommendations** section of this rule). Exclusion of Orange County Southern Subregion HCP lands could help preserve the partnership we developed with the County of Orange and other permittees in the development of the HCP, and foster future partnerships and development of future HCPs, and encourage the establishment of future conservation and management of habitat for the arroyo toad and other sensitive species.

The Orange County Southern Subregion HCP provides substantial protection and management for the arroyo toad and the physical and biological features essential to the conservation of the species, and addresses conservation issues from a coordinated, integrated perspective rather than a piecemeal, project-by-project approach (as would occur under sections 7 of the Act or smaller HCPs), thus resulting in coordinated landscape-scale conservation that can contribute to genetic diversity by preserving covered species populations, habitat, and interconnected linkage areas that support recovery of the arroyo toad and other listed species. It is important that we encourage participation in such plans and encourage voluntary coverage of listed plant species in such plans. Additionally, many landowners perceive critical habitat as an unfair and unnecessary regulatory burden given the expense and time involved in developing and implementing complex regional and jurisdiction-wide HCPs, such as the Orange County Southern Subregion HCP. Exclusion of Orange County Southern Subregion HCP lands would help preserve the partnerships we developed with the County of Orange and other stakeholders in the development of the HCP, and foster future partnerships and development of future HCPs.

In summary, we believe excluding land covered by the Orange County Southern Subregion HCP from critical habitat could provide the significant benefit of maintaining existing regional HCP partnerships and fostering new ones.

Weighing Benefits of Exclusion Against Benefits of Inclusion—Orange County Southern Subregion HCP

We reviewed and evaluated the benefits of inclusion and benefits of exclusion for all lands owned by or under the jurisdiction of Orange County Southern Subregion HCP permittees as critical habitat for the arroyo toad. The benefits of including lands already conserved and managed in the critical habitat designation are small. Approximately 1,608 ac (651 ha) of land in Subunit 10a within Caspers Wilderness Park, approximately 509 ac (206 ha) of land in Subunit 10b within O'Neill Regional Park, approximately 23 ac (9 ha) of land in Subunit 10a within Planning Area 1 Open Space, and approximately 39 ac (16 ha) of land in Subunit 11a within Donna O'Neill Land Conservancy are already managed and conserved, and provide a benefit to the arroyo toad. There is also no educational or ancillary benefit of designating critical habitat in these conserved areas; educational information regarding the importance of these areas was identified during the development and implementation of the Orange County Southern Subregion HCP, and potential ancillary benefits are negligible. Similarly, the regulatory benefit provided by a critical habitat designation is small because it is partially redundant with the existing protection of these areas under the Orange County Southern Subregion HCP. Therefore, we do not believe critical habitat designation for the arroyo toad within these areas will provide significant regulatory, educational, or ancillary benefits for these areas.

In contrast, including lands within the Orange County Southern Subregion HCP plan area in the final revised critical habitat designation for arroyo toad that are not conserved and managed will provide additional protection under section 7(a) of the Act when there is a Federal nexus, and designation may act as an educational tool for the public regarding the conservation of arroyo toad and the physical and biological features essential to the conservation of the species. Therefore designation of these areas will provide an educational benefit by focusing attention on the specific lands within Orange County Southern Subregion HCP plan area that are essential to the species' recovery so that conservation efforts are directed toward those areas. We also anticipate a potential regulatory benefit from

designation for actions requiring a Federal nexus in connection with activities on these lands and some ancillary benefit from other laws such as CEQA and NEPA from designating these areas as critical habitat.

The lands in Subunit 10a within Caspers Wilderness Park, in Subunit 10b within O'Neill Regional Park, in Subunit 10a within Planning Area 1 Open Space, and in Subunit 11a within Donna O'Neill Land Conservancy are currently being managed under management plans developed in part because the areas are within a participating HCP jurisdiction. The exclusion of conserved areas of Subunits 10a, 10b, and 11a will benefit the partnership that we have with the County of Orange and other permittees under the Orange County Southern Subregion HCP, and encourage the conservation of lands associated with the development and implementation of future HCPs.

In summary, we find that excluding from critical habitat areas that are receiving long-term conservation and management for the purpose of protecting the arroyo toad (Subunits 10a, 10b, and 11a) will preserve our partnership with the permittees in the Orange County Southern Subregion HCP and encourage the conservation of lands associated with development and implementation of future HCPs. These partnership benefits are significant and outweigh the small potential regulatory, educational, and ancillary benefits of including these portions of Subunits 10a, 10b, and 11a in critical habitat for the arroyo toad. We find that including lands as critical habitat that are not yet receiving long-term conservation and management within Subunits 10a, 10b, and 11a will provide additional regulatory protection under section 7(a) of the Act when there is a Federal nexus, and will provide an educational benefit by focusing conservation efforts by the Orange County Southern Subregion HCP permittees on conservation and management of these specific essential habitat areas for the arroyo toad and educating the public about importance of these areas for the conservation of this species. Designation may also result in some ancillary benefits under other laws. Therefore, designating these areas as critical habitat for the arroyo toad will provide educational as well as some regulatory and ancillary benefits to the species. While we acknowledge that excluding these areas under section 4(b)(2) of the Act would provide a benefit to the partnership that we have with the permittees under the Orange County Southern Subregion HCP, we have not concluded that the benefits of exclusion outweigh the educational benefit along with the potential regulatory and ancillary benefits to the conservation of the species in these areas of Subunits 10a, 10b, and 11a. Therefore, the Secretary is declining to exercise his discretion to exclude 2,736 ac (1,107 ha) of land within the Orange County Southern Subregion HCP plan area in Subunits 10a and 11a in this final revised critical habitat designation.

Exclusion Will Not Result in Extinction of the Species—Subunits 10a, 10b, and 11a, Orange County Southern Subregion HCP

We determined that the exclusion of approximately 2,179 ac (882 ha) of land in Subunits 10a, 10b, and 11a within the Orange County Southern Subregion HCP planning area from the final revised critical habitat designation for the arroyo toad will not result in extinction of the species. These areas are permanently conserved and managed to provide a benefit to arroyo toad and its habitat, thus providing assurances that the species will not go extinct as a result of exclusion from critical habitat. Therefore, based on the above discussion, the Secretary is exercising his discretion to exclude approximately 2,179 ac (882 ha) of land in Subunits 10a, 10b, and 11a from this final revised critical habitat designation.

Exclusions Under Section 4(b)(2) of the Act—Tribal Lands

In accordance with the Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (June 5, 1997); 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 relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Based on this philosophy, we believe that, in most cases, designation of tribal lands as critical habitat provides very little additional benefit to the arroyo toad. Conversely, such designation is often viewed by tribes as an unwarranted and unwanted intrusion into tribal self-governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend. We take into consideration our partnerships and existing conservation actions that tribes have implemented or are currently implementing when conducting our analysis under section 4(b)(2) of the Act in the final revised critical habitat designation. We also take into consideration conservation actions that are planned (such as a Memorandum of Understanding addressing arroyo toad conservation that is under development between the Service, Bureau of Indian Affairs (BIA), and affected tribes (as discussed in detail below)) as part of our ongoing commitment to the government-to-government relationship with tribes. Section 4(b)(2) of the Act allows the Secretary to exclude areas from critical habitat based on economic impacts, impacts to National security, or other relevant impacts if the Secretary determines that the benefits of such exclusion outweigh the benefits of designating the area as critical habitat. However, an exclusion cannot occur if it will result in the extinction of the species concerned.

We determined approximately 4,046 ac (1,636 ha) of lands owned by or under the jurisdiction of six tribes contain the physical and biological features essential to the conservation of arroyo toad, and therefore meet the definition of critical habitat under the Act. These tribal lands are found within Units 14, 16, 17, and 18 and are owned by or under the jurisdiction of the following tribes: the Rincon Band of Luiseño Mission Indians; the Pala Band of Luiseño Mission Indians; the Sycuan Band of the Kumeyaay Nation; the Mesa Grande Band of Diegueno Mission Indians; and the Barona Group of Capitan Grande Band of Mission Indians and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians, which jointly manage the Capitan Grande Band of Diegueno Mission Indians Reservation. In making our final decision with regard to these tribal lands, we considered several factors, including Secretarial Order 3206, Executive Order 13175, the President's memorandum on "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951; April 29, 1994), conservation measures in place on these lands that may benefit arroyo toad, economic impacts to the tribes, our relationship with the tribes, and impacts to current and future partnerships with the affected tribes and other tribes we coordinate with on endangered and threatened species issues. Under section 4(b)(2) of the Act,

the Secretary is exercising his discretion to exclude approximately 3,000 ac (1,214 ha) of land comprised of all reservation lands and lands we anticipate to be reservation lands in the near future from this final revised critical habitat designation. The Secretary is declining to exercise his discretion to exclude approximately 1,046 ac (422 ha) of tribal fee-owned land that is off-reservation (not under the jurisdiction of tribal governments) in Units 14 and 18 in this final revised critical habitat designation. As described in our analysis below, this conclusion was reached after considering the relevant impacts of specifying these areas as critical habitat.

The Rincon Band of Luiseño Mission Indians Reservation encompasses approximately 4,026 ac (1,625 ha) in northern San Diego County, which includes approximately 1,071 ac (433 ha) that meet the definition of arroyo toad critical habitat in Unit 14. The Rincon Band of Luiseño Mission Indians developed an arroyo toad management plan in 2005 that provides guidelines for the protection and management of arroyo toad habitat within an approximately 97 ac (39 ha) of the Habitat Management Plan area, all of which meet the definition of critical habitat. Specific tasks that will be implemented include: (1) Removal and monitoring of nonnative species within the plan area that pose an arroyo toad threat; (2) monthly removal and monitoring of trash and debris within the plan area; (3) maintenance and monitoring of oil and grease traps at the edge of facility parking lots; (4) assessment and monthly monitoring of vehicle, livestock, and other incursions (such as trespassing) into the plan area; (5) reporting of unauthorized activities within the plan area to the Service; (6) development of an arroyo toad education program; and (7) placement of signs at regular intervals along the plan area boundary.

The Pala Band of Luiseño Mission Indians Reservation encompasses approximately 12,429 ac (5,018 ha) in northern San Diego County, which includes approximately 1,662 ac (673 ha) that meet the definition of critical habitat in Unit 14. The reservation is located in the Middle San Luis Rey River basin approximately 6 miles (9.7 km) east of Interstate 15 on California Highway 76. The town of Pala is located along California Highway 76 in approximately the center of the reservation. The reservation was established for the Cupeno and Luiseño Indians, who considered themselves to be one "people"—Pala. The Pala Band of Luiseño Mission Indians developed a Master Plan in 2005 that is currently being implemented to guide management and land use on the reservation. Additionally, the tribe has developed a management plan to address arroyo toad resource management and conservation, which outlines the following conservation goals to benefit the species: (1) Maintenance of designated open space and waterways for arroyo toad along Pala Creek and the San Luis Rey River; (2) encouragement of allottees (owners of individual allotments within reservation lands) to locate new construction away from inland areas; (3) replacement of the Lilac Extension vehicle crossing of the San Luis Rey River with a bridge; (4) reduction of off-highway vehicle activity by establishing a designated area for these activities outside arroyo toad habitat; (5) purchasing adjacent property known to be occupied by arroyo toads and conserving occupied areas; (6) discouraging development of six allotments within the San Luis Rey River; and (7) removal of nonnative species within arroyo toad habitat corridors.

The Sycuan Band of the Kumeyaay Nation Reservation encompasses approximately 806 ac (325 ha) in southern San Diego County, which includes approximately 22 ac (9 ha) that meet the definition of critical habitat in Unit 18. Additionally, approximately 130 ac (53 ha) of lands within Unit 18 are anticipated to be transferred to the reservation in the near future. The Sycuan Band of the Kumeyaay Nation has two land management plans in place relevant to their reservation that provide direct and indirect arroyo toad benefits on the reservation: an Interim Land Use Master Plan that was adopted by the Sycuan General Council on January 10, 2002 (BRG 2002), and the Sycuan Tribal Environmental Plan that was approved by the Tribal Council in June 2003 (Sycuan 2003). The Land Use Master Plan provides recommended land use planning for the reservation and additional surrounding properties that are to be brought into Trust, and is based on preservation of sensitive environmental and tribal resources (BRG 2002, p. 1). The Sycuan Tribal Environmental Plan includes policies, procedures, and guidance that are in compliance with the Tribal Environmental Policy Act (Sycuan 2003, p. 1). The Sycuan Tribal Environmental Plan outlines procedures for environmental planning, project implementation, and operations that minimize adverse considerations where potential negative impacts to human health and the environment could occur. Additionally, the Sycuan Tribal Environmental Plan promotes environmental protection through responsible management practices that will benefit conservation of endangered and threatened species and their habitat, including arroyo toad. Conservation measures are organized into the following categories outlined in more detail in the "Sycuan Conservation Strategy and Conservation Measures Plan" (Conservation Plan) portion of the Sycuan Tribal Environmental Plan: (1) Conservation area site selection, design, and management; (2) land cover type conservation measures; and (3) species-specific conservation measures (which protect and restore populations and habitat of each covered species) (Sycuan 2003, p. 5). The overall Conservation Plan includes the following types of conservation measures for arroyo toad and other covered species: (1) Protection of existing habitat for compliance and species recovery; (2) enhancement of existing habitat; (3) restoration to create new habitat; (4) management of habitat to maintain and preserve ecological functions; (5) avoidance and minimization of direct impacts on individuals and habitat of covered species; (6) population enhancement measures that directly or indirectly increase abundance of covered species; and (7) research necessary to improve conservation measure effectiveness (Sycuan 2003, pp. 5–6).

The Mesa Grande Reservation, which is owned and managed by the Mesa Grande Band of Diegueno Mission Indians, is situated in the hills above Sutherland Reservoir near the mountain community of Santa Ysabel, which is approximately 35 miles northeast of San Diego, San Diego County. The reservation encompasses approximately 1,818 ac (734 ha) of land, which includes approximately 23 ac (9 ha) that meet the definition of critical habitat in Unit 16. Although there is no arroyo toad management plan for the Mesa Grande Reservation, the Service, BIA, and tribe are currently working together to develop a conservation program for arroyo toad and its habitat.

The Capitan Grande Reservation lands fall within Capitan Grande Canyon where the San Diego River once ran, which is approximately 35 miles (56 km) east of San Diego, San Diego County. The Reservation encompasses approximately 15,619 ac (6,306 ha) of land, which includes approximately 92 ac (37 ha) that meet the definition of critical habitat in Unit 17. An 1875 Presidential Executive Order resulted in the formation of a number of small reservations, including the Capitan

Grande Reservation. From this reservation two tribes were formed: the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation. The tribes jointly manage the Capitan Grande Reservation. Although currently there is no arroyo toad management plan for the Capitan Grande Reservation, the Service, BIA, and both tribes are currently coordinating to discuss arroyo toad management and its habitat on the reservation and will work together to promote conservation of arroyo toad and its habitat.

Lands which meet the definition of critical habitat within the Rincon Band of Luiseño Mission Indians Reservation, the Pala Band of Luiseño Mission Indians Reservation, the Mesa Grande Reservation, and the Capitan Grande Reservation include a streambed, or are on both sides of a streambed, and encompass arroyo toad breeding habitat. Activities on lands that meet the definition of critical habitat within these four tribal reservations could affect species breeding and also potentially affect downstream hydrology and habitat. Therefore it is important we build and maintain strong partnerships with tribes and work cooperatively to accomplish species recovery objectives.

Benefits of Inclusion—Tribal Lands

The principle benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. 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 (including arroyo toad), 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.

Any protections provided by critical habitat that are redundant with protections already in place reduce the benefits of inclusion in critical habitat. The consultation provisions under section 7(a) of the Act constitute the regulatory benefits of designating lands as critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Critical habitat may provide a regulatory benefit for arroyo toad when there is a Federal nexus present for a project that might adversely modify critical habitat. On tribal reservations there is potential for a Federal nexus through the BIA for projects that could adversely modify critical habitat. Therefore, we anticipate some projects on land that meets the definition of critical habitat within Units 14, 16, 17, and 18 will require consultation with the Service.

Another possible benefit of including lands in critical habitat is public education regarding the potential conservation value of an area that may help focus conservation efforts on areas of high conservation value for certain species. Any information about the arroyo toad and its habitat that reaches a wide audience, including parties engaged in conservation activities, is valuable. The inclusion of tribal fee-owned lands (lands that are controlled by local governments) in the arroyo toad proposed and final revised critical habitat designation is beneficial to the species because the proposed and final rules identify those lands that are essential (and may require management) to the conservation of the arroyo toad. The process of proposing and finalizing revised critical habitat provided the opportunity for peer review and public comment on habitat we determined meets the definition of critical habitat. This process is valuable to land owners and managers in prioritizing conservation and management of identified areas. Because of past efforts working with the tribes, we believe educational benefits are small on lands controlled by tribal governments (tribal reservation lands). In an effort to demonstrate our commitment to work closely with the tribes as a partner in protecting species while also respecting tribal status, our Regional Director and staff of the Pacific Southwest Region met with tribes at a tribal listening session held on November 20, 2009, at the University of California, Riverside campus at Palm Desert. Carlsbad Fish and Wildlife Office (CFWO) staff is conducting ongoing coordination with all the affected tribes. CFWO staff coordination includes meetings with representatives of the Barona Group of Capitan Grande Band of Mission Indians and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians on September 15, 2009, and representatives of the Pala Band of Luiseño Mission Indians on August 11, 2009 to discuss development of the proposed critical habitat designation. We believe our ongoing coordination with the tribes should provide sufficient future education, facilitate development of management plans (for reservations that do not currently have management plans), and promote arroyo toad conservation on tribal reservation lands.

The designation of arroyo toad critical habitat may also strengthen or reinforce some of the provisions in other State laws such as CEQA (on tribal fee-owned lands) and Federal laws, such as NEPA (on all tribal lands). These laws analyze the potential for projects to significantly affect the environment. The additional protections associated with critical habitat may be beneficial in areas not currently conserved on tribal lands. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws.

We believe that fish, wildlife, and other natural resources on tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Three reservations that include land that meets the definition of critical habitat have active management plans that contribute to arroyo toad conservation, that provide conservation benefits partly redundant with that provided by critical habitat under section 7(a) of the Act. We are committed to ongoing meaningful collaboration and cooperation with all the affected tribes. For land that meets the definition of critical habitat on reservations where tribes do not currently have management plans, we will continue to work with BIA and affected tribes to develop species and habitat management plans to promote arroyo toad conservation.

In summary, we believe there would likely be some regulatory benefits of critical habitat designation on all tribal lands and educational benefits on tribal

fee-owned lands. On tribal reservation lands, we believe our ongoing coordination with tribes should provide sufficient future education and facilitate development of management plans for these areas.

Benefits of Exclusion—Tribal Lands

We believe significant benefits would be realized by forgoing designation of critical habitat on reservation lands managed by the Rincon Band of Luiseño Mission Indians, the Pala Band of Luiseño Mission Indians, the Sycuan Band of the Kumeyaay Nation, the Mesa Grande Band of Diegueno Mission Indians, the Barona Group of Capitan Grande Band of Mission Indians, and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians. These benefits include:

(1) Continuance and strengthening of our effective working relationships with all tribes to promote conservation of arroyo toad and its habitat;

(2) Allowance for continued meaningful collaboration and cooperation in working toward recovering this species, including conservation benefits that might not otherwise occur; and

(3) Encouragement of other tribes to complete management plans in the future on other reservations for this and other federally listed and sensitive species and engage in meaningful collaboration and cooperation.

Critical habitat designation is often viewed by tribes as an unwarranted and unwanted intrusion into tribal self-governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend. For example, in comments submitted during the public comment periods, the Rincon Band of Luiseño Mission Indians, the Barona Group of Capitan Grande Band of Mission Indians, and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians indicated designation of critical habitat for arroyo toad would negatively impact tribal relations. All affected tribes except the Mesa Grande Band of Diegueno Mission Indians submitted comments indicating they were opposed to critical habitat designation or believed their lands should be excluded. Exclusion of these lands from critical habitat will help preserve the partnerships we have developed, reinforce those relationships we are building with tribes, and foster future partnerships and development of future management plans. Therefore, we believe excluding tribal reservation lands from critical habitat provides the significant benefit of maintaining and strengthening existing conservation partnerships and fostering new ones.

Weighing Benefits of Exclusion Against Benefits of Inclusion—Tribal Lands

We reviewed and evaluated the benefits of inclusion and the benefits of exclusion of tribal lands as critical habitat for arroyo toad. Including tribal lands in the critical habitat designation for arroyo toad will provide additional protection under section 7(a) of the Act when there is a Federal nexus, and designation may act as an educational tool for the public regarding the conservation of arroyo toad and the physical and biological features essential to the conservation of the species. We also anticipate a potential regulatory benefit from designation for actions requiring a Federal nexus in connection with activities on these lands and some ancillary benefit from other laws such as CEQA and NEPA from designating these areas as critical habitat. However, we believe past and future coordination with the tribes will provide sufficient education regarding arroyo toad habitat conservation needs on tribal reservation lands and therefore educational benefits for these areas are small.

The benefits of excluding tribal reservation lands from critical habitat are significant. Exclusion of these lands from critical habitat will help preserve the partnerships we have developed and reinforce those we are building with the tribes, and foster future partnerships and development of management plans. The tribes and BIA emphasized through comment letters provided in 2004 and during the public comment period their belief that designation of critical habitat on reservation land undermines tribal sovereign governmental authority and interferes with the cooperative government-to-government trust relationship between the tribes and the United States (BIA 2004a, pp. 1–2; BIA 2004b, p. 2; Barona 2009, p. 2; Rincon 2009, p. 2; Viejas 2009, pp. 4–5). We are committed to working with our tribal partners to further the conservation of arroyo toad and other endangered and threatened species. Therefore, in consideration of the relevant impact to our government-to-government relationship with the tribes and our current and future conservation partnerships, we determined the significant benefits of exclusion outweigh the benefits of critical habitat designation.

In summary, we find that the exclusion of tribal reservation lands from this final revised critical habitat will preserve our partnerships with the tribes and foster future development of habitat management plans. These partnership benefits are significant and outweigh the potential regulatory and educational benefits of including these portions of Units 14, 16, 17, and 18 in final revised critical habitat for the arroyo toad. We find that including tribal fee-owned lands as critical habitat within Units 14 and 18 will provide additional regulatory protection under section 7(a) of the Act when there is a Federal nexus, and will provide an educational benefit by focusing conservation efforts by the County of San Diego and other local jurisdictions on conservation and management of these specific essential habitat areas for the arroyo toad and educating the public about importance of these areas for the conservation of this species. Designation may also result in some ancillary benefits under other laws. Therefore, designating these areas as critical habitat for the arroyo toad will provide educational as well as some regulatory and ancillary benefits to the species. While we acknowledge that excluding these areas under section 4(b)(2) of the Act would provide a benefit to the partnership that we have with tribes, we have not concluded that the benefits of exclusion outweigh the educational benefit along with the potential regulatory and ancillary benefits to the conservation of the species and its essential habitat in these areas of Units 14 and 18. Therefore, the Secretary is declining to exercise his discretion to exclude 1,046 ac (422 ha) of tribal fee-owned land that is off-reservation (not under the jurisdiction of tribes) in Units 14 and 18 in this final revised critical habitat designation.

Exclusion Will Not Result in Extinction of the Species—Tribal Lands

We determined that the exclusion of 3,000 ac (1,214 ha) of tribal reservation land and future reservation land from the revised designation of arroyo toad critical habitat will not result in extinction of the species. The jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process due to arroyo toad and other federally listed species occupancy provide assurances that this species will not go extinct as a result of exclusion from critical habitat designation. Therefore, based on the above discussion the Secretary is exercising his discretion to exclude approximately 3,000 ac (1,214 ha) of land in units 14, 16, 17, and 18 managed by the Rincon Band of Luiseño Mission Indians, the Pala Band of Luiseño Mission Indians, the Sycuan

Band of the Kumeyaay Nation, the Mesa Grande Band of Diegueno Mission Indians, and the Barona Group of Capitan Grande Band of Mission Indians and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians and managed in the near future by the Sycuan Band of the Kumeyaay Nation from this final revised critical habitat designation.

Exclusions Under Section 4(b)(2) of the Act—Impacts to National Security

Section 4(b)(2) of the Act allows the Secretary to exclude areas from critical habitat for reasons of national security if the Secretary determines the benefits of such an exclusion outweigh the benefits of designating the area as critical habitat. However, an exclusion cannot occur if it will result in the extinction of the species concerned.

Remote Training Site Warner Springs

The U.S. Navy conducts training activities within the Remote Training Site Warner Springs complex, which is comprised of approximately 6,158 ac (2,486 ha) of lands owned and leased from the Vista Irrigation District and the Cleveland National Forest. Additionally, the U.S. Navy is proposing to expand its training activities onto another 6,326 ac (2,554 ha) of lands owned by the Bureau of Land Management, Cleveland National Forest, and the Vista Irrigation District, expanding the total training area to approximately 12,484 ac (5,040 ha).

Approximately 4,609 ac (1,865 ha) of land in Unit 15 that meet the definition of critical habitat under the Act are in the existing and proposed Remote Training Site Warner Springs. In making our final decision with regard to these lands, we considered several factors including impacts to national security associated with a critical habitat designation as described by the U.S. Navy, existing consultations, and conservation measures in place at this facility that benefit arroyo toad. Under section 4(b)(2) of the Act, the Secretary is exercising his discretion to exclude 4,609 ac (1,865 ha) of land meeting the definition of critical habitat in Unit 15 within the existing and proposed Remote Training Site Warner Springs from this final revised critical habitat designation. As described in our analysis below, we reached this conclusion after considering the relevant impacts of specifying these areas as critical habitat.

The U.S. Navy is currently revising the 2002 Naval Base Coronado Integrated Natural Resources Management Plan (INRMP) to address management of arroyo toad and its habitat at the Remote Training Site Warner Springs. We received a draft of the U.S. Navy's revised INRMP in September 2009 (U.S. Navy 2009a). Additionally, the U.S. Navy is currently implementing measures to avoid or minimize impacts to arroyo toad, as identified in a biological opinion we issued on October 30, 2009, on the proposed expansion and realignment of training areas at Remote Training Site Warner Springs (USFWS 2009). These measures include, but are not limited to: (1) Avoid and minimize impacts to the onsite population of the arroyo toad within an Arroyo Toad Management Area; (2) permanently close two stream crossings on the San Luis Rey River; (3) educate personnel on how to avoid adverse impacts to the species; (4) prioritize nonnative, invasive plant species searches and spot treatment control efforts in riparian zones and areas of higher levels of training activity; and (5) conduct surveys for arroyo toad at least every 3 years to determine status and location.

In a letter received by the Service on December 24, 2009, the Navy determined that critical habitat designation on the Remote Training Site Warner Springs would impact national security (U.S. Navy 2009b). The Remote Training Site Warner Springs is unique in its use and purpose in that it serves as the principle venue for Survival, Evasion, Resistance, and Escape (SERE) training on the West Coast. All Department of Defense SERE field training for U.S. Navy and U.S. Marine Corps personnel from the West Coast and Pacific region is conducted at this location. The Remote Training Site Warner Springs also supports unique training activities for Naval Special Warfare, 1st Marine Special Operations Battalion, Naval Construction Force Amphibious Construction Battalion One Seabees, 1st Marine Expeditionary Force Training and Experimentation Group/Tactical Exercise Group, and other non-routine training. The U.S. Navy expressed concern that designation of these lands could cause mission-critical activities to be delayed if they were required to conduct consultation due to a critical habitat designation. Mission-critical activities not previously analyzed that would likely be delayed by section 7 consultation for designated critical habitat and that directly affect national security include training activities and supporting facility construction. Delays in construction that lead to delays in training schedules could disrupt the ability to acquire and perform unique warfare skills required for personnel readiness.

Benefits of Inclusion—Remote Training Site Warner Springs

The principle benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7 of the Act under which consultation is completed. 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 (including the arroyo toad), 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.

Any protections provided by critical habitat that are redundant with protections already in place reduce the benefits of inclusion in critical habitat. The consultation provisions under section 7(a) of the Act constitute the regulatory benefits of designating lands as critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Critical habitat may provide a regulatory benefit for the arroyo toad when there is a Federal nexus present for a Department of Defense project that might adversely modify critical habitat. Therefore, we anticipate some projects on land that meets the definition of critical habitat within Remote Training Site Warner Springs will require consultation with the Service.

Another possible benefit of including lands in critical habitat is public

education regarding the potential conservation value of an area that may help focus conservation efforts on areas of high conservation value for certain species. Any information about the arroyo toad and its habitat that reaches a wide audience, including parties engaged in conservation activities, is valuable. The inclusion of lands in the arroyo toad critical habitat designation within Remote Training Site Warner Springs could be beneficial to the species because it identifies those lands that require management for the conservation of the arroyo toad. The process of proposing and finalizing revised critical habitat provided the opportunity for peer review and public comment on habitat we determined meets the definition of critical habitat. This process is valuable to land owners and managers in prioritizing conservation and management of identified areas. In general, we believe the designation of critical habitat for the arroyo toad will provide additional information to the public not already sufficiently emphasized through meetings, educational materials provided to the general public by the County of San Diego, and recommendations provided in our Recovery Plan (Service 1999). However, the public education benefit is currently being realized through the INRMP.

The designation of arroyo toad critical habitat may also strengthen or reinforce some of the provisions in other Federal laws, such as NEPA. These laws analyze the potential for projects to significantly affect the environment. On Remote Training Site Warner Springs, the additional protections associated with critical habitat may be beneficial in areas not currently conserved. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws.

In light of continued U.S. Navy commitments to manage its lands in a manner that promotes conservation of the arroyo toad and the coordination and management efforts demonstrated by the Navy resulting from consultation and development of an INRMP, we believe designation of critical habitat on Remote Training Site Warner Springs would provide minimal additional regulatory and conservation benefits to the species beyond those that will result from continued section 7 consultation.

Benefits of Exclusion—Remote Training Site Warner Springs

The benefits of excluding approximately 4,609 ac (1865 ha) of land meeting the definition of critical habitat on the existing and proposed Remote Training Site Warner Springs are significant. The U.S. Navy maintains and defends our national security at the Remote Training Site Warner Springs by conducting mission-critical training activities unique to this location on the West Coast. Mission-critical activities not previously analyzed that would likely be delayed by section 7 consultation for designated critical habitat and that directly affect national security include training activities and supporting facility construction. Delays in construction and training schedules could disrupt the ability to acquire and perform unique warfare skills required for personnel readiness. Excluding the Remote Training Site Warner Springs from critical habitat designation will effectively remove the impact that a designation of critical habitat could have on the U.S. Navy's ability to maintain and defend our national security.

Benefits of Exclusion Outweigh Benefits of Inclusion—Remote Training Site Warner Springs

We reviewed and evaluated the benefits of inclusion and benefits of exclusion for lands within the existing and proposed Remote Training Site Warner Springs in Unit 15. We believe the benefits of designating these lands as arroyo toad critical habitat are relatively small, whereas the benefits of excluding these lands from critical habitat will result in the removal of impacts to national security as determined by the U.S. Navy. Therefore, we have determined the benefits identified above of excluding approximately 4,609 ac (1865 ha) of lands within the existing and proposed Remote Training Site Warner Springs from the critical habitat designation outweigh the benefits of including these lands.

Exclusion Will Not Result in Extinction of the Species—Remote Training Site Warner Springs

We determined that the exclusion of 4,609 ac (1865 ha) of land in Unit 15 within the existing and proposed Remote Training Site Warner Springs from the final designation of critical habitat for the arroyo toad will not result in extinction of the species. The U.S. Navy's current management of Remote Training Site Warner Springs and proposed management under the draft INRMP provide some protection and management of lands within Unit 15, including land meeting the definition of critical habitat. The jeopardy standard of section 7 of the Act provides assurances the species will not go extinct as a result of exclusion from critical habitat designation. Therefore, based on the above discussion, the Secretary is exercising his discretion to exclude approximately 4,609 ac (1865 ha) of land in Unit 15 within the existing and proposed Remote Training Site Warner Springs from this final revised critical habitat designation.

Camp Morena

Camp Morena is a small parcel of approximately 71 ac (29 ha) used by the U.S. Navy under a year-to-year license with the City of San Diego and serves as a support facility for the nearby Camp Michael Monsoor (formerly called La Posta Mountain Warfare Training Facility).

We determined that approximately 31 ac (13 ha) of Camp Morena located in Subunit 19a meet the definition of critical habitat under the Act. In making our final decision with regard to these lands, we considered several factors including impacts to national security associated with a critical habitat designation as described by the U.S. Navy, existing consultations, and conservation measures in place at this facility that benefit the arroyo toad. Under section 4(b)(2) of the Act, the Secretary is exercising his discretion to exclude 31 ac (13 ha) of land meeting the definition of critical habitat within Camp Morena in Subunit 19a from this final revised critical habitat designation. As described in our analysis below, we reached this conclusion after considering the relevant impacts of specifying these areas as critical habitat.

In a letter received by the Service on December 24, 2009, the Navy determined that critical habitat designation on Camp Morena would impact national security (U.S. Navy 2009b). Camp Morena and Camp Michael Monsoor provide essential training for U.S. Special Operations Command units preparing to deploy in support of assigned missions and other contingency operations in support of national security. Additionally, Camp Morena and Camp Michael Monsoor are both critical to classified, highly specialized training of west-coast based Sea Air and Land (SEAL) Special Boat Teams. Camp Michael Monsoor is the sole live fire training site exclusively set aside for Naval Special Warfare commands in the San Diego region. Additionally, terrain and training realism is provided for personnel deployed to Iraq and Afghanistan. In support of Camp Michael Monsoor, the U.S. Navy requires significant base operations and logistical support at Camp Morena, including administration activities, classrooms, conference rooms, mission planning capabilities,

and berthing space. The U.S. Navy is concerned that designation of lands on Camp Morena would cause mission-critical activities to be delayed if they were required to conduct consultation due to a critical habitat designation. Mission-critical activities not previously analyzed that would likely be delayed by section 7 consultation for designated critical habitat and that directly affect national security include training activities and supporting facility construction. Future planned use of Camp Morena includes increased training functions with more frequent training and possible construction of new facilities; delays in construction that lead to delays in training schedules could disrupt the ability to acquire and perform unique warfare skills required for personnel readiness.

Benefits of Inclusion—Camp Morena

The principle benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7 of the Act under which consultation is completed. 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 (including the arroyo toad), 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.

Any protections provided by critical habitat that are redundant with protections already in place reduce the benefits of inclusion in critical habitat. The consultation provisions under section 7(a) of the Act constitute the regulatory benefits of designating lands as critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Critical habitat may provide a regulatory benefit for the arroyo toad when there is a Federal nexus present for a Department of Defense project that might adversely modify critical habitat. Therefore, we anticipate some projects on land that meets the definition of critical habitat within Camp Morena will require consultation with the Service.

Another possible benefit of including lands in critical habitat is public education regarding the potential conservation value of an area that may help focus conservation efforts on areas of high conservation value for certain species. Any information about the arroyo toad and its habitat that reaches a wide audience, including parties engaged in conservation activities, is valuable. The inclusion of lands in the arroyo toad critical habitat designation within Camp Morena could be beneficial to the species because it identifies those lands that require management for the conservation of the arroyo toad. The process of proposing and finalizing revised critical habitat provided the opportunity for peer review and public comment on habitat we determined meets the definition of critical habitat. This process is valuable to land owners and managers in prioritizing conservation and management of identified areas. In general, we believe the designation of critical habitat for the arroyo toad will provide additional information to the public not already sufficiently emphasized through meetings, educational materials provided to the general public by the County of San Diego, and recommendations provided in our Recovery Plan (Service 1999).

The designation of arroyo toad critical habitat may also strengthen or reinforce some of the provisions in other Federal laws, such as NEPA. These laws analyze the potential for projects to significantly affect the environment. On Camp Morena, the additional protections associated with critical habitat may be beneficial in areas not currently conserved. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws.

In summary, we believe there are some regulatory benefits and educational benefits of critical habitat designation on Camp Morena.

Benefits of Exclusion—Camp Morena

The benefits of excluding approximately 31 ac (13 ha) of land meeting the definition of critical habitat on Camp Morena are significant. The U.S. Navy maintains and defends our national security at Camp Morena by conducting mission-critical training activities unique to this location on the West Coast. Mission-critical activities not previously analyzed that could likely be delayed by section 7 consultation for designated critical habitat and that directly affect national security include training activities and supporting facility construction. Delays in construction and training schedules could disrupt the ability to acquire and perform unique warfare skills required for personnel readiness. Excluding Camp Morena from critical habitat designation will effectively remove the impact that a designation of critical habitat for the arroyo toad could have on the U.S. Navy's ability to maintain and defend our national security.

Benefits of Exclusion Outweigh Benefits of Inclusion—Camp Morena

We reviewed and evaluated the benefits of inclusion and benefits of exclusion for lands within Camp Morena in Subunit 19a. We believe the benefits of designating these lands as arroyo toad critical habitat are relatively small, whereas the benefits of excluding these lands from critical habitat will result in the removal of impacts to national security as determined by the U.S. Navy. Therefore, we have determined the benefits identified above of excluding approximately 31 ac (13 ha) of lands within Camp Morena from the critical habitat designation outweigh the benefits of including these lands.

Exclusion Will Not Result in Extinction of the Species—Camp Morena

We determined that the exclusion of 31 ac (13 ha) of land in Subunit 19a within Camp Morena from the final designation of critical habitat for the arroyo toad will not result in extinction of the species. The U.S. Navy's proposed management of Camp Morena under the draft INRMP may provide some protection and management of lands within Subunit 19a, including land meeting the definition of critical habitat. The jeopardy standard of section 7 of the Act provides assurances the species will not go extinct as a result of exclusion from critical habitat designation. Therefore, based on the above discussion, the Secretary is exercising his discretion to exclude

approximately 31 ac (13 ha) of land in Subunit 19a within Camp Morena from this final revised critical habitat designation.

Economics

Following the publication of the proposed revised critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The draft economic analysis (DEA) was made available for public review and comment from June 29, 2010 to July 29, 2010 (75 FR 37358). Substantive comments and information we received on the DEA are summarized below in the "Public Comment" section and are incorporated into the final analysis, as appropriate. Taking any relevant new information into consideration, the Service completed a final economic analysis (FEA) in November 2010, of the designation that updates the DEA.

The primary purpose of the economic analysis is to estimate the potential incremental economic impacts associated with the revised designation of critical habitat for the arroyo toad. The 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 the arroyo toad as endangered (59 FR 64859; December 16, 1994), 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 25-year time frame, from when the proposed rule became available to the public (74 FR 52612; October 13, 2009). The 25-year time frame 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 are expected to be related to the real estate industry (real estate development, CEQA, and delay impacts), followed by utilities and infrastructure projects. The FEA estimates total potential incremental economic impacts in areas proposed as revised critical habitat over the next 25 years (2010 to 2035) to be $750 million, annualized at $64 million using a 7 percent discount rate.

The FEA estimates the largest impacts of the proposed revised critical habitat rule would result from real estate development. If the critical habitat designation is finalized as proposed, the FEA estimates that $731 million of the $750 million total incremental costs will result from real estate development, the majority coming from the loss of on-site acres set-aside and other project modifications. Overall, the real estate industry (real estate development, CEQA, and delay impacts) is estimated to experience the highest costs, followed by formal and informal consultations and utilities and infrastructure projects. Of the 22 proposed critical habitat units, five are expected to incur incremental economic costs greater than $50 million between 2010 and 2035. Critical habitat Unit 14, located in San Diego County, has the largest incremental impacts ($228 million) of the units considered for designation.

The FEA is available at *http://www.regulations.gov* or upon request from the Ventura Fish and Wildlife Office (*see* **ADDRESSES** section).

Summary of Comments and Recommendations

We requested written comments from the public on the 2009 proposed revised rule to revise critical habitat for the arroyo toad (74 FR 52612; October 13, 2009) during two comment periods. The first comment period opened with the publication of the proposed revised rule in the **Federal Register** on October 13, 2009 (74 FR 52612), and closed December 14, 2009. The second comment period opened with the publication of the notice of availability of the DEA in the **Federal Register** on June 29, 2010 (75 FR 37358) and closed on July 29, 2010. During both 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 comment periods, we requested all interested parties to submit comments or information related to the proposed revisions to critical habitat, including (but not limited to) the following: Unit boundaries, species occurrence information and distribution, land use designations that may affect critical habitat, potential economic effects of the proposed designation, benefits associated with critical habitat designation, areas proposed for designation and associated rationale for the non-inclusion or considered exclusion of these areas, and methods used to designate critical habitat.

During the first comment period, we received 50 comment letters directly addressing the proposed revision of critical habitat, 3 from peer reviewers, 2 from Federal agencies, 5 from Native American tribes, and 40 from public organizations or individuals. During the second comment period, we received 60 comments addressing the proposed critical habitat designation and the DEA. Of these latter comments, 8 were from Native American tribes and 52 were from public organization or individuals.

The open period for requesting public hearings on the revised proposed rule was from October 13, 2009, through November 27, 2009 (74 FR 52612). We did not receive any requests for a public hearing during either that period or the comment period that began on October 13, 2009, and ended December 14, 2009.

Peer Review

In accordance with our Policy for Peer Review in Endangered Species Act Activities, 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. The three peer reviewers that responded generally supported the proposed revised designation, and two of the three peer reviewers provided additional information, clarifications, and suggestions that we have incorporated as appropriate to improve this final revised critical habitat rule.

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 the arroyo toad. All comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review Comments

Comment 1: One peer reviewer affirmed that the background information, essentially the biology of the arroyo toad, was well-documented and prepared. Also, this peer reviewer agreed with our removal of specific areas within some units that do not represent suitable habitat based on additional information garnered since the last designation (such as in Unit 7: Upper Los Angeles River Basin and Unit 23: Whitewater River Basin).

A second peer reviewer noted that our use of the 82-ft (25-m) elevation/4,921-ft (1,500-m) lateral boundary for considerations of critical habitat is scientifically defensible and was unaware of any new information that would change those values. This peer reviewer also stated that the criteria used to identify critical habitat are well-supported and that they agreed with each of the proposed subunits and their boundaries in the Northern Recovery Unit, except subunit 7a, as explained in Comment 6 below. The peer reviewer went on to note all subunit boundaries in the proposed critical habitat rule correspond closely with the areas they know to be occupied by (or suitable for) arroyo toads.

Our Response: We appreciate the assessment of the proposed rule by the peer reviewers. We have identified all habitats that have the physical or biological features essential to the conservation of the species, which are the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species (*see* "Primary Constituent Elements" section above). We are designating approximately 98,366 acres (ac) (39,807 hectares (ha)) of this habitat in this final designation of critical habitat for the arroyo toad. Some areas meeting the definition of critical habitat have been excluded from this final revised critical habitat designation under section 4(b)(2) of the Act (*see* **EXCLUSIONS UNDER SECTION 4(B)(2)** section for a detailed discussion).

Comment 2: One peer reviewer recommended adding deep or persistent standing water during summer and fall as a threat to arroyo toads because such pools provide refuge and breeding habitat for nonnative predators such as crayfish, various warm-water fish species, African clawed frogs, and bullfrogs. The peer reviewer also presented the rationale that these predators cannot survive seasonal drying, and in most streams in most years, can be eliminated from large portions of streams used by arroyo toads. The peer reviewer pointed out that although these predator species will recolonize, there is a time lag correlated with distance and reduction in abundance that increases survivorship of tadpoles and adult toads.

Our Response: We considered the suggested edits and have made changes to the text as appropriate in the *Reasons for Decline and Threats* section above.

Comment 3: One peer reviewer asked for more elaboration on whether bullfrogs are the predators of greatest concern, rather than some fish species and adult clawed frogs that are very effective predators on arroyo toad tadpoles and, depending on streambed configuration and densities, could be tied to severe population effects on arroyo toads.

Our Response: After closer review of available information, we cannot say for certain that bullfrogs are a greater threat to arroyo toads than other exotic predator species. Bullfrogs and African clawed frogs are both considered serious threats to native amphibians and fishes, not only to the arroyo toad but to other federally endangered species. Bullfrogs are nonnative to California and because of their large size, aggressive behavior, generalized eating habits, and highly successful reproduction capabilities, competition and predation by bullfrogs are known to have a substantial influence on the presence and abundance of other amphibian species (Hecnar and M'Closkey 1997, pp.146–149). Bullfrogs have been documented preying on tadpoles, juveniles and adult arroyo toads. Where they co-occur with arroyo toads, bullfrogs are major predators and can essentially eliminate local populations of arroyo toads (Sweet 1992, p. 128). In a recent study, D'Amore *et al.* (2009, p. 2) examined habitat characteristics correlated with the presence of bullfrogs and California red-legged frogs (*Rana draytonii*). The study found that the invasive bullfrog out-competed the native amphibian in sites with hydrological alteration, landscape-level habitat fragmentation, and degradation of habitat. Unlike the native species, the bullfrog was able to tolerate and succeed in a wide range of conditions, including compromised water quality with higher levels of phosphate, ammonia, and salinity; higher water temperatures; and fragmented habitats due to agriculture, roads, and other human-caused alterations (D'Amore *et al.* 2009, p. 8).

According to Sweet (1992, p. 156), bullfrogs and introduced predatory fishes, such as green sunfish, largemouth bass (*Micropterous salmonides*), and black bullhead (*Ictalurus nebulosus*), are not well-adapted to be permanent residents in arroyo toad habitat because they die off during droughts and are washed out by even moderate flooding in portions of streams occupied by arroyo toads. However, they also thrive in reservoirs and deep pools formed below dams, enabling them to quickly recolonize downstream (Sweet 1992, p. 156).

The African clawed frog is an air-breathing frog that is almost completely aquatic, leaving water only to migrate (Peek 2010, p. 1). They inhabit stagnant grassland ponds as well as streams in arid and semi-arid regions. In California, African clawed frogs have established large and dense populations (Willigan 2001, p. 3). They have been found in San Diego, Orange, and Los Angeles Counties and may also be in San Bernardino, Santa Barbara, Riverside, Imperial, Kern, and Yolo Counties (CaliforniaHerps.com 2010, p. 1). In Ventura County, they are present in the Santa Clara River from the mouth of the river upstream 10.5 mi (17 km) to the Vern Freeman Diversion at Saticoy (Lafferty and Page 1985, p. 589). The species tolerates a wide variety of aquatic conditions, including extreme levels of acidity, low oxygen levels, and high water temperatures (Peek, 2010, p. 1). They are "sit and wait" predators,

similar to bullfrogs, in that they feed on whatever prey they encounter (Peek 2010, p. 2). Their diet includes a wide range of native aquatic invertebrates and vertebrates, including tadpoles and juvenile amphibians, young arroyo chub (*Gila orcutti*), the federally endangered unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) and tidewater goby (*Eucyclogobius newberryi*). In contrast to bullfrogs and predatory fishes that cannot survive when ponds dry up, African clawed frogs burrow into the mud (leaving a tunnel for air) and can remain dormant for 8 months to a year (Peek 2010, p. 1). There are currently no known efforts targeting control of African clawed frogs in Southern California (Peek 2010, p. 2). Based on this information, we will continue to regard introduced predatory fishes, bullfrogs, and African clawed frogs as constituting a severe threat to arroyo toad populations.

Comment 4: One peer reviewer criticized the approach of excluding identified habitats that are described as suitable and currently occupied by arroyo toads simply because these sites are otherwise afforded some degree of protection, be it via a military plan or a municipal watershed plan, or some form of multi-species habitat conservation plan. The peer reviewer argued that this approach weakens an otherwise strong and uniform plan that will designate and help protect habitat for this species.

Our Response: We appreciate the peer reviewer's concerns regarding adequate protection of arroyo toads under HCPs, INRMPs, or other conservation management plans. Conservation benefits provided by existing HCPs are not considered a benefit of exclusion because they would remain in place regardless of critical habitat designation; however, they do minimize the benefits of inclusion to the extent they are redundant with protection measures that would be provided by a critical habitat designation. Any remaining conservation benefits resulting from critical habitat inclusion are also limited to projects where a Federal nexus applies.

The benefits of excluding a particular area covered by an existing HCP are primarily based on the perception of negative impacts that a critical habitat designation could have on current and possible future partners.

Regarding arroyo toad habitat occurring on lands owned by the military, we do not have full discretion to designate critical habitat on the military bases. The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under section 670a of this title, if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation." We determined the INRMPs for Fort Hunter Liggett Military Reservation, Marine Corps Base Camp Pendleton, and Fallbrook Naval Weapons Base provide benefits to the arroyo toad; therefore, the Act mandates we exempt lands subject to the INRMPs for these military bases from critical habitat designation (*see* **Exemptions** section in the proposed revised rule (74 FR 52639; October 13, 2009) for details). In addition, although Remote Training Site Warner Springs and Camp Morena had not completed the INRMP process by the time this revised critical habitat rule was finalized, the Secretary is exercising his discretion to exclude lands within these military facilities under section 4(b)(2) of the Act for reasons of national security.

Comment 5: Regarding the *Special Management Considerations or Protection* section (74 FR 52619; October 13, 2009) in the proposed revised rule, one peer reviewer recommended adding fire suppression activities that are conducted without appropriate section 7 consultation or oversight to the list of threats for arroyo toads. The peer reviewer stated that during the Day Fire (2006) in the Hardluck reach of upper Piru Creek, and during the Zaca Fire (2007) in the Sisquoc River, Mono Creek, and Indian Creek staging areas, multiple "safety zones" and access tracks were bulldozed in highly sensitive arroyo toad habitat. The peer reviewer was concerned that some managers and contractors may not be supportive of endangered species restrictions and may *see* a "fire emergency" as license to actively destroy habitat and reopen closed roads. The peer reviewer contended that this is an emerging threat to arroyo toad habitat range-wide, while also being a broader issue requiring greater interagency coordination.

Our Response: We appreciate the peer reviewer's critical review and have added fire suppression activities to the "*Reasons for Decline and Threats*" section above.

Regarding the peer reviewer's concern about interagency cooperation on reducing fire suppression impacts to listed species, we should clarify that since 1995 we have considered wildfire to be an emergency action that falls under section 7 emergency consultation procedures (Service's 1995 Director's memorandum, "Endangered Species and Fire Policy Clarification"). For those wildfires that are unplanned, unwanted, and for which the objective is suppression, consultation is not necessary on the wildfire itself but has been required for the response actions that the action agency controls. Actions that may result in effects to listed species or critical habitat typically include activities such as backburning, fire-line construction, placement of fire camps, use of aircraft, water drops, and use of fire retardant. During the initial contact with the action agency, our role is to offer recommendations to minimize the effects of fire suppression activities to listed species or their critical habitat. After the fire is extinguished, the action agency conducts an assessment on the effects to the listed species or critical habitat caused by actions taken to respond to the emergency. If any listed species or critical habitat were adversely affected by the fire suppression activities, the action agency must initiate formal consultation. The purpose of formal consultation in such cases is to document the amount of any take that occurred, assess the effectiveness of implementation of protective measures proposed at the onset of the emergency, and to conclude the consultation. The project description provided by the action agency must include a description of the nature of the emergency and justification for using emergency procedures. We use this information to update the environmental baseline for the species or designated critical habitat and to account for losses caused by the fire and suppression activities.

We also assist our partners by providing technical assistance and processing section 7 consultations expeditiously on fuel-reduction projects, as fire emergency preparedness has a high priority within our consultation workload. A successful method for addressing fire issues with our partners has been early coordination. The earlier that we are aware of a potential fuel reduction project, the sooner we can assist in determining potential effects to listed species and work with staff to develop measures to minimize or eliminate these effects. This coordination facilitates

streamlined section 7 consultation under the Act.

Comment 6: Regarding the Northern Recovery Unit, one peer reviewer believes that Subunit 7a (lower Big Tujunga Creek proposed in 2004; *see* the **Summary of Changes from Previously Designated Critical Habitat** section of the proposed revised critical habitat rule (74 FR 52622; October 13, 2009)) may harbor suitable breeding habitat. The peer reviewer stated that the middle third of the canyon (from 1,476 to 1,804 ft-elevation (450 to 550 m) appeared to have suitable upland habitat based on their reconnaissance visits conducted during the non-breeding season in 2006. They stated the area also had distribution channels that provided suitable breeding microhabitat, despite evident hydrologic instability probably tied to release operations at Big Tujunga Dam.

Our Response: We appreciate the peer reviewer expressing their opinion that Subunit 7a may harbor suitable breeding habitat. We will consider this information during future recovery planning, including for potential future surveys or reintroduction to expand the number of existing populations. At this time, the best available information indicates this habitat is of questionable suitability, and is not currently occupied (Backlin *et al.* 2002, pp. 6, 12; Hitchcock *et al.* 2004, pp. 8–9, 29) or connected to habitat that is occupied. This location does not appear to be required to maintain the appropriate population structure across the species' range, or to provide connectivity between breeding sites, and it does not meet the definition of critical habitat for the arroyo toad.

Comment 7: One peer reviewer commented that the proposed rule provides considerably more detail about the circumstances of potential HCP exclusions than is usual, and that this is an excellent feature of the document. However, they noted that current coverages by the existing HCPs vary tremendously. According to the peer reviewer's calculations, lands within the proposed critical habitat boundaries that are currently protected are: 0 percent (Orange County Southern Subregion HCP), 0.06 percent (Western Riverside County MSHCP), 19 percent (San Diego MSCP), 51 percent (Orange County Central-Coastal NCCP/HCP), and 89 percent (Coachella Valley Multiple Species Habitat Conservation Plan (Coachella Valley MSHCP)). Based on these calculations, they do not see how the proposed exclusions can be defended.

Our Response: When we issue an incidental take permit for an HCP, we make a determination that it provides adequate protection for all covered species within the plan area boundary (including HCPs that address arroyo toad and its habitat). Subsequently, we monitor the HCP implementation and the covered species' status and could alter our determination if warranted. We have not determined any HCP that overlapped with arroyo toad proposed critical habitat designation to be improperly implemented or inadequately funded, including proposed Unit 23 within the Coachella Valley MSHCP boundaries, which is not included in this final rule (*see* Summary of Changes from the 2009 Proposed Rule To Revise Critical Habitat section). However, we will evaluate any information submitted to us and consider it in our ongoing assessments of all permitted HCPs, and continue to work with permittees to make sure HCPs are adequately funded. If during our ongoing assessments of permitted HCPs we determine they do not adequately protect a covered species, are not being properly implemented, or do not have adequate funding based on all available information, we will take appropriate action with regard to the HCP permit, and may again revise designated critical habitat, subject to available funding and other conservation priorities.

Public Comments

Comments Related to Critical Habitat, Primary Constituent Elements, and Methodology

Comment 8: One commenter argued that using unpublished data reports on the arroyo toad does not meet the requirement that the Service use the best available science.

Our Response: We understand the commenter's concern and have considered their argument; however, critical habitat designations use the best available commercial and scientific data to identify lands that we believe contain the physical and biological features essential to the conservation of the species. In designating critical habitat for the arroyo toad, we have used the best available scientific and commercial information, including results of numerous surveys, peer-reviewed literature, unpublished reports by scientists and biological consultants, potential habitat maps developed by the Forest Service, and expert opinion from biologists with extensive experience studying the arroyo toad. Further, information provided in comments on the proposed designation and the draft economic analysis were evaluated and taken into consideration in the development of this final designation, as appropriate. 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 Ventura Fish and Wildlife Office (*see* **ADDRESSES** section above).

Comment 9: One commenter stated that in describing how Federal rights interact with private rights, the Service should include a short segment on relevant provisions of California water law and how the law might impact private landowners or those who hold water rights under the proposed critical habitat designation. The commenter stated the Service should let current water users know if this critical habitat designation will affect the amount of water available for irrigation, recreational use, agricultural use, or other uses. The commenter further recommended we should state clearly in the rule whether private parties are permitted to change their current water uses, and if so, if there are any special limitations on new uses that would conflict with critical habitat goals.

Our Response: The detailed information requested by the commenter on California water law and individual water rights is beyond the scope of this critical habitat designation; therefore, we have not incorporated such information in this final rule.

Comment 10: One commenter urged us to identify "wildfire suppression activities" as a threat to arroyo toad populations. The commenter asserted that the Service has substantial evidence on file regarding bulldozing and vegetation clearing that occurred along Mono Creek during the 2007 Zaca Fire and that these fire suppression activities caused direct mortality to arroyo toads and adversely modified arroyo toad terrace habitat.

Our Response: We revised the text in the "*Reasons for Decline and Threats*" section above to include fire suppression activities as a threat to arroyo toads. Fire suppression activities include fire line construction; fire retardant and water drops; establishment of temporary fire camps, staging areas, parking sites, safety zones, and helipads; and post-fire rehabilitation. Safety zone and fire line construction often involves using bulldozers to clear vegetation down to bare soil. Parking areas and fire camps result in heavy trampling and soil compaction from equipment and vehicles. Fire camps and fire suppression activities may also tax nearby water supplies for putting out fires (as well as supplying fire camp).

Fire lines that are cut through riparian habitat can alter stream hydrology, destroy vegetation, kill or injure wildlife, and encourage the establishment of nonnative species. All of these activities can result in adverse effects to arroyo toads if they occur in or near occupied habitat.

In the case of the 2007 Zaca Fire, a number of broad fuelbreaks and safety zones were constructed using heavy equipment in the lower portions of Indian, Mono, and Agua Caliente Creeks, as well as elsewhere along Camuesa Road in the upper Santa Ynez River drainage. According to site visit observations (Sweet 2007a, pp. 1–9), several of the fuelbreaks and safety zones were constructed on stream terrace habitat in Indian and Mono Creeks, and severely degraded important upland habitat for arroyo toads. Arroyo toads in these areas have been intensively studied from 1989 to 1993 (*see* Sweet 1992, pp. 1–198; 1993, pp. 1–73) and monitored by Service personnel in most of the last 15 years (Sweet 2007a, p. 1). Sweet's studies indicate that subadult and adult arroyo toads make extensive use of the affected stream terraces, and typically in August and September a large proportion of the population would be resident in burrows on the terraces. Removal of all vegetation (including the root bases of woody shrubs) by bulldozing is very likely to have killed any toads that were dormant in burrows within the treated areas (Sweet 2007a, p. 1).

Sweet (2007a, p. 1) also reported that in addition to causing direct mortality, the bulldozing operations may have seriously degraded critical upland habitat by removing shade and the opportunity for toads to select microclimates based on soil temperature, moisture content, and ground cover; by creating extensive barriers to toad movement through the placement of large piles of woody debris between the creek bed and the terraces; and by providing ideal conditions for the terraces to become invaded by exotic weeds, in particular yellow star thistle. Sweet (2007a, p. 1) noted that arroyo toads are unable to inhabit terraces where star thistle is well-established.

Comment 11: One commenter stated that the proposed critical habitat rule for the arroyo toad is fatally flawed because it fails to consider all essential habitat for the toad, including areas previously designated as critical habitat, habitat recently known to be occupied, and habitat that may not currently be occupied but could provide an opportunity for species recovery. For example, the commenter believes that some key recovery metapopulations were not included in the proposed revised critical habitat designation, such as the San Dieguito River Basin, the Tijuana River, and the Pinto Wash Basin in the Jacumba (In-Ko-Pah) Mountains Wilderness Study Area. The commenter stated that the proposal provides no reasonable explanation for why these important areas previously identified as essential to the recovery of the arroyo toad are not discussed or included in the proposal.

Our Response: We believe we have considered all essential habitat for the arroyo toad and proposed to designate all habitat areas that meet the definition of critical habitat. Section 3(5)(C) of the Act states that except in particular circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species. It is not the intent of the Act to designate critical habitat for every population and every documented historical location of a species, nor is it the intent to designate all areas supporting metapopulations as critical habitat. We recognize that the designation of critical habitat may not include all of the habitat that may eventually be determined to be necessary for the recovery of the arroyo toad, and critical habitat designations do not signal that habitat outside the designation is unimportant or may not contribute to recovery of the species. Areas outside the final revised critical habitat designation will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act, regulatory protections afforded by the section 7(a)(2) jeopardy standard, and the prohibitions of section 9 of the Act. These protections and conservation tools will continue to contribute to recovery of this species. Section 4(b) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available. The best available data indicate that the Tijuana River no longer contains physical and biological features essential to the conservation of the species due to poor water quality. Additionally, the best available data indicate that the arroyo toad does not occur currently and most likely did not occur historically in the Pinto Wash Basin, and therefore we determined that this area is not essential for the conservation of the species. To provide clarification to the commenter regarding the San Dieguito River Basin, we included this area in Unit 16 in the proposed revised critical habitat designation and the final revised critical habitat designation. For a complete description of this unit, *see* **Final Revised Critical Habitat Designation** above.

Comment 12: Two commenters expressed concerns that the Service dismissed from the critical habitat designation areas of habitat that have been altered from the operation of upstream dams but are known in the past to have supported populations of arroyo toads, including Big Tujunga Dam in Unit 7, Sutherland Dam in Unit 16, Loveland Dam in Unit 18, and Morena Dam in Unit 19. While the first commenter recognized that the dams and the basins behind them pose a barrier to arroyo toad movement, they contended that proper management can restore habitat above and below these dams and basins and the Service should promote such restoration. The commenter recommended protecting and maintaining these important habitat areas and pressing for changes in flow regimes to support arroyo toads in these historical habitats.

The second commenter also argued that given the extremely harmful effect these dams have on arroyo toad habitat, they believed the Service should be more focused on stopping the 'taking' activity under section 9 of the Act (which prohibits any party, public or private, from 'harming' an animal listed as endangered) than on removing the area from critical habitat designation. Moreover, if these dams were built with Federal funds, the commenter believed the Service could prohibit harmful activities that jeopardize the species under section 7 of the Act (commenter cited *Tennessee Valley Authority* v. *Hill,* 437 U.S. 153 (1978)).

Our Response: In accordance with 50 CFR 424.12, we designated critical habitat on the basis of the best scientific data available, after taking into consideration the probable economic and other relevant impacts of making such a designation. In designating critical habitat, we considered those physical and biological features that are essential to the conservation of the arroyo toad and that may require special management considerations or protection. We are not designating lands above and below dams and basins if those areas do not contain the physical and biological features that are essential to the conservation of the arroyo toad. For more information on our criteria for designating critical habitat, please *see* the **Criteria Used to Identify Critical Habitat** section above.

The Service implements all sections of the Act, including section 4 (using the best scientific and commercial data available to determine if a species warrants Federal protection), section 7

(consulting on Federal actions that may affect critical habitat), and section 9 (prohibiting take of listed species). Each of these sections of the Act is governed by separate legal standards and requirements. Regarding the commenters' belief that the Service should be more focused on stopping the 'taking' activity than on removing the area from critical habitat designation, we appreciate any information provided by the public regarding a potential section 9 violation, and we will provide this information (as appropriate) to our law enforcement division. However, potential violations are not directly relevant to this final revised critical habitat designation.

Comment 13: Three commenters expressed general opposition to revising critical habitat because taxpayers will be unable to access public lands and will lose recreational opportunities on public lands.

Our Response: We acknowledge the commenters' concerns that revising critical habitat may result in certain habitat areas of the arroyo toad being restricted or closed to the public; however, an area we designate as critical habitat is not a refuge or sanctuary for the species but requires Federal agencies to ensure that their activities are not likely to destroy or adversely modify the areas designated. In addition, we believe that abundant recreational opportunities will remain and be available to the public on public lands, whether or not they are in arroyo toad critical habitat.

Comments Related to Site-Specific Areas

Comment 14: One commenter supported our inclusion of the Upper Santa Ynez River as well as its Mono Creek and Indian Creek tributaries in Unit 3. However, they believe that Agua Caliente Creek (another tributary of the Santa Ynez River) should also be included in the designation and that Manzana Creek and La Brea Creek (tributaries to the Sisquoc River) should be included in the critical habitat designation. The commenter asserts that these tributaries contain numerous breeding pools and juvenile and adult habitat crucial to the survival of the toad but are subject to impacts from high-density recreational activity, off-highway vehicle use, livestock grazing, and mining activities. The commenter contends that designation of these areas as critical habitat would help facilitate protection of existing populations and help provide suitable habitat for recovery efforts.

Our Response: Section 3(5)(A) of the Act defines critical habitat as: (1) The specific areas within the geographical area occupied by the species at the time it is listed on which are found those physical and biological features (a) essential to the conservation of the species, and (b) which may require special management considerations or protection, and (2) specific areas outside the geographical area occupied by the species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species. Not all areas that may contribute to a species' recovery are necessarily essential for conservation of the species. Although arroyo toads are not known to occupy Agua Caliente Creek and we did not include Agua Caliente Creek as part of this final revised critical habitat designation for the arroyo toad, we included the confluence of Agua Caliente Creek and the Santa Ynez River occupied by arroyo toads because we determined that the area meets the definition of critical habitat. Additionally, we do not have information suggesting that Manzana Creek or La Brea Creek are occupied by arroyo toads or that these tributaries contribute a substantial amount of habitat that would be used by arroyo toads. We did not include these tributaries in this final revised critical habitat designation because these areas do not meet the definition of critical habitat for the arroyo toad.

Comment 15: One commenter stated that the portion of Subunit 6a that encompasses approximately 7 mi (12 km) of Castaic Creek from Bear Canyon downstream to Castaic Lake should be excluded from the critical habitat designation. The commenter asserts that the Los Angeles County Department of Water and Power (LADWP) has secured appropriate permits from Federal and State agencies to clear accumulated materials and maintain three check-dams and debris basins on Castaic Creek. The commenter notes that these activities generally disturb the potential habitat for a number of years and the frequency and number of arroyo toads encountered has not dramatically increased; therefore, it is the opinion of the commenter that the area cannot be considered critical to the survival of the species.

Our Response: According to a 2009 translocation survey report conducted prior to maintenance activities for the Castaic Power Plant (Ramirez 2009, pp. 1–5), recent 2008 and 2009 spring season surveys in Basin 1 within and adjacent to the project impact areas indicate that all of Basin 1 represents high-quality arroyo toad foraging and/or aestivation habitat. According to Ramirez (2009, p. 2), the active channel which bisects Basin 1 represents high-quality arroyo toad breeding habitat (during the spring season/inundation period). Arroyo toad tadpoles, juveniles, and adults were documented within Basin 1 during 2008 and 2009 survey efforts conducted by the Forest Service (Ramirez 2009, p. 4). In addition, the western regions of Basins 2 and 3 represent high-quality arroyo toad foraging and/or aestivation habitat (Ramirez 2009, p. 3). Based on these and prior annual survey results, we believe it is essential habitat for the arroyo toad and meets the definition of critical habitat for the species.

Comment 16: Two commenters stated that land within Subunit 6b is already protected through conservation easements and other management measures and requested exclusion of Subunit 6b from the final revised critical habitat designation.

The first commenter stated that the Newhall Land and Farming Company (Newhall LFC) Natural River Management Plan (NRMP) includes numerous avoidance and mitigation measures that benefit arroyo toads. Areas protected by conservation easement under the NRMP encompass nearly half of the proposed critical habitat acreage in Subunit 6. Newhall LFC has also voluntarily placed conservation easements on approximately 48 ac (19 ha) of arroyo toad upland habitat within the Santa Clara River corridor near the U.S. Interstate 5 bridge. This acreage is in addition to the acreage already conserved under the NRMP and Valencia Commerce Center conservation easements, as well as the conservation easements proposed under the Newhall Ranch Specific Plan. The commenter also stated that the Newhall Ranch area is not truly essential to the conservation of the species due to limited arroyo toad observations, and would generate considerable costs for private landowners.

The second commenter stated that Subunit 6b is a highly developed area with concentrated urban and agricultural uses along the Santa Clara River corridor and its tributaries. Within the last 15 years, more than a dozen protocol surveys for arroyo toad have been performed in Subunit 6b and less than half of these surveys have identified any sign of arroyo toad presence. The commenter concluded that the few individuals found are not indicative of a robust population in the subunit, and therefore saw no reason for including Subunit 6b in the critical habitat designation and believed that the new regulatory burden resulting from the designation is not warranted.

Our Response: Although this area currently contains a small arroyo toad population, arroyo toad numbers likely were much larger in the past, and the number of arroyo toads has the potential to greatly increase once again throughout suitable habitat in this subunit. In the case of Newhall Ranch, we determined that approximately 1,003 ac (405 ha) of land in Subunit 6b owned by Newhall LFC meet the definition of critical habitat under the Act. In our exclusion analysis under Section 4(b)(2) of the Act, we evaluated the conservation strategy provided by Newhall LFC's Natural River Management Plan that includes the placement of a conservation easement on 541 ac (218 ha) on portions of Santa Clara River and Castaic Creek, of which 330 ac (133 ha) are within Subunit 6b. Existing conservation measures can minimize the benefits of inclusion, but the benefits of exclusion must outweigh the benefits of inclusion and a determination that exclusion would not result in the extinction of the species must be made before we can exclude lands from a final critical habitat designation. In making our final decision with regard to these lands, we considered several factors, including our relationships with the landowner and other stakeholders, conservation measures and management that are in place on these lands, and impacts to current and future partnerships. For the reasons discussed in the **Exclusions Under Section 4(b)(2) of the Act** section above, the Secretary is exercising his discretion to exclude the 330 ac (133 ha) of Newhall LFC lands that have been conveyed the CDFG in a conservation easement and are conserved and managed by the NRMP from this final revised critical habitat designation.

Comment 17: One commenter expressed concerns that the designation of critical habitat at the eastern end of Subunit 6b would impact operations and maintenance of several Metropolitan facilities (Foothill Feeder, Saugus Tunnel, and Santa Clara River Blow-Off Structure) and associated rights-of-way. The commenter stated we should revise the proposed designation to exclude approximately 243 acres of the eastern extension of critical habitat within Subunit 6b because the few arroyo toads present in this area do not represent a sustainable breeding population, and because operation of the Foothill Feeder, including discharge of water from the blow-off into the Santa Clara River, has minimal effects on this species.

Our Response: Exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of an area will not result in extinction of a species, which is a more complex analysis process than described by the comment above. When considering the benefits of exclusion, we consider a variety of factors, which in the case of Newhall Ranch, included but was not limited to whether the conservation easements had been conveyed to CDFG, and whether there was a reasonable expectation that conservation management strategies and actions in the NRMP will be implemented into the future (*see* **Exclusions Under Section 4(b)(2) of the Act** section above for further discussion). After considering the relevant impacts, we have not concluded that the benefits of exclusion outweigh the benefits of inclusion for the remaining 672 ac (272 ha) of Newhall LFC lands within Subunit 6b. Regarding the 243 ac (98 ha) in question, the commenter did not include a map with the comment but simply described the area as the eastern extension of Subunit 6b. We are unable to determine how much, if any, of the 243 ac (98 ha) are within the 330 ac (133 ha) conservation easement and therefore, whether any of the 243 ac (98 ha) would be within the area that is excluded in Subunit 6b. Additionally, lands covered by buildings, pavement, and other structures, such as the Metropolitan Water District's water management facilities (Foothill Feeder, Saugus Tunnel, and Santa Clara River Blow-Off Structure) would not be included in designated critical habitat because such lands do not support the physical and biological features essential to the conservation of the arroyo toad.

Comment 18: One commenter stated that tributary streams to the lower Big Tujunga Wash in Unit 7, such as Clear, Doan, Ebbets, Vogel, Grizzly, Bryant, Ybarra, and Fusier creeks, contain suitable arroyo toad habitat and are unaffected by "unseasonable" water releases from Big Tujunga Dam. The commenter believed these tributaries have not received adequate focused surveys for arroyo toads and that Big Tujunga Wash might be naturally repopulated with arroyo toad tadpoles from these tributaries, provided water releases from the dam are timed properly and removal of invasive species is successfully completed.

Our Response: We appreciate the commenter expressing their opinion that tributary streams to the lower Big Tujunga Wash may harbor suitable breeding habitat. We will consider this information during future recovery planning. At this time, the best available information indicates this habitat is of questionable suitability, is not currently occupied (Backlin *et al.* 2002, pp. 6, 12; Hitchcock *et al.* 2004, pp. 8–9, 29), is not connected to habitat that is occupied, and does not appear to be required to maintain the appropriate population structure across the species' range, or to provide connectivity between breeding sites; therefore, it does not meet the definition of arroyo toad critical habitat. Please see our response to Comment 6 above.

Comment 19: One commenter expressed concerns regarding potential impacts from the proposed revised critical habitat designation to existing and planned operations, maintenance, and protection activities associated with Metropolitan's Colorado River Aqueduct (CRA) right-of-way and appurtenant facilities in Unit 23. The commenter believes we should revise the proposed designation to exclude the area within the Metropolitan CRA for the following reasons: (1) The absence of arroyo toads and PCEs; (2) previous and ongoing disturbance; (3) significant maintenance operations impacts that could potentially occur; and (4) significant potential economic impacts.

Our Response: Following examination of data used to map Unit 23 in the proposed rule and discussions with species experts regarding identification records, we determined that these records are not arroyo toads and do not support a determination that this area meets the definition of critical habitat. Therefore, Unit 23 is not included in this final revised critical habitat rule (*see* the **Summary of Changes from the 2009 Proposed Rule To Revise Critical Habitat** section).

Comment 20: Two commenters commended the Service for proposing critical habitat for the arroyo toad on 7.3 mi (12 km) of Silverado Creek in Unit 8. They stated there are multiple factors threatening the arroyo toad, including habitat loss from urban development, predation by invasive species, and wildfire, that necessitate continued protection under the Act for the arroyo toad in the Santa Ana River Basin.

Our Response: We appreciate the support and look forward to working with the commenters in the future on continued conservation efforts for the arroyo toad.

Comment 21: One commenter stated several reasons why they believe that arroyo toad critical habitat rule improperly includes 43 ac (17 ha) of Pardee's Meadowwood project site north of State Route 76 along the San Luis Rey River in Unit 14. They stated that this area does not contain suitable breeding or aestivation habitat, and the recently completed widening and

realignment of State Route 76 together with the permanent arroyo toad barrier fence that will be installed on the southern edge of the right-of-way will restrict movements of toads from the San Luis Rey floodprone area north onto the Meadowwood project site.

Our Response: Upon further examination, we agree that areas within the Meadowwood project site and on Rosemary's Mountain to the east do not contain the physical and biological features essential to the conservation of the arroyo toad. Therefore, we removed these areas from critical habitat. We did not remove all lands north of State Route 76, as arroyo toads may access these other areas via Horse Ranch Creek, which flows underneath State Route 76 and connects with the San Luis Rey River.

Comment 22: One commenter requested that we reexamine the portion of Unit 16 where we proposed critical habitat along Guejito Creek on the Rancho Guejito property. The commenter stated that we included areas where the arroyo toad and the PCEs were absent, such as roads, developed areas, and particular natural features (i.e., steep slopes), or where the species status is uncertain. They recommended the following revisions: (1) Reduce potential adjacent upland habitat to 1,000 ft (305 m), (2) remove the lower 2.3 mi (10 km) reach of Guejito Creek that does not support breeding activities and lacks PCEs, and (3) remove the developed area north of San Pasqual Valley Road.

Our Response: After determining the criteria used to identify critical habitat, we made every effort to avoid developed areas such as lands covered by buildings, pavement, and other structures because such lands lack PCEs for the arroyo toad. We did not designate some areas if habitat was highly degraded and not likely restorable, nor did we designate areas that were highly fragmented or isolated. Such areas provide little or no long-term conservation value and do not support the physical and biological features essential to the conservation of the arroyo toad. Agricultural lands may have been included if they were within areas identified as necessary for dispersal or connectivity between known occurrences. However, we avoided known areas of intensive agriculture that lacked the PCEs for the arroyo toad. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of the revised critical habitat are excluded by text in this final rule.

We do not agree that upland habitat delineation should be limited to 1,000 ft (305 m) from the stream channel. Section 4(b) of the Act requires we designate critical habitat on the basis of the best scientific and commercial data available. We believe our proposed revisions to critical habitat were supported by sufficient data that represents the best available scientific information. To delineate upland habitat areas, we used a GIS-based modeling procedure. We determined that areas up to 82 ft (25 m) in elevation above the stream channel were most likely to contain the riparian and upland habitat elements essential to arroyo toads. We truncated the upland habitat delineation in flat areas at 4,921 ft (1,500 m) from the stream channel based on known movement of arroyo toads if the 82-ft (25-m) elevation limit had not yet been reached at that point. These model parameters are based on the best scientific data available and are the same as those used in the 2004 proposed critical habitat designation (69 FR 23254; April 28, 2004) (*see* the **Criteria Used to Identify Critical Habitat** section of this rule). Peer reviewers expressed support for our methods (*see* Comment 1 above).

We do not agree that the lower 2.3 mi (10 km) reach of Guejito Creek does not contain any PCEs. This area provides stream channels and adjacent upland habitat that allow movement to breeding pools, foraging areas, overwintering sites, and upstream and downstream dispersal for arroyo toad dispersal (PCE 4); therefore, it meets the definition of arroyo toad critical habitat.

Comment 23: Two commenters opposed the designation of critical habitat in Subunit 22a. One commenter argued that the Rancho Las Flores Planned Community (Rancho Las Flores) land in Summit Valley, San Bernardino County, which surrounds the West Fork of the Mojave River, should be excluded from the final revised critical habitat designation. The commenter pointed out that many acres in this area will be designated as open space and are protected by a conservation easement to protect the toad. They also stated that two biological opinions have been issued for projects in this area and a habitat conservation plan (HCP) is being developed to cover lands not addressed in the biological opinions. Additionally, they expressed concern that new housing, jobs, and other social benefits provided by the planned community may be jeopardized or constrained by a critical habitat designation.

A second commenter opposed the designation of critical habitat in Subunit 22a on Summit Valley Ranch in Summit Valley, San Bernardino County, which contains a portion of Little Horsethief Creek that runs through the southern portion of the site and is known to contain a breeding population of the arroyo toad. However, the commenter argued that the proposed critical habitat designation is too broad because it also includes Horsethief Creek and adjacent upland areas that do not contain breeding populations or breeding habitat for the arroyo toad. The commenter recommended revising the proposed designation at a minimum to exclude the western half of Horsethief Creek on Summit Valley Ranch and all land north of Highway 138. Additionally, the developed homesite, stock pond, and grazing land fronting the homesite should be excluded from critical habitat because they lack the primary constituent elements for arroyo toad habitat.

Our Response: Justification of exclusion from critical habitat is not based on conservation measures provided by an HCP or other management plan but on how the benefits of exclusion compare to the benefits of inclusion. After considering the relevant impacts, we did not conclude that the benefits of excluding lands owned by the Rancho Las Flores LLP in Subunit 22a outweigh the benefits of including those lands, and the Secretary is declining to exercise his discretion to exclude the Rancho Las Flores property. Additionally, we did not conclude that the benefits of excluding the Summit Valley Ranch property in Subunit 22a outweigh the benefits of including those lands, and the Secretary is declining to exercise his discretion to exclude the Summit Valley Ranch property. The portion of Little Horsethief Creek that runs through Summit Valley Ranch contains the physical and biological features essential to the conservation of the arroyo toad. The area supports important breeding habitat and a robust breeding population of arroyo toads. However, we agree that the lands north of State Route 138 do not contain the primary constituent elements of critical habitat, and we removed those lands from this final revised critical habitat designation (*see* the **Summary of Changes from the 2009 Proposed Rule to Revise Critical Habitat** section). The Secretary's determination not to exercise his discretion to exclude areas from critical habitat designation under section 4(b)(2) of the Act is committed to agency discretion by law and is not

reviewable (*see Home Builders Ass'n of N. Cal.* v. *U.S. Fish & Wildlife Serv.,* 2006 U.S. Dist. LEXIS 80255 at *66 (E.D. Cal. Nov. 2, 2006); *Cape Hatteras Access Preservation Alliance et al.* v. *U.S. Dept. of the Interior,* 2010 U.S. Dist. LEXIS 84515 ** 36–38 (D.D.C. August 17, 2010)).

Comments Related to HCPs, NCCP Program, and Section 7

Comment 24: One commenter stated that HCPs, which allow for the "take" of species, are not a substitute for the designation of critical habitat, which focuses on the recovery of species. The commenter argued that excluding areas of essential habitat from critical habitat designation that are covered or will be covered in the future by other management or conservation plans is unreasonable and unjustified. They were opposed to any exclusion of areas that may be covered by other management plans, specifically the Western Riverside County MSHCP, San Diego MSCP (and specifically the San Diego County Subarea Plan under the MSCP), Coachella Valley MSHCP, the Orange County Southern Subregion HCP, and Orange County Central-Coastal NCCP/HCP.

Our Response: With regard to the commenter's concerns that lands owned or under the jurisdiction of the Western Riverside County MSHCP, San Diego MSCP (and specifically the San Diego County Subarea Plan under the MSCP), the Orange County Southern Subregion HCP, and the Orange County Central-Coastal NCCP/HCP should not be excluded because these HCPs may not adequately provide for the recovery of the species, the adequacy of an HCP to provide for the survival and recovery of the species is not the basis for an exclusion determination. Exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of an area will not result in extinction of a species. Conservation benefits provided by existing HCPs are not considered a benefit of exclusion because they would remain in place regardless of critical habitat designation; however, they do minimize the benefits of inclusion to the extent that they are redundant with protection measures that would be provided by a critical habitat designation. Any remaining conservation benefits resulting from critical habitat inclusion are also limited to projects where a Federal nexus applies. As described in the **Exclusions Under Section 4(b)(2) of the Act** section above, the likelihood of a project with a Federal nexus occurring on lands covered by the Western Riverside County MSHCP, San Diego MSCP (and specifically the San Diego County Subarea Plan under the MSCP), the Orange County Southern Subregion HCP, and the Orange County Central-Coastal NCCP/HCP proposed revised critical habitat is small in areas that are currently conserved; therefore, the benefits of inclusion are relatively minor in these areas. Additionally, we made the determination that lands within the jurisdiction of the Coachella Valley MSHCP do not meet the definition of critical habitat; therefore, this HCP is not addressed in this final rule (*see* **Summary of Changes from the 2009 Proposed Rule to Revise Critical Habitat** section).

When we issued the incidental take permits for these regional HCPs, we believed they would address conservation issues from a coordinated, integrated perspective rather than a piecemeal, project-by-project approach (as would occur under sections 7 and 9 of the Act and smaller HCPs), and provide adequate protection for the arroyo toad and its habitat within plan area boundaries. We believe these five regional HCPs (including the Coachella Valley MSHCP, which addresses arroyo toad management although critical habitat does not occur within the boundaries of that plan; *see* **Summary of Changes from the 2009 Proposed Rule to Revise Critical Habitat** section) incorporate ongoing management and protection that will benefit the long-term conservation of arroyo toads and their habitat. We continue to monitor their implementation and the species' status and have not altered our determination. We have not determined the Western Riverside County MSHCP, San Diego MSCP (and specifically the San Diego County Subarea Plan under the MSCP), the Orange County Southern Subregion HCP, and Orange County Central-Coastal NCCP/HCP are being improperly implemented, nor that a return to the project-by-project approach as otherwise occurs under the Act would achieve greater long-term conservation than continued protection under these regional HCPs. Nonetheless, the Secretary is declining to exercise his discretion to exclude lands owned by or under the jurisdiction of the permittees of the San Diego MSCP. The Secretary's determination not to exercise his discretion to exclude areas from critical habitat designation under section 4(b)(2) of the Act is committed to agency discretion by law and is not reviewable (*see Home Builders Ass'n of N. Cal.* v. *U.S. Fish & Wildlife Serv.,* 2006 U.S. Dist. LEXIS 80255 at *66 (E.D. Cal. Nov. 2, 2006); *Cape Hatteras Access Preservation Alliance et al.* v. *U.S. Dept. of the Interior,* 2010 U.S. Dist. LEXIS 84515 ** 36–38 (D.D.C. August 17, 2010)). The Secretary is exercising his discretion to exclude a portion of lands covered by the Western Riverside County MSHCP, Orange County Southern Subregion HCP, and Orange County Central-Coastal NCCP/HCP. Please refer to the **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts** section for further discussion of these areas.

Comment 25: One commenter stated that most of the lands proposed for arroyo toad revised critical habitat designation in San Diego County (County) are unincorporated and therefore under the jurisdiction of the County. These areas are subject to the County's ongoing regional habitat conservation planning efforts under the Multiple Species Conservation Program (MSCP). While the MSCP for South San Diego County has been adopted and the Service has issued the incidental take permit, the MSCP for North San Diego County will not be finalized until 2011, and the MSCP for East San Diego County is still in development. Regardless, the commenter stated that the Service should exclude all arroyo toad critical habitat units and subunits within all three MSCP areas from the final revised critical habitat designation, based on the following rationale: (1) HCPs incorporate management measures and protection for conserved lands designed to restore and enhance their value as habitat; (2) costs would be increased and projects delayed by section 7 consultations, prompted primarily by the presence of critical habitat covering activities already covered by HCPs; (3) designating critical habitat over areas already covered by HCPs implies that the HCPs are not providing adequate protection for the covered species, and could provide an avenue for legal challenges against HCPs themselves; and (4) regional HCPs take many years to develop and require substantial investment of time and resources by Federal, State, and local governments; private landowners; and conservation organizations. The commenter stated that the resulting plan provides a preserve system and management measures that protect covered species and their habitat over the long term and provides the opportunity to implement measures to support the recovery of listed species on a broad and meaningful scale.

Our Response: Justification of exclusion from critical habitat is not based on conservation measures provided by an HCP but on how the benefits of exclusion compare to the

benefits of inclusion. After considering the relevant impacts, we did not conclude that the benefits of excluding lands covered by the County of San Diego Subarea Plan under the MSCP outweigh the benefits of including those lands (Subunits 16a, 17b, 17d, 18a, and 19b), and the Secretary is declining to exercise his discretion to exclude lands in these areas. Additionally, the North County MSCP and the East County MSCP under which conservation measures will be assured future implementation are not yet finalized; therefore, we have not concluded that the benefits of exclusion outweigh the benefits of inclusion. There are potential significant benefits to the conservation of arroyo toad that may come from the designation of critical habitat on these lands (Subunits 11b, 12a, 12b, 13a, 13b, 16a, 16d, 17a, 17b, 17d, 18a, 19a, 19b, 19c, 19d, 19e, and Units 14 and 15). The Secretary's determination not to exercise his discretion to exclude areas from critical habitat designation under section 4(b)(2) of the Act is committed to agency discretion by law and is not reviewable (*see Home Builders Ass'n of N. Cal.* v. *U.S. Fish & Wildlife Serv.,* 2006 U.S. Dist. LEXIS 80255 at *66 (E.D. Cal. Nov. 2, 2006); *Cape Hatteras Access Preservation Alliance et al.* v. *U.S. Dept. of the Interior,* 2010 U.S. Dist. LEXIS 84515 ** 36–38 (D.D.C. August 17, 2010)).

Comment 26: Two commenters argued for the exclusion of lands in Units 9 and 13 from the final revised critical habitat designation that are owned by or under the jurisdiction of the Western Riverside County MSHCP permittees because the HCP already adequately provides for the survival and recovery of the species, and under section 6.9 of the HCP and section 14.10 of the associated Implementing Agreement, no critical habitat should be designated in the HCP Plan Area. The commenters argued that designating critical habitat within the Western Riverside County MSHCP Plan boundaries would create duplicative regulatory efforts without any additional benefits to the species and would ultimately dissuade future habitat conservation plan creation. The commenters argued further that federally owned lands, not just privately owned lands, in each unit within the MSHCP should also be excluded because the Implementing Agreement has already taken Federal lands into account and therefore adequately provides for the survival and recovery of the species on these lands.

Our Response: With regard to the commenters' assertions that lands owned by or under the jurisdiction of the Western Riverside County MSHCP should be excluded because the HCP adequately provides for the survival and recovery of the species, the adequacy of an HCP to provide for the survival and recovery of the species is not the basis for an exclusion determination. Exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of an area will not result in extinction of a species, which is a more complex analysis process than described by the comments above. We found the benefits of exclusion of lands covered by the Western Riverside County MSHCP that are conserved and managed are greater than the benefits of including these lands in the critical habitat designation in Units 9 and 13 (*see* the **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts**—"*Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP)*" section above for a detailed discussion).

With regard to the commenters' belief that critical habitat should not be designated in the Western Riverside County MSHCP Plan Area based on language in section 6.9 of the HCP and the associated Implementing Agreement, section 14.10 of the Implementing Agreement does not preclude critical habitat designation within the plan area (Dudek and Associates 2003, pp. 51–52). Consistent with our commitment under the Implementing Agreement, and after public review and comment on the proposed revision to critical habitat for the arroyo toad, we determined through our analysis under section 4(b)(2) of the Act that the maximum extent of allowable exclusions under the Western Riverside County MSHCP was limited to the exclusion of conserved and managed lands owned by or under the jurisdiction of the permittees of the Western Riverside County MSHCP in Units 9 and 13 (*see* the **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts**—"*Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP)*" section above for a detailed discussion).

Comment 27: One commenter believed the Service should exclude the entire 2,182 ac (883 ha) of proposed Unit 8 from the final revised critical habitat because potential risks to the arroyo toad have been sufficiently reduced or even eliminated through participation in the Orange County Central-Coastal Natural Community Conservation Plan/Habitat Conservation Plan (Orange County Central-Coastal NCCP/HCP) and the North Ranch Policy Plan Area (NRPPA). The commenter further stated that although approximately 9 percent (identified by the commenter as land encompassing Santiago Creek from the confluence with Silverado Creek downstream to Irvine Lake) is not covered by either program, this land is unoccupied by arroyo toads and therefore is not essential to conservation of this species. Finally, the commenter identified during the second comment period that the area considered for exclusion within Unit 8 was changed from 1,497 ac (606 ha) in the 2009 proposed revised rule (74 FR 52630, 52643; October 13, 2009) to 647 ac (262 ha) in the 2010 revisions to the proposed rule that were outlined in the document making available the DEA (75 FR 37365; June 29, 2010). The commenter stated that this 850-ac (344-ha) reduction is not explained, nor is it clear how this amount was determined or where it lies within the unit.

Our Response: With regard to the commenter's belief that lands owned or under the jurisdiction of the Orange County Central-Coastal NCCP/HCP should be excluded because the HCP adequately provides for the survival and recovery of the species, the adequacy of an HCP to provide for the survival and recovery of the species is not the basis for an exclusion determination. Exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of an area will not result in extinction of a species, which is a more complex analysis process than described by the comments above. We found the benefits of exclusion of conserved and managed lands covered by the Orange County Central-Coastal NCCP/HCP and NRPPA to be greater than the minimal benefits of including these lands in the critical habitat designation in Unit 8 (*see* **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts**—"*Orange County Central-Coastal Subregional Habitat Conservation Plan/Natural Community Conservation Plan (Orange County Central–Coastal NCCP/HCP)*" section above for a detailed discussion).

Based on the commenter's concerns with regard to the Santiago Creek area, we reevaluated survey data in our files from 2005 (GLA 2005). We agree that approximately 179 ac (72 ha) specifically encompassing Santiago Creek from just below the confluence with Black Star Creek downstream to Irvine Lake do not contain the PCEs, and therefore we removed this area from this final revised critical habitat designation. We determined that this area is unsuitable for arroyo toads

because as water from Irvine Lake frequently backs up into this area and creates conditions favorable for arroyo toad predators. High numbers and distribution of these predators, such as bullfrog, crayfish (*Procambarus clarkia*), and prickly sculpin (*Cottus asper*), were detected at this location (GLA 2005). With regard to the remaining portion of lands in Unit 8 encompassing Black Star Creek and Santiago Creek upstream of the confluence with Black Star Creek, the best available scientific information indicates that these areas contain the physical and biological features essential to conservation of this species. However, some of these areas are covered by the Orange County Central-Coastal NCCP/HCP and NRPPA, and we determined that the benefits of exclusion outweigh the benefits of inclusion in this final revised critical habitat designation in these areas. Therefore, the Secretary is exercising his discretion to exclude these areas from this final rule.

Regarding the 9 percent, now 4 percent, of lands covered by the Orange County Central-Coastal NCCP/HCP and NRPPA that are not conserved, we do not agree that these areas do not meet the definition of critical habitat. We also do not agree that the remaining areas of Unit 8 (i.e., 685 ac (277 ha) of Forest Service land) not covered by the HCP do not meet the definition of critical habitat, and the Secretary is not exercising his discretion to exclude these areas from this final revised critical habitat designation. The Secretary's determination not to exercise his discretion to exclude areas from critical habitat designation under section 4(b)(2) of the Act is committed to agency discretion by law and is not reviewable (*see Home Builders Ass'n of N. Cal.* v. *U.S. Fish & Wildlife Serv.,* 2006 U.S. Dist. LEXIS 80255 at *66 (E.D. Cal. Nov. 2, 2006); *Cape Hatteras Access Preservation Alliance et al.* v. *U.S. Dept. of the Interior,* 2010 U.S. Dist. LEXIS 84515 ** 36–38 (D.D.C. August 17, 2010)).

With regard to the commenter's concern that the area considered for exclusion was reduced by 850-ac (344-ha) in the document making available the DEA (75 FR 37365; June 29, 2010), we apologize for this confusion, as the acreage printed in the table was in error. The area considered for exclusion as noticed to the public in the 2009 proposed revised rule (74 FR 52630, 52643; October 13, 2009) is the correct acreage considered for exclusion under section 4(b)(2) of the Act. Additionally (as noted above), we found the benefits of exclusion of lands covered by the NRPPA to be greater than the minimal benefits of including these lands in the critical habitat designation in Unit 8 (*see* **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts—** "Orange County Central-Coastal Subregional Habitat Conservation Plan/ Natural Community Conservation Plan (Orange County Central-Coastal NCCP/ HCP)" section above for a detailed discussion).

Comment 28: One commenter stated that lands owned by the Sweetwater Authority, Helix Water District, and Padre Dam Municipal Water District in San Diego County (portions of Subunits 18a and 18c) should be excluded from designated critical habitat for the arroyo toad because existing management and protection measures adequately conserve the habitat and those measures are likely to continue in the foreseeable future under the pending draft Joint Water Agencies Natural Community Conservation Plan/Habitat Conservation Plan (JWA NCCP/HCP) anticipated to be completed within the next year.

Our Response: Exclusions under section 4(b)(2) of the Act are based on whether the benefits of exclusion outweigh the benefits of inclusion. Conservation benefits provided by existing HCPs are not considered a benefit of exclusion because they would remain in place regardless of critical habitat designation; however, they do minimize the benefits of inclusion to the extent that they are redundant with protection measures that would be provided by a critical habitat designation. We reviewed the draft JWA NCCP/HCP referenced by the commenter and determined that the existing management and protection measures do provide beneficial conservation measures for the arroyo toad that are redundant with conservation measures provided by critical habitat designation, and therefore would reduce the benefits of inclusion in critical habitat if implementation were assured into the future. When considering the benefits of exclusion, we consider a variety of factors, including, but not limited to, whether the plan is finalized (i.e., approved by all parties) and whether there is a reasonable expectation that conservation management strategies and actions will be implemented into the future (*see* **Exclusions Under Section 4(b)(2) of the Act** section above for further discussion). After considering the relevant impacts, we have not concluded that the benefits of exclusion outweigh the benefits of inclusion for lands owned by the Sweetwater Authority, Helix Water District, and Padre Dam Municipal Water District, and the Secretary is not exercising his discretion to exclude these areas from arroyo toad critical habitat designation. The Secretary's determination not to exercise his discretion to exclude areas from critical habitat designation under section 4(b)(2) of the Act is committed to agency discretion by law and is not reviewable (*see Home Builders Ass'n of N. Cal.* v. *U.S. Fish & Wildlife Serv.,* 2006 U.S. Dist. LEXIS 80255 at *66 (E.D. Cal. Nov. 2, 2006); *Cape Hatteras Access Preservation Alliance et al.* v. *U.S. Dept. of the Interior,* 2010 U.S. Dist. LEXIS 84515 ** 36–38 (D.D.C. August 17, 2010)).

Comment 29: One commenter requested that the Southern Subregion NCCP/HCP (referred to as the Orange County Southern Subregion HCP in the proposed revised critical habitat designation and this final rule) be excluded from the final revised critical habitat designation for the following reasons: (1) The plan benefits the arroyo toad through conservation of breeding locations, protection of upland foraging and aestivation habitats, and management actions; (2) the plan provides assurances that the conservation strategies and actions will be implemented and effective; and (3) the Service has stated its intention to exclude habitat within this plan area from any revision to an existing critical habitat designation as long as the Conservation Strategy is being properly implemented.

Our Response: The Secretary is exercising his discretion to exclude certain lands within the Orange County Southern Subregion HCP plan area from this final revised critical habitat designation (*see* "*Orange County Southern Subregion Habitat Conservation Plan (Orange County Southern Subregion HCP)*" section under the **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts** section above). With regard to the commenter's assertions that lands owned by or under the jurisdiction of the Orange County Southern Subregion HCP should be excluded because the HCP adequately provides for the conservation of the species, the adequacy of an HCP to provide for the conservation of the species is not the basis for an exclusion determination. Exclusion is based on our determination that the benefits of exclusion outweigh the benefits of inclusion, and that exclusion of an area will not result in extinction of a species. We found the benefits of exclusion of lands covered by the Orange County Southern Subregion HCP to be greater than the minimal benefits of including these lands in the critical habitat designation in Subunits 10a, 10b, and 11a (*see* "*Orange County Southern Subregion*

Habitat Conservation Plan (Orange County Southern Subregion HCP)" section under the **Exclusions Under Section 4(b)(2) of the Act—Other Relevant Impacts** section above for a detailed discussion).

Comments Related to Military Lands

Comment 30: The U.S. Navy stated that their facility, Camp Morena, lacks PCEs for arroyo toad and that no potentially suitable breeding habitat occurs on the property. Although potential upland foraging habitat occurs on the property, the U.S. Navy stated that the suitability of the habitat is low based on current and past human use of the site, compacted soils throughout the site, and low percentage of sand in the soil.

Our Response: The Navy's statement was based on a draft 2009 biological inventory that was not available for our review. Through our original analysis, we believe that this area in question contains the PCEs and provides suitable habitat for arroyo toad. Without additional data, we do not have a basis to reevaluate the area. Regardless, we determined that the benefits of exclusion outweigh the benefits of inclusion under section 4(b)(2) of the Act for lands that overlap with Camp Morena (Unit 19); therefore, these lands are not included in this critical habitat designation (*see* **Exclusions Under Section 4(b)(2) of the Act—Impacts to National Security** section).

Comment 31: Two Federal agencies commented on the relationship of critical habitat designation for the arroyo toad and military lands. The first commenter, the U.S. Navy, agreed with the exemption of the Fallbrook Naval Weapons Station from critical habitat designation based on the existing 2006 Service approved INRMP, which provides conservation benefits to the arroyo toad. The Navy also believed additional Navy facilities, the Remote Training Site Warner Springs and Camp Morena, should be excluded from the final revised critical habitat designation. They contended that additional regulatory requirements imposed by the critical habitat designation for the arroyo toad may: (1) Restrict or prohibit implementation of required training (such as mission planning capabilities, more frequent training, and construction of new facilities); (2) result in unacceptable delays to construction of facilities needed to support mission critical training (such as unique warfare skills available to soldiers at Remote Training Site Warner Springs and Camp Morena); and (3) cause delays in construction of facilities or training initiatives that support operational readiness, which has a serious impact on personnel readiness and national security, resulting in lower numbers of qualified personnel or skills needed for the Navy's national security mission.

The Navy stated that since the Remote Training Site Warner Springs and Camp Morena are part of Naval Base Coronado, they are included in a 2009 update to the Naval Base Coronado INRMP, which identifies measures that provide conservation benefits to the species at Remote Training Site Warner Springs. The update to the INRMP was based on focused surveys for the arroyo toad that were conducted in 2006 to support the Biological Assessment for Expansion and Realignment of Training Areas at Remote Training Site Warner Springs (March 2008). The INRMP revision, expected to be completed in 2011, will incorporate all coordinated updates and conservation protocols established by new biological opinions for species found on Naval Base Coronado, and it will address natural resource management of the newly acquired Camp Morena property.

The second commenter, Cleveland National Forest, agreed with the U.S. Navy that critical habitat for the arroyo toad should not be proposed along the upper San Luis River at the Remote Training Site Warner Springs in Unit 15 because it is covered by the Naval Base Coronado INRMP; it serves as the west coast's principal venue for SERE (Survival, Evasion, Resistance, and Escape) training, and the critical habitat designation would result in unacceptable delays to future proposed training activities or construction of facilities needed to support mission critical training.

Our Response: In our section 4(b)(2) exclusion analyses for Remote Training Site Warner Springs and Camp Morena, we considered several factors including impacts to national security associated with a critical habitat designation as described by the Navy, existing consultations, and conservation measures in place at Naval Base Coronado facilities that benefit the arroyo toad. As stated in section 4(b)(2) of the Act, the Secretary may exclude any portion of such an area from the critical habitat if the benefits of such exclusion outweigh the benefits of specifying the area as part of the critical habitat. The Secretary shall not exclude any such area if, based on the best scientific and commercial data available, he determines that the failure to designate that area as critical habitat will result in the extinction of the species concerned. The Secretary is exercising his discretion to exclude all training lands associated with Remote Training Site Warner Springs and Camp Morena from this final revised critical habitat designation based on impacts to national security (*see* **Exclusions Under Section 4(b)(2) of the Act—Impacts to National Security** section above). We appreciate all of the Navy's efforts to conserve the arroyo toad and its habitat on its lands and will continue to work cooperatively with them in the future for resource conservation.

Comments Related to U.S. Forest Service Lands on the Angeles National Forest, Cleveland National Forest, Los Padres National Forest, and San Bernardino National Forest

Comment 32: Two national forests agreed with the proposed revised critical habitat designation:

(1) Angeles National Forest agreed with our description of the biology, habitat, and population status of the arroyo toad; and

(2) Los Padres National Forest agreed with the proposed designation of critical habitat in Unit 3, Subunit 5a, and Subunit 5b because all of these areas are occupied by arroyo toads and contain essential habitat.

Our Response: We appreciate the support and look forward to working with the U.S. Forest Service in the future on continued conservation efforts for the arroyo toad.

Comment 33: Two national forests stated that the proposed revised critical habitat designation will not negatively impact current National Forest Land Management planning:

(1) Angeles National Forest stated that the critical habitat designation would not serve as an impediment for completion of the Tehachapi Renewable Transmission Project or be cost prohibitive, although some design modification of the project may occur to reduce construction impacts to arroyo toad designated critical habitat; and

(2) Los Padres National Forest stated that redesignating Unit 3, Subunit 5a, and Subunit 5b will not likely require a change of current management actions because the Los Padres National Forest considers protection of the arroyo toad and its habitat an important part of their land management plan.

Our Response: Again, we appreciate the support and look forward to working with the U.S. Forest Service in the future on continued conservation efforts for the arroyo toad.

Comment 34: Two national forests provided information on threats to the arroyo toad:

(1) Angeles National Forest stated that the Big Tujunga locality of arroyo toads (Unit 7) is the only one where public access is not restricted, is in close

proximity to a regularly traveled road that can be easily accessed by visitors, and therefore is at an elevated risk of impacts from human activities;

(2) Angeles National Forest provided updated information on effects of the Station Fire to Unit 7, Subunit 6a, and Unit 21; and

(3) Cleveland National Forest stated that regarding Subunits 19c and 19d, there is no authorized grazing along the portions of Pine Creek within proposed critical habitat, which has been in effect since 1998 for the lower portion of Pine Creek (south of Old Highway 80), and since 2007 for the upper portion of Pine Creek (north of Old Highway 80).

Our Response: We appreciate these edit recommendations and have made changes to the unit descriptions in this final rule (*see* the **Final Revised Critical Habitat Designation** section above).

Comment 35: Three national forests recommended adding or removing areas to the proposed revised critical habitat designation:

(1) Angeles National Forest recommended re-examining areas near Lynx Gulch Road for consideration as critical habitat because there are verified records of arroyo toads from this area;

(2) Cleveland National Forest recommended adding San Mateo Creek between Camp Pendleton and Tenaja Falls in Subunit 11b to the critical habitat designation because the entire stretch is occupied by arroyo toads;

(3) San Bernardino National Forest recommended including Little Horsethief Canyon, Horsethief Canyon, the Cleghorn arm of Silverwood Lake, Kinely Creek, Mojave River, and Deep Creek for at least 0.5 mi (km) of the Mojave River below the Mojave spillway in Unit 22;

(4) San Bernardino National Forest recommended re-examining Cucamonga Canyon for consideration as critical habitat because there are verified records of arroyo toads from this area within the last decade; and

(5) Cleveland National Forest recommended removing the following areas because they are headwaters that lack the PCEs of critical habitat for the arroyo toad: Upper San Juan Creek from just upstream of Lower San Juan Picnic Area to the headwaters (Subunit 10a); Agua Caliente Creek (Unit 15); Temecula Creek from the intersection with Chihuahua to headwaters (Subunit 13b); Viejas Creek from just above the confluence with Sweetwater Creek to headwaters (Subunit 18a); and the upper portion of Horsethief Canyon (Subunit 19d).

Our Response: We considered the suggested changes to this critical habitat designation. However, we did not receive enough information to support revisions to our critical habitat designation in most of these areas. Regarding the suggestion to add San Mateo Creek between MCB Camp Pendleton and Tenaja Falls in Subunit 11b to the critical habitat designation, we reevaluated survey data in our files and included this area in the proposed revised critical habitat as noticed in the document making available the DEA (75 FR 37358; June 29, 2010). For more information *see* the **Summary of Changes From the 2009 Proposed Rule to Revise Critical Habitat** section.

Comment 36: Cleveland National Forest recommended removing the Oak Grove administrative site in Subunit 13b from the final revised critical habitat designation because most of the site is developed and heavily disturbed over many years due to operation of the fire station and campground.

Our Response: After determining the criteria used to identify critical habitat, we made every effort to avoid developed areas such as lands covered by buildings, pavement, and other structures because such lands lack PCEs for the arroyo toad. We did not designate some areas if habitat was highly degraded and not likely restorable, nor did we designate areas that were highly fragmented or isolated. Such areas provide little or no long-term conservation value and do not support the physical and biological features essential to the conservation of the arroyo toad. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of the final revised critical habitat (including the Oak Grove administrative site in Subunit 13b) are excluded by text in this rule and are not considered part of this final revised critical habitat designation.

Comment 37: San Bernardino National Forest recommended including all sections of "currently excluded essential habitat" in the final revised critical habitat designation for Subunit 9a that fall within the national forest boundary along the South Fork San Jacinto River. Although none of these sections are known to be occupied by arroyo toads, the area contains suitable habitat for the species and should be managed as critical habitat, especially during times of climate change. San Bernardino National Forest further recommended including the area known as the "Hixon trail area" in Subunit 9b because it has the largest and only population of arroyo toads on the San Jacinto Ranger District.

Our Response: These areas were included in our proposed revised critical habitat rule (74 FR 52612; October 13, 2009) and are included in this final revised critical habitat designation.

Comment 38: San Bernardino National Forest recommended re-examining the species identification for Unit 23.

Our Response: Following examination of data used to map Unit 23 in the proposed rule and discussions with species experts regarding identification records, we determined that these records are not arroyo toads and do not support a determination that this area meets the definition of critical habitat. Therefore, Unit 23 is not included in this final revised critical habitat rule (*see* the **Summary of Changes From the 2009 Proposed Rule to Revise Critical Habitat** section).

Comments Related to Tribal Lands

Comment 39: The Barona Group of Capitan Grande Band of Mission Indians, Rincon Band of Luiseño Mission Indians, and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians stated that designation of critical habitat on reservation land undermines tribal sovereign governmental authority and interferes with the cooperative government-to-government trust relationship between the tribes and the United States.

Our Response: We evaluated the benefits of exclusion of all reservation lands from this final revised critical habitat designation. Maintaining and fostering partnerships and good working relationships with tribes are benefits of exclusion and are supported by Secretarial Order 3206. Consistent with Secretarial Order 3206 and Executive Order 13175, we also believe tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. We found the benefits of exclusion of tribal lands to be greater than the benefits of including these lands in the critical habitat designation in Units 14, 16, 17, and 18 (*see* **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section above for a detailed discussion). Therefore, the Secretary is exercising his discretion to exclude all tribal reservation lands from this final revised critical habitat designation. We recognize and value our relationships with the tribes and will continue to work cooperatively with them to conserve federally listed species on their lands.

Comment 40: The Pala Band of Luiseño Mission Indians and Sycuan Band of the Kumeyaay Nation stated that critical habitat designation—for the protection and management of a species that became scarce due to activities off of a reservation—is unfair and inequitable on a reservation. They stated that designation of critical habitat on a reservation creates a disproportionate economic and cultural impact on Native Americans because, unlike other lands within the region, opportunities for relocation of projects are limited on a reservation. Additionally, the Pala Band of Luiseño Mission Indians, Rincon Band of Luiseño Mission Indians, Sycuan Band of the Kumeyaay Nation, and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians stated that designation of critical habitat on their lands would cause economic hardship due to increased costs and delays associated with section 7 consultations. Much of the activities on reservations occur with Federal funds, grants, or oversight; therefore, all these activities with Federal involvement in areas designated as critical habitat would require consultation under section 7 of the Act.

Our Response: Consistent with Secretarial Order 3206, we recognize that we must carry out our responsibilities under the Act in a manner that harmonizes these duties with the Federal trust responsibility to the tribes and tribal sovereignty while striving to ensure that Indian tribes do not bear a disproportionate burden for the conservation of species. Consistent with the Act and Secretarial Order 3206, we also evaluated the economic impact of critical habitat designation on tribes. The final economic analysis (FEA) indicated the proposed designation would result in total costs of future project modifications (including on-site set aside, "other" project modifications and administrative costs) associated with real estate development by tribes to be approximately $21 million under the baseline scenario and $119 million under the incremental scenario over the next 25 years.

In our analysis under section 4(b)(2) of the Act, we considered benefits of preserving the partnerships we have developed with the tribes, reinforcing those relationships with ongoing coordination on natural resource issues, and fostering future partnerships and development of future management plans. These are benefits of exclusion that, along with other benefits of exclusion, significantly outweigh the benefits of inclusion, and we determined that exclusion will not result in the extinction of the species. Therefore, the Secretary is exercising his discretion to exclude all tribal reservation lands from this final revised critical habitat designation. See our response to Comment 39 above and **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section for more information regarding the exclusion process.

Comment 41: The Pala Band of Luiseño Mission Indians, Rincon Band of Luiseño Mission Indians, and Sycuan Band of the Kumeyaay Nation stated that they have demonstrated their ability to manage natural resources through their own management plans and other conservation programs. Therefore, in lieu of critical habitat designation on their lands, we should defer to their programs to protect arroyo toad habitat.

Our Response: We appreciate receiving the information provided by the three tribes on their management plans and other conservation programs. In our analysis under section 4(b)(2) of the Act, we considered benefits of preserving the partnerships we have developed with the tribes, reinforcing those relationships with ongoing coordination on natural resource issues, and fostering future partnerships and development of future management plans. These are benefits of exclusion that, along with other benefits of exclusion, significantly outweigh the benefits of inclusion, and we determined that exclusion will not result in the extinction of the species. Therefore, the Secretary is exercising his discretion to exclude all tribal reservation lands from this final revised critical habitat designation. We look forward to enhancing our government-to-government relationship with the tribes, and providing technical assistance in the future on natural resource to these tribes and any other tribes that do not currently have management plans in place. *See* **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section for more information regarding the exclusion process.

Comment 42: The Rincon Band of Luiseño Mission Indians stated that designation of critical habitat on the Rincon Reservation affords no additional benefits to the species. Specifically, the tribe stated that any possible educational benefits or minor protection during a section 7 consultation are negligible.

Our Response: In our analysis under section 4(b)(2) of the Act, we considered educational benefits and benefits provided by critical habitat under section 7(a) of the Act. These are considered to be benefits of including a particular area in critical habitat. However, under section 4(b)(2) of the Act, a determination that the benefits of exclusion outweigh the benefits of inclusion, along with a determination that exclusion would not result in the extinction of the species, must be made before the Secretary determines whether to exercise his discretion to exclude lands that meet the definition of critical habitat from a final critical habitat designation. In our analysis under section 4(b)(2) of the Act, we determined that designating critical habitat would likely provide regulatory benefits under section 7(a) of the Act that are not already provided (as a result of the listing of arroyo toad) by the combination of sections 7 and 9 of the Act and tribal regulations on reservations (such as the Rincon Reservation) where management plans are in place. We agree that educational benefits are small on lands controlled by tribal governments (such as the Rincon Reservation), as we believe our ongoing coordination with the Rincon Band of Luiseño Mission Indians should provide sufficient future education for this area. As a result, the Secretary is exercising his discretion to exclude the Rincon Reservation from this final revised critical habitat designation (*see* **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section for more information regarding the tribal exclusions).

Comment 43: The Rincon Band of Luiseño Mission Indians stated that designation of critical habitat would create a disincentive to develop HCPs and therefore recommended that we exclude pending HCPs, including the Rincon HCP. They stated that the proposed designation on the Rincon Reservation poses substantial risks to the Rincon HCP without affording the arroyo toad any additional conservation benefits by adding uncertainty to the process, increasing costs to plan development and implementation, and weakening stakeholder support.

Our Response: Under section 4(b)(2) of the Act, the Secretary may exercise his discretion to exclude an area from critical habitat if the benefits of exclusion outweigh the benefits of inclusion, provided the exclusion will not result in the extinction of the species. Conservation benefits provided by existing HCPs are not considered a benefit of exclusion because they would remain in place regardless of critical habitat designation; however, they do minimize the benefits of inclusion to the extent they are redundant with protection measures that would be provided by a critical habitat designation. We did not consider for

exclusion areas covered by the draft Rincon HCP; however, the Secretary is exercising his discretion to exclude the Rincon Band of Luiseño Mission Indians reservation lands (*see* the **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section for more information regarding the tribal exclusions).

Comment 44: The Barona Group of Capitan Grande Band of Mission Indians and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians, which jointly manage the Capitan Grande Band of Diegueno Mission Indians Reservation (Capitan Grande Reservation), stated that the reservation is not used for residential or development purposes. The two tribes prevent use by outside parties, and only tribal members can use the reservation for hunting and cultural purposes. The tribes further stated that they are not planning to change their procedures for controlling access to the reservation and protecting its resources. Finally, the tribes intend to work cooperatively with us to protect arroyo toad habitat on the reservation if needed; therefore, the reservation should be excluded from critical habitat designation.

Our Response: We appreciate the Tribes' information on the current and future use of the reservation, management of their lands, and commitment to protecting natural resources, including the arroyo toad. In our analysis under section 4(b)(2) of the Act, we considered benefits of preserving the partnerships we have developed with the tribes, reinforcing those relationships with ongoing coordination on natural resource issues, and fostering future partnerships and development of future management plans, which we believe, along with other benefits of exclusion, significantly outweigh the benefits of inclusion in this critical habitat designation. Therefore, the Secretary is exercising his discretion to exclude the Capitan Grande Reservation lands from this final revised critical habitat designation (*see* our Response to Comment 40 above and the **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section).

Comment 45: The Barona Group of Capitan Grande Band of Mission Indians and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians stated that although they oppose designation of any critical habitat on the Capitan Grande Reservation, areas proposed as critical habitat on the reservation were too broad. The Barona Group of Capitan Grande Band of Mission Indians surmised that our proposal was based only on our assessment of aerial photographs of the area and knowledge of the features of upstream and downstream parcels, rather than any direct, on-the-ground observations. Based on an arroyo toad habitat assessment of the area submitted by both tribes (HELIX 2009, pp. 1–6), they stated that only about half of the areas proposed contain suitable breeding habitat, and therefore the rest of the area does not contain suitable arroyo toad habitat.

Our Response: To determine the extent of suitable arroyo toad habitat, we used spatial data on stream gradients with grades less than 6 percent, aerial photography, surveys of habitat suitability, and site visits. Additionally, we included higher gradient areas between breeding habitat because these areas are used by toads during the non-breeding period and allow toads to disperse between breeding areas. To delineate upland habitat areas, we used a GIS-based modeling procedure to identify alluvial terraces, valley bottomlands, and upland habitats adjacent to stream reaches occupied by the arroyo toad. These model parameters are based on the best scientific data available and are the same as those used in the 2004 proposed critical habitat designation (69 FR 23258; April 28, 2004) (*see* the **Criteria Used to Identify Critical Habitat** section of this rule). Peer Reviewers expressed support for our methods (*see* Comment 1 above).

We appreciate receiving the arroyo toad habitat assessment and will consider this information during future recovery planning with both tribes. Although the habitat assessment delineates suitable breeding habitat within areas proposed for critical habitat designation and states that we may have overestimated the quantity of upland habitat outside the river bed (HELIX 2009, p. 3), it does not provide the specificity required to redraw the upland habitat areas or invalidate our assessment that these upland areas provide for arroyo toad foraging and overwintering (PCE 4) and that they therefore meet the definition of critical habitat. We will continue to work with the tribes on management and recovery-related activities for the arroyo toad and its habitat. However, with regard to Capitan Grande Reservation lands as they relate to the proposed critical habitat rule, we determined that the benefits of exclusion outweigh the benefits of inclusion in this final revised critical habitat designation; therefore, the Secretary is exercising his discretion to exclude the Capitan Grande Reservation from this final rule. *See* **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section for more information regarding the exclusion process.

Comment 46: The Barona Group of Capitan Grande Band of Mission Indians and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians stated that habitat on the Capitan Grande Reservation may not be occupied by arroyo toad because there are no occupancy records of arroyo toad on the reservation. Additionally, the Barona Group of Capitan Grande Band of Mission Indians stated that although there are occupancy records of arroyo toad near the reservation, the records are either more than 6 years old or more than 2 mi (0.8 km) upstream; therefore, habitat on the reservation likely does not provide connectivity between arroyo toad observations and should not be designated as critical habitat.

Our Response: Section 4(b) of the Act requires we designate critical habitat on the basis of the best scientific and commercial data available. We believe our proposed revisions to critical habitat were supported by sufficient data that represent the best available scientific information. These data indicate that habitat has not changed since occupancy records were collected on adjacent parcels both upstream and downstream of the Capitan Grande Reservation. Therefore, we have no basis to conclude the area is no longer occupied. Additionally, the best available data indicate that habitat on the reservation is contiguous with habitat containing the PCEs upstream and downstream of the reservation; therefore, these areas continue to meet the definition of critical habitat. However, we determined that the benefits of exclusion outweigh the benefits of inclusion in this final revised critical habitat designation; therefore, the Secretary is exercising his discretion to exclude the Capitan Grande Reservation from this final rule. *See* **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section for more information regarding the exclusion process.

Comment 47: The Sycuan Band of the Kumeyaay Nation stated that the biological data cited in the description of Unit 18 in the proposed rule (*see* the **Proposed Revisions to Critical Habitat Designation** section of the proposed revised critical habitat rule (74 FR 52625; October 13, 2009)), which includes Sycuan lands, is significantly outdated because the occupancy records are 10 to 17 years old. Therefore, any designation in this unit based on species' presence or the existence of PCEs is speculative at best. Additionally, the tribe stated that they do not know which areas of their lands

were proposed as critical habitat because the proposed rule is vague. They stated that the only areas on the reservation that appeared relevant to the proposed critical habitat designation were the north fork of the Sweetwater River, which is not known to support arroyo toad. Therefore, designating critical habitat on the reservation is inappropriate because the reservation does not have arroyo toad habitat or any occupancy records of arroyo toad.

Our Response: Section 4(b) of the Act requires we designate critical habitat on the basis of the best scientific and commercial data available. The best available data indicate that habitat in Unit 18 has not changed since the occupancy records were collected. Therefore, we have no basis to conclude the area is no longer occupied. To provide clarification to the Sycuan Band of the Kumeyaay Nation regarding proposed critical habitat, the areas that meet the definition of critical habitat on the Sycuan Reservation include lands along the Sweetwater River and along the north fork of the Sweetwater River. With regards to this final rule, we determined that the benefits of exclusion outweigh the benefits of inclusion for Sycuan Band of the Kumeyaay Nation Reservation lands; therefore, the Secretary is exercising his discretion to exclude this reservation from this final revised critical habitat designation. *See* the **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section for more information regarding the exclusion process.

Comments Related to Economic Impacts and Analysis

Comments from Tribal Governments

Comment 48: The Pala Band of Luiseño Mission Indians, the Sycuan Band of the Kumeyaay Nation, and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians stated that the draft economic analysis (DEA) does not include estimated economic impacts for tribal lands within the proposed revised critical habitat units.

Our Response: The final economic analysis (FEA) has been updated to reflect estimated economic impacts on tribal lands within the proposed revised critical habitat units. The summary tables in the Executive Summary of the FEA include economic impacts on tribal lands. In addition, the FEA includes a new Chapter 7 that discusses the socioeconomic characteristics and estimated baseline and incremental economic impacts for each affected tribe. Where data limitations prevent quantification, the FEA also includes a qualitative discussion of impacts as provided by each tribe.

Comment 49: The Pala Band of Luiseño Mission Indians and the Sycuan Band of the Kumeyaay Nation stated that fee to trust transfers (*i.e.,* land currently owned by the Pala Band of Luiseño Mission Indians and Sycuan Band of the Kumeyaay Nation but not yet part of their reservations) are currently in progress and should be treated the same as existing tribal [reservation] land.

Our Response: The FEA includes economic impacts to tribal lands and assumes that fee-owned land incurs the same impacts as reservation land.

Comment 50: The Pala Band of Luiseño Mission Indians, the Sycuan Band of the Kumeyaay Nation, and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians stated that the DEA excludes the economic impacts of proposed critical habitat on tribal groundwater use and tribal water rights.

Our Response: Quantifying impacts of a critical habitat designation on tribal water rights would require information that is not readily available (such as the nature and scope of specific future projects that could be impacted by a critical habitat designation, or details on the current scope of water rights). This type of analysis is generally not undertaken unless there is an adjudication of tribal water rights. The FEA recognizes that tribes' water rights have long been recognized by the U.S. Supreme Court but does not attempt to include an estimated impact related to tribal water rights.

Comment 51: The Pala Band of Luiseño Mission Indians and Sycuan Band of the Kumeyaay Nation stated that the DEA ignored the expenditures the tribes have incurred in developing and implementing their own Tribal Resource Management Plans (RMPs).

Our Response: Where information was provided by the tribes, the FEA included annual costs associated with implementing their own Tribal RMPs. Otherwise, these plans are described qualitatively. These costs incurred by the Pala Band of Luiseño Mission Indians and Sycuan Band of the Kumeyaay Nation are considered baseline because the development and initial implementation of the RMPs occurred prior to the proposed critical habitat designation.

Comment 52: The Pala Band of Luiseño Mission Indians and Sycuan Band of the Kumeyaay Nation stated that reservations were created for the use of tribes in perpetuity and are essentially nontransferable, creating a limited, specialized land value.

Our Response: Economic impact estimates in the FEA resulting from reduced development opportunities include the present value of future annual land value losses based on market rates for non-tribal lands in each county. In addition, there are other, unique attributes of tribal land (such as cultural importance, restrictions on the ability of the tribes to transfer lands, and lack of substitutes) that should be taken into consideration when estimating land values. However, the effect of these attributes is difficult to quantify. In the absence of specific examples of recent land transactions within tribal lands that would provide information about the value of these lands, the FEA uses the best available scientific and commercial data available (as shown in Table 2–9 of the FEA) to estimate potential land value losses.

Comment 53: The Pala Band of Luiseño Mission Indians stated that most of the tribal land proposed as critical habitat occurs within allotted lands on the reservations. The tribe stated that the DEA ignored the extraordinary economic impacts on allotted lands, which are not readily purchased or sold. Further, the tribe stated that the DEA does not address economic impacts to the tribes related to constrained allottees.

Our Response: As discussed in our response to Comment 52, in the absence of specific land transaction data provided by affected tribes, the FEA uses average residential and nonresidential residual land values (as shown in Table 2–9 of the FEA). In Chapter 7, the FEA includes a qualitative discussion of the unique issues associated with allotted lands based on information provided by the tribes.

Comment 54: The Pala Band of Luiseño Mission Indians and Sycuan Band of the Kumeyaay Nation stated that because a significant amount of activity on tribal lands occurs with Federal funds, grants, or oversight, the designation of critical habitat on Reservation land results in a disproportionately higher occurrence of section 7 consultations with the Service.

Our Response: The FEA estimates the economic impacts of section 7 consultations based on the historical rate of consultations and the proposed revised critical habitat acreage. The comment letters submitted by the tribes do not provide specific data related to the number of future projects requiring section 7 consultations or the historical rate of consultation for projects occurring on their tribal lands. Therefore, the FEA does not quantify a higher rate of section 7 consultations

but does include a qualitative description of these impacts in Chapter 7, which addresses economic impacts on tribal lands.

Comment 55: The Sycuan Band of the Kumeyaay Nation stated that the DEA excluded the percentage of total tribal lands affected by the proposed critical habitat designation.

Our Response: Chapter 5 of the FEA includes the percentage of total lands, by tribe, affected by the proposed critical habitat designation.

General Comments Regarding Framework and Assumptions

Comment 56: One commenter believed the DEA did not include the most recent demographic projections provided by the San Diego Association of Governments (SANDAG).

Our Response: The most recent SANDAG projections (Series 12) were published in February 2010, following the period in which demographic projections (Series 11) were collected for the DEA. The FEA has been updated to reflect the current Series 12 projections from the period 2010 through 2035. In addition, the FEA includes updated ownership data that was the best available during the time of the analysis in July 2010. The previous ownership data reflected a 2005 ownership database from California Spatial Information Library (CaSIL) that was adjusted by us with 2005 tribal reservation boundaries provided by the Building Industry Association. The updated ownership data in the FEA reflect the following changes: 2009 tribal reservation boundaries from the Building Industry Association; 2009 right-of-way from the Metropolitan Water District (MWD); 2009 parcels from the San Diego Geographic Information Source (SanGIS); 2009 ownership from the Rincon Tribe; and 2008 parcels from Riverside County.

Comment 57: One commenter stated that to assume that all constrained land cannot be developed is unsupportable and understates the effect of the critical habitat designation.

Our Response: The FEA assumes that bodies of water and land located within the 100-year flood plain will not be developed. For communities that participate in the Federal Emergency Management Agency (FEMA) subsidized flood insurance program, development is prohibited within the 100-year flood plain. Specifically, these communities must have a flood management plan and related ordinance in place for developers to obtain flood insurance through FEMA, the sole purveyor of subsidized flood insurance. The flood management plan and ordinance cannot allow development within any special flood hazard area, defined as the 100-year flood plain.

For developers and communities that do not need or want to participate in FEMA's subsidized flood insurance program, development can occur within the 100-year flood plain. However, on average, this development would likely be prohibitively expensive to undertake relative to other locations given the cost of gaining entitlements, including engineering, planning, administration, and construction of the mitigation requirements. This assumption has been verified with private real estate developers and civil engineers and is consistent with SANDAG's data of developable land within their Series 12 Regional Growth Forecast.

Other constraints, including land with "slope issues" and unusually or inadequately configured parcels of land, have not been excluded from the analysis.

Comment 58: One commenter asked why 23,000 ac (9,308 ha) were identified as baseline economic costs, when there are 15,524 developable ac (6,282 ha) in existing HCP boundaries, plus 1,844 buffer ac (746 ha), for a total of 17,368 ac (7,029 ha).

Our Response: Based on the May 2010 DEA, the 23,000 baseline acres (9,308 ha) includes the following components: (1) Developable HCP acres (15,524); (2) 80 percent of developable acres within riparian habitat (buffer) (1,844 * 80 percent = 1,475); and (3) 15 percent of developable acres outside of riparian habitat (40,003 * 80 percent = 6,000). These three components equal 23,000 baseline developable acres (9,308 ha). The definition of baseline acreage is based on our estimates incremental impacts (*see* Appendix H of the DEA), which identifies the proportion of acreage within and outside of riparian habitat that would likely result in a positive arroyo toad survey (i.e., at least one arroyo toad is present). A graphical representation of the methodology used to determine baseline acres is shown in Exhibit 1–1 of the DEA and a detailed description of the methodology is also provided in Chapter 1. Adding developable acreage in existing HCP boundaries (15,524 ac (6,282 ha)) plus developable land within the 1,844 ac (746 ha) buffer does not account for the application of proportional acreage within and outside of riparian habitat that are estimated to represent the presence of arroyo toads (i.e., 80 percent of acreage within the buffer and 15 percent of acreage outside of the buffer). Although these acreage estimates have now changed with the inclusion of updated SANDAG projections and ownership data in the FEA, the methodology remains the same.

Comment 59: One commenter stated that the DEA uses anecdotal evidence to support a 1.5:1 mitigation ratio. The commenter believes anecdotal evidence indicated that 2:1 is more often the mitigation ratio, and that the DEA should include a more scientific basis for this estimate.

Our Response: The mitigation ratio used in the DEA was based on the best available scientific and commercial data, which is the consultation history spanning from 1994 through 2009. We believe the 1.5:1 mitigation ratio is appropriate and continue to use this ratio in the FEA.

Comment 60: One commenter stated that the full 1.5:1 offsetting ratio is not applied to the amount of developable land that the DEA assumes to be used to offset development impacts.

Our Response: Sixty percent of offsetting compensation is assumed to occur "on-site" or within the acreage forecasted to be developed. The remaining 40 percent of off-setting compensation is assumed to occur within suitable arroyo toad habitat within the 100-year flood plain. Specifically, applying a 1.5:1 mitigation ratio to the updated projected developable acreage in the FEA (7,602 ac (3,076 ha)) yields about 11,400 ac (4,613 ha) projected to be set-aside, 40 percent of which will occur within the 100-year flood plain (about 4,600 ac (1,862 ha)). There are about 14,000 ac (5,666 ha) located in the 100-year flood plain to accommodate this offsetting compensation acreage. An explanation of this assumption is included in the FEA.

Comment 61: One commenter believed the DEA contains an unsupported assumption that only 40 percent of all mitigation land would be within the 109,110 ac (44,155 ha) of lands that make up the proposed critical habitat designation. The commenter asked why this would not be 100 percent of all mitigation lands.

Our Response: Sixty percent of offsetting compensation is assumed to occur "on-site" or within the acreage forecasted to be developed. The remaining 40 percent of offsetting compensation is assumed to occur within suitable arroyo toad habitat within the 100-year flood plain. Please refer to our response to Comment 61 above.

Comment 62: One commenter stated that the DEA incorrectly assumed that if land could not be developed in one part San Diego County, the development could be transferred to another area in

the County that would be distinctly different, or that infill densities could be increased.

Our Response: The FEA includes an analysis of substitutability as a basis for determining the potential extent of market impacts, rather than as a means for quantifying costs. To determine the significance of arroyo toad-related project modifications for regional real estate markets, the FEA evaluates the regional significance of the set-aside with the total projected development in each county. As shown in Table 2–8 of the FEA, the estimated on-site incremental set-aside represents about 0.6 percent of future countywide growth (0.9 percent in total, including baseline). In San Diego County, the estimated on-site incremental set-aside represents about 1.4 percent of future countywide growth (2.0 percent in total, including baseline). These estimates may overstate the percentage of growth affected in San Diego County because they do not take into account opportunities for adaptation by developers (such as construction in areas of the county not currently forecast for development, infill development, or more dense development). Thus, the set-aside associated with arroyo toad protection is not expected to have a measurable impact on the amount of new housing constructed or housing prices. Calculations of land value losses do not consider potential offsetting increases in the value of substitute parcels located outside of critical habitat.

Comment 63: One commenter stated that there were several places in the DEA where discrepancies existed between tables and text, between different tables, or between different parts of the text. There are other places where findings are provided and not adequately supported by explanations or tables that were cited.

Our Response: Where appropriate, the FEA has been updated to resolve any identified inconsistencies. Additional text has been added to further explain findings or assumptions.

Comment 64: One commenter stated that property values in the DEA were determined on a countywide basis, using "typical" housing developments and mean rents. The commenter believed the sites identified as habitat may not conform to these averages. Furthermore, the commenter believed the DEA should have included alternative development scenarios, and the exclusion of condominiums in the projection of housing development was inaccurate.

Our Response: The FEA uses an average single-family residential housing value to determine residential residual land value, reflecting the most likely type of residential housing likely to be developed. We recognize that there are a broad range of housing types that will be constructed in the areas that were proposed as critical habitat, ranging from multifamily housing units (such as condominiums) to large, low-density homes. The average residential residual land value takes into account that some of these housing types will have a lower value, while other housing types will have a higher value relative to the assumption used in the FEA. The FEA has been updated to describe this assumption.

Comment 65: One commenter stated that if condominiums are excluded from the projection of housing development in the DEA, then we should ensure that housing values do not reflect the value of condominium units.

Our Response: Housing values reflect single-family detached homes only.

Comment 66: One commenter believed the industrial lease rates were too low in the DEA, assuming a "reasonable share of industrial development" would be planned industrial or research and development, which command higher lease rates.

Our Response: The DEA utilized general development projections obtained from regional planning agencies, which do not identify the specific sub-types of development (i.e., research and development is a sub-type of industrial development). Identifying specific sub-types of development is beyond the scope of the economic analysis. It is assumed that, on average, the mix of industrial development planned in the areas proposed for critical habitat would be similar to the mix of industrial development in each county. Thus, we believe using average industrial lease rates is an appropriate assumption.

Comment 67: One commenter believed the developer's rate of return of 15 percent (as described in the DEA) should apply only to the developer's investment in the project, which is not 100 percent. The commenter stated that after accounting for debt funding (at an average interest rate of 6.375 percent) on approximately 75 percent of a project, the discount rate should be reduced to 8.5 percent.

Our Response: The FEA has been updated to reflect a developer's nominal discount rate of 8.5 percent.

Comment 68: One commenter believed the DEA ignored impacts on agricultural operations, and that the water costs allocable to agriculture in the water section had nothing to do with the need to develop an alternative water supply for agriculture, which are costs that pertain only to water that needs to be replaced due to controlled releases associated with habitat protections. The commenter stated that new agricultural installations require a local permit in San Diego County that would be subject to CEQA, and subject to scrutiny by the Service should the land be disturbed. In addition, the commenter believed the DEA ignores the economic impacts of harvested agricultural output lost annually.

Our Response: The FEA evaluates impacts of the critical habitat designation on the water supply to agricultural operations in Chapter 3. However, the FEA appropriately focuses on the value of resources potentially removed from production rather than the value of the potential reduction in total output from industries that use these resources. The total potential loss in output from "downstream" industries as a result of reduced water supply would not be an appropriate measure of the loss in "social welfare" because: (1) This output also requires additional inputs that represent a cost; and (2) downstream industries may adjust their factor inputs (grow less water intensive crops) in response to changes in water supply.

In the past, agricultural operations have competed for water with urbanized land uses. However, until recently, agricultural lands have steadily declined in part because of higher land values associated with a conversation to urbanized land uses. Although this trend has abated slightly in conjunction with the economic downturn, an overall continued decline is expected over the long term.

Comment 69: With respect to delay impacts as described in the DEA, one commenter stated that the developer does not lose the full value of his land for 2 years because he regains the use of that land in the third year; instead, the developer loses the return on the land above the natural appreciation. The commenter believed the DEA overestimates delay impacts.

Our Response: We agree with the commenter that delay costs were overstated in the DEA. We updated the calculations in the FEA to reflect developers' opportunity cost of delayed returns on investment during the delay period.

Comment 70: One commenter stated that the Service's assumption that delays will stop after 2 years is questionable.

Our Response: The DEA assumes that in most cases, CEQA compliance requirements related to the critical habitat designation would become familiar, and after a period of 12

months, applicants would incorporate these requirements into their CEQA documents.

Comment 71: One commenter believed the assumption identified in the DEA to prepare an Environmental Impact Report (EIR) of $56,000 is too low, and that the cost to prepare an EIR is usually between $100,000 and $200,000.

Our Response: The DEA examines impacts on both large and small projects through CEQA. Consultants who specialize in EIRs agreed that proposed critical habitat adds no measurable CEQA-related costs for large projects that are already required to comply with CEQA statutes. For small projects, the DEA assumes that some projects will be required to prepare an EIR when they could otherwise claim a categorical exemption. Further, small projects that submitted either a mitigated negative declaration or a negative declaration would be required to prepare an EIR. The cost assumptions reflect the incremental cost of preparing these documents above what they already would have been required to prepare.

Comment 72: One commenter stated that Tables 6–2 and 6–3 (estimated CEQA costs) in the DEA appear inaccurate and use faulty assumptions about the cost of producing CEQA documents. The commenter believed there was no documentation regarding CEQA costs, and that there was no support for the assumption that a critical habitat designation alone would upgrade the CEQA document to a more robust environmental review.

Our Response: In Table 6–2 and 6–3 of the DEA, the total annual number of CEQA documents in a critical habitat designation does not equal the sum of their respective columns because of fractional numbers. The FEA has been updated to show each fractional number to the nearest tenth. As noted in the DEA and FEA, the costs associated with a notice of exemption, negative declaration, and EIR are based on personal communication with three consultants who specialize in EIRs. These consultants were contacted as part of the development of the 2005 DEA; the current 2010 DEA escalated these cost assumptions to 2010 dollars using a Consumer Price Index (CPI). Because there is no empirical evidence to support the assumption that a critical habitat designation would necessitate a more robust environmental review for small projects, the DEA assumes the "worst case" scenario that all small projects are affected.

Comment 73: One commenter believed the cost and time required to prepare an EIR would increase substantially even for those projects already requiring an EIR due to the need to prepare additional surveys and conduct additional analysis of arroyo toad impacts. Further, the commenter stated that the DEA incorrectly assumes that substantial increases in CEQA costs would only occur for projects that would not require an EIR absent the critical habitat designation.

Our Response: Consultants who specialize in EIRs agreed that proposed critical habitat adds no measurable CEQA-related costs for large projects that are already required to comply with CEQA statutes. Please also refer to our responses to Comments 71 and 72.

Comment 74: One commenter believed the two types of delay identified in the DEA would be required regardless of whether or not critical habitat is designated.

Our Response: The DEA assumes that delay costs are only incurred for a small percentage of projects that are already entitled or nearly entitled and where the arroyo toad has not previously been identified through surveys. In other words, these projects have nearly completed the necessary environmental reviews assuming the arroyo toad is not present at the site. The delays are caused by the new information provided by critical habitat regarding the potential presence of the arroyo toad and value of the habitat, regardless of the outcome of previous surveys.

Comment 75: Three commenters stated that the DEA did not include an analysis of potential uncertainty and stigma costs, which could be substantial. They recommended that the Service should conduct a literature review or additional research regarding the effects of uncertainty and stigma on other endangered species.

Our Response: We have reviewed the literature and are unaware of any published studies estimating the stigma effects of critical habitat designation. Furthermore, no published literature exists estimating the economic impact of regulatory uncertainty that may result from the designation. New, primary research on these issues is beyond the scope of the economic analysis. Because data are not readily available to quantify potential impacts from regulatory uncertainty and stigma, these impacts are discussed qualitatively in Chapter 6 of the DEA.

Comment 76: Given the ongoing financial situation in our country, one commenter believed that many of the cost assumptions relied on in the DEA may no longer be valid, particularly with regards to the real estate sector. Further, the commenter believed the assumptions regarding the discount rate for future costs and the time value of money should be reevaluated.

Our Response: Key assumptions in the analysis of potential impacts to real estate development include the amount, pace, and location of future development activity and current land values. The economic analysis relies on the best readily-available data sources, including the Santa Barbara County Association of Governments Regional Growth Forecast (2000–2030), the Southern California Association of Governments (SCAG) Adopted 2008 RTP Growth Forecast, and the SANDAG Series 12 Regional Growth Forecast, which project the amount and location of future development. These projections were adopted in 2007 (Santa Barbara), 2008 (SCAG), and 2010 (SANDAG) and rely on data and the best judgment of local and regional planners in the respective communities. We agree that the pace of such development is likely influenced by current economic activities; however, we have no empirical data with which to make assumptions about when the development is most likely to occur. Therefore, we assume development is distributed evenly throughout the timeframe of the projections. Finally, residual land values are based on current 2010 data obtained from reputable industry sources (DataQuick and CB Richard Ellis).

Throughout the report, the economic analysis estimates the present value of future impacts using discount rates of 3 and 7 percent. The U.S. Office of Management and Budget (OMB) requires Federal agencies to report results using these rates (*see* OMB Circular A–4, 2003).

Comment 77: One commenter stated that there may not be funding available for the conservation efforts of established HCPs given that housing and development "starts" and home prices in southern California continue to decline.

Our Response: It is beyond the scope of the economic analysis to determine whether current development projections and estimated residual land values will impact the funding available for the conservation efforts of established HCPs. Furthermore, conservation efforts undertaken as a result of HCPs are considered to be baseline costs and would not be affected by the designation of critical habitat.

Comment 78: One commenter stated that economic impacts to mining projects and grazing shown in the DEA are unrealistic. Specifically, the commenter stated that impacts to mining projects depend largely on an assumption that demand for concrete

and other building materials would continue at a rate established during a housing boom in 2005. Further, the commenter stated that with respect to impacts to grazing, surveys, and fencing have already been implemented on a majority of allotments where arroyo toad occurs. While some fences may still need to be built, the commenter believed that maintenance of fencing could be an incremental cost; however, the commenter believed it is likely that this incremental cost would also occur in the absence of a critical habitat designation in order to protect arroyo toad as a listed species. The commenter believed that wholesale replacement of fencing in response to a critical habitat designation is unlikely.

Our Response: The assumptions used to estimate the economic impacts to mining and grazing industries are conservative and may overstate impacts. However, these impacts represent a nominal portion of total incremental economic impacts. The estimated incremental economic impacts of both mining and grazing activities equal about 0.15 percent of total incremental impacts.

Comment 79: The commenters believed that the assumption that 80 percent of floodplain acreage is occupied by arroyo toads and 15 percent of upland acreage is occupied by arroyo toads is overstated. By generally assuming these occupancy rates, the commenters believed the DEA does not properly account for areas that are not actually occupied by the species, but which will require intensive surveying due to critical habitat designation.

Our Response: Occupancy rates were estimated using the following information: In studies by Griffin *et al.* (1999, pp. 1–66), arroyo toads were found to spend most of their time during the breeding season within the stream channel or on adjacent sandy terraces, but they also used upland areas such as campgrounds and even agricultural fields. Using our best professional judgment, the likelihood of finding arroyo toads in breeding habitat during the breeding season (typically between March and early June, although the breeding season may occur earlier or later, depending on weather conditions, elevation, and latitude) would be approximately 80 to 85 percent. During the non-breeding season, the likelihood would drop to approximately 15 to 20 percent because toads would most likely be burrowed in upland habitat.

Arroyo toad juveniles and adults use upland areas adjacent to breeding habitat for foraging and wintering. Griffin *et al.* (1999, pp. 1–66) also found that arroyo toads seemed to select habitat more according to vegetation structure than vegetation type; dense and tall vegetative structure was preferred least of all. In a study using pitfall traps, Holland and Sisk (2001, pp. 1–32) captured arroyo toads primarily within the stream channel and riparian habitats, but approximately 18 percent of the adult and subadult captures averaged across all 3 years of the study were in upland habitats (11 percent at one site and 24 percent at the other). Using our best professional judgment, the likelihood of finding arroyo toads in upland habitats would be approximately 15 to 20 percent.

Comment 80: One commenter stated that the offsetting compensation ratio for Rancho Las Flores shown in the DEA is artificially low because the number of impacted acres is artificially high. Thus, the commenter believed the resulting offsetting compensation ratio used in the analysis is flawed.

Our Response: The comment did not provide the correct number of affected acres for use in the economic analysis; therefore, the FEA continues to rely on acreage estimates obtained from the Rancho Las Flores consultation for preparation of the 2005 DEA.

Comment 81: One commenter stated that a cost-effectiveness approach is the appropriate framework of economic science for weighing the economic costs and benefits of a critical habitat designation.

Our Response: OMB's Circular A–4 (p. 10) defines the "best practices" for preparing economic analyses of Federal regulations. It states that for all major rulemakings, the Federal agency should carry out a benefit-cost analysis. If some of the primary benefit categories cannot be expressed in monetary units, the Federal agency should also conduct a cost-effectiveness analysis. In unusual cases where no quantified information on benefits, costs and effectiveness can be produced, the regulatory analysis should present a qualitative discussion of the issues and evidence.

Both benefit-cost analysis and cost-effectiveness analysis require measurement of the effectiveness of the regulation in quantitative terms. Benefit-cost analysis simply takes the next step of monetizing the value to the public of the improvements. As discussed in Chapter 8 of the FEA, neither monetization nor quantification of benefits is possible because data on the incremental change in the probability of arroyo toad conservation that is expected to result from the critical habitat designation do not exist. Therefore, potential benefits are discussed qualitatively.

Comment 82: One commenter stated that the DEA should have allocated a portion of the costs of creating and modifying HCPs as an incremental impact because HCPs are often preemptively developed as a strategy to achieve regulatory relief.

Our Response: While it is possible that the HCPs were created in part in anticipation of a critical habitat designation, these costs have already been incurred and the FEA does not include historical costs. Further, the decision of whether or not to designate critical habitat will not affect these costs; thus, costs already incurred are attributable to the baseline. Future baseline costs associated with modifying or maintaining HCPs are reflected in the estimated project modification costs shown in Table 2–13 of the DEA.

Comments Regarding Water Supply Framework and Assumptions in the DEA

Comment 83: With regard to economic impacts to water supply, three commenters stated that the DEA assumes that all impacts are baseline. The commenters explain that prior to a critical habitat designation, a Service permit is required if arroyo toads are present or use the land with sufficient regularity that it is likely to be present during any reasonable span of time, and after critical habitat is designated an agency must consult with the Service if the land is suitable for the arroyo toad. The commenters believed that such additional costs are incremental, not baseline. One of the commenters indicated that since the arroyo toad was listed in 1995, they do not believe that water management changes in San Diego have been implemented as a result of the listing. Thus, the commenter believed that future mandated water management changes would be the result of a critical habitat designation and should be assigned as incremental costs.

Our Response: Comment letters indicated that water agencies have not had to implement any project modifications or consult with the Service as a result of listing the arroyo toad as an endangered species in 1995. Discussions with affected water agencies conducted as part of the 2005 FEA (and included in the updated 2010 DEA) describe a series of project modifications implemented following the listing of the arroyo toad. For example, the California Department of Water Resources (DWR), which manages Pyramid Lake and releases water to Piru Creek, met with the Service, CDFG, and the United Water Conservation District

(UWCD) after the species was listed and mutually agreed to a flow release schedule and operating guidelines for California State Water Project (SWP) water deliveries. Thus, the FEA maintains the assumption that impacts to water supply are attributable to the baseline.

Comment 84: One commenter stated that the DEA assumes that Santa Barbara households incur 25 percent of water costs, which differs from the 64 to 68 percent range identified for other counties.

Our Response: Water consumption percentages by sector are based on data from publicly available software (IMpact Analysis for PLANing or IMPLAN) and data that are used to measure the economic impacts of a given change on a local or regional economy. It is reasonable to conclude that these factors vary by county depending on the mix of land uses contained within each county. As shown in Table D–2 of the DEA, Santa Barbara households account for 25 percent of the demand for water with all other sectors accounting for the remaining 75 percent of water demand, excluding the trade sector.

Comment 85: One commenter stated that the regional multiplier assumption for water supply impacts of 1.21 was too low. Further, the commenter stated that overall regional multipliers are approximately 2:1 when all direct, indirect, and induced expenditures are included.

Our Response: The FEA examines impacts to water supply by estimating the costs associated with potential investments in water supply infrastructure and increased water prices and a corresponding loss in consumer surplus as shown in Table 3–4. In addition to reduced consumer surplus, an increase in the price of water may reduce the purchasing power of county households and increase business production costs. These regional economic impacts are shown in Table 3–5 and Table 3–6 of the FEA. The total output impacts shown in Table 3–6 of the FEA are based on household output per million dollar change in final household demand (about 1.5 for each county), county consumption factors, and impacts by sector. The impacts by sector are estimated by multiplying the annual costs by county by the water consumption factors derived from IMPLAN, publicly available software and data that are used to measure the economic impacts of a given change on a local or regional economy. The FEA continues to rely on the data obtained through IMPLAN.

Comment 86: One commenter believed the use of 2004 averages for costs applicable to dams and reservoirs that were not a part of that prior study is not justified.

Our Response: The use of 2004 averages for costs applicable to dams and reservoirs that were not part of the prior study may understate the economic impacts to water supply. However, as discussed in our response to Comment 83, the FEA assumes that economic impacts to water supply are attributable to the baseline. The methodology employed in the FEA prioritized research efforts on evaluating costs that would result from critical habitat designation (incremental costs). However, the FEA includes costs applicable to the additional dams and reservoirs, using 2005 averages as a proxy, to provide an indication of the magnitude of these baseline impacts.

Comment 87: One commenter stated that there appears to be an error in the calculation of discounting annual water costs.

Our Response: The FEA has been updated to correct an error in the estimate of total water impacts in Table 3–4.

Comment 88: One commenter stated that the discount rate of 7 percent used in estimating water impacts is too high.

Our Response: OMB requires Federal agencies to report results using discount rates of 3 and 7 percent (*see* OMB Circular A–4, 2003).

Comment 89: Two commenters believed the estimated cost of replacement water is too low. One commenter indicated that replacement water costs are likely approximately $600 per acre-foot, or $60 per acre-foot higher than indicated in the DEA. Another commenter indicated that actual 2010 costs are $690 per acre foot for untreated water and $905 per acre foot for treated water. These amounts are projected to increase to $1,634 and $2,016 per acre foot, respectively, by 2025.

Our Response: The FEA incorporates revised replacement water costs. Specifically, Table 3–4 utilizes a replacement water cost of $905 per acre foot for each affected activity/dam in San Diego County. This assumption reflects the cost of replacement water for treated water, which is higher than the cost of replacement water for untreated water. Usage of this assumption may overstate water supply impacts; however, there is no readily available data on the percentage of treated versus untreated water. It is important to note, though, that these impacts are attributable to the baseline as discussed in our response to Comment 83.

Comment 90: One commenter believed the DEA failed to acknowledge or analyze information provided by the Ramona Municipal Water District regarding the economic and public service impacts related to wastewater services—specifically, the expansion of the Santa Maria Wastewater Treatment Plant. The commenter stated that impacts include: Limiting the development projected by the County General Plan, loss of property value that could reach $70 million if property cannot be developed, and potential increases in consumer rates.

Our Response: These economic impacts are now described in Chapter 5 of the FEA.

Comment 91: One commenter stated that the DEA's reliance on historical data to calculate the likelihood of Sweetwater's water releases is invalid. For example, the commenter stated that the DEA falsely assumed that Sweetwater only conducts water transfers outside typical breeding season on a limited basis; those criteria have been superseded by Sweetwater's 2006 Standard Operating Procedure, which assists in minimizing impacts to the arroyo toad from Sweetwater's water transfers, but allows for more operational flexibility resulting in greater water release volumes, a greater volume of water to be replaced, and higher costs than shown in the DEA.

Our Response: We recognize that operations at Sweetwater have changed since the 2005 FEA was prepared. In order to incorporate these changes in the current FEA, we would need to collect data that are not readily available. Based our evaluation of information concerning potentially-affected water agencies, the FEA assumes that impacts to water supply are attributable to the baseline given the presence of arroyo toads downstream. Because the FEA assumes that water supply impacts are attributable to baseline, we prioritized our research efforts and focused on updating those costs and assumptions that would be incremental to the baseline. Thus, the FEA includes updated cost estimates but maintains those assumptions obtained for the 2005 FEA. These costs are included in the FEA to provide context, rather than for decision-making purposes.

Comment 92: One commenter believed that the DEA failed to adequately account for the additional impacts to Sweetwater associated with any modification of current Loveland dam operations, time delays, and regulatory uncertainties. The commenter acknowledged that $2 million in annual economic impacts are

shown in Table 3–4 of the DEA, but the commenter believed this number assumes that costs have not increased in the past 6 years and would not increase over the next 25 years. The commenter stated that there are no releases from the Sweetwater Dam except infrequently in the event it overtops in an El Niño winter.

Our Response: We recognize that operations at Sweetwater have changed since the 2005 FEA was prepared. In order to incorporate these changes in the current FEA, we would need to collect data that are not readily available. Please refer to our response to Comment 91 for additional discussion.

Comment 93: Four commenters stated that the DEA incorrectly assumes that water supplies would be available without adequately considering the regulatory and environmental restrictions that have impacted sources of imported water. They stated that water supplies may have already been committed to another purpose, and that the DEA should assume all lost water will be replaced through the development of new substitute sources.

Our Response: We recognize that the regulatory and environmental environment has changed since the 2005 FEA was prepared. Access to substitute water sources is more difficult, which would increase costs. Because the FEA assumes that some water will be replaced through the development of new substitute sources, costs may be understated. However, assuming 100 percent of lost water will be replaced through the development of new sources likely overstates costs. In order to incorporate an updated assumption regarding the amount of water to be replaced through new substitute sources, we would need to collect substantial data. Based on our evaluation of the best available information and potentially-affected water agencies, the FEA assumes that impacts to water supply are attributable to the baseline given the presence of arroyo toads downstream. Because the FEA assumes that water supply impacts are attributable to baseline, we prioritized our research efforts and focused on updating those costs and assumptions that would be incremental to the baseline. Thus, the FEA continues to rely on assumptions obtained for the 2005 DEA.

Comment 94: One commenter believed there is some question regarding whether Metropolitan Water District (MWD) facilities are included in Unit 23. If so, the commenter believed the DEA underestimates the cost of new infrastructure at $451,500. The commenter instead estimates a cost of $5,780,000 for new infrastructure for water conveyance to avoid discharges into the Whitewater River; if not, the DEA should omit these costs.

Our Response: We evaluated the information provided by the commenter and reevaluated information in our files and determined that MWD facilities are not included in Unit 23. Thus, the FEA has been updated to omit these costs.

Comment 95: One commenter estimated that $350,000 in incremental costs was not included in the DEA for Subunit 6b. The commenter stated that these costs pertain to impacts to the operation and maintenance of Metropolitan Water District's facilities, associated right-of-way, monitoring, and development and implementation of an HCP.

Our Response: It is unclear why the impacts described by the commenter would result from this critical habitat designation, rather than the listing of arroyo toad. As such, the FEA does not include these costs.

Comments Regarding Transportation Impacts

Comment 96: Regarding transportation impacts, one commenter stated that the upland and wetland habitat restoration costs per acre are too low. The commenter believed that instead of using $14,800 per acre, the DEA should have used an assumption of $50,000 per acre, based on research that indicates upland habitat restoration costs range from $30,000 to $50,000 per acre and riparian habitat restoration costs range from $100,000 to $250,000 per acre.

Our Response: The FEA has been updated to reflect an average habitat restoration cost of $50,000 per acre. This assumption is consistent with data derived from the Caltrans Endangered Species Act Annual Impact and Mitigation Report, described in the California Red-Legged Frog Economic Analysis Final Report, dated December 11, 2009.

Comment 97: Four commenters stated that the DEA repeats the error of the 2004 DEA by omitting the State Route 241 Completion Project (aka Foothill-South Transportation Corridor) from the evaluation of transportation projects that would experience significant economic impacts.

Our Response: We have become aware that the proposed State Route 241 Completion Project does not meet the requirements of the Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*), and the California Coastal Commission has denied a permit for this project as currently planned based on concerns related to a portion of the project. Based on California Coastal Commission's concerns, it appears that no viable project alternatives exist at this time and the proposed project as currently designed cannot move forward without project modification. Therefore, this project has not been included in the FEA.

Comment 98: Four commenters stated that the DEA incorrectly excludes transportation projects that are part of regional and interregional transportation plans.

Our Response: We recognize there are some transportation projects that are part of regional and interregional transportation plans (SCAG, SANDAG, and SBCAG Regional Transportation Improvement Plans and Regional Transportation Plans) that overlap with the critical habitat designation. The data required to estimate the economic impacts of these transportation projects is not available; however, the FEA has discussed these projects qualitatively in Chapter 5.

Comment 99: One commenter stated that the proposed widening of State Route 138 near the Rancho Las Flores Planned Community may overlap with Unit 22, although the DEA appears to consider this project confined to Unit 20.

Our Response: The FEA utilizes the California Transportation Investment System (CTIS), a geographic information systems (GIS)-based application, that provides spatial data of planned and programmed transportation projects through 2030. An analysis of the CTIS data shows the proposed widening of State Route 138 overlapping with Unit 20 only.

Comment 100: One commenter believed the DEA overlooks the compliance costs associated with State Route 138 that would be imposed on the Rancho Las Flores Planned Community as it becomes developed.

Our Response: The FEA has been updated to include development proposed in the Rancho Los Flores Planned Community. Thus, in Chapter 2 (footnote 54) of the FEA, impacts pertaining to this development project are identified, including: Loss in land value; other project modifications; and delay costs. CEQA and administrative costs are based on total acreage designated, rather than acreage designated for development.

Comments Regarding Development Projections in the DEA

Comment 101: One commenter stated that the DEA failed to evaluate State and local building ordinances that could limit development, which would lower the estimated economic impacts.

Our Response: As mentioned in our response to Comments 56 and 66, the DEA relies on development projections furnished by regional forecasting agencies. These agencies incorporate local land use projections from city planners who are aware of State or local building ordinances affecting future development.

Comment 102: One commenter stated that Rancho Mission Viejo development has been approved by Orange County in 2004 and the Service in 2007 to consist of 816 developable acres (330 ha), a far greater amount than the 65 ac (26 ha) shown in the DEA for Unit 10.

Our Response: Specific information regarding the type and location of development was not provided in the public comment letter. However, we obtained a map and project description found in "The Ranch Plan Planned Community Program Text" as adopted by Ordinance 04–014 on November 8, 2004, by the Orange County Board of Supervisors. Based on the information contained within this document, we determined that planned development overlapping with Unit 10 is located within the Orange County Southern Subregion HCP. Although it is difficult to confirm the number of overlapping acres, as a very conservative assumption, 800 additional residential acres (324 ha) in Unit 10 have been included in the baseline scenario in the FEA.

Comment 103: One commenter believed the DEA incorrectly stated that there would be no economic impacts to development in Unit 22. The commenter stated that development within the Rancho Las Flores Planned Community and Summit Valley Ranch projects is expected to occur within this critical habitat unit over the next 20 years.

Our Response: Based on the Rancho Las Flores Planned Community (RLFPC) boundary, we were able to determine that 2,624 ac (1,062 ha) of the 9,867-ac (3,993-ha) project overlap with proposed Unit 22, which translates into approximately 27 percent of the project. Because the comment letter did not provide details regarding the type of development within the overlapping acreage, we uniformly applied the percentage of overlap to the residential and nonresidential acreage identified in the City of Hesperia Draft General Plan Update Technical Background Report, dated January 2010. There are 3,810 ac (1,542 ha) of residential, 314 ac (127 ha) of town center (retail), and 80 ac (32 ha) of commercial (office) envisioned in the RLFPC. Applying the percentage of the project overlapping with proposed Unit 22, the FEA has been updated to include the following acreages: 1,029 ac (416 ha) of residential, 85 ac (34 ha) of retail, and 22 ac (9 ha) of office. As a conservative assumption, the FEA includes all development in the RLFPC under the incremental scenario.

Since no information was provided in the comment letter regarding the amount and type of overlapping acreage in the Summit Valley Ranch Specific Plan (SVRSP), the FEA does not include development projections associated with this project. However, while the regional planning agency development projections indicate no development in this census tract, it is clear that proposed Unit 22 overlaps with the SVRSP. Thus, the FEA describes the fact that Unit 22 would have greater economic impacts than shown; however, these impacts cannot be quantified because development data are not available.

Comment 104: One commenter stated that the DEA identifies 38 ac (15 ha) of developable land in Unit 8. Instead, the commenter believed the projected development should be estimated as least 74 ac (30 ha), as approved under the East Orange Planned Community.

Our Response: Although it is difficult to estimate, 36 additional residential acres (15 ha), as a very conservative assumption, in Unit 8 have been included under the incremental scenario in the FEA.

Comments Regarding Benefits of Designation as They Relate to the DEA

Comment 105: One commenter stated that the aesthetic benefits can be quantified by studying willingness-to-pay for environmental benefits in comparable regions. Similarly, the commenter believed the regional economic benefits can be quantified by researching tourism and visitation, and that mentioning these benefits without conducting a study is inappropriate. Another commenter also stated that the DEA failed to quantify benefits and ancillary benefits, and dismissed benefits because they believed the benefits are not the purpose of a critical habitat designation. Further, the second commenter stated that the DEA fails to: (1) Assess the benefits of maintaining riparian areas and adjacent upland habitat; (2) mention or assess the economic benefits accruing from preservation of native habitat for other species; and (3) account for the benefits of maintaining contiguous riparian and adjacent upland habitat for other native species that use these areas. Further, the second commenter believed the DEA fails to mention that critical habitat designation would reduce uncertainty by identifying areas that are likely occupied by the arroyo toad or necessary to its recovery.

Our Response: As described in Chapter 7 of the DEA (now Chapter 8 in the FEA), the primary benefit of critical habitat is to support the conservation of the arroyo toad. This chapter summarizes potential benefits associated with specific arroyo toad conservation efforts such as aesthetic benefits, regional economic benefits, improved water quality and soil productivity, and flood control. The analysis recognizes that these benefits can be measured if sufficient data are available. However, these benefits are not quantified or monetized because to do so requires information on the incremental change in the probability of toad conservation that is expected to result from the designation. Currently, these data are unavailable; no studies exist that provide such information for this particular species. Depending on the project modifications ultimately implemented as a result of the regulation, other ancillary benefits that are not the stated objective of critical habitat (such as increasing the value of homes adjacent to preserved habitat or preserving habitat for other non-listed species) may occur.

Comment 106: One commenter stated that the DEA double-counts property value benefits by including them in the real estate development methodology (and claiming that values and densities would transfer freely throughout the county) and then singles them out as an additional benefit.

Our Response: Property value benefits described qualitatively in Chapter 8 of the FEA focus on potential increase in values for properties adjoining critical habitat. This increase may occur due to the lower density development occurring on critical habitat properties. The commenter is correct in suggesting that if other areas are developed more densely to accommodate housing needs, the net benefit to society may be zero. A discussion of this issue has been added to Chapter 8 of the FEA.

Comment 107: One commenter stated that improved water quality, soil productivity, and flood control should not be mentioned as benefits if costs are not evaluated.

Our Response: The designation of critical habitat is not anticipated to negatively affect water quality, soil productivity, or flood control. Thus, costs to address such issues are not anticipated. Rather, these benefits may arise as a result of project modifications described in the report, for which costs have been estimated (such as costs of conserving land rather than developing it).

Required Determinations

Regulatory Planning and Review

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' action.

(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 (RFA; 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the revised critical habitat designation for the arroyo toad will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small government jurisdictions, including school boards and city and community 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 the arroyo toad would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities, such as residential and commercial development. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. To estimate the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat affects activities conducted, funded, permitted, or authorized by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the arroyo toad. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

In the FEA of the proposed revisions to critical habitat, we evaluated the potential economic effects on small business entities resulting from implementation of conservation actions related to the proposed revisions to critical habitat for the arroyo toad. The FEA is based on the estimated incremental impacts associated with the proposed rulemaking as described in Chapters 2 through 7. The FEA evaluates the potential for economic impacts related to activity categories including real estate development, changes in water supply, grazing and mining activities, road construction projects, utility and other infrastructure projects, CEQA, uncertainty, and delay. The FEA concludes that the incremental impacts resulting from this rulemaking that may be borne by small businesses will be associated only with land development, cattle ranching, and farming. Incremental impacts are either not expected for the other types of activities considered or, if expected, will not be borne by small entities.

As discussed in Appendix A of the FEA, the potential impacts of the proposed revised designation of critical habitat on land developers over the next 25 years would result from lost land value, project modification costs, CEQA costs, delay costs, and administrative costs. Small land developers with projects in the proposed critical habitat designation are expected to bear an annual incremental impact per project of between roughly $800 and $934,000. The number of small land developers affected annually ranges from zero to approximately 1.0 percent of the county total. For those small land developers that are impacted, the average annualized cost per project ranges from less than 0.1 percent to 44.0 percent of the typical annual sales for a small firm in the land subdivision sector.

As discussed in Appendix A of the FEA, the potential impacts of the proposed revised designation of critical habitat on cattle ranchers and farmers would result from future project modifications, such as fencing and water source development. Small cattle ranching businesses operating in the critical habitat designation are expected to bear an incremental impact per project of between roughly $6,300 and $13,700. The number of small cattle ranching operations affected annually ranges from about 0.2 percent to approximately 2.0 percent of the cattle ranching businesses in each county. For those small cattle ranching businesses that are impacted, the average cost per project (*i.e.,* grazing allotment) ranges from less than 0.1 percent to approximately 2.0 percent of the typical annual sales for a small business in the sector.

In summary, we considered whether the revised designation of critical habitat would result in a significant economic impact on a substantial number of small entities. We have identified small businesses that may be affected within the land development, ranching, and farming sectors. We have determined that this designation would not affect a substantial number of land developers, farmers, or cattle ranchers.

For the above reasons and based on currently available information, we certify that the revised designation of critical habitat for the arroyo toad will not have a significant economic impact

on a substantial number of small business entities. Therefore, a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

On May 18, 2001, the President issued E.O. 13211 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 the arroyo toad is not considered a significant regulatory action under E.O. 13211. 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. As discussed in Appendix A, the FEA finds that none of these outcomes are likely to occur. 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, 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. "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 section 7 of the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat. Non-Federal entities which receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The FEA concludes incremental impacts may occur due to project modifications that may need to be made for real estate development; however, these are not expected to affect small governments. Consequently, we do not believe that this final revised critical habitat designation will significantly or uniquely affect small government entities. 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 revised critical habitat for the arroyo toad 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 the arroyo toad does not pose significant takings implications.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this final revised critical habitat designation with appropriate State resource agencies in California; however, we did not receive any comments from State agencies. The majority of land (96 percent) being designated is not State or locally owned and, therefore, the designation has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the physical and biological features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating revised 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 the arroyo toad.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

It is our position that, outside the jurisdiction of the Circuit Court of Appeals 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 by the Circuit Court of Appeals of the United States for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

In the proposed revisions to critical habitat published in the **Federal Register** on October 13, 2009 (74 FR 52612), we proposed approximately 1,155 ac (467 ha) in Unit 14 within the Rincon Band of Luiseño Mission Indians Reservation and other associated tribal lands owned/managed by the Rincon Band of Luiseño Mission Indians; 2,385 ac (963 ha) in Unit 14 within the Pala Band of Luiseño Mission Indians Reservation and other associated tribal lands owned/managed by the Pala Band of Luiseño Mission Indians; 391 ac (158 ha) in Unit 18 within the Sycuan Band of the Kumeyaay Nation's Reservation and other associated tribal lands owned/managed by the Sycuan Band of the Kumeyaay Nation; 93 ac (38 ha) in Unit 17 within the Capitan Grande Reservation; and 23 ac (9 ha) in Unit 16 within the Mesa Grande Reservation, as critical habitat for the arroyo toad. We worked directly with the tribes to determine economic and other burdens expected to result from critical habitat designation on tribal lands, and as a result of information exchanged, the Secretary is exercising his discretion to exclude all tribal reservation lands meeting the definition of critical habitat for the arroyo toad from this final revised designation under section 4(b)(2) of the Act (*see* **Exclusions Under Section 4(b)(2) of the Act—Tribal Lands** section above).

References Cited

A complete list of all references cited in this rulemaking is available on *http://www.regulations.gov* and upon request from the Field Supervisor, Ventura Fish and Wildlife Office, or the Field Supervisor, Carlsbad Fish and Wildlife (*see* **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections).

Author(s)

The primary authors of this notice are staff of the Ventura Fish and Wildlife Office and the Carlsbad Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

■ 2. In § 17.11(h), revise the entry for "Toad, arroyo (=arroyo southwestern)" under "Amphibians" in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
AMPHIBIANS	.....	.....	.....	.....	.....	.	
*	*	*	*	*	*		*
Toad, arroyo (=arroyo southwestern).	*Anaxyrus californicus*	*U.S.A. (CA), Mexico*	*Entire*	*E*	*568*	*17.95(d)*	*NA*
*	*	*	*	*	*		*

■ 3. In § 17.95(d), revise the entry for "Arroyo Toad (*Bufo californicus*)" to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians.*

* * * * *

Arroyo Toad (*Anaxyrus californicus*).

(1) Critical habitat units are depicted for Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura Counties, California, on the maps below.

(2) Within these areas, the primary constituent elements for the arroyo toad consist of four components:

(i) Rivers or streams with hydrologic regimes that supply water to provide space, food, and cover needed to sustain eggs, tadpoles, metamorphosing juveniles, and adult breeding toads. Breeding pools must persist a minimum of 2 months for the completion of larval development. However, due to the dynamic nature of southern California riparian systems and flood regimes, the location of suitable breeding pools may vary from year to year. Specifically, the conditions necessary to allow for successful reproduction of arroyo toads are:

(A) Breeding pools that are less than 6 inches (15 centimeters) deep;

(B) Areas of flowing water with current velocities less than 1.3 feet per second (40 centimeters per second); and

(C) Surface water that lasts for a minimum of 2 months during the breeding season (a sufficient wet period in the spring months to allow arroyo toad larvae to hatch, mature, and metamorphose).

(ii) Riparian and adjacent upland habitats, particularly low-gradient (typically less than 6 percent) stream segments and alluvial streamside terraces with sandy or fine gravel substrates that support the formation of shallow pools and sparsely vegetated sand and gravel bars for breeding and rearing of tadpoles and juveniles; and adjacent valley bottomlands that include areas of loose soil where toads can burrow underground, to provide foraging and living areas for juvenile and adult arroyo toads.

(iii) A natural flooding regime, or one sufficiently corresponding to natural, that:

(A) Is characterized by intermittent or near-perennial flow that contributes to the persistence of shallow pools into at least mid-summer;

(B) Maintains areas of open, sparsely vegetated, sandy stream channels and terraces by periodically scouring riparian vegetation; and

(C) Also modifies stream channels and terraces and redistributes sand and sediment, such that breeding pools and terrace habitats with scattered vegetation are maintained.

(iv) Stream channels and adjacent upland habitats that allow for movement to breeding pools, foraging areas, overwintering sites, upstream and downstream dispersal, and connectivity to areas that contain suitable habitat.

(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 a base of USGS 7.5' quadrangles using USDA National Agricultural Imagery Program (NAIP) county-wide MrSID compressed mosaics of 1 meter resolution and natural color aerial photography from summer 2009. Except where otherwise noted, critical habitat units were mapped using Universal Transverse Mercator (UTM) zone 11, North American Datum of 1983 (NAD83) coordinates.

(5) **Note:** Index map 1 of Units of Critical Habitat for Arroyo Toad (*Anaxyrus californicus*) follows:

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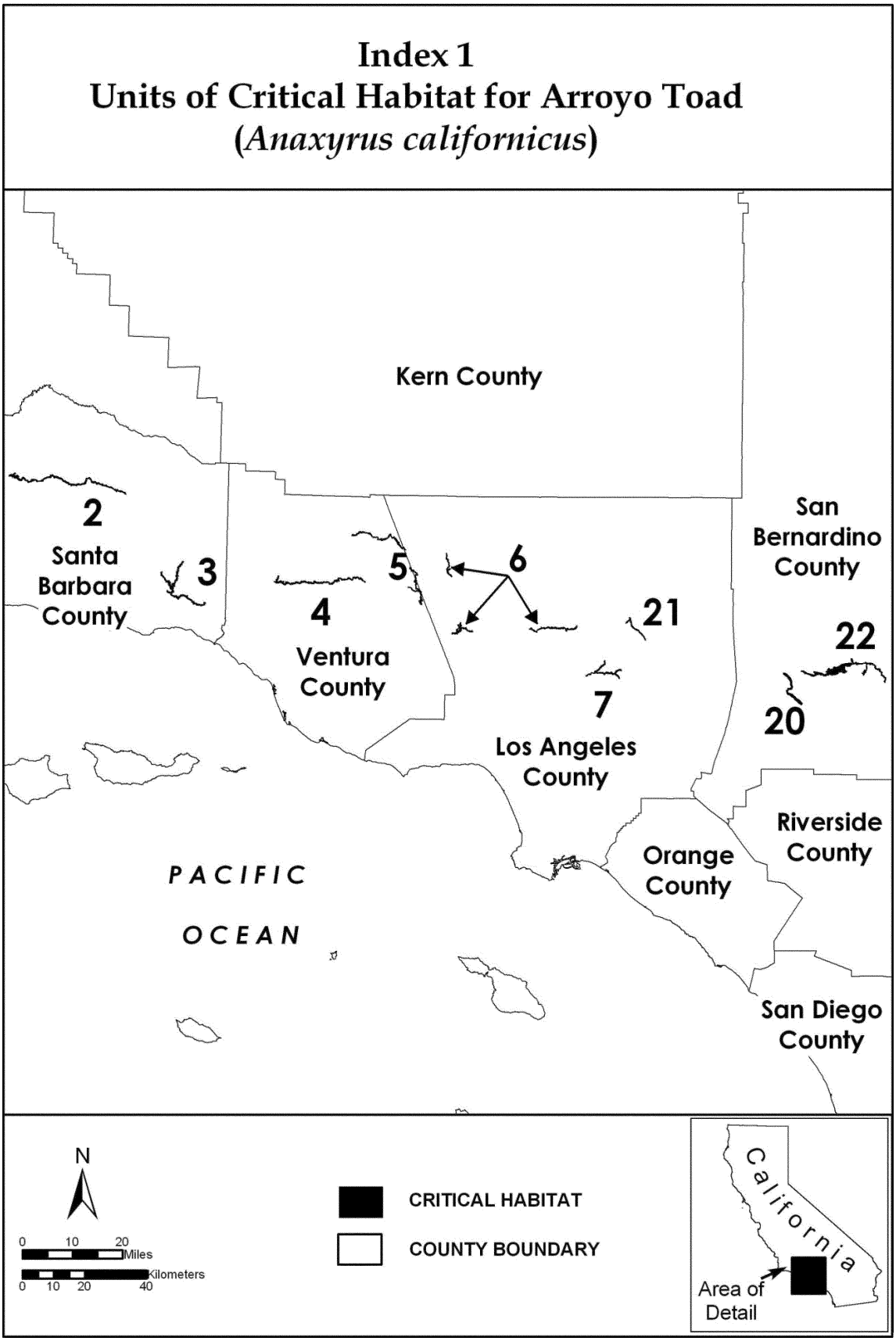
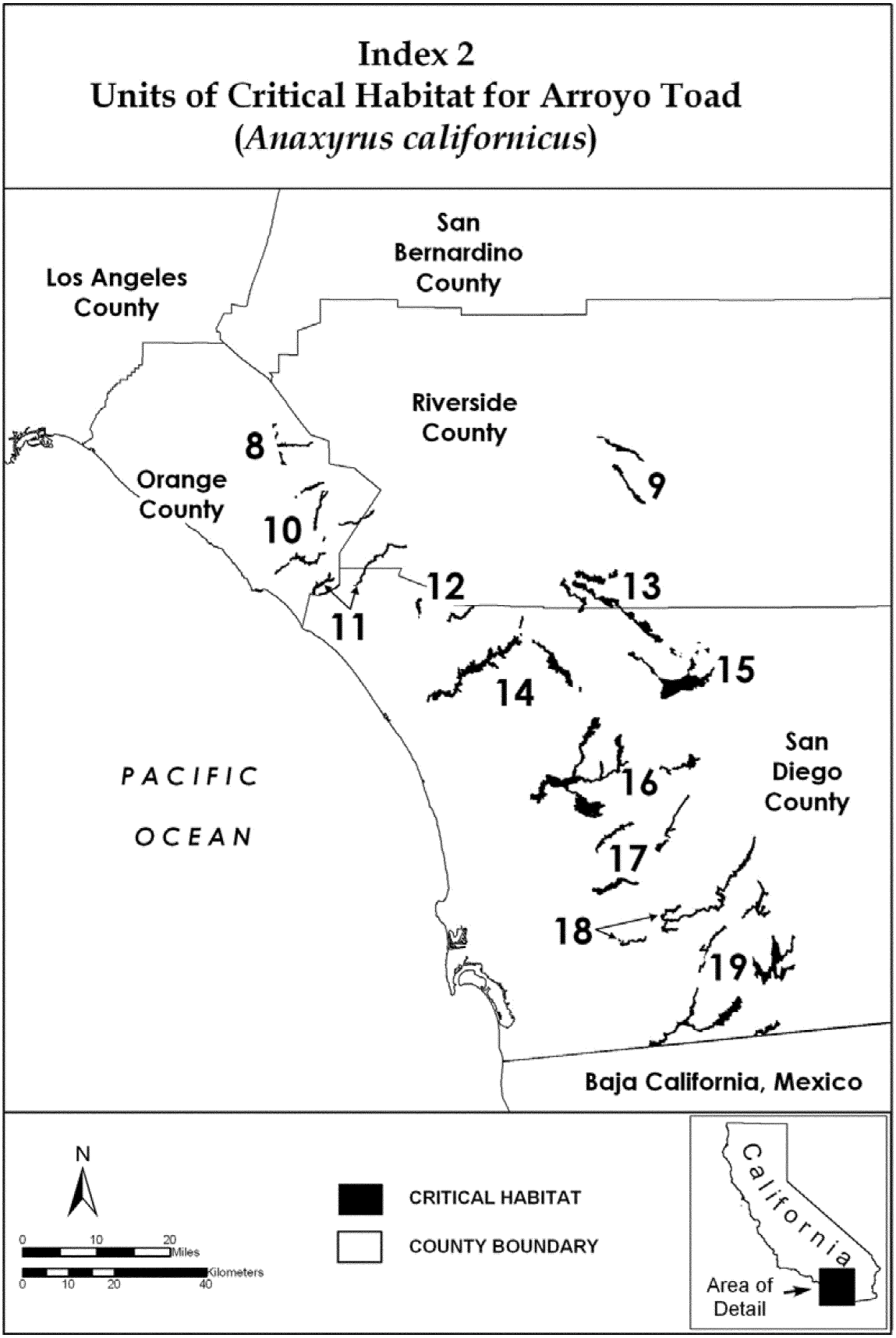

Index 1
Units of Critical Habitat for Arroyo Toad
(Anaxyrus californicus)
Kern County
2
Santa Barbara County
3
4
Ventura County
5
6
21
San Bernardino County
22
20
7
Los Angeles County
Riverside County
Orange County
PACIFIC
OCEAN
San Diego County
N
0 10 20 Miles
0 10 20 40 Kilometers
CRITICAL HABITAT
COUNTY BOUNDARY
California
Area of Detail

(6) **Note:** Index map 2 of Units of Critical Habitat for Arroyo Toad (*Anaxyrus californicus*) follows:



BILLING CODE 4310–55–C

(7) Unit 2: Sisquoc River, Santa Barbara County, California.

(i) From USGS 1:24,000 quadrangle maps Foxen Canyon, Zaca Lake, Bald

Mtn., and Hurricane Deck. Beginning at 120 degrees West Longitude at UTM zone 10, NAD83 y coordinate 3858106, land bounded by the following UTM zone 10, NAD83 coordinates (E, N): 774369, 3858136; 774379, 3857806; 774379, 3857806; 774151, 3857792; 774149, 3857822; 773999, 3857813; 773997, 3857843; 773937, 3857839; 773936, 3857869; 773876, 3857866; 773874, 3857896; 773844, 3857894; 773842, 3857924; 773812, 3857922; 773810, 3857952; 773780, 3857950; 773779, 3857980; 773749, 3857978; 773740, 3858128; 773710, 3858126; 773708, 3858156; 773678, 3858154; 773676, 3858184; 773646, 3858183; 773644, 3858213; 773615, 3858211; 773613, 3858241; 773583, 3858239; 773581, 3858269; 773521, 3858265; 773519, 3858295; 773459, 3858292; 773458, 3858322; 773248, 3858309; 773246, 3858339; 773156, 3858334; 773155, 3858364; 773095, 3858360; 773093, 3858390; 773033, 3858386; 773031, 3858416; 772941, 3858411; 772940, 3858441; 772850, 3858435; 772852, 3858405; 772792, 3858402; 772784, 3858522; 772755, 3858520; 772753, 3858550; 772723, 3858548; 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(ii) Note: Map of Unit 2 is provided at paragraph (8)(ii) of this entry.

(8) Unit 3: Upper Santa Ynez River Basin, Santa Barbara County, California.

(i) From USGS 1:24,000 quadrangle maps Little Pine Mtn., Hildreth Peak, and Carpinteria, land bounded by the following UTM coordinates (E, N): 262233, 3833176; 262233, 3833146; 262263, 3833146; 262263, 3833116; 262293, 3833116; 262293, 3833086; 262323, 3833086; 262323, 3833026; 262203, 3833026; 262203, 3832996; 262113, 3832996; 262113, 3832966; 262083, 3832966; 262083, 3832936; 261963, 3832936; 261963, 3832876; 261993, 3832876; 261993, 3832846; 261963, 3832846; 261963, 3832786; 261993, 3832786; 261993, 3832666; 261933, 3832666; 261933, 3832636; 261843, 3832636; 261843, 3832666; 261753, 3832666; 261753, 3832636; 261723, 3832636; 261723, 3832576; 261753, 3832576; 261753, 3832486; 261723, 3832486; 261723, 3832456; 261693, 3832456; 261693, 3832426; 261663, 3832426; 261663, 3832396; 261693, 3832396; 261693, 3832336; 261753, 3832336; 261753, 3832306; 261723, 3832306; 261723, 3832276; 261663, 3832276; 261663, 3832246; 261633, 3832246; 261633, 3832216; 261663, 3832216; 261663, 3832186; 261693, 3832186; 261693, 3832066; 261663, 3832066; 261663, 3832006; 261633, 3832006; 261633, 3831976; 261603, 3831976; 261603, 3831916; 261543, 3831916; 261543, 3831886; 261513, 3831886; 261513, 3831916; 261393, 3831916; 261393, 3831946; 261363, 3831946; 261363, 3831976; 261333, 3831976; 261333, 3831856; 261363, 3831856; 261363, 3831706; 261333, 3831706; 261333, 3831676; 261303, 3831676; 261303, 3831616; 261333, 3831616; 261333, 3831556; 261213, 3831556; 261213, 3831496; 261183, 3831496; 261183, 3831466; 261153, 3831466; 261153, 3831436; 261123, 3831436; 261123, 3831376; 261063, 3831376; 261063, 3831346; 260973, 3831346; 260973, 3831316; 260823, 3831316; 260823, 3831256; 260793, 3831256; 260793, 3831226; 260823, 3831226; 260823, 3831196; 260853, 3831196; 260853, 3831166; 260733, 3831166; 260733, 3831106; 260703, 3831106; 260703, 3831046; 260583, 3831046; 260583, 3831016; 260523, 3831016; 260523, 3830926; 260553, 3830926; 260553, 3830896; 260613, 3830896; 260613, 3830866; 260643, 3830866; 260643, 3830806; 260673, 3830806; 260673, 3830746; 260703, 3830746; 260703, 3830656; 260673, 3830656; 260673, 3830596; 260643, 3830596; 260643, 3830536; 260613, 3830536; 260613, 3830506; 260583, 3830506; 260583, 3830476; 260523, 3830476; 260523, 3830416; 260493, 3830416; 260493, 3830356; 260523, 3830356; 260523, 3830296; 260553, 3830296; 260553, 3830236; 260583, 3830236; 260583, 3830206; 260553, 3830206; 260553, 3830176; 260583, 3830176; 260583, 3830146; 260613, 3830146; 260613, 3830116; 260643, 3830116; 260643, 3830086; 260673, 3830086; 260673, 3829996; 260553, 3829996; 260553, 3829966; 260523, 3829966; 260523, 3829936; 260493, 3829936; 260493, 3829876; 260523, 3829876; 260523, 3829786; 260493, 3829786; 260493, 3829606; 260463, 3829606; 260463, 3829546; 260433, 3829546; 260433, 3829516; 260403, 3829516; 260403, 3829486; 260373, 3829486; 260373, 3829456; 260343, 3829456; 260343, 3829426; 260313, 3829426; 260313, 3829246; 260343, 3829246; 260343, 3829216; 260373, 3829216; 260373, 3829186; 260343, 3829186; 260343, 3829096; 260313, 3829096; 260313, 3829066; 260283, 3829066; 260283, 3829036; 260253, 3829036; 260253, 3829006; 260223, 3829006; 260223, 3828976; 260193, 3828976; 260193, 3828946; 260163, 3828946; 260163, 3828796; 260193, 3828796; 260193, 3828766; 260223, 3828766; 260223, 3828736; 260313, 3828736; 260313, 3828676; 260343, 3828676; 260343, 3828616; 260373, 3828616; 260373, 3828556; 260403, 3828556; 260403, 3828526; 260433, 3828526; 260433, 3828496; 260523, 3828496; 260523, 3828466; 260643, 3828466; 260643, 3828436; 260613, 3828436; 260613, 3828406; 260583, 3828406; 260583, 3828376; 260403, 3828376; 260403, 3828346; 260253, 3828346; 260253, 3828316; 260223, 3828316; 260223, 3828286; 260193, 3828286; 260193, 3828256; 260163, 3828256; 260163, 3828196; 260193, 3828196; 260193, 3828166; 260223, 3828166; 260223, 3828136; 260253, 3828136; 260253, 3828046; 260283, 3828046; 260283, 3827986; 260253, 3827986; 260253, 3827926; 260223, 3827926; 260223, 3827866; 260193, 3827866; 260193, 3827806; 260253, 3827806; 260253, 3827776; 260343, 3827776; 260343, 3827746; 260403, 3827746; 260403, 3827716; 260373, 3827716; 260373, 3827686; 260343, 3827686; 260343, 3827566; 260313, 3827566; 260313, 3827536; 260223, 3827536; 260223, 3827506; 260193, 3827506; 260193, 3827476; 260163, 3827476; 260163, 3827356; 260133, 3827356; 260133, 3827326; 260163, 3827326; 260163, 3827236; 260283, 3827236; 260283, 3827206; 260253, 3827206; 260253, 3827176; 260223, 3827176; 260223, 3827116; 260133, 3827116; 260133, 3827086; 260103, 3827086; 260103, 3827056; 260073, 3827056; 260073, 3826936; 259983, 3826936; 259983, 3826906; 259953, 3826906; 259953, 3826846; 259833, 3826846; 259833, 3826816; 259803, 3826816; 259803, 3826786; 259773, 3826786; 259773, 3826756; 259563, 3826756; 259563, 3826576; 259593, 3826576; 259593, 3826546; 259623, 3826546; 259623, 3826516;

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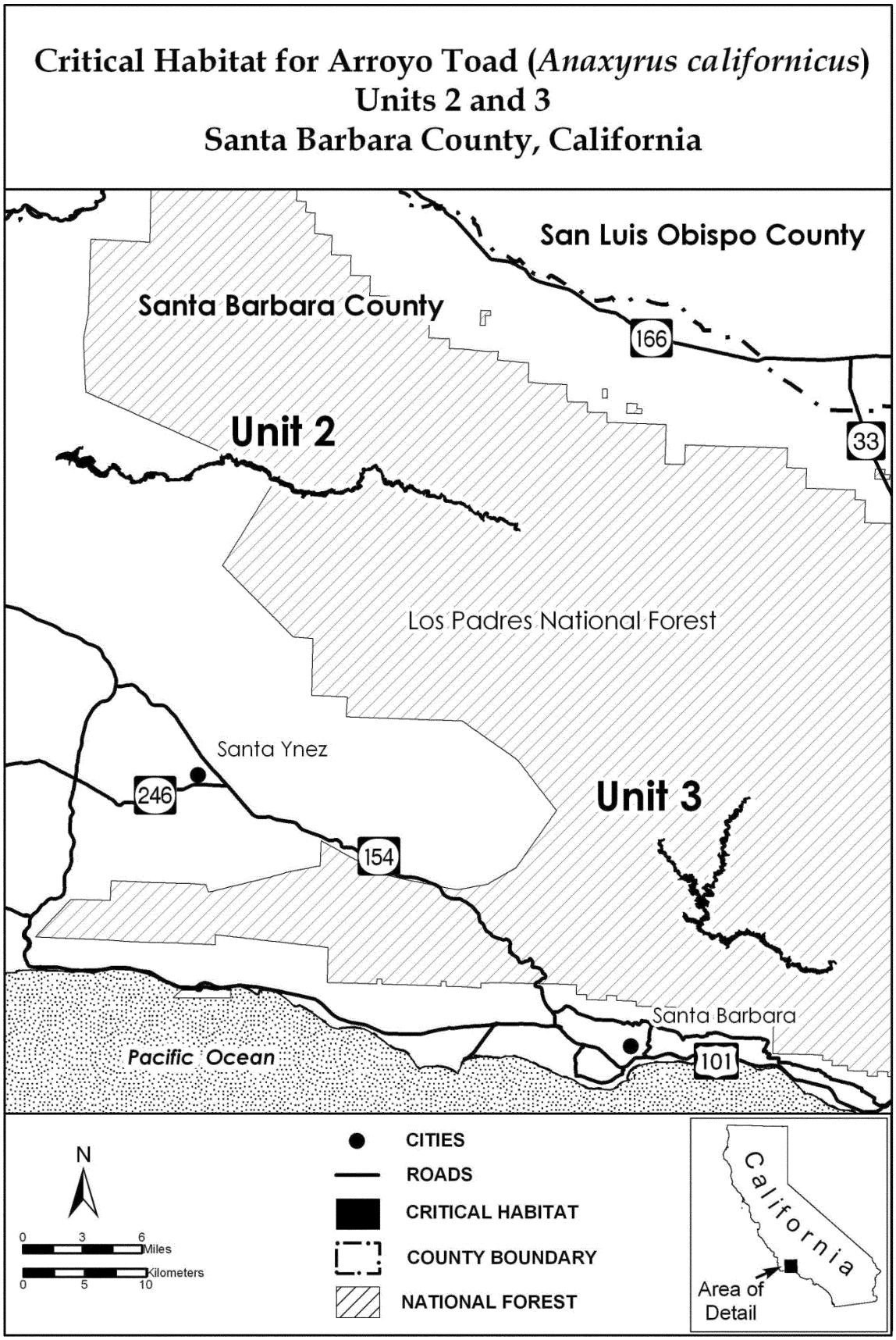
(ii) **Note:** Map of Units 2 and 3 follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(9) Unit 4: Sespe Creek, Ventura County, California.

(i) From USGS 1:24,000 quadrangle maps Wheeler Springs, Lion Canyon,

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(ii) Note: Map of Unit 4 is provided at paragraph (10)(iii) of this entry.

(10) Unit 5: Piru Creek, Ventura and Los Angeles Counties, California.

(i) Subunit 5a: From USGS 1:24,000 quadrangle maps Lockwood Valley, Alamo Mtn., and Black Mtn., land upstream from Pyramid Lake bounded by the following UTM coordinates (E, N): 319293, 3842776; 319293, 3842746; 319353, 3842746; 319353, 3842716; 319383, 3842716; 319383, 3842626; 319413, 3842626; 319413, 3842536; 319443, 3842536; 319443, 3842506; 319473, 3842506; 319473, 3842446; 319503, 3842446; 319503, 3842476; 319533, 3842476; 319533, 3842536; 319623, 3842536; 319623, 3842506; 319683, 3842506; 319683, 3842476; 319713, 3842476; 319713, 3842446; 319773, 3842446; 319773, 3842476; 319803, 3842476; 319803, 3842536; 319833, 3842536; 319833, 3842596; 319863, 3842596; 319863, 3842686; 319923, 3842686; 319923, 3842716; 319953, 3842716; 319953, 3842746; 320013, 3842746; 320013, 3842716; 320073, 3842716; 320073, 3842686; 320103, 3842686; 320103, 3842626; 320163, 3842626; 320163, 3842656; 320193, 3842656; 320193, 3842686; 320283, 3842686; 320283, 3842656; 320313, 3842656; 320313, 3842686; 320403, 3842686; 320403, 3842716; 320433, 3842716; 320433, 3842686; 320463, 3842686; 320463, 3842596; 320523, 3842596; 320523, 3842566; 320613, 3842566; 320613, 3842596; 320643, 3842596; 320643, 3842626; 320703, 3842626; 320703, 3842596; 320733, 3842596; 320733, 3842566; 320793, 3842566; 320793, 3842506; 320823, 3842506; 320823, 3842446; 320853, 3842446; 320853, 3842356; 320883, 3842356; 320883, 3842326; 320913, 3842326; 320913, 3842296; 320973, 3842296; 320973, 3842326; 321063, 3842326; 321063, 3842356; 321123, 3842356; 321123, 3842386; 321153, 3842386; 321153, 3842356; 321213, 3842356; 321213, 3842386; 321273, 3842386; 321273, 3842356; 321363, 3842356; 321363, 3842326; 321693, 3842326; 321693, 3842356; 321723, 3842356; 321723, 3842416; 321753, 3842416; 321753, 3842356; 321783, 3842356; 321783, 3842326; 321903, 3842326; 321903, 3842296; 321933, 3842296; 321933, 3842236; 321963, 3842236; 321963, 3842206; 321993, 3842206; 321993, 3842236; 322053, 3842236; 322053, 3842266; 322143, 3842266; 322143, 3842296; 322233, 3842296; 322233, 3842326; 322293, 3842326; 322293, 3842356; 322353, 3842356; 322353, 3842326; 322413, 3842326; 322413, 3842296; 322443, 3842296; 322443, 3842266; 322473, 3842266; 322473, 3842206; 322503, 3842206; 322503, 3842086; 322473, 3842086; 322473, 3842056; 322503, 3842056; 322503, 3841966; 322563, 3841966; 322563, 3841936; 322623, 3841936; 322623, 3841906; 322713, 3841906; 322713, 3841846; 322743, 3841846; 322743, 3841816; 322773, 3841816; 322773, 3841726; 322833, 3841726; 322833, 3841696; 322863, 3841696; 322863, 3841576; 322893, 3841576; 322893, 3841456; 322953, 3841456; 322953, 3841426; 322983, 3841426; 322983, 3841276; 323013, 3841276; 323013, 3841186; 323043, 3841186; 323043, 3841156; 323103, 3841156; 323103, 3841126; 323223, 3841126; 323223, 3841096; 323253, 3841096; 323253, 3841066; 323283, 3841066; 323283, 3841006; 323313, 3841006; 323313, 3840976; 323373, 3840976; 323373, 3840886; 323433, 3840886; 323433, 3840916; 323583, 3840916; 323583, 3840946; 323613, 3840946; 323613, 3840976; 323673, 3840976; 323673, 3841006; 323763, 3841006; 323763, 3841036; 323913, 3841036; 323913, 3841006; 323973, 3841006; 323973, 3840976; 324033, 3840976; 324033, 3840946; 324063, 3840946; 324063, 3840916; 324093, 3840916; 324093, 3840886; 324243, 3840886; 324243, 3840916; 324363, 3840916; 324363, 3840946; 324483, 3840946; 324483, 3840976; 324633, 3840976; 324633, 3840946; 324783, 3840946; 324783, 3840916; 324843, 3840916; 324843, 3840886; 324873, 3840886; 324873, 3840856; 324903, 3840856; 324903, 3840826; 324933, 3840826; 324933, 3840736; 324963, 3840736; 324963, 3840646;

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(ii) Subunit 5b: From USGS 1:24,000 quadrangle maps Black Mountain, Liebre Mountain, Whitaker Peak, and Cobblestone Mountain, land between Pyramid Lake and Lake Piru bounded by the following UTM coordinates (E, N): 337443, 3829276; 337383, 3829276; 337383, 3829246; 337293, 3829246; 337293, 3829216; 337263, 3829216; 337263, 3829246; 337203, 3829246; 337203, 3829336; 337173, 3829336; 337173, 3829366; 337203, 3829366; 337203, 3829426; 337173, 3829426; 337173, 3829456; 337143, 3829456; 337143, 3829486; 337053, 3829486; 337053, 3829456; 336873, 3829456; 336873, 3829486; 336843, 3829486; 336843, 3829516; 336813, 3829516; 336813, 3829546; 336783, 3829546; 336783, 3829606; 336693, 3829606; 336693, 3829726; 336723, 3829726; 336723, 3829786; 336693, 3829786; 336693, 3829816; 336663, 3829816; 336663, 3829846; 336633, 3829846; 336633, 3829876; 336573, 3829876; 336573, 3829936; 336513, 3829936; 336513, 3829876; 336483, 3829876; 336483, 3829846; 336453, 3829846; 336453, 3829816; 336303, 3829816; 336303, 3829876; 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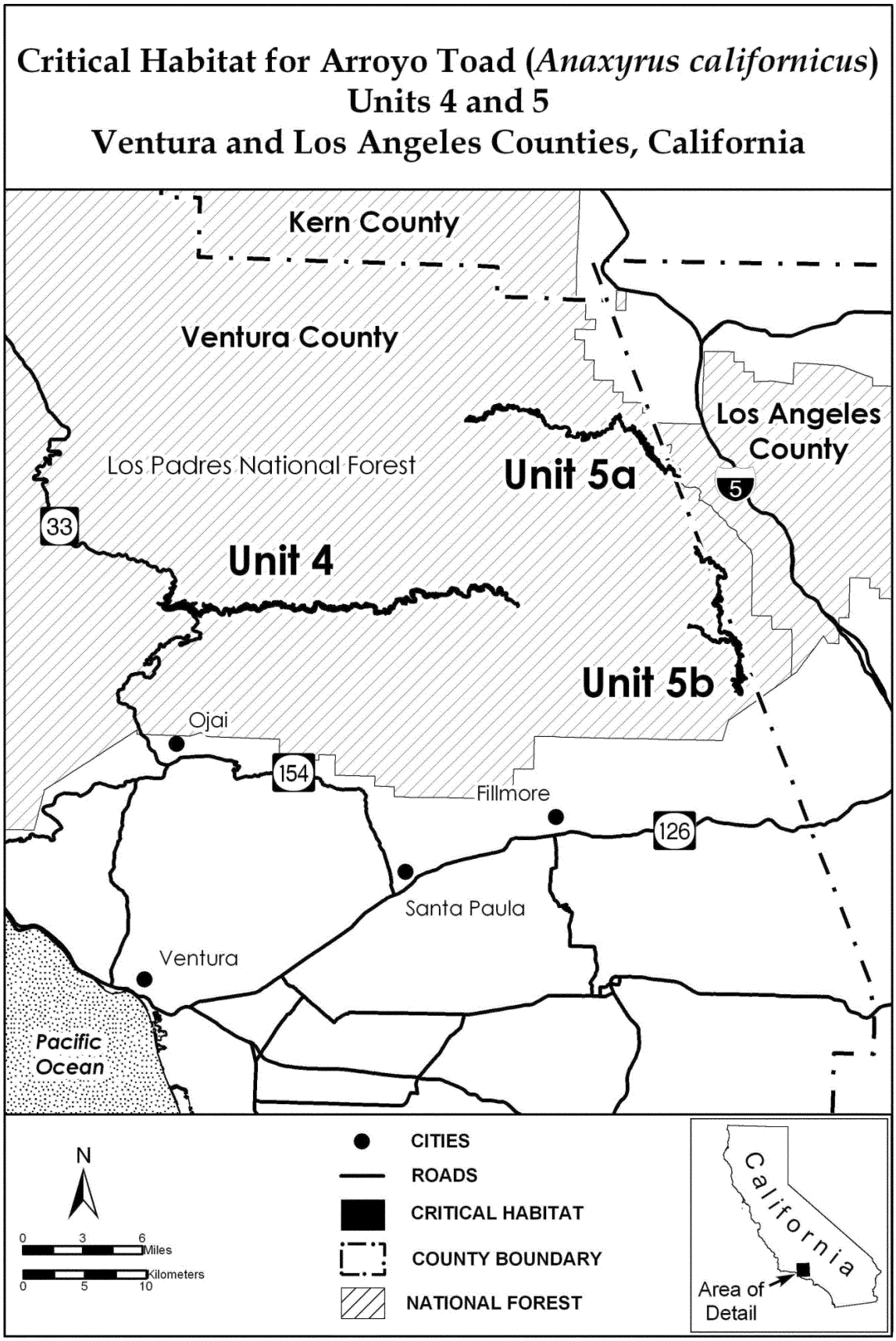
Excluding land bounded by 337443, 3829276; 337473, 3829276; 337473, 3829336; 337443, 3829336; returning to 337443, 3829276.

(iii) **Note:** Map of Units 4 and 5 follows:

BILLING CODE 4310–55–P



BILLING CODE 43107–55–C

(11) Unit 6: Upper Santa Clara River Basin, Los Angeles County, California.

(i) Subunit 6a: From USGS 1:24,000 quadrangle maps Liebre Mtn. and

Whitaker Peak, land upstream of Castaic Lake, bounded by the following UTM coordinates (E, N): 347013, 3835726; 347013, 3835696; 347043, 3835696; 347043, 3835576; 347073, 3835576; 347073, 3835546; 347103, 3835546; 347103, 3835516; 347073, 3835516; 347073, 3835426; 347103, 3835426; 347103, 3835306; 347133, 3835306; 347133, 3835276; 347163, 3835276; 347163, 3835216; 347133, 3835216; 347133, 3835186; 347163, 3835186; 347163, 3835126; 347133, 3835126; 347133, 3835036; 347163, 3835036; 347163, 3834976; 347193, 3834976; 347193, 3834946; 347223, 3834946; 347223, 3834916; 347193, 3834916; 347193, 3834886; 347163, 3834886; 347163, 3834856; 347133, 3834856; 347133, 3834766; 347163, 3834766; 347163, 3834676; 347133, 3834676; 347133, 3834646; 347103, 3834646; 347103, 3834436; 347073, 3834436; 347073, 3834406; 347043, 3834406; 347043, 3834346; 347073, 3834346; 347073, 3834226; 347043, 3834226; 347043, 3834166; 347073, 3834166; 347073, 3834136; 347103, 3834136; 347103, 3834106; 347073, 3834106; 347073, 3834046; 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(ii) Subunit 6b: From USGS 1:24,000 quadrangle maps Val Verde and Newhall, land bounded by the following UTM coordinates (E, N): 351607, 3812015; 351519, 3811959; 351509, 3811885; 351441, 3811818; 351334, 3811775; 351265, 3811817; 351198, 3811784; 351050, 3811684; 350707, 3811270; 350549, 3811035; 350461, 3810962; 350392, 3810900; 350536, 3810555; 350611, 3810615; 350651, 3810701; 350911, 3810836; 350996, 3810902; 351071, 3811080; 351233, 3811324; 351219, 3811410; 351600, 3811716; 351723, 3811700; 351817, 3811720; 351869, 3811755; 351931, 3811780; 352028, 3811785; 352275, 3811789; 352444, 3811775; 352470, 3811769; 352572, 3811731; 352656, 3811722; 352693, 3811705; 352754, 3811671; 352780, 3811675; 352794, 3811672; 352866, 3811626; 352898, 3811602; 352914, 3811598; 352942, 3811612; 352987, 3811637; 353083, 3811663; 353147, 3811702; 353216, 3811740; 353234, 3811758; 353232, 3811809; 353269, 3811790; 353276, 3811785; 353335, 3811693; 353500, 3811489; 353620, 3811270; 353712, 3811027; 353790, 3810921; 353806, 3810879; 353836, 3810829; 353902, 3810814; 354034, 3810821; 354163, 3810711; 354188, 3810661; 354219, 3810611; 354385, 3810571; 354404, 3810585; 354407, 3810621; 354340, 3810791; 354401, 3810779; 354503, 3810743; 354626, 3810700; 354675, 3810672; 354728, 3810658; 354809, 3810606; 354872, 3810556; 354931, 3810602; 354944, 3810635; 354962, 3810664; 354999, 3810679; 355059, 3810710; 355104, 3810722; 355134, 3810752; 355211, 3810742; 355239, 3810746; 355261, 3810741; 355286, 3810734; 355312, 3810731; 355340, 3810738; 355367, 3810705; 355334, 3810669; 355308, 3810641; 355272, 3810602; 355329, 3810504; 355339, 3810502; 355434, 3810487; 355489, 3810439; 355510, 3810432; 355515, 3810392; 355464, 3810402; 355405, 3810353; 355244, 3810403; 355176, 3810435; 355113, 3810417; 355091, 3810325; 354761, 3810325; 354746, 3810358; 354539, 3810348; 354510, 3810406; 354477, 3810400; 354282, 3810496; 354213, 3810530; 354144, 3810533; 354039, 3810589; 353745, 3810703; 353618, 3810835; 353493, 3810884; 353457, 3810959; 353464, 3811077; 353461, 3811117; 353440, 3811155; 353401, 3811177; 353203, 3811177; 353129, 3811231; 353097, 3811234; 353059, 3811234; 353025, 3811241; 353000, 3811258; 352943, 3811285; 352799, 3811294; 352639, 3811323; 352632, 3811323; 352526, 3811295; 352391, 3811345; 352293, 3811456; 352263, 3811456; 352263, 3811486; 352203, 3811486; 352203, 3811516; 352143, 3811516; 352143, 3811486; 352083, 3811486; 352083, 3811516; 352053, 3811516; 352053, 3811546; 351933, 3811546; 351933, 3811516; 351903, 3811516; 351903, 3811486; 351873, 3811486; 351873, 3811456; 351843, 3811456; 351843, 3811396; 351813, 3811396; 351813, 3811366; 351783, 3811366; 351783, 3811306; 351753, 3811306; 351753, 3811246; 351723, 3811246; 351723, 3811216; 351693, 3811216; 351693, 3811126; 351723, 3811126; 351723, 3811096; 351753, 3811096; 351753, 3811036; 351783, 3811036; 351783, 3811006; 351843, 3811006; 351843, 3810946; 351873, 3810946; 351873, 3810916; 351903, 3810916; 351903, 3810886; 351873, 3810886; 351873, 3810856; 351783, 3810856; 351783, 3810886; 351693, 3810886; 351693, 3810916; 351633, 3810916; 351633, 3810886; 351573, 3810886; 351573, 3810856; 351543, 3810856; 351543, 3810826; 351513, 3810826; 351513, 3810796; 351483, 3810796; 351483, 3810766; 351453, 3810766; 351453, 3810736; 351423, 3810736; 351423, 3810706; 351393, 3810706; 351393, 3810586; 351423, 3810586; 351423, 3810556; 351483, 3810556; 351483, 3810526; 351573, 3810526; 351573, 3810496; 351513, 3810496; 351513, 3810406; 351423, 3810406; 351423, 3810436; 351333, 3810436; 351333, 3810406; 351273, 3810406; 351273, 3810376; 351213, 3810376; 351213, 3810346; 351123, 3810346; 351123, 3810316; 351063, 3810316; 351063, 3810286; 350973, 3810286; 350973, 3810256; 350913, 3810256; 350913, 3810196; 350853, 3810196; 350853, 3810166; 350823, 3810166; 350823, 3810106; 350793, 3810106; 350793, 3810016; 350763, 3810016; 350763, 3809986; 350733, 3809986; 350733, 3810016; 350703, 3810016; 350703, 3810046; 350673, 3810046; 350673, 3810016; 350613, 3810016; 350613, 3809986; 350583, 3809986; 350583, 3809956; 350553, 3809956; 350553, 3809926; 350523, 3809926; 350523, 3809896; 350463, 3809896; 350463, 3809866; 350433, 3809866; 350433, 3809806; 350463, 3809806; 350463, 3809776; 350493, 3809776; 350493, 3809716; 350523, 3809716; 350523, 3809686; 350493, 3809686; 350493, 3809656; 350403, 3809656; 350403, 3809686; 350343, 3809686; 350343, 3809716; 350283, 3809716; 350283, 3809746; 350163, 3809746; 350163, 3809716; 350073, 3809716; 350073, 3809746; 349803, 3809746; 349803, 3809716; 349773, 3809716; 349773, 3809656; 349743, 3809656; 349743, 3809626; 349713, 3809626; 349713, 3809656; 349683, 3809656; 349683, 3809716; 349653, 3809716; 349653, 3809746; 349593, 3809746; 349593, 3809776; 349443, 3809776; 349443, 3809746; 349413, 3809746; 349413, 3809716; 349383, 3809716; 349383, 3809686; 349353, 3809686; 349353,

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(iii) Subunit 6c: From USGS 1:24,000 quadrangle maps Agua Dulce, and Acton, land bounded by the following UTM coordinates (E, N): 388803, 3811696; 388803, 3811636; 388833, 3811636; 388833, 3811606; 388863, 3811606; 388863, 3811576; 388833, 3811576; 388833, 3811486; 388773, 3811486; 388773, 3811426; 388683, 3811426; 388683, 3811306; 388653, 3811306; 388653, 3811276; 388623, 3811276; 388623, 3811246; 388593, 3811246; 388593, 3811216; 388353, 3811216; 388353, 3811186; 388293, 3811186; 388293, 3811126; 387965, 3811126; 387965, 3810996; 386223, 3810996; 386223, 3811006; 386163, 3811006; 386163, 3811036; 386013, 3811036; 386013, 3811066; 385953, 3811066; 385953, 3811096; 385893, 3811096; 385893, 3811186; 385773, 3811186; 385773, 3811156; 385743, 3811156; 385743, 3811036; 385773, 3811036; 385773, 3810706; 385803, 3810706; 385803, 3810646; 385833, 3810646; 385833, 3810586; 385863, 3810586; 385863, 3810526; 385773, 3810526; 385773, 3810556; 385713, 3810556; 385713, 3810586; 385623, 3810586; 385623, 3810646; 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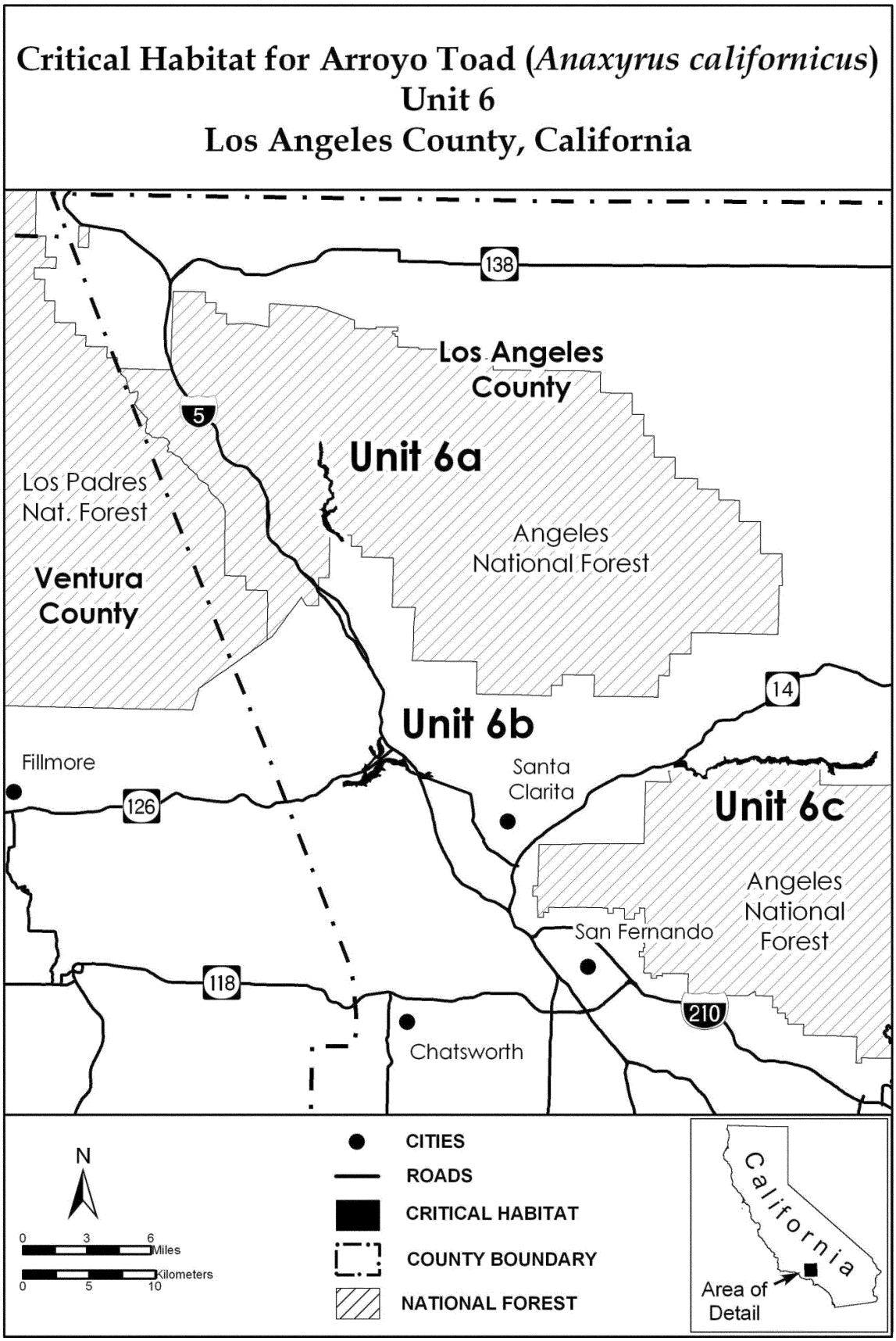
(iv) **Note:** Map of Unit 6 follows.

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(12) Unit 7: Upper Los Angeles River Basin, Los Angeles County, California.

(i) From USGS 1:24,000 quadrangle maps Condor Peak and Chilao Flat, land

in the Big Tujunga Creek basin bounded by the following UTM zone 11, NAD83 coordinates (E, N): 398433, 3797296; 398403, 3797296; 398403, 3797326; 398433, 3797326; returning to 398433, 3797296.

(ii) Land bounded by the following UTM coordinates (E, N): 398433, 3797296; 398463, 3797296; 398463, 3797326; 398523, 3797326; 398523, 3797446; 398553, 3797446; 398553, 3797416; 398583, 3797416; 398583, 3797386; 398613, 3797386; 398613, 3797326; 398643, 3797326; 398643, 3797296; 398703, 3797296; 398703, 3797326; 398733, 3797326; 398733, 3797356; 398763, 3797356; 398763, 3797386; 398823, 3797386; 398823, 3797326; 398793, 3797326; 398793, 3797266; 398823, 3797266; 398823, 3797236; 398943, 3797236; 398943, 3797266; 399003, 3797266; 399003, 3797236; 399033, 3797236; 399033, 3797206; 399003, 3797206; 399003, 3797146; 399093, 3797146; 399093, 3797176; 399123, 3797176; 399123, 3797206; 399153, 3797206; 399153, 3797296; 399183, 3797296; 399183, 3797326; 399213, 3797326; 399213, 3797296; 399243, 3797296; 399243, 3797266; 399273, 3797266; 399273, 3797296; 399303, 3797296; 399303, 3797326; 399363, 3797326; 399363, 3797356; 399393, 3797356; 399393, 3797236; 399633, 3797236; 399633, 3797206; 399693, 3797206; 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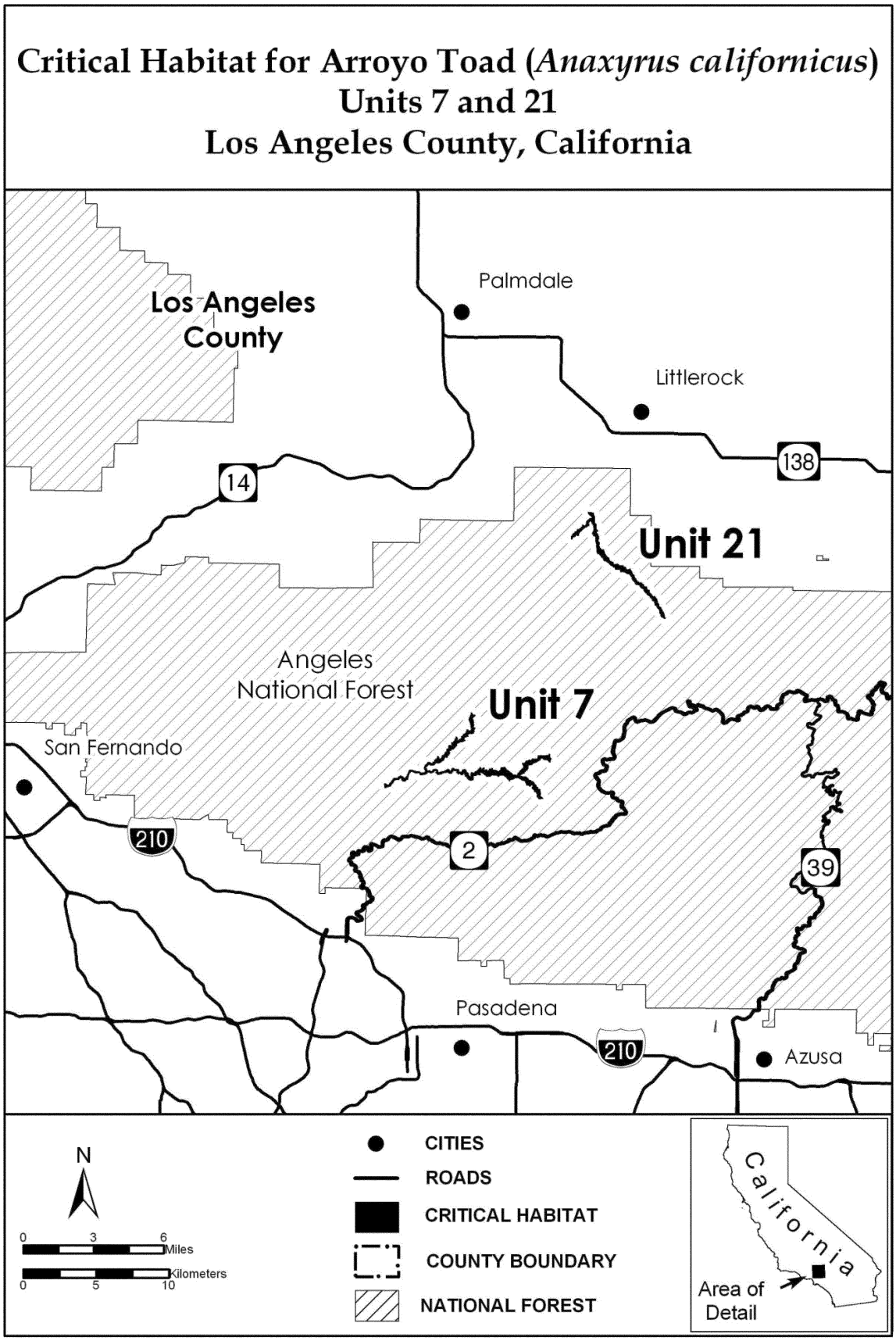
(iii) **Note:** Map of Units 7 and 21 follows.

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(13) Unit 8: Lower Santa Ana River Basin, Orange County, California.

(i) From USGS 1:24,000 quadrangle maps Black Star Canyon, Corona South,

El Toro, and Santiago Peak, land bounded by the following UTM coordinates (E, N): 439642, 3732778; 439642, 3732749; 439671, 3732749; 439671, 3732721; 439699, 3732721; 439699, 3732692; 439727, 3732692; 439727, 3732636; 439756, 3732636; 439756, 3732607; 439841, 3732607; 439841, 3732522; 439897, 3732522; 439897, 3732466; 439926, 3732466; 439926, 3732409; 439983, 3732409; 439983, 3732380; 440153, 3732380; 440153, 3732409; 440181, 3732409; 440181, 3732380; 440210, 3732380; 440210, 3732324; 440153, 3732324; 440153, 3732295; 440124, 3732295; 440124, 3732267; 440068, 3732267; 440068, 3732239; 440011, 3732239; 440011, 3732210; 439983, 3732210; 439983, 3732097; 440011, 3732097; 440011, 3732040; 440039, 3732040; 440039, 3731813; 440068, 3731813; 440068, 3731785; 440011, 3731785; 440011, 3731756; 439983, 3731756; 439983, 3731671; 440011, 3731671; 440011, 3731586; 439983, 3731586; 439983, 3731501; 440068, 3731501; 440068, 3731302; 440096, 3731302; 440096, 3731274; 440124, 3731274; 440124, 3731217; 440096, 3731217; 440096, 3731161; 440124, 3731161; 440124, 3731132; 440153, 3731132; 440153, 3731075; 440181, 3731075; 440181, 3731047; 440210, 3731047; 440210, 3730962; 440238, 3730962; 440238, 3730934; 440295, 3730934; 440295, 3730905; 440323, 3730905; 440323, 3730877; 440351, 3730877; 440351, 3730820; 440380, 3730820; 440380, 3730707; 440408, 3730707; 440408, 3730678; 440465, 3730678; 440465, 3730650; 440493, 3730650; 440493, 3730622; 440522, 3730622; 440522, 3730593; 440550, 3730593; 440550, 3730565; 440578, 3730565; 440578, 3730508; 440607, 3730508; 440607, 3730451; 440692, 3730451; 440692, 3730395; 440663, 3730395; 440663, 3730366; 440692, 3730366; 440692, 3730309; 440720, 3730309; 440720, 3730253; 440749, 3730253; 440749, 3730224; 440777, 3730224; 440777, 3730196; 440805, 3730196; 440805, 3730168; 440862, 3730168; 440862, 3730139; 440919, 3730139; 440919, 3730111; 440947, 3730111; 440947, 3730083; 440976, 3730083; 440976, 3730054; 441032, 3730054; 441032, 3730026; 441089, 3730026; 441089, 3729997; 441061, 3729997; 441061, 3729969; 441004, 3729969; 441004, 3729941; 440976, 3729941; 440976, 3729912; 440890, 3729912; 440890, 3729941; 440834, 3729941; 440834, 3729969; 440805, 3729969; 440805, 3729997; 440777, 3729997; 440777, 3730026; 440749, 3730026; 440749, 3730054; 440607, 3730054; 440607, 3730083; 440578, 3730083; 440578, 3730111; 440550, 3730111; 440550, 3730139; 440522, 3730139; 440522, 3730196; 440493, 3730196; 440493, 3730224; 440465, 3730224; 440465, 3730253; 440436, 3730253; 440436, 3730281; 440408, 3730281; 440408, 3730338; 440380, 3730338; 440380, 3730366; 440323, 3730366; 440323, 3730395; 440266, 3730395; 440266, 3730366; 440238, 3730366; 440238, 3730338; 440238, 3730281; 440266, 3730281; 440266, 3730168; 440295, 3730168; 440295, 3730083; 440323, 3730083; 440323, 3730054; 440295, 3730054; 440295, 3730026; 440266, 3730026; 440266, 3730054; 440238, 3730054; 440238, 3730083; 440181, 3730083; 440181, 3730111; 440096, 3730111; 440096, 3730083; 440068, 3730083; 440068, 3730168; 440096, 3730168; 440096, 3730224; 440068, 3730224; 440068, 3730253; 440039, 3730253; 440039, 3730281; 440068, 3730281; 440068, 3730395; 440039, 3730395; 440039, 3730423; 440011, 3730423; 440011, 3730439; 440013, 3730446; 440018, 3730467; 440024, 3730487; 440031, 3730507; 440037, 3730527; 440044, 3730546; 440051, 3730566; 440059, 3730585; 440067, 3730605; 440075, 3730624; 440084, 3730643; 440093, 3730662; 440102, 3730681; 440108, 3730691; 440108, 3730692; 440128, 3730713; 440130, 3730716; 440130, 3730717; 440129, 3730719; 440128, 3730723; 440116, 3730760; 440108, 3730799; 440104, 3730838; 440104, 3730875; 440104, 3730878; 440104, 3730881; 440106, 3730918; 440111, 3730918; 440112, 3730939; 440107, 3730939; 440109, 3730968; 440109, 3730994; 440107, 3731031; 440100, 3731067; 440090, 3731103; 440076, 3731137; 439958, 3731389; 439957, 3731392; 439956, 3731395; 439949, 3731411; 439936, 3731449; 439927, 3731487; 439922, 3731526; 439911, 3731686; 439911, 3731689; 439911, 3731692; 439910, 3731703; 439904, 3731739; 439894, 3731775; 439753, 3732205; 439751, 3732211; 439742, 3732247; 439740, 3732253; 439720, 3732354; 439719, 3732360; 439710, 3732393; 439709, 3732396; 439708, 3732399; 439643, 3732597; 439641, 3732603; 439630, 3732631; 439613, 3732664; 439594, 3732695; 439581, 3732711; 439581, 3732712; 439603, 3732730; 439642, 3732784; returning to 439642, 3732778.

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(iii) Land bounded by the following UTM coordinates (E, N): 439075, 3737033; 439075, 3737005; 439132, 3737005; 439132, 3736976; 439188, 3736976; 439188, 3736948; 439217, 3736948; 439217, 3736919; 439188, 3736919; 439188, 3736692; 439160, 3736692; 439160, 3736664; 439188, 3736664; 439188, 3736607; 439160, 3736607; 439160, 3736522; 439132, 3736522; 439132, 3736437; 439103, 3736437; 439103, 3736409; 439046, 3736409; 439046, 3736352; 439018, 3736352; 439018, 3736324; 438990, 3736324; 438990, 3736295; 438961, 3736295; 438961, 3736267; 438933, 3736267; 438933, 3736239; 438848, 3736239; 438848, 3736182; 438819, 3736182; 438819, 3736125; 438791, 3736125; 438791, 3736040; 438819, 3736040; 438819, 3735955; 438791, 3735955; 438791, 3735927; 438819, 3735927; 438819, 3735841; 438848, 3735841; 438848, 3735756; 438905, 3735756; 438905, 3735728; 438848, 3735728; 438848, 3735700; 438819, 3735700; 438819, 3735643; 438791, 3735643; 438791, 3735614; 438770, 3735614; 438763, 3735636; 438678, 3735898; 438678, 3736125; 438706, 3736125; 438706, 3736182; 438734, 3736182; 438734, 3736267; 438763, 3736267; 438763, 3736295; 438791, 3736295; 438791, 3736352; 438848, 3736352; 438848, 3736380; 438876, 3736380; 438876, 3736466; 438905, 3736466; 438905, 3736494; 438933, 3736494; 438933, 3736522; 438961, 3736522; 438961, 3736551; 438990, 3736551; 438990, 3736721; 439018, 3736721; 439018, 3736749; 439046, 3736749; 439046, 3736834; 439018, 3736834; 439018, 3736863; 439046, 3736863; 439046, 3736891; 439018, 3736891; 439018, 3737061; 439018, 3737090; 439046, 3737090; 439046, 3737118; 439075, 3737118; returning to 439075, 3737033.

(iv) Land bounded by the following UTM coordinates (E, N): 438819, 3738707; 438819, 3738650; 438791, 3738650; 438791, 3738622; 438763, 3738622; 438763, 3738593; 438678, 3738593; 438678, 3738565; 438593, 3738565; 438593, 3738593; 438536, 3738593; 438536, 3738622; 438394, 3738622; 438394, 3738593; 438337, 3738593; 438337, 3738565; 438309, 3738565; 438309, 3738423; 438337, 3738423; 438337, 3738338; 438309, 3738338; 438309, 3738224; 438280, 3738224; 438280, 3738054; 438224, 3738054; 438224, 3737997; 438216, 3737997; 438212, 3738060; 438195,

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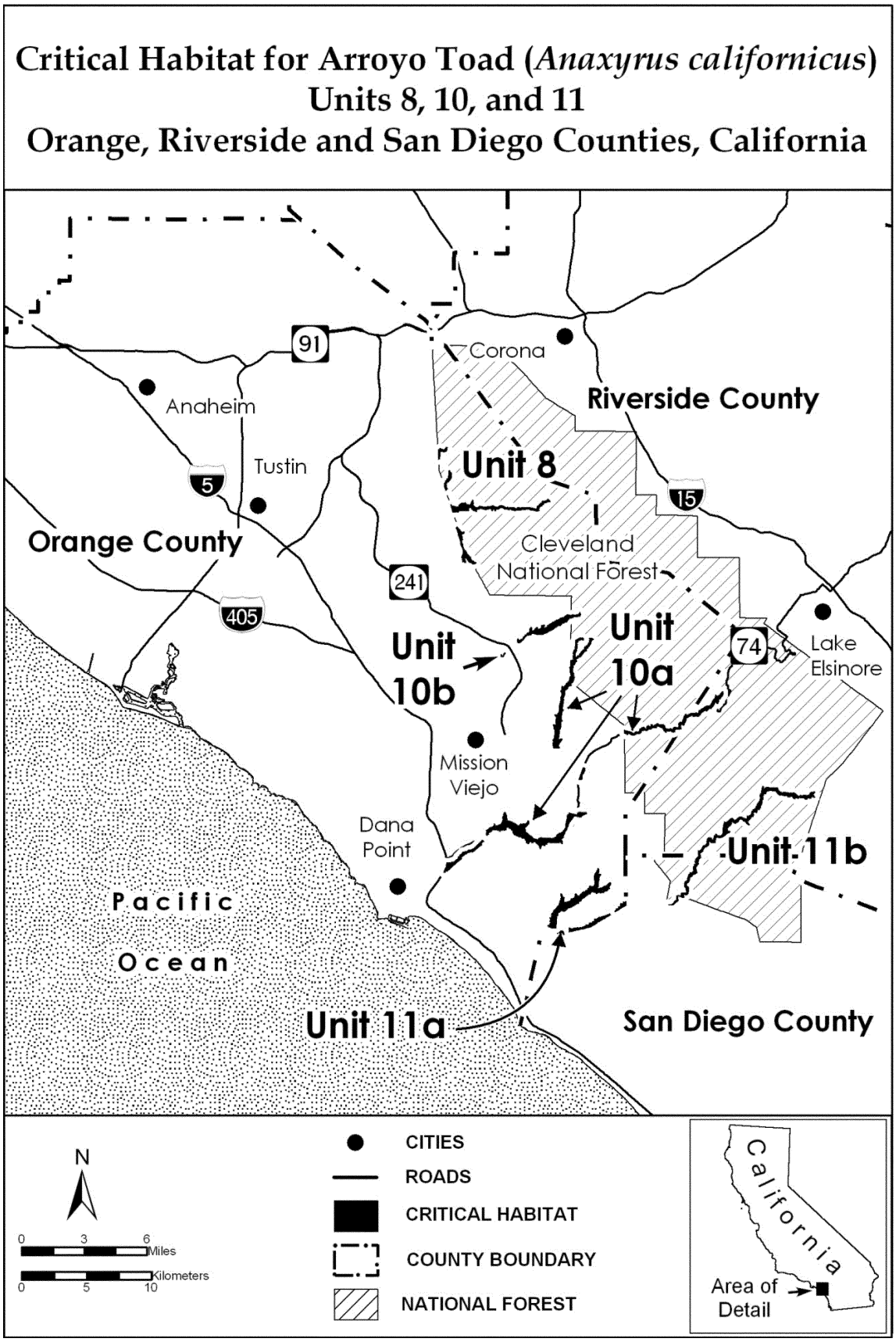
(v) **Note:** Map of Units 8, 10, and 11 follows.

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(14) Unit 9: San Jacinto River Basin, Riverside County, California.

(i) Subunit 9a: From USGS 1:24,000 quadrangle maps San Jacinto, Lake

Fulmor, Hemet and Blackburn Canyon, land bounded by the following UTM coordinates (E, N): 511446, 3735434; 511416, 3735434; 511416, 3735453; 511469, 3735455; 511469, 3735434; returning to 511446, 3735434.

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(iii) Land bounded by the following UTM coordinates (E, N): 510080, 3736102; 510444, 3735807; 510183, 3735807; 509230, 3735809; 509158, 3735887; 509092, 3735942; 509032, 3735968; 508988, 3736003; 508969, 3736079; 508994, 3736113; 509122, 3736113; 509266, 3736094; 509314, 3736096; 509464, 3736079; 509601, 3736077; 509649, 3736100; 509650, 3736103; 509652, 3736114; 509871, 3736115; 510063, 3736116; returning to 510080, 3736102.

(iv) Subunit 9b: From USGS 1:24,000 quadrangle map Blackburn Canyon, land bounded by the following UTM coordinates (E, N): 512766, 3730034; 512766, 3730004; 512796, 3730004; 512796, 3729974; 512826, 3729974; 512826, 3729944; 512886, 3729944; 512886, 3729914; 512916, 3729914; 512916, 3729884; 512946, 3729884; 512946, 3729854; 512976, 3729854; 512976, 3729824; 513006, 3729824; 513006, 3729794; 513066, 3729794; 513066, 3729764; 513096, 3729764; 513096, 3729704; 513186, 3729704; 513186, 3729734; 513216, 3729734; 513216, 3729794; 513246, 3729794; 513246, 3729824; 513426, 3729824; 513426, 3729794; 513456, 3729794; 513456, 3729764; 513486, 3729764; 513486, 3729734; 513546, 3729734; 513546, 3729704; 513516, 3729704; 513516, 3729674; 513486, 3729674; 513486, 3729644; 513456, 3729644; 513456, 3729614; 513426, 3729614; 513426, 3729554; 513396, 3729554; 513396, 3729524; 513456, 3729524; 513456, 3729494; 513486, 3729494; 513486, 3729374; 513576, 3729374; 513576, 3729344; 513606, 3729344; 513606, 3729254; 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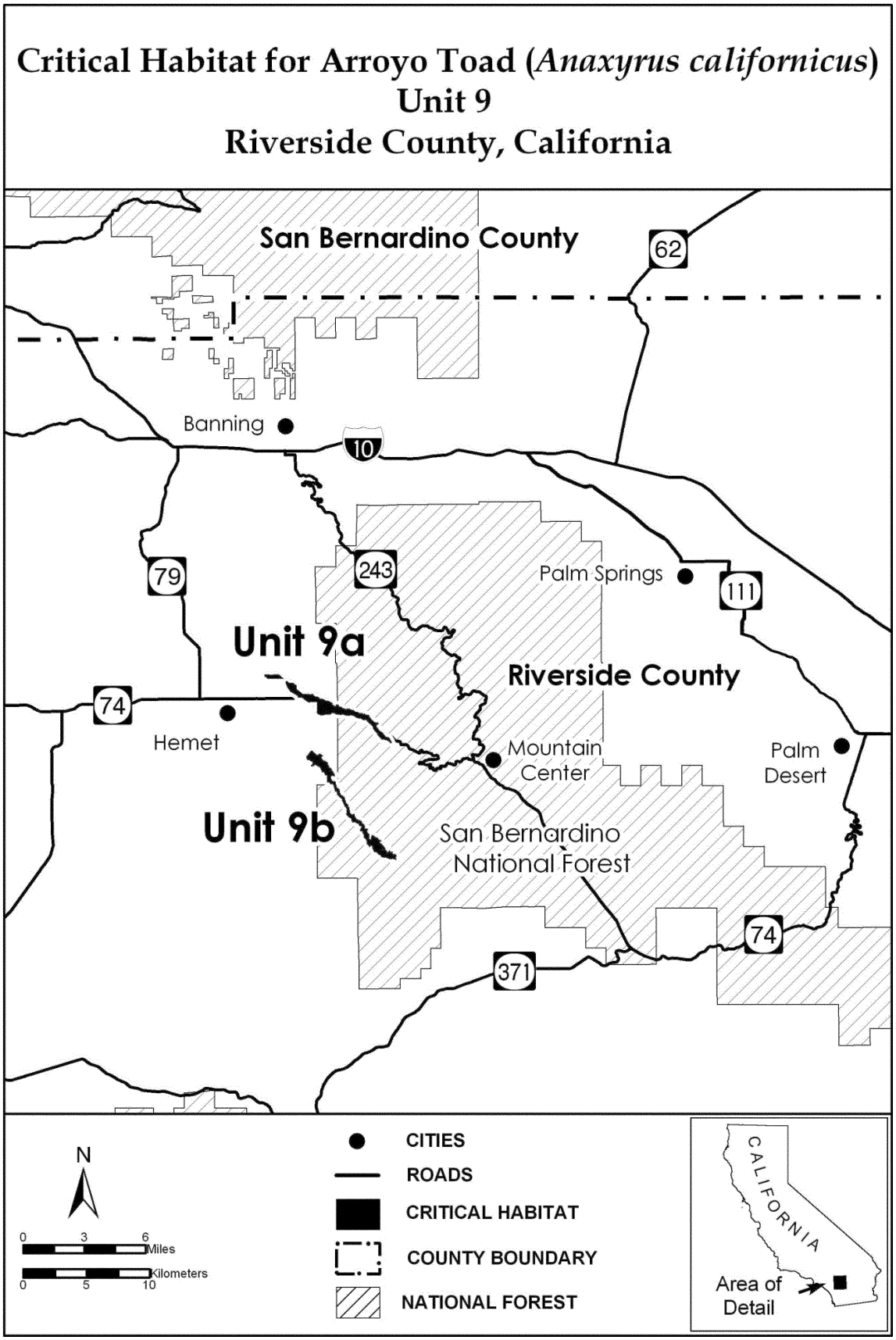
(v) **Note:** Map of Units 9 follows.

BILLING CODE 4310–55–P


Critical Habitat for Arroyo Toad (*Anaxyrus californicus*)
Unit 9
Riverside County, California
San Bernardino County
62
Banning
10
79
243
Palm Springs
111
Unit 9a
Riverside County
74
Hemet
Mountain Center
Palm Desert
Unit 9b
San Bernardino National Forest
74
371
N
0 3 6 Miles
0 5 10 Kilometers
CITIES
ROADS
CRITICAL HABITAT
COUNTY BOUNDARY
NATIONAL FOREST
CALIFORNIA
Area of Detail

BILLING CODE 4310–55–C

(15) Unit 10: San Juan Creek Basin, Orange and Riverside Counties, California.

(i) Subunit 10a: From USGS 1:24,000 quadrangle maps Dana Point, San Juan Capistrano, Canada Gobernadora, Sitton Peak and Santiago Peak, land bounded by the following UTM coordinates (E, N): 447472, 3708409; 447500, 3708409; 447500, 3708380; 447472, 3708380; returning to 447472, 3708409.

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(iii) Land bounded by the following UTM coordinates (E, N): 447500, 3708409; 447500, 3708437; 447472, 3708437; 447472, 3708409; 447330, 3708409; 447330, 3708380; 447075, 3708380; 447075, 3708409; 446905, 3708409; 446905, 3708380; 446876, 3708380; 446876, 3708409; 446820, 3708409; 446820, 3708437; 446678, 3708437; 446678, 3708409; 446621, 3708409; 446621, 3708380; 446593, 3708380; 446593, 3708352; 446564, 3708352; 446564, 3708295; 446593, 3708295; 446593, 3708267; 446536, 3708267; 446536, 3708295; 446479, 3708295; 446479, 3708324; 446394, 3708324; 446394, 3708352; 446366, 3708352; 446366, 3708267; 446394, 3708267; 446394, 3708238; 446422, 3708238; 446422, 3708182; 446366, 3708182; 446366, 3708210; 446252, 3708210; 446252, 3708238; 446167, 3708238; 446167, 3708153; 446139, 3708153; 446139, 3708068; 446110, 3708068; 446110, 3707983; 446082, 3707983; 446082, 3707926; 446054, 3707926; 446054, 3708011; 446025, 3708011; 446025, 3708097; 446018, 3708097; 446002, 3708150; 445977, 3708203; 445942, 3708250; 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(viii) Subunit 10b: From USGS 1:24,000 quadrangle map Santiago Peak, land bounded by the following UTM coordinates (E, N): 443236, 3722799; 443231, 3722788; 443185, 3722746; 443127, 3722747; 443085, 3722768; 443067, 3722796; 443053, 3722858; 443052, 3722896; 443090, 3722896; 443099, 3722835; 443114, 3722806; 443117, 3722806; 443117, 3722805; 443120, 3722805; 443120, 3722806; 443131, 3722805; 443128, 3722802; 443128, 3722799; 443143, 3722793; 443173, 3722792; 443198, 3722813; 443198, 3722825; 443218, 3722844; 443223, 3722867; 443232, 3722876; 443233, 3722907; 443223, 3722918; 443223, 3722926; 443253, 3722926; 443253, 3722946; 443262, 3722956; 443283, 3722956; 443283, 3722986; 443313, 3722986; 443313, 3723036; 443322, 3723044; 443322, 3723046; 443343, 3723046; 443343, 3723076; 443368, 3723076; 443371, 3723067; 443339, 3723002; 443314, 3722980; 443311, 3722950; 443308, 3722945; 443274, 3722909; 443272, 3722871; 443258, 3722842; 443240, 3722823; returning to 443236, 3722799.

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(x) Note: Map of Unit 10 is provided at paragraph (13)(v) of this entry.

(16) Unit 11: San Mateo Basin, Orange, Riverside, and San Diego Counties, California.

(i) Subunit 11a: From USGS 1:24,000 quadrangle map San Clemente, land bounded by the following UTM coordinates (E, N): 449613, 3702046; 449583, 3702046; 449583, 3702076; 449613, 3702076; returning to 449613, 3702046.

(ii) Land bounded by the following UTM coordinates (E, N): 449613, 3702046; 449703, 3702046; 449703, 3702016; 449733, 3702016; 449733, 3702046; 449823, 3702046; 449823, 3702076; 449853, 3702076; 449853, 3702196; 449913, 3702196; 449913, 3702166; 450033, 3702166; 450033, 3702196; 450093, 3702196; 450093, 3702256; 450153, 3702256; 450153, 3702286; 450213, 3702286; 450213, 3702316; 450243, 3702316; 450243, 3702346; 450273, 3702346; 450273, 3702436; 450243, 3702436; 450243, 3702466; 450303, 3702466; 450303, 3702496; 450393, 3702496; 450393, 3702466; 450423, 3702466; 450423, 3702496; 450483, 3702496; 450483, 3702526; 450513, 3702526; 450513, 3702556; 450603, 3702556; 450603, 3702586; 450633, 3702586; 450633, 3702646; 450663, 3702646; 450663, 3702616; 450753, 3702616; 450753, 3702646; 450813, 3702646; 450813, 3702676; 450933, 3702676; 450933, 3702706; 450963, 3702706; 450963, 3702736; 451083, 3702736; 451083, 3702766; 451203, 3702766; 451203, 3702796; 451263, 3702796; 451263, 3702826; 451293, 3702826; 451293, 3702796; 451323, 3702796; 451323, 3702826; 451383, 3702826; 451383, 3702856; 451413, 3702856; 451413, 3702886; 451473, 3702886; 451473, 3702916; 451533, 3702916; 451533, 3702976; 451563, 3702976; 451563, 3703006; 451743, 3703006; 451743, 3703036; 451818, 3703036; 450584, 3702286; 450513, 3702286; 450513, 3702256; 450453, 3702256; 450453, 3702226; 450423, 3702226; 450423, 3702188; 449917, 3701885; 449865, 3701873; 448313, 3701517; 448318, 3701806; 448320, 3701805; 448504, 3701735; 448596, 3701741; 448628, 3701756; 448657, 3701771; 448701, 3701806; 448773, 3701806; 448773, 3701776; 448803, 3701776; 448803, 3701806; 448953, 3701806; 448953, 3701836; 448983, 3701836; 448983, 3701806; 449163, 3701806; 449163, 3701836; 449223, 3701836; 449223, 3701806; 449313, 3701806; 449313, 3701836; 449343, 3701836; 449343, 3701866; 449433, 3701866; 449433, 3701896; 449463, 3701896; 449463, 3701926; 449523, 3701926; 449523, 3701956; 449613, 3701956; returning to 449613, 3702046.

(iii) Land bounded by the following UTM coordinates (E, N): 452685, 3703768; 452686, 3703564; 451833, 3703045; 451833, 3703096; 451863, 3703096; 451863, 3703126; 451893, 3703126; 451893, 3703156; 451923, 3703156; 451923, 3703216; 451953, 3703216; 451953, 3703246; 451983, 3703246; 451983, 3703306; 452013, 3703306; 452013, 3703276; 452073, 3703276; 452073, 3703306; 452103, 3703306; 452103, 3703426; 452223, 3703426; 452223, 3703456; 452253, 3703456; 452253, 3703486; 452283, 3703486; 452283, 3703636; 452313, 3703636; 452313, 3703696; 452343, 3703696; 452343, 3703636; 452433, 3703636; 452433, 3703666; 452463, 3703666; 452463, 3703696; 452493, 3703696; 452493, 3703816; 452553, 3703816; 452553, 3703786; 452583, 3703786; 452583, 3703756; 452613, 3703756; 452613, 3703786; 452643, 3703786; 452643, 3703816; 452673, 3703816; 452673, 3703876; 452684, 3703876; returning to 452685, 3703768.

(iv) Land bounded by the following UTM coordinates (E, N): 451503, 3705316; 451503, 3705346; 451533, 3705346; 451533, 3705316; returning to 451503, 3705316.

(v) Land bounded by the following UTM coordinates (E, N): 451503, 3705316; 451503, 3705166; 451473, 3705166; 451473, 3705136; 451443, 3705136; 451443, 3705046; 451413, 3705046; 451413, 3705016; 451383, 3705016; 451383, 3704926; 451413, 3704926; 451413, 3704896; 451443, 3704896; 451443, 3704836; 451383, 3704836; 451383, 3704866; 451323, 3704866; 451323, 3704776; 451263, 3704776; 451263, 3704746; 451233, 3704746; 451233, 3704686; 451203, 3704686; 451203, 3704656; 451053, 3704656; 451053, 3704626; 450993, 3704626; 450993, 3704566; 450813, 3704566; 450813, 3704536; 450753, 3704536; 450753, 3704506; 450723, 3704506; 450723, 3704536; 450483, 3704536; 450483, 3704506; 450423, 3704506; 450423, 3704476; 450393, 3704476; 450393, 3704536; 450333, 3704536; 450333, 3704566; 450273, 3704566; 450273, 3704596; 450153, 3704596; 450153, 3704626; 450033, 3704626; 450033, 3704596; 450003, 3704596; 450003, 3704566; 449973, 3704566; 449973, 3704536; 449943, 3704536; 449943, 3704476; 449913, 3704476; 449913, 3704446; 449883, 3704446; 449883, 3704416; 449763, 3704416; 449763, 3704386; 449703, 3704386; 449703, 3704356; 449673, 3704356; 449673, 3704326; 449613, 3704326; 449613, 3704296; 449583, 3704296; 449583, 3704266; 449553, 3704266; 449553, 3704236; 449523, 3704236; 449523, 3704206; 449493, 3704206; 449493, 3704176; 449433, 3704176; 449433, 3704146; 449403, 3704146; 449403, 3704116; 449343, 3704116; 449343, 3704086; 449283, 3704086; 449283, 3704056; 449253, 3704056; 449253, 3704026; 449223, 3704026; 449223, 3703906; 449163, 3703906; 449163, 3703876; 449073, 3703876; 449073, 3703846; 449043, 3703846; 449043, 3703742; 449037, 3703740; 449021, 3703726; 448893, 3703726; 448893, 3703696; 448863, 3703696; 448863, 3703666; 448833, 3703666; 448833, 3703646; 448818, 3703644; 448808, 3703636; 448803, 3703636; 448803, 3703631; 448776, 3703606; 448743, 3703606; 448743, 3703580; 448738, 3703576; 448683, 3703576; 448683, 3703546; 448653, 3703546; 448653, 3703516; 448593, 3703516; 448593, 3703486; 448503, 3703486; 448503, 3703456; 448473, 3703456; 448473, 3703426; 448443, 3703426; 448443, 3703396; 448353, 3703396; 448353, 3703366; 448203, 3703366; 448203, 3703336; 448143, 3703336; 448143, 3703281; 448143, 3703281; 448025, 3703185; 448021, 3703182; 448017, 3703179; 448014, 3703176; 448006, 3703169; 447991, 3703157; 447987, 3703154; 447983, 3703152; 447979, 3703149; 447968, 3703140; 447956, 3703132; 447948, 3703126; 447944, 3703124; 447940, 3703121; 447935, 3703119; 447931, 3703116; 447927, 3703113; 447923, 3703111; 447919, 3703108; 447915, 3703106; 447911, 3703103; 447906, 3703101; 447902, 3703099; 447898, 3703096; 447885, 3703089; 447881, 3703087; 447876, 3703084; 447873, 3703083; 447873, 3703096; 447843, 3703096; 447843, 3703126; 447603, 3703126; 447603, 3703096; 447573, 3703096; 447573, 3703066; 447543, 3703066; 447543, 3703036; 447483, 3703036; 447483, 3703006; 447453, 3703006; 447453, 3702976; 447423, 3702976; 447423, 3702796; 447393, 3702796; 447393, 3702766; 447363, 3702766; 447363, 3702706; 447333, 3702706; 447333, 3702646; 447363, 3702646; 447363, 3702586; 447333, 3702586; 447333, 3702526; 447303, 3702526; 447303, 3702316; 447309, 3702316; 447309, 3702315; 447310, 3702312; 447310, 3702309; 447310,

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(vi) Subunit 11b: From USGS 1:24,000 quadrangle map Margarita Peak, land bounded by the following UTM coordinates (E, N): 455883, 3703636; 455883, 3703606; 455943, 3703606; 455943, 3703592; 455790, 3703594; 455792, 3703606; 455853, 3703606; 455853, 3703636; returning to 455883, 3703636.

(vii) Land bounded by the following UTM coordinates (E, N): 467274, 3712323; 467274, 3712352; 467302, 3712352; 467302, 3712323; returning to 467274, 3712323;

(viii) Land bounded by the following UTM coordinates (E, N): 467274, 3712323; 467274, 3712267; 467245, 3712267; 467245, 3712238; 467217, 3712238; 467217, 3712210; 467188, 3712210; 467188, 3712182; 467160, 3712182; 467160, 3712153; 467132,

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(ix) Note: Map of Unit 11 is provided at paragraph (13)(v) of this entry.

(17) Unit 12: Lower Santa Margarita Basin, San Diego County, California.

(i) Subunit 12a: From USGS 1:24,000 quadrangle maps Fallbrook and Temecula, land bounded by the following UTM coordinates (E, N): 470019, 3696496; 470013, 3696496; 470013, 3696526; 470019, 3696526; returning to 470019, 3696496.

(ii) Land bounded by the following UTM coordinates (E, N): 470024, 3696976; 470020, 3696616; 470013, 3696616; 470013, 3696646; 469983, 3696646; 469983, 3696856; 470013, 3696856; 470013, 3696976; returning to 470024, 3696976.

(iii) Land bounded by the following UTM coordinates (E, N): 470553, 3700756; 470553, 3700726; 470583, 3700726; 470583, 3700606; 470553, 3700606; 470553, 3700576; 470523, 3700576; 470523, 3700546; 470463, 3700546; 470463, 3700456; 470493, 3700456; 470493, 3700426; 470553, 3700426; 470553, 3700396; 470583, 3700396; 470583, 3700336; 470523, 3700336; 470523, 3700306; 470313, 3700306; 470313, 3700276; 470223, 3700276; 470223, 3700246; 470163, 3700246; 470163, 3700096; 470043, 3700096; 470043, 3700126; 469923, 3700126; 469923, 3699976; 469893, 3699976; 469893, 3699886; 469923, 3699886; 469923, 3699766; 469953, 3699766; 469953, 3699706; 469983, 3699706; 469983, 3699676; 470013, 3699676; 470013, 3699646; 470043, 3699646; 470043, 3699616; 470103, 3699616; 470103, 3699586; 470073, 3699586; 470073, 3699436; 470043, 3699436; 470043, 3699406; 470013, 3699406; 470013, 3699376; 469983, 3699376; 469983, 3699286; 470073, 3699286; 470073, 3699256; 470043, 3699256; 470043, 3699196; 470013, 3699196; 470013, 3699136; 469983, 3699136; 469983, 3699076; 470013, 3699076; 470013, 3698896; 470043, 3698896; 470043, 3698866; 470073, 3698866; 470073, 3698836; 470133, 3698836; 470133, 3698806; 470223, 3698806; 470223, 3698836; 470253, 3698836; 470253, 3698866; 470313, 3698866; 470313, 3698806; 470343, 3698806; 470343, 3698746; 470313, 3698746; 470313, 3698686; 470343, 3698686; 470343, 3698596; 470313, 3698596; 470313, 3698566; 470253, 3698566; 470253, 3698446; 470223, 3698446; 470223, 3698416; 470193, 3698416; 470193, 3698446; 470163, 3698446; 470163, 3698416; 470133, 3698416; 470133, 3698356; 470103, 3698356; 470103, 3698326; 470133, 3698326; 470133, 3698266; 470163, 3698266; 470163, 3698206; 470193, 3698206; 470193, 3698176; 470283, 3698176; 470283, 3698146; 470313, 3698146; 470313, 3698116; 470283, 3698116; 470283, 3698086; 470253, 3698086; 470253, 3697936; 470283, 3697936; 470283, 3697906; 470373, 3697906; 470373, 3697876; 470433, 3697876; 470433, 3697816; 470403, 3697816; 470403, 3697786; 470313, 3697786; 470313, 3697756; 470283, 3697756; 470283, 3697696; 470253, 3697696; 470253, 3697576; 470283, 3697576; 470283, 3697546; 470343,

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(iv) Subunit 12b: From USGS 1:24,000 quadrangle maps Fallbrook and Temecula, land bounded by the following UTM coordinates (E, N): 481713, 3699166; 481713, 3699136; 481743, 3699136; 481743, 3699106; 481773, 3699106; 481773, 3699046; 481803, 3699046; 481803, 3698986; 481833, 3698986; 481833, 3698956; 481983, 3698956; 481983, 3698926; 482043, 3698926; 482043, 3698896; 481983, 3698896; 481983, 3698866; 481953, 3698866; 481953, 3698836; 481923, 3698836; 481923, 3698806; 481893, 3698806; 481893, 3698716; 481863, 3698716; 481863, 3698686; 481833, 3698686; 481833, 3698656; 481803, 3698656; 481803, 3698626; 481773, 3698626; 481773, 3698596; 481743, 3698596; 481743, 3698566; 481683, 3698566; 481683, 3698536; 481653, 3698536; 481653, 3698506; 481518, 3698506; 481519, 3698558; 481476, 3698579; 481418, 3698570; 481299, 3698509; 481259, 3698468; 481232, 3698394; 481172, 3698298; 481108, 3698204; 481085, 3698135; 481233, 3698076; 481233, 3698056; 481173, 3698056; 481173, 3698026; 481083, 3698026; 481083, 3697996; 481053, 3697996; 481053, 3697936; 480993, 3697936; 480993, 3697876; 480963, 3697876; 480963, 3697816; 480933, 3697816; 480933, 3697786; 480903, 3697786; 480903, 3697756; 480873, 3697756; 480873, 3697726; 480843, 3697726; 480843, 3697666; 480783, 3697666; 480783, 3697636; 480753, 3697636; 480753, 3697606; 480693, 3697606; 480693, 3697576; 480663, 3697576; 480663, 3697546; 480633, 3697546; 480633, 3697456; 480543, 3697456; 480543, 3697486; 480483, 3697486; 480483, 3697456; 480453, 3697456; 480453, 3697336; 480483, 3697336; 480483, 3697306; 480453, 3697306; 480453, 3697276; 480393, 3697276; 480393, 3697246; 480363, 3697246; 480363, 3697276; 480303, 3697276; 480303, 3697246; 480273, 3697246; 480273, 3697186; 480243, 3697186; 480243, 3697156; 480273, 3697156; 480273, 3697066; 480213, 3697066; 480213, 3697036; 480183, 3697036; 480183, 3697006; 480153, 3697006; 480153, 3696976; 480123, 3696976; 480123, 3696946; 480093, 3696946; 480093, 3696916; 480063, 3696916; 480063, 3696886; 480093, 3696886; 480093, 3696856; 480123, 3696856; 480123, 3696796; 480153, 3696796; 480153, 3696766; 480213, 3696766; 480213, 3696736; 480183, 3696736; 480183, 3696706; 480153, 3696706; 480153, 3696676; 480093, 3696676; 480093, 3696706; 480063, 3696706; 480063, 3696736; 479883, 3696736; 479883, 3696676; 479733, 3696676; 479733, 3696646; 479673, 3696646; 479673, 3696616; 479643, 3696616; 479643, 3696586; 479613, 3696586; 479613, 3696556; 479583, 3696556; 479583, 3696496; 479553, 3696496; 479553, 3696466; 479493, 3696466; 479493, 3696436; 479463, 3696436; 479463, 3696406; 479373, 3696406; 479373, 3696376; 479343, 3696376; 479343, 3696346; 479283, 3696346; 479283, 3696316; 479253, 3696316; 479253, 3696286; 479223, 3696286; 479223, 3696226; 479193, 3696226; 479193, 3696196; 479163, 3696196; 479163, 3696226; 479043, 3696226; 479043, 3696196; 479013, 3696196; 479013, 3696166; 478953, 3696166; 478953, 3696196; 478923, 3696196; 478923, 3696226; 478953, 3696226; 478953, 3696316; 478923, 3696316; 478923, 3696376; 478863, 3696376; 478863, 3696346; 478833, 3696346; 478833, 3696286; 478563, 3696286; 478563, 3696316; 478473, 3696316; 478473, 3696346; 478443, 3696346; 478443, 3696376; 478473, 3696376; 478473, 3696436; 478443, 3696436; 478443, 3696496; 478413, 3696496; 478413, 3696556; 478383, 3696556; 478383, 3696586; 478293, 3696586; 478293, 3696556; 478173, 3696556; 478173, 3696526; 478143, 3696526; 478143, 3696496; 478083, 3696496; 478083, 3696436; 478053, 3696436; 478053, 3696406; 478023, 3696406; 478023, 3696376; 477993, 3696376; 477993, 3696406; 477963, 3696406; 477963, 3696466; 477903, 3696466; 477903, 3696496; 477813, 3696496; 477813, 3696466; 477753, 3696466; 477753, 3696526; 477723, 3696526; 477723, 3696556; 477693, 3696556; 477693, 3696586; 477663, 3696586; 477663, 3696796; 477633, 3696796; 477633, 3696856; 477663, 3696856; 477663, 3696976; 477633, 3696976; 477633, 3697006; 477573, 3697006; 477573, 3697036; 477333, 3697036; 477333, 3697006; 477273, 3697006; 477273, 3696976; 477243, 3696976; 477243, 3696946; 477213, 3696946; 477213, 3696916; 477183, 3696916; 477183, 3696886; 477153, 3696886; 477153, 3696856; 477123, 3696856; 477123, 3696826; 477093, 3696826; 477093, 3696796; 477063, 3696796; 477063, 3696766; 477033, 3696766; 477033, 3696706; 476973, 3696706; 476973, 3696616; 477003, 3696616; 477003, 3696586; 476943, 3696586; 476943, 3696556; 476913, 3696556; 476913, 3696526; 476883, 3696526; 476883, 3696346; 476913, 3696346; 476913, 3696316; 476883, 3696316; 476883, 3696196; 476853, 3696196; 476853, 3695926;

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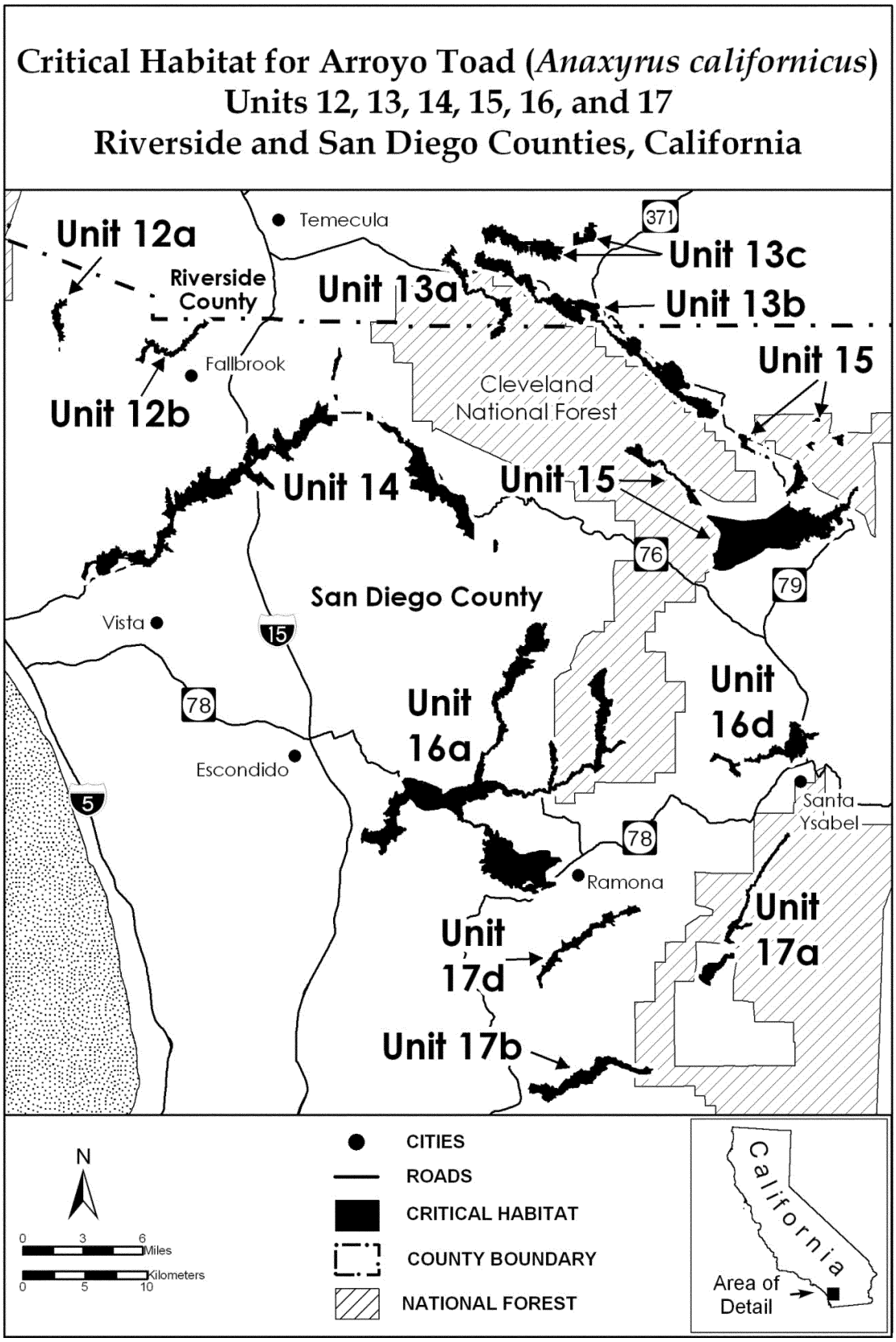
(v) **Note:** Map of Units 12, 13, 14, 15, 16, and 17 follows.

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(18) Unit 13: Upper Santa Margarita Basin, Riverside and San Diego Counties, California.

(i) Subunit 13a: from USGS 1:24,000 quadrangle map Vail Lake, land bounded by the following UTM coordinates (E, N): 505506, 3698564; 505506, 3698534; 505536, 3698534; 505536, 3698564; 505506, 3698564; 505506, 3698599; 505506, 3698624; 505536, 3698624; 505536, 3698654; 505566, 3698654; 505566, 3698624; 505626, 3698624; 505626, 3698594; 505656, 3698594; 505656, 3698624; 505686, 3698624; 505686, 3698654; 505716, 3698654; 505716, 3698684; 505686, 3698684; 505686, 3698714; 505656, 3698714; 505656, 3698744; 505626, 3698744; 505626, 3698774; 505596, 3698774; 505596, 3698804; 505446, 3698804; 505446, 3698834; 505386, 3698834; 505386, 3698924; 505446, 3698924; 505446, 3698954; 505476, 3698954; 505476, 3698984; 505506, 3698984; 505506, 3699044; 505536, 3699044; 505536, 3699134; 505566, 3699134; 505566, 3699194; 505656, 3699194; 505656, 3699224; 505746, 3699224; 505746, 3699254; 505776, 3699254; 505776, 3699314; 505806, 3699314; 505806, 3699494; 505836, 3699494; 505836, 3699554; 505866, 3699554; 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(ii) Subunit 13b: From USGS 1:24,000 quadrangle maps Vail Lake, Aguanga, and Palomar Observatory, land bounded by the following UTM coordinates (E, N): 520626, 3692624; 520656, 3692624; 520656, 3692654; 520626, 3692654; 520626, 3692624; 520596, 3692624; 520596, 3692594; 520476, 3692594; 520476, 3692624; 520356, 3692624; 520356, 3692594; 520326, 3692594; 520326, 3692564; 520266, 3692564; 520266, 3692594; 520206, 3692594; 520206, 3692654; 520176, 3692654; 520176, 3692684; 520146, 3692684; 520146, 3692744; 520116, 3692744; 520116, 3692864; 519936, 3692864; 519936, 3692894; 519906, 3692894; 519906, 3692924; 519876, 3692924; 519876, 3692984; 519846, 3692984; 519846, 3693014; 519816, 3693014; 519816, 3693044; 519786, 3693044; 519786, 3693074; 519756, 3693074; 519756, 3693104; 519726, 3693104; 519726, 3693134; 519606, 3693134; 519606, 3693164; 519576, 3693164; 519576, 3693224; 519546, 3693224; 519546, 3693284; 519456, 3693284; 519456, 3693314; 519336, 3693314; 519336, 3693344; 519306, 3693344; 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(iii) Subunit 13c: From USGS 1:24,000 quadrangle maps Vail Lake, Sage, Cahuilla Mtn., and Aguanga, land bounded by the following UTM coordinates (E, N): 508295, 3705827; 508285, 3705827; 508285, 3705874; 508289, 3705912; 508352, 3705912; 508352, 3705827; returning to 508295, 3705827.

(iv) Land bounded by the following UTM coordinates (E, N): 506990, 3704380; 506962, 3704380; 506962, 3704408; 506990, 3704408; returning to 506990, 3704380.

(v) Land bounded by the following UTM coordinates (E, N): 505004, 3706809; 505004, 3706791; 505033, 3706791; 505033, 3706735; 505203, 3706735; 505203, 3706763; 505260, 3706763; 505260, 3706678; 505231, 3706678; 505231, 3706649; 505260, 3706649; 505260, 3706621; 505373, 3706621; 505373, 3706649; 505401, 3706649; 505401, 3706621; 505628, 3706621; 505628, 3706649; 505714, 3706649; 505714, 3706678; 505770, 3706678; 505770, 3706593; 505742, 3706593; 505742, 3706564; 505770, 3706564; 505770, 3706451; 505799, 3706451; 505799, 3706423; 505855, 3706423; 505855, 3706394; 505997, 3706394; 505997, 3706423; 506026, 3706423; 506026, 3706252; 506054, 3706252; 506054, 3706224; 506082, 3706224; 506082, 3706139; 506224, 3706139; 506224, 3706110; 506253, 3706110; 506253, 3706082; 506281, 3706082; 506281, 3705940; 506309, 3705940; 506309, 3706025; 506338, 3706025; 506338, 3706054; 506394, 3706054; 506394, 3706082; 506451, 3706082; 506451, 3706054; 506479, 3706054; 506479, 3705997; 506536, 3705997; 506536, 3705969; 506678, 3705969; 506678, 3705940; 506877, 3705940; 506877, 3705855; 506905, 3705855; 506905, 3705827; 506933, 3705827; 506933, 3705855; 506990, 3705855; 506990, 3705827; 506962, 3705827; 506962, 3705742; 506990, 3705742; 506990, 3705657; 507018, 3705657; 507018, 3705600; 507047, 3705600; 507047, 3705571; 507081, 3705571; 507080, 3705462; 507387, 3705460; 507387, 3705458; 507416, 3705458; 507416, 3705430; 507557, 3705430; 507557, 3705458; 507586, 3705458; 507586, 3705459; 508287, 3705456; 508286, 3705713; 508295, 3705713; 508295, 3705628; 508409, 3705628; 508409, 3705657; 508465, 3705657; 508465, 3705458; 508494, 3705458; 508494, 3705486; 508607, 3705486; 508607, 3705373; 508636, 3705373; 508636, 3705458; 508664, 3705458; 508664, 3705486; 508749, 3705486; 508749, 3705515; 509118, 3705515; 509118, 3705486; 509260, 3705486; 509260, 3705515; 509316, 3705515; 509316, 3705543; 509345, 3705543; 509345, 3705628; 509487, 3705628; 509487, 3705600; 509572, 3705600; 509572, 3705571; 509600, 3705571; 509600, 3705401; 509628, 3705401; 509628, 3705373; 509685, 3705373; 509685, 3705401; 509799,

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(vi) Land bounded by the following UTM coordinates (E, N): 512834, 3706987; 512834, 3706962; 512891, 3706962; 512891, 3706980; 513089, 3706957; 513089, 3706933; 513061, 3706933; 513061, 3706820; 513089, 3706820; 513089, 3706848; 513146, 3706848; 513146, 3706791; 513203, 3706791; 513203, 3706763; 513288, 3706763; 513288, 3706791; 513345, 3706791; 513345, 3706763; 513373, 3706763; 513373, 3706706; 513345, 3706706; 513345, 3706678; 513146, 3706678; 513146, 3706649; 513089, 3706649; 513089, 3706621; 513061, 3706621; 513061, 3706479; 513089, 3706479; 513089, 3706423; 513146, 3706423; 513146, 3706394; 513175, 3706394; 513175, 3706337; 513203, 3706337; 513203, 3706281; 513231, 3706281; 513231, 3706252; 513260, 3706252; 513260, 3706224; 513288, 3706224; 513288, 3706196; 513316, 3706196; 513316, 3706054; 513288, 3706054; 513288, 3705912; 513260, 3705912; 513260, 3705827; 513231, 3705827; 513231, 3705770; 513203, 3705770; 513203, 3705657; 513175, 3705657; 513175, 3705628; 513146, 3705628; 513146, 3705600; 513118, 3705600; 513118, 3705543; 513089, 3705543; 513089, 3705515; 512862, 3705515; 512862, 3705486; 512636, 3705486; 512636, 3705458; 512579, 3705458; 512579, 3705430; 512323, 3705430; 512323, 3705401; 512295, 3705401; 512295, 3705373; 512238, 3705373; 512238, 3705316; 512210, 3705316; 512210, 3705288; 511955, 3705288; 511955, 3705259; 511813, 3705259; 511813, 3705231; 511671, 3705231; 511671, 3705203; 511586, 3705203; 511586, 3705174; 511535, 3705174; 511525, 3706082; 511699, 3706082; 511699, 3706110; 511728, 3706110; 511728, 3706139; 511756, 3706139; 511756, 3706167; 511784, 3706167; 511784, 3706196; 511813, 3706196; 511813, 3706224; 511898, 3706224; 511898, 3706196; 511911, 3706196; 511916, 3705800; 512341, 3705773; 512337, 3706082; 512522, 3706082; 512522, 3706110; 512579, 3706110; 512579, 3706139; 512550, 3706139; 512550, 3706196; 512437, 3706196; 512437, 3706309; 512409, 3706309; 512409, 3706366; 512437, 3706366; 512437, 3706564; 512465, 3706564; 512465, 3706630; 512761, 3706595; 512751, 3706990; 512808, 3706990; returning to 512834, 3706987.

(vii) Note: Map of Unit 13 is provided at paragraph (17)(v) of this entry.

(19) Unit 14: Lower and Middle San Luis Rey Basin, San Diego County, California.

(i) From USGS 1:24,000 quadrangle maps Pechanga, San Luis Rey, Morro Hill, Bonsall, Pala, and Boucher Hill, land bounded by the following UTM coordinates (E, N): 505206, 3681404; 505206, 3681374; 505266, 3681374; 505266, 3681344; 505326, 3681344; 505326, 3681224; 505356, 3681224; 505356, 3681164; 505386, 3681164; 505386, 3681014; 505356, 3681014; 505356, 3680984; 505326, 3680984; 505326, 3680864; 505356, 3680864; 505356, 3680744; 505326, 3680744; 505326, 3680654; 505356, 3680654; 505356, 3680624; 505326, 3680624; 505326, 3680594; 505296, 3680594; 505296, 3680564; 505266, 3680564; 505266, 3680474; 505236, 3680474; 505236, 3680429; 505066, 3680430; 505061, 3680430; 505061, 3680553; 505061, 3680603; 505061, 3680603; 505061, 3680604; 505061, 3680604; 505061, 3680604; 505061, 3680605; 505061, 3680605; 505061, 3680605; 505061, 3680606; 505061, 3680606; 505061, 3680606; 505061, 3680606; 505062, 3680607; 505062, 3680607; 505062, 3680607; 505062, 3680607; 505062, 3680607; 505062, 3680608; 505062, 3680608; 505062, 3680608; 505062, 3680608; 505062, 3680609; 505062, 3680609; 505062, 3680609; 505062, 3680609; 505062, 3680610; 505062, 3680610; 505062, 3680610; 505062, 3680610; 505062, 3680610; 505062, 3680611; 505062, 3680611; 505062, 3680611; 505062, 3680612; 505062, 3680612; 505062, 3680612; 505062, 3680612; 505062, 3680612; 505062, 3680612; 505062, 3680613; 505062, 3680613; 505062, 3680613; 505062, 3680614; 505062, 3680614; 505062, 3680614; 505062, 3680614; 505062, 3680615; 505062, 3680615; 505062, 3680616; 505062, 3680616; 505062, 3680617; 505062, 3680617; 505062, 3680617; 505062, 3680617; 505062, 3680617; 505062, 3680617; 505062, 3680618; 505062, 3680618; 505062, 3680619; 505062, 3680620; 505062, 3680620; 505062, 3680621; 505062, 3680621; 505062, 3680622; 505062, 3680622; 505062, 3680623; 505062, 3680623; 505062, 3680623; 505061, 3680624; 505061, 3680624; 505061, 3680625; 505061, 3680625; 505061, 3680625; 505061, 3680625; 505061, 3680625; 505065, 3680625; 505065, 3680726; 505066, 3680827; 505066, 3680927; 505066, 3681113; 505066, 3681123; 505066, 3681123; 505066, 3681232; 505066, 3681273; 505066, 3681344; 505146, 3681344; 505146, 3681374; 505176, 3681374; 505176, 3681404; returning to 505206, 3681404.

(ii) Land bounded by the following UTM coordinates (E, N): 496083, 3690984; 496081, 3690778; 496186, 3690777; 496188, 3690982; 496083, 3690984; 496085, 3691184; 496086, 3691184; 496086, 3691124; 496116, 3691124; 496116, 3691094; 496146, 3691094; 496146, 3691034; 496176, 3691034; 496176, 3691004; 496236, 3691004; 496236, 3690944; 496266, 3690944; 496266, 3690884; 496296, 3690884; 496296, 3690854; 496326, 3690854; 496326, 3690824; 496356, 3690824; 496356, 3690794; 496386, 3690794; 496386, 3690764; 496416, 3690764; 496416, 3690734; 496446, 3690734; 496446, 3690704; 496476, 3690704; 496476, 3690674; 496506, 3690674; 496506, 3690644; 496536, 3690644; 496536, 3690614; 496596, 3690614; 496596, 3690584; 496656, 3690584; 496656, 3690554; 496716, 3690554; 496716, 3690524; 496806, 3690524; 496806, 3690494; 497106, 3690494; 497106, 3690464; 497166, 3690464; 497166, 3690434; 497256, 3690434; 497256, 3690404; 497298, 3690404; 497300, 3690146; 497496, 3690141; 497496, 3690134; 497526, 3690134; 497526, 3689984; 497556, 3689984; 497556, 3689924; 497526, 3689924; 497526, 3689804; 497556, 3689804; 497556, 3689744; 497586, 3689744; 497586, 3689684; 497616, 3689684; 497616, 3689654; 497676, 3689654; 497676, 3689624; 497747, 3689624; 497758, 3689276; 497954, 3689277; 497951, 3689383; 498148, 3689383; 498145, 3689534; 498186, 3689534; 498186, 3689504; 498216, 3689504; 498216, 3689444; 498246, 3689444; 498246, 3689414; 498216, 3689414; 498216, 3689264; 498246, 3689264; 498246, 3689234; 498216, 3689234; 498216, 3689204; 498366, 3689204; 498366, 3689174; 498546, 3689174; 498546, 3689144; 498576, 3689144; 498576, 3689054; 498546, 3689054; 498546, 3689024; 498636, 3689024; 498636, 3688994; 498756, 3688994; 498756, 3688964; 498786, 3688964; 498786, 3688934; 498876,

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(iii) Land bounded by the following UTM coordinates (E, N): 496086, 3691274; 496085, 3691274; 496085, 3691304; 496086, 3691304; returning to 496086, 3691274.

(iv) Land bounded by the following UTM coordinates (E, N): 494886, 3691724; 494886, 3691694; 494946, 3691694; 494946, 3691664; 494916, 3691664; 494916, 3691574; 494976, 3691574; 494976, 3691604; 495006, 3691604; 495006, 3691634; 495036, 3691634; 495036, 3691664; 495126, 3691664; 495126, 3691574; 495096, 3691574; 495096, 3691544; 495126, 3691544; 495126, 3691514; 495186, 3691514; 495186, 3691484; 495265, 3691484; 495265, 3691426; 495265, 3691426; 495266, 3691034; 495216, 3691034; 495216, 3691064; 495186, 3691064; 495186, 3691094; 494946, 3691094; 494946, 3691064; 494847, 3691064; 494847, 3691104; 494848, 3691249; 494850, 3691724; returning to 494886, 3691724.

(v) Land bounded by the following UTM coordinates (E, N): 490926, 3692474; 490926, 3692444; 490956, 3692444; 490956, 3692414; 490986, 3692414; 490986, 3692384; 491016, 3692384; 491016, 3692324; 491076, 3692324; 491076, 3692174; 491106, 3692174; 491106, 3692144; 491136, 3692144; 491136, 3692114; 491196, 3692114; 491196, 3692144; 491256, 3692144; 491256, 3692174; 491346, 3692174; 491346, 3692204; 491406, 3692204; 491406, 3692234; 491436, 3692234; 491436, 3692264; 491466, 3692264; 491466, 3692267; 491596, 3692267; 491595, 3692414; 491646, 3692414; 491646, 3692324; 491676, 3692324; 491676, 3692144; 491646, 3692144; 491646, 3692114; 491616, 3692114; 491616, 3691964; 491646, 3691964; 491646, 3691858; 491596, 3691858; 491596, 3691849; 491596, 3691822; 491596, 3691803; 491596, 3691803; 491596, 3691584; 491596, 3691442; 491998, 3691441; 492404, 3691435; 492405, 3691020; 492304,

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(vi) Land bounded by the following UTM coordinates (E, N): 492402, 3693080; 492402, 3693012; 492400, 3692673; 492366, 3692673; 492366, 3692714; 492336, 3692714; 492336, 3692744; 492276, 3692744; 492276, 3692774; 492246, 3692774; 492246, 3692924; 492216, 3692924; 492216, 3692984; 492186, 3692984; 492186, 3693074; 492156, 3693074; 492156, 3693085; 492366, 3693082; 492402, 3693082; returning to 492402, 3693080.

(vii) Land bounded by the following UTM coordinates (E, N): 492606, 3696884; 492606, 3696854; 492636, 3696854; 492636, 3696794; 492666, 3696794; 492666, 3696584; 492696, 3696584; 492696, 3696404; 492726, 3696404; 492726, 3696314; 492756, 3696314; 492756, 3696284; 492786, 3696284; 492786, 3696194; 492726, 3696194; 492726, 3696164; 492696, 3696164; 492696, 3696134; 492666, 3696134; 492666, 3696104; 492636, 3696104; 492636, 3696074; 492606, 3696074; 492606, 3696014; 492636, 3696014; 492636, 3695984; 492606, 3695984; 492606, 3695954; 492576, 3695954; 492576, 3695924; 492546, 3695924; 492546, 3695864; 492516, 3695864; 492516, 3695804; 492486, 3695804; 492486, 3695564; 492456, 3695564; 492456, 3695504; 492426, 3695504; 492426, 3695444; 492396, 3695444; 492396, 3695384; 492426, 3695384; 492426, 3695354; 492396, 3695354; 492396, 3695264; 492366, 3695264; 492366, 3695144; 492336, 3695144; 492336, 3695114; 492306, 3695114; 492306, 3695054; 492276, 3695054; 492276, 3694994; 492246, 3694994; 492246, 3694664; 492216, 3694664; 492216, 3694574; 492186, 3694574; 492186, 3694514; 492156, 3694514; 492156, 3694334; 492126, 3694334; 492126, 3694317; 492019, 3694320; 491976, 3694320; 491976, 3694514; 492006, 3694514; 492006, 3694574; 492036, 3694574; 492036, 3694604; 492066, 3694604; 492066, 3694664; 492096, 3694664; 492096, 3694694; 492126, 3694694; 492126, 3694994; 492096, 3694994; 492096, 3695114; 492126, 3695114; 492126, 3695294; 492156, 3695294; 492156, 3695414; 492186, 3695414; 492186, 3695594; 492216, 3695594; 492216, 3695654; 492246, 3695654; 492246, 3695804; 492216, 3695804; 492216, 3695864; 492246, 3695864; 492246, 3695954; 492306, 3695954; 492306, 3695984; 492336, 3695984; 492336, 3696014; 492396, 3696014; 492396, 3696044; 492426, 3696044; 492426, 3696104; 492456, 3696104; 492456, 3696164; 492486, 3696164; 492486, 3696194; 492516, 3696194; 492516, 3696254; 492546, 3696254; 492546, 3696344; 492516, 3696344; 492516, 3696374; 492546, 3696374; 492546, 3696434; 492516, 3696434; 492516, 3696734; 492546, 3696734; 492546, 3696824; 492576, 3696824; 492576, 3696884; returning to 492606, 3696884.

(viii) Note: Map of Unit 14 is provided at paragraph (17)(iii) of this entry.

(20) Unit 15: Upper San Luis Rey Basin, San Diego County, California.

(i) From USGS 1:24,000 quadrangle maps Palomar Observatory, and Warner Springs, land bounded by the following UTM coordinates (E, N): 529742, 3680834; 529742, 3680862; 529770, 3680862; 529770, 3680834; returning to 529742, 3680834.

(ii) Land bounded by the following UTM coordinates (E, N): 533799, 3683983;533827, 3683983; 533827, 3683954; 533799, 3683954; 533799, 3683983; thence from land bounded by the following UTM coordinates (E, N): 521912, 3684068; 522111, 3683784; 522082, 3683784; 522082, 3683813; 522054, 3683813; 522054, 3683841; 522026, 3683841; 522026, 3683898; 521997, 3683898; 521997, 3683926; 521969, 3683926; 521969, 3683983; 521941, 3683983; 521941, 3684011; 521912, 3684011; returning to 521912, 3684068; thence from land bounded by the following UTM coordinates (E, N): 521912, 3684068; 521884, 3684068; 521884, 3684096; 521855, 3684096; 521855, 3684149; returning to 521912, 3684068; thence from land bounded by the following UTM coordinates (E, N): 528806, 3684664; 528806, 3684644; 528796, 3684664; returning to 528806, 3684664; thence from land bounded by the following UTM coordinates (E, N): 533799, 3683983; 533685, 3683983; 533685, 3683954; 533657, 3683954; 533657, 3683926; 533600, 3683926; 533600, 3683869; 533629, 3683869; 533629, 3683813; 533487, 3683813; 533487, 3683784; 533458, 3683784; 533458, 3683756; 533203, 3683756; 533203, 3683727; 533175, 3683727; 533175, 3683699; 533118, 3683699; 533118, 3683671; 533090, 3683671; 533090, 3683614; 533061, 3683614; 533061, 3683586; 533033, 3683586;

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(iv) Land bounded by the following UTM coordinates (E, N): 527100, 3688218; 527189, 3688133; 527274, 3688045; 527260, 3687961; 527240, 3687969; 527188, 3687979; 527132, 3687990; 527094, 3688001; 527049, 3688024; 526996, 3688057; 526979, 3688074; 526981, 3688142; 527035, 3688139; returning to 527100, 3688218.

(v) Land bounded by the following UTM coordinates (E, N): 527302, 3688720; 527302, 3688715; 527295, 3688720; returning to 527302, 3688720.

(vi) Land bounded by the following UTM coordinates (E, N): 527274, 3688749; 527274, 3688735; 527254, 3688749; returning to 527274, 3688749.

(vii) Land bounded by the following UTM coordinates (E, N): 527217, 3688806; 527217, 3688777; 527246, 3688777; 527246, 3688754; 527171, 3688806; returning to 527217, 3688806.

(viii) Land bounded by the following UTM coordinates (E, N): 516777, 3689146; 516777, 3689118; 516806, 3689118; 516806, 3689032; 516834, 3689032; 516834, 3689061; 516891, 3689061; 516891, 3689032; 516919, 3689032; 516919, 3688976; 516948, 3688976; 516948, 3688919; 516976, 3688919; 516976, 3688891; 516948, 3688891; 516948, 3688834; 516976, 3688834; 516976, 3688806; 517004, 3688806; 517004, 3688777; 517033, 3688777; 517033, 3688749; 517061, 3688749; 517061, 3688579; 517033, 3688579; 517033, 3688550; 516948, 3688550; 516948, 3688522; 516976, 3688522; 516976, 3688493; 517004, 3688493; 517004, 3688465; 517033, 3688465; 517033, 3688408; 517004, 3688408; 517004, 3688380; 517033, 3688380; 517033, 3688238; 517004, 3688238; 517004, 3688210; 517089, 3688210; 517089, 3688096; 517118, 3688096; 517118, 3688040; 517175, 3688040; 517175, 3688011; 517288, 3688011; 517288, 3687954; 517345, 3687954; 517345, 3687926; 517373, 3687926; 517373, 3687898; 517402, 3687898; 517402, 3687869; 517430, 3687869; 517430, 3687841; 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(ix) Land bounded by the following UTM coordinates (E, N): 530905, 3689118; 530905, 3689089; 530763, 3689089; 530763, 3689118; 530735, 3689118; 530735, 3689089; 530707, 3689089; 530707, 3688891; 530735, 3688891; 530735, 3688834; 530763, 3688834; 530763, 3688806; 530792, 3688806; 530792, 3688749; 530820, 3688749; 530820, 3688720; 530848, 3688720; 530848, 3688692; 530877, 3688692; 530877, 3688635; 530820, 3688635; 530820, 3688664; 530792, 3688664; 530792, 3688692; 530763, 3688692; 530763, 3688720; 530707, 3688720; 530707, 3688749; 530678, 3688749; 530678, 3688777; 530593, 3688777; 530593, 3688806; 530508, 3688806; 530508, 3688862; 530480, 3688862; 530480, 3688891; 530451, 3688891; 530451, 3688947; 530423, 3688947; 530423, 3688976; 530366, 3688976; 530366, 3689004; 530312, 3689004; 530717, 3689283; 530990, 3689238; 530990, 3689231; 530962, 3689231; 530962, 3689203; 530934, 3689203; 530934, 3689118; returning to 530905, 3689118.

(x) Land bounded by the following UTM coordinates (E, N): 533203, 3689884; 533203, 3689855; 533288, 3689855; 533288, 3689827; 533317, 3689827; 533317, 3689798; 533288, 3689798; 533288, 3689770; 533231, 3689770; 533231, 3689713; 533203, 3689713; 533203, 3689515; 533231, 3689515; 533231, 3689430; 533203, 3689430; 533203, 3689231; 533231, 3689231; 533231, 3689032; 533203, 3689032; 533203, 3688982; 533200, 3688985; 533115, 3689037; 533039, 3689061; 532931, 3689099; 532888, 3689136; 532855, 3689184; 532827, 3689250; 532827, 3689325; 532808, 3689382; 532789, 3689448; 532742, 3689486; 532624, 3689542; 532553, 3689566; 532506, 3689575; 532440, 3689613; 532416, 3689628; 532465, 3689628; 532465, 3689657; 532636, 3689657; 532636, 3689685; 532749, 3689685; 532749, 3689657; 532834, 3689657; 532834, 3689685; 532806, 3689685; 532806, 3689742; 532834, 3689742; 532834, 3689770; 532863, 3689770; 532863, 3689798; 533033, 3689798; 533033, 3689827; 533118, 3689827; 533118, 3689855; 533175, 3689855; 533175, 3689884; returning to 533203, 3689884.

(xi) Land bounded by the following UTM coordinates (E, N): 525004, 3689940; 525004, 3689912; 525061, 3689912; 525061, 3689884; 525175, 3689884; 525175, 3689912; 525231, 3689912; 525231, 3689855; 525288, 3689855; 525288, 3689827; 525430, 3689827; 525430, 3689657; 525458, 3689657; 525458, 3689628; 525487, 3689628; 525487, 3689600; 525770, 3689600; 525770, 3689628; 525790, 3689628; 525775, 3689579; 525757, 3689503; 525768, 3689445; 525945, 3689372; 525854, 3689406; 525765, 3689436; 525641, 3689482; 525630, 3689473; 525526, 3689521; 525524, 3689317; 525483, 3689320; 525478, 3688981; 525862, 3688727; 526129, 3688570; 526141, 3688573; 526141, 3688571; 526139, 3688295; 526139, 3688295; 526139, 3688352; 526111, 3688352; 526111, 3688408; 526082, 3688408; 526082, 3688465; 525997, 3688465; 525997, 3688493; 525912, 3688493; 525912, 3688465; 525884, 3688465; 525884, 3688493; 525856, 3688493; 525856, 3688522; 525827, 3688522; 525827, 3688550; 525799, 3688550; 525799, 3688579; 525770, 3688579; 525770, 3688607; 525714, 3688607; 525714, 3688635; 525657, 3688635; 525657, 3688664; 525629, 3688664; 525629, 3688692; 525515, 3688692; 525515, 3688720; 525487, 3688720; 525487, 3688749; 525458, 3688749; 525458, 3688777; 525430, 3688777; 525430, 3688749; 525345, 3688749; 525345, 3688777; 525316, 3688777; 525316, 3688806; 525146, 3688806; 525146, 3688834; 525118, 3688834; 525118, 3688862; 525061, 3688862; 525061, 3688919; 525033, 3688919; 525033, 3689004; 525061,

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(xii) Land bounded by the following UTM coordinates (E, N): 530792, 3691018; 530792, 3691011; 530791, 3691012; 530786, 3691018; returning to 530792, 3691018.

(xiii) Land bounded by the following UTM coordinates (E, N): 531331, 3691160; 531331, 3691132; 531359, 3691132; 531359, 3691075; 531387, 3691075; 531387, 3690990; 531359, 3690990; 531359, 3690961; 531317, 3690970; 531271, 3690976; 531225, 3690973; 531199, 3690980; 531176, 3691003; 531130, 3691019; 531110, 3691026; 531080, 3691022; 531064, 3691016; 531047, 3691013; 531039, 3691012; 531039, 3691013; 531029, 3691029; 531007, 3691022; 530983, 3691008; 530962, 3690999; 530941, 3690991; 530908, 3690976; 530874, 3690968; 530847, 3690968; 530818, 3690981; 530810, 3690990; 530934, 3690990; 530934, 3691018; 530962, 3691018; 530962, 3691047; 531019, 3691047; 531019, 3691075; 531047, 3691075; 531047, 3691132; 531075, 3691132; 531075, 3691160; 531132, 3691160; 531132, 3691189; 531189, 3691189; 531189, 3691217; 531331, 3691217; returning to 531331, 3691160.

(xiv) Note:

Map of Unit 15 is provided at paragraph (17)(v) of this entry.

(21) Unit 16: Santa Ysabel Creek, San Diego County, California.

(i) Subunit 16a: From USGS 1:24,000 quadrangle maps Rodriquez Mtn., Mesa Grande, Ramona, San Pasqual, and Escondido. Land bounded by the following UTM coordinates (E, N): 508579, 3674706; 508579, 3674678; 508607, 3674678; 508607, 3674649; 508692, 3674649; 508692, 3674621; 508721, 3674621; 508721, 3674649; 508806, 3674649; 508806, 3674621; 508834, 3674621; 508834, 3674593; 508862, 3674593; 508862, 3674536; 508891, 3674536; 508891, 3674451; 508919, 3674451; 508919, 3674366; 508976, 3674366; 508976, 3674337; 509004, 3674337; 509004, 3674394; 509033, 3674394; 509033, 3674422; 509061, 3674422; 509061, 3674479; 509033, 3674479; 509033, 3674508; 509004, 3674508; 509004, 3674536; 509033, 3674536; 509033, 3674593; 509089, 3674593; 509089, 3674621; 509146, 3674621; 509146, 3674649; 509175, 3674649; 509203, 3674649; 509203, 3674621; 509231, 3674621; 509231, 3674649; 509316, 3674649; 509316, 3674593; 509345, 3674593; 509345, 3674564; 509316, 3674564; 509316, 3674508; 509288, 3674508; 509288, 3674479; 509260, 3674479; 509260, 3674422; 509231, 3674422; 509231, 3674337; 509203, 3674337; 509203, 3674281; 509175, 3674281; 509175, 3674224; 509146, 3674224; 509146, 3674195; 509118, 3674195; 509118, 3674139; 509089, 3674139; 509089, 3673912; 509118, 3673912; 509118, 3673770; 509089, 3673770; 509089, 3673685; 509061, 3673685; 509061, 3673486; 509089, 3673486; 509089, 3673401; 509118, 3673401; 509118, 3673373; 509146, 3673373; 509146, 3673344; 509175, 3673344; 509175, 3673316; 509203, 3673316; 509203, 3673288; 509260, 3673288; 509260, 3673316; 509288, 3673316; 509288, 3673344; 509316, 3673344; 509316, 3673373; 509430, 3673373; 509430, 3673401; 509515, 3673401; 509515, 3673146;

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(ii) Subunit 16d: From USGS 1:24,000 quadrangle maps Warners Ranch, Santa Ysabel, and Ramona. Land bounded by the following UTM coordinates (E, N): 522905, 3664181; 522905, 3664153; 522962, 3664153; 522962, 3664124; 522990, 3664124; 522990, 3664096; 523217, 3664096; 523217, 3664068; 523274, 3664068; 523274, 3664039; 523302, 3664039; 523302, 3664011; 523359, 3664011; 523359, 3663954; 523387, 3663954; 523387, 3663926; 523416, 3663926; 523416, 3663898; 523444, 3663898; 523444, 3663869; 523614, 3663869; 523614, 3663841; 523671, 3663841; 523671, 3663812; 523699, 3663812; 523699, 3663784; 523756, 3663784; 523756, 3663756; 523841, 3663756; 523841, 3663727; 524012, 3663727; 524012, 3663699; 524068, 3663699; 524068, 3663671; 524153, 3663671; 524153, 3663642; 524238, 3663642; 524238, 3663614; 524256, 3663614; 524256, 3663584; 524286, 3663584; 524286, 3663494; 524316, 3663494; 524316, 3663464; 524346, 3663464; 524346, 3663434; 524376, 3663434; 524376, 3663374; 524406, 3663374; 524406, 3663344; 524436, 3663344; 524436, 3663314; 524526, 3663314; 524526, 3663284; 524556, 3663284; 524556, 3663314; 524706, 3663314; 524706, 3663344; 524796, 3663344; 524796, 3663374; 524826, 3663374; 524826, 3663404; 524856, 3663404; 524856, 3663421; 524948, 3663421; 524950, 3663314; 524946, 3663314; 524946, 3663284; 524916, 3663284; 524916, 3663254; 524886, 3663254; 524886, 3663194; 524826, 3663194; 524826, 3663164; 524676, 3663164; 524676, 3663194; 524616, 3663194; 524616, 3663164; 524586, 3663164; 524586, 3663074; 524526, 3663074; 524526, 3663044; 524466, 3663044; 524466, 3663014; 524496, 3663014; 524496, 3662984; 524526, 3662984; 524526, 3662954; 524586, 3662954; 524586, 3662924; 524616, 3662924; 524616, 3662834; 524646, 3662834; 524646, 3662804; 524676, 3662804; 524676, 3662774; 524706, 3662774; 524706, 3662744; 524736, 3662744; 524736, 3662714; 524796, 3662714; 524796, 3662684; 524856, 3662684; 524856, 3662624; 524916, 3662624; 524916, 3662594; 524946, 3662594; 524946, 3662564; 524976, 3662564; 524976, 3662534; 524946, 3662534; 524946, 3662504; 524976, 3662504; 524976, 3662384; 524946, 3662384; 524946, 3662294; 524916, 3662294; 524916, 3662324; 524886, 3662324; 524886, 3662354; 524826, 3662354; 524826, 3662384; 524766, 3662384; 524766, 3662354; 524736, 3662354; 524736, 3662294; 524676, 3662294; 524676, 3662354; 524646, 3662354; 524646, 3662384; 524616, 3662384; 524616, 3662414; 524586, 3662414; 524586, 3662444; 524496, 3662444; 524496, 3662474; 524466, 3662474; 524466, 3662564; 524436, 3662564; 524436, 3662594; 524376, 3662594; 524376, 3662624; 524316, 3662624; 524316, 3662654; 524286, 3662654; 524286, 3662684; 524256, 3662684; 524256, 3662714; 524196, 3662714; 524196, 3662744; 524166, 3662744; 524166, 3662804; 524136, 3662804; 524136, 3662834; 524106, 3662834; 524106, 3662894; 524136, 3662894; 524136, 3662924; 524166, 3662924; 524166, 3662984; 524196, 3662984; 524196, 3663014; 524166, 3663014; 524166, 3663104; 524136, 3663104; 524136, 3663314; 524106, 3663314; 524106, 3663374; 524076, 3663374; 524076, 3663404; 524046, 3663404; 524046, 3663464; 524016, 3663464; 524016, 3663494; 523986, 3663494; 523986, 3663500; 523898, 3663500; 523898, 3663529; 523841, 3663529; 523841, 3663557; 523785, 3663557; 523785, 3663585; 523699, 3663585; 523699, 3663614; 523643, 3663614; 523643, 3663642; 523586, 3663642; 523586, 3663671; 523529, 3663671; 523529, 3663699; 523444, 3663699; 523444, 3663727; 523359, 3663727; 523359, 3663756; 523302, 3663756; 523302, 3663784; 523217, 3663784; 523217, 3663812; 523019, 3663812; 523019, 3663756; 522990, 3663756; 522990, 3663699; 522962, 3663699; 522962, 3663671; 522934, 3663671; 522934, 3663642; 522877, 3663642; 522877, 3663614; 522820, 3663614; 522820, 3663585; 522792, 3663585; 522792, 3663557; 522735, 3663557; 522735, 3663529; 522621, 3663529; 522621, 3663500; 522537, 3663500; 522525, 3663557; 522536, 3663557; 522536, 3663585; 522593, 3663585; 522593, 3663614; 522621, 3663614; 522621, 3663699; 522650, 3663699; 522650, 3663727; 522678, 3663727; 522678, 3663784; 522707, 3663784; 522707, 3663812; 522735, 3663812; 522735, 3663926; 522763, 3663926; 522763, 3663954; 522792, 3663954; 522792, 3663983; 522820, 3663983; 522820, 3664011; 522848, 3664011; 522848, 3664039; 522877, 3664039; 522877, 3664124; 522848, 3664124; 522848, 3664153; 522877, 3664153; 522877, 3664181; returning to 522905, 3664181.

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(iv) Note: Map of Unit 16 is provided at paragraph (17)(v) of this entry.

(22) Unit 17: San Diego River Basin, San Diego County, California.

(i) Subunit 17a: From USGS 1:24,000 quadrangle maps El Cajon Mtn., Tule Springs and Santa Ysabel, land bounded by the following UTM coordinates (E, N): 524451, 3648049; 524450, 3647699; 524437, 3647699; 524437, 3647670; 524409, 3647670; 524409, 3647653; 524248, 3647653; 524104, 3647654; 524040, 3647654; 524040, 3647670; 523926, 3647670; 523926, 3647654; 523844, 3647655; 523846, 3647557; 523841, 3647557; 523841, 3647500; 523813, 3647500; 523813, 3647415; 523785, 3647415; 523785, 3647358; 523756, 3647358; 523756, 3647302; 523728, 3647302; 523728, 3647273; 523699, 3647273; 523699, 3647245; 523671, 3647245; 523671, 3647188; 523643, 3647188; 523643, 3647103; 523614, 3647103; 523614, 3647075; 523586, 3647075; 523586, 3647046; 523558, 3647046; 523558, 3647018; 523501, 3647018; 523501, 3646990; 523473, 3646990; 523473, 3646961; 523444, 3646961; 523444, 3646876; 523387, 3646876; 523387, 3646875; 523367, 3646875; 523362, 3646848; 523359, 3646848; 523359, 3646831; 523352, 3646791; 523274, 3646791; 523274, 3646763; 523217, 3646763; 523217, 3646734; 523189, 3646734; 523189, 3646678; 523047, 3646678; 523047, 3646649; 522990, 3646649; 522990, 3646621; 522962, 3646621; 522962, 3646564; 522990, 3646564; 522990, 3646536; 523019, 3646536; 523019, 3646507; 522962, 3646507; 522962, 3646500; 522934, 3646500; 522934, 3646507; 522848, 3646507; 522848, 3646479; 522820, 3646479; 522820, 3646451; 522848, 3646451; 522848, 3646286; 522837, 3646224; 522820, 3646224; 522820, 3646195; 522763, 3646195; 522763, 3646139; 522735, 3646139; 522735, 3646110; 522763, 3646110; 522763, 3646082; 522735, 3646082; 522735, 3646025; 522650, 3646025; 522650, 3645997; 522621, 3645997; 522621, 3645968; 522593, 3645968; 522593, 3645912; 522565, 3645912; 522565, 3645883; 522480, 3645883; 522480, 3645770; 522508, 3645770; 522508, 3645741; 522536, 3645741; 522536, 3645656; 522557, 3645656; 522555, 3645458; 522451, 3645458; 522451, 3645486; 522366, 3645486; 522366, 3645514; 522309, 3645514; 522309, 3645543; 522253, 3645543; 522253, 3645571; 522196, 3645571; 522196, 3645600; 522139, 3645600; 522139, 3645628; 522082, 3645628; 522082, 3645656; 522054, 3645656; 522054, 3645685; 522026, 3645685; 522026, 3645713; 521969, 3645713; 521969, 3645741; 521941, 3645741; 521941, 3645770; 521912, 3645770; 521912, 3645798; 521884, 3645798; 521884, 3645826; 521855, 3645826; 521855, 3645855; 521827, 3645855; 521827, 3645883; 521799, 3645883; 521799, 3645912; 521770, 3645912; 521770, 3645940; 521742, 3645940; 521742, 3645968; 521714, 3645968; 521714, 3646025; 521685, 3646025; 521685, 3646053; 521657, 3646053; 521657, 3646110; 521629, 3646110; 521629, 3646125; 521641, 3646125; 521652, 3646195; 521657, 3646195; 521657, 3646226; 521666, 3646280; 521685, 3646280; 521685, 3646337; 521742, 3646337; 521742, 3646309; 521799, 3646309; 521799, 3646280; 521855, 3646280; 521855, 3646309; 521884, 3646309; 521884, 3646422; 521912, 3646422; 521912, 3646451; 521941, 3646451; 521941, 3646536; 521912, 3646536; 521912, 3646564; 521905, 3646564; 521932, 3646734; 521941, 3646734; 521941, 3646788; 521950, 3646848; 521969, 3646848; 521969, 3646876; 521997, 3646876; 521997, 3646848; 522026, 3646848; 522026, 3647018; 522139, 3647018; 522139, 3647046; 522196, 3647046; 522196, 3647075; 522253, 3647075; 522253, 3647046; 522281, 3647046; 522281, 3647103; 522338, 3647103; 522338, 3647131; 522366, 3647131; 522366, 3647217; 522394, 3647217; 522394, 3647245; 522451, 3647245; 522451, 3647249; 522613, 3647249; 522954, 3647249; 523019, 3647250; 523019, 3647245; 523217, 3647245; 523217, 3647273; 523246, 3647273; 523246, 3647302; 523302, 3647302; 523302, 3647330; 523331, 3647330; 523331, 3647358; 523359, 3647358; 523359, 3647387; 523387, 3647387; 523387, 3647415; 523416, 3647415; 523416, 3647529; 523444, 3647529; 523444, 3647557; 523473, 3647557; 523473, 3647585; 523501, 3647585; 523501, 3647614; 523529, 3647614; 523529, 3647670; 523558, 3647670; 523558, 3647699; 523586, 3647699; 523586, 3647756; 523614, 3647756; 523614, 3647812; 523643, 3647812; 523643, 3647841; 523671, 3647841; 523671, 3647869; 523699, 3647869; 523699, 3647897; 523728, 3647897; 523728, 3647926; 523785, 3647926; 523785, 3647954; 523955, 3647954; 523955, 3647926; 524012, 3647926; 524012, 3647897; 524097, 3647897; 524097, 3647869; 524153, 3647869; 524153, 3647897; 524182, 3647897; 524182, 3647983; 524153, 3647983; 524153, 3648053; 524246, 3648052; returning to 524451, 3648049.

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(iv) Subunit 17b: From USGS 1:24,000 quadrangle map El Cajon Mtn. San Vicente Reservoir, and El Cajon, land bounded by the following UTM coordinates (E, N): 514386, 3639704; 514386, 3639674; 514446, 3639674; 514446, 3639644; 514536, 3639644; 514536, 3639614; 514566, 3639614; 514566, 3639584; 514596, 3639584; 514596, 3639614; 514866, 3639614; 514866, 3639584; 514926, 3639584; 514926, 3639554; 514956, 3639554; 514956, 3639524; 514986, 3639524; 514986, 3639494; 515016, 3639494; 515016, 3639404; 515046, 3639404; 515046, 3639374; 515076, 3639374; 515076, 3639344; 515226, 3639344; 515226, 3639314; 515235, 3639314; 515286, 3639314; 515286, 3639344; 515376, 3639344; 515376, 3639314; 515406, 3639314; 515406, 3639254; 515436, 3639254; 515436, 3639224; 515496, 3639224; 515496, 3639164; 515526, 3639164; 515526, 3639134; 515586, 3639134; 515586, 3639104; 515646, 3639104; 515646, 3639134; 515796, 3639134; 515796, 3639104; 515856, 3639104; 515856, 3639074; 515916, 3639074; 515916, 3639044; 516006, 3639044; 516006, 3639014; 516066, 3639014; 516066, 3638984; 516126, 3638984; 516126, 3638924; 516156, 3638924; 516156, 3638894; 516186, 3638894; 516186, 3638834; 516216, 3638834; 516216, 3638804; 516336, 3638804; 516336, 3638774; 516426, 3638774; 516426, 3638744; 516516, 3638744; 516516, 3638714; 516606, 3638714; 516606, 3638684; 516726, 3638684; 516726, 3638654;

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(v) Subunit 17d: From USGS 1:24,000 quadrangle maps El Cajon Mtn., Ramona, and San Vicente Reservoir. Land bounded by the following UTM coordinates (E, N): 516538, 3651895; 516538, 3651738; 516595, 3651747; 516826, 3651690; 516843, 3651620; 516850, 3651614; 516846, 3651614; 516846, 3651524; 516876, 3651524; 516876, 3651434; 516726, 3651434; 516726, 3651404; 516666, 3651404; 516666, 3651374; 516606, 3651374; 516606, 3651344; 516456, 3651344; 516456, 3651314; 516396, 3651314; 516396, 3651284; 516216, 3651284; 516216, 3651254; 516186, 3651254; 516186, 3651224; 516156, 3651224; 516156, 3651194; 516126, 3651194; 516126, 3651164; 516036, 3651164; 516036, 3651104; 515976, 3651104; 515976, 3651074; 515905, 3651074; 515905, 3651177; 515844, 3651227; 515651, 3651214; 515498, 3651180; 515417, 3651156; 515395, 3651211; 515168, 3651025; 514977, 3650964; 514856, 3650913; 514642, 3650849; 514659, 3650833; 514685, 3650804; 514698, 3650791; 514722, 3650758; 514801, 3650601; 514823, 3650568; 514605, 3650564; 514608, 3650502; 514656, 3650454; 514722, 3650376; 514781, 3650355; 514826, 3650360; 514826, 3650264; 514707, 3650264; 514698, 3650285; 514615, 3650380; 514557, 3650470; 514524, 3650489; 514410, 3650476; 514339, 3650501; 514204, 3650496; 514149, 3650502; 514098, 3650460; 514061, 3650426; 514092, 3650289; 514108, 3650234; 514086, 3650234; 514086, 3650204; 514056, 3650204; 514056, 3650144; 513996, 3650144; 513996, 3650114; 513906, 3650114; 513906, 3650144; 513786, 3650144; 513786, 3650114; 513696, 3650114; 513696, 3650144; 513636, 3650144; 513636, 3650174; 513546, 3650174; 513546, 3650114; 513516, 3650114; 513516, 3650084; 513306, 3650084; 513306, 3650054; 513186, 3650054; 513186, 3650084; 513156, 3650084; 513156, 3650054; 513096, 3650054; 513096, 3650024; 513066, 3650024; 513066, 3649994; 513036, 3649994; 513036, 3649964; 513006, 3649964; 513006, 3649724; 512976, 3649724; 512976, 3649664; 512946, 3649664; 512946, 3649604; 512976, 3649604; 512976, 3649484; 512946, 3649484; 512946, 3649454; 512916, 3649454; 512916, 3649424; 512886, 3649424; 512886, 3649394; 512766, 3649394; 512766, 3649364; 512706, 3649364; 512706, 3649334; 512526, 3649334; 512526, 3649304; 512496, 3649304; 512496, 3649244; 512436, 3649244; 512436, 3649214; 512376, 3649214; 512376, 3649184; 512346, 3649184; 512346, 3649154; 512316, 3649154; 512316, 3649064; 512226, 3649064; 512226, 3649034; 512196, 3649034; 512196, 3649004; 512166, 3649004; 512166, 3648944; 512136, 3648944; 512136, 3648914; 512076, 3648914; 512076, 3648884; 512046, 3648884; 512046, 3648854; 512016, 3648854; 512016, 3648794; 511986, 3648794; 511986, 3648764; 511956, 3648764; 511956, 3648734; 511896, 3648734; 511896, 3648704; 511866, 3648704; 511866, 3648644; 511836, 3648644; 511836, 3648614; 511866, 3648614; 511866, 3648524; 511896, 3648524; 511896, 3648494; 511926, 3648494; 511926, 3648464; 511956, 3648464; 511956, 3648434; 511986, 3648434; 511986, 3648374; 511926, 3648374; 511926, 3648404; 511836, 3648404; 511836, 3648434; 511776, 3648434; 511776, 3648464; 511746, 3648464; 511746, 3648494; 511686, 3648494; 511686, 3648524; 511296, 3648524; 511296, 3648494; 511236, 3648494; 511236, 3648464; 511206, 3648464; 511206, 3648434; 511176, 3648434; 511176, 3648404; 511146, 3648404; 511146, 3648374; 511116, 3648374; 511116, 3648344; 511086, 3648344; 511086, 3648314; 510996, 3648314; 510996, 3648284; 510786, 3648284; 510786, 3648254; 510756, 3648254; 510756, 3648224; 510726, 3648224; 510726, 3648194; 510696, 3648194; 510696, 3648164; 510426, 3648164; 510426, 3648194; 510336, 3648194; 510336, 3648164; 510306, 3648164; 510306, 3648134; 510246, 3648134; 510246, 3648104; 510216, 3648104; 510216, 3648074; 510186, 3648074; 510186, 3647864; 510216, 3647864; 510216, 3647624; 510426, 3647624; 510426, 3647564; 510456, 3647564; 510456, 3647504; 510486, 3647504; 510486, 3647474; 510546, 3647474; 510546, 3647384; 510516, 3647384; 510516, 3647354; 510396, 3647354; 510396, 3647384; 510336, 3647384; 510336, 3647414; 510036, 3647414; 510036, 3647354; 510006, 3647354; 510006, 3647324; 509976, 3647324; 509976, 3647294; 509946, 3647294; 509946, 3647264; 509916, 3647264; 509916, 3647204; 509886, 3647204; 509886, 3647174; 509916, 3647174; 509916, 3647144; 509946, 3647144; 509946, 3647114;

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Excluding land bounded by 514026, 3650954; 514026, 3650924; 513966, 3650924; 513966, 3650894; 513996, 3650894; 513996, 3650864; 514026, 3650864; 514026, 3650894; 514056, 3650894; 514056, 3650954; returning to 514026, 3650954.

Excluding land bounded by 510816, 3648437; 510816, 3648434; 510906, 3648434; 510906, 3648524; 510876, 3648524; 510876, 3648554; 510846, 3648554; 510846, 3648464; 510816, 3648464; returning to 510816, 3648437.

(vi) Note: Map of Unit 17 is provided at paragraph (17)(v) of this entry.

(23) Unit 18: Sweetwater River Basin, San Diego County, California.

(i) Subunit 18a: From USGS 1:24,000 quadrangle maps Alpine, Viejas Mountain, Descanso, and Cuyamaca Peak, land bounded by the following UTM coordinates (E, N): 523206, 3628484; 523206, 3628454; 523236, 3628454; 523236, 3628484; 523206, 3628484; 523206, 3628574; 523176, 3628574; 523176, 3628604; 523146, 3628604; 523146, 3628634; 523116, 3628634; 523116, 3628664; 523086, 3628664; 523086, 3628724; 523056, 3628724; 523056, 3628754; 523026, 3628754; 523026, 3628784; 522996, 3628784; 522996, 3628844; 522966, 3628844; 522966, 3628874; 522936, 3628874; 522936, 3628904; 522966, 3628904; 522966, 3628934; 523056, 3628934; 523056, 3628964; 523086, 3628964; 523086, 3629024; 523116, 3629024; 523116, 3629084; 523266, 3629084; 523266, 3629114; 523356, 3629114; 523356, 3629144; 523416, 3629144; 523416, 3629174; 523446, 3629174; 523446, 3629204; 523506, 3629204; 523506, 3629234; 523566, 3629234; 523566, 3629264; 523626, 3629264; 523626, 3629294; 523656, 3629294; 523656, 3629354; 523686, 3629354; 523686, 3629624; 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(ii) Subunit 18c: From USGS 1:24,000 quadrangle map Alpine, land bounded by the following UTM coordinates (E, N): 513673, 3626397; 513674, 3626074; 514075, 3626046; 514077, 3625994; 514026, 3625994; 514026, 3625964; 513966, 3625964; 513966, 3625934; 513816, 3625934; 513816, 3625964; 513696, 3625964; 513696, 3626054; 513666, 3626054; 513666, 3626354; 513636, 3626354; 513636, 3626450; 513673, 3626447; returning to 513673, 3626397.

(iiii) Land bounded by the following UTM coordinates (E, N): 518196, 3626114; 518226, 3626114; 518226, 3626144; 518196, 3626144; 518196, 3626174; 518166, 3626174; 518166, 3626144; 518196, 3626144; 518196, 3626114; 518166, 3626114; 518166, 3626054; 518136, 3626054; 518136, 3625994; 518076, 3625994; 518076, 3625964; 517986, 3625964; 517986, 3625934; 517836, 3625934; 517836, 3625904; 517806, 3625904; 517806, 3625874; 517776, 3625874; 517776, 3625844; 517716, 3625844; 517716, 3625814; 517656, 3625814; 517656, 3625754; 517536, 3625754; 517536, 3625724; 517476, 3625724; 517476, 3625694; 517386, 3625694; 517386, 3625724; 517176, 3625724; 517176, 3625754; 517116, 3625754; 517116, 3625784; 517056, 3625784; 517056, 3625814; 517026, 3625814; 517026, 3625844; 516996, 3625844; 516996, 3625874; 516936, 3625874; 516936, 3625904; 516786, 3625904; 516786, 3625874; 516666, 3625874; 516666, 3625904; 516606, 3625904; 516606, 3625934; 516456, 3625934; 516456, 3625964; 516186, 3625964; 516186, 3625934; 516066, 3625934; 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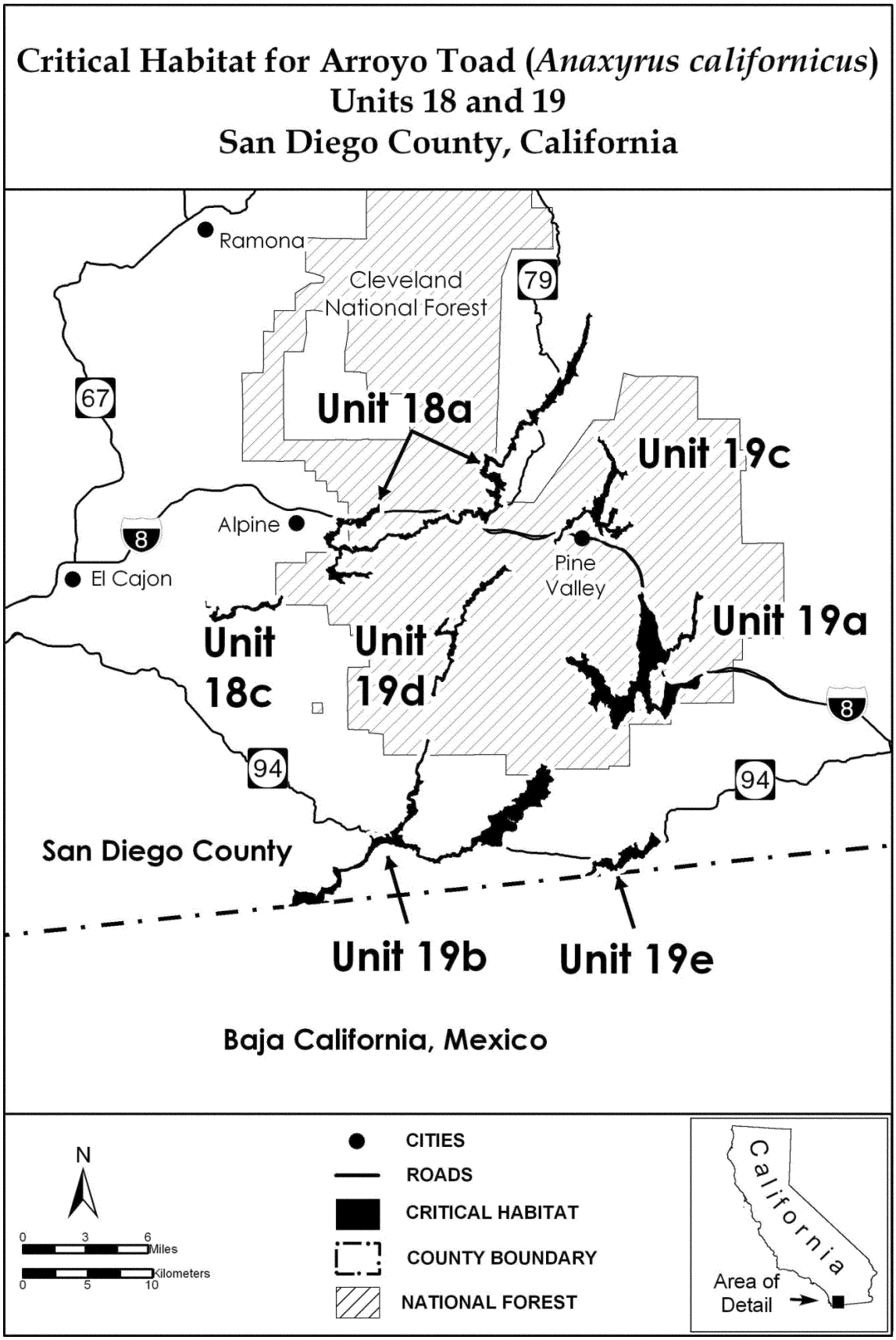
(iv) **Note:** Map of Units 18 and 19 follows.

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(24) Unit 19: Cottonwood Creek Basin, San Diego County, California.

(i) Subunit 19a: From USGS 1:24,000 quadrangle maps Morena Reservoir,

Cameron Corners and Mount Laguna, land bounded by the following UTM coordinates (E,N): 544887, 3619754; 544891, 3619395; 544918, 3619372; 544919, 3619283; 545309, 3618949; 545299, 3619235; 545332, 3619274; 545346, 3619274; 545346, 3619244; 545376, 3619244; 545376, 3619214; 545436, 3619214; 545436, 3619184; 545496, 3619184; 545496, 3619124; 545526, 3619124; 545526, 3619094; 545616, 3619094; 545616, 3619064; 545826, 3619064; 545826, 3619094; 545856, 3619094; 545856, 3619124; 545886, 3619124; 545886, 3619154; 546036, 3619154; 546036, 3619124; 546156, 3619124; 546156, 3619154; 546186, 3619154; 546186, 3619184; 546276, 3619184; 546276, 3619214; 546306, 3619214; 546306, 3619514; 546276, 3619514; 546276, 3619604; 546306, 3619604; 546306, 3619694; 546336, 3619694; 546336, 3619724; 546366, 3619724; 546366, 3619754; 546396, 3619754; 546396, 3619784; 546456, 3619784; 546456, 3619814; 546486, 3619814; 546486, 3619904; 546516, 3619904; 546516, 3619994; 546486, 3619994; 546486, 3620054; 546456, 3620054; 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(ii) Subunit 19b: From USGS 1:24,000 quadrangle maps Barrett Lake, Tecate, Potrero and Morena Reservoir, land bounded by the following UTM coordinates (E, N): 529986, 3613334; 529986, 3613304; 530016, 3613304; 530016, 3613274; 530046, 3613274; 530046, 3613244; 530076, 3613244; 530076, 3613184; 530106, 3613184; 530106, 3613154; 530136, 3613154; 530136, 3613124; 530166, 3613124; 530166, 3613034; 530196, 3613034; 530196, 3612794; 530166, 3612794; 530166, 3612644; 530196, 3612644; 530196, 3612584; 530406, 3612584; 530406, 3612554; 530466, 3612554; 530466, 3612524; 530406, 3612524; 530406, 3612494; 530376, 3612494; 530376, 3612434; 530346, 3612434; 530346, 3612404; 530316, 3612404; 530316, 3612374; 530286, 3612374; 530286, 3612344; 530256, 3612344; 530256, 3612314; 530226, 3612314; 530226, 3612284; 530136, 3612284; 530136, 3612224; 530106, 3612224; 530106, 3612164; 530136, 3612164; 530136, 3612104; 530106, 3612104; 530106, 3611864; 530136, 3611864; 530136, 3611834; 530106, 3611834; 530106, 3611774; 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(iii) Subunit 19c: From USGS 1:24,000 quadrangle maps Descanso, and Cuyamaca Peak, land bounded by the following UTM coordinates (E, N): 544040, 3639046; 544040, 3639018; 544068, 3639018; 544068, 3638990; 544097, 3638990; 544097, 3638961; 544125, 3638961; 544125, 3638876; 544324, 3638876; 544324, 3638905; 544380, 3638905; 544380, 3638848; 544409, 3638848; 544409, 3638678; 544437, 3638678; 544437, 3638649; 544494, 3638649; 544494, 3638593; 544579, 3638593; 544579, 3638422; 544607, 3638422; 544607, 3638337; 544636, 3638337; 544636, 3638309; 544664, 3638309; 544664, 3638280; 544693, 3638280; 544693, 3638252; 544721, 3638252; 544721, 3638224; 544749, 3638224; 544749, 3638195; 544778, 3638195; 544778, 3638054; 544806, 3638054; 544806, 3637997; 544834, 3637997; 544834, 3637912; 544863, 3637912; 544863, 3637883; 544834, 3637883; 544834, 3637827; 544948, 3637827; 544948, 3637798; 544976, 3637798; 544976, 3637741; 545005, 3637741; 545005, 3637685; 545033, 3637685; 545033, 3637656; 545090, 3637656; 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(iv) Subunit 19d: From USGS 1:24,000 quadrangle maps Barrett Lake, Viejas Mtn., and Descanso, land bounded by the following UTM coordinates (E, N): 536796, 3629174; 536796, 3629144; 536826, 3629144; 536826, 3629054; 536856, 3629054; 536856, 3629024; 536886, 3629024; 536886, 3628994; 536916, 3628994; 536916, 3628964; 536946, 3628964; 536946, 3628934; 536976, 3628934; 536976, 3628904; 537036, 3628904; 537036, 3628874; 537066, 3628874; 537066, 3628844; 537246, 3628844; 537246, 3628814; 537036, 3628814; 537036, 3628784; 537006, 3628784; 537006, 3628814; 536886, 3628814; 536886, 3628844; 536736, 3628844; 536736, 3628814; 536706, 3628814; 536706, 3628784; 536676, 3628784; 536676, 3628754; 536646, 3628754; 536646, 3628724; 536616, 3628724; 536616, 3628694; 536586, 3628694; 536586, 3628574; 536556, 3628574; 536556, 3628544; 536526, 3628544; 536526, 3628514; 536466, 3628514; 536466, 3628484; 536406, 3628484; 536406, 3628454; 536346, 3628454; 536346, 3628394; 536316, 3628394; 536316, 3628334; 536286, 3628334; 536286, 3628304; 536226, 3628304; 536226, 3628244; 536136, 3628244; 536136, 3628214; 536076, 3628214; 536076, 3628244; 535986, 3628244; 535986, 3628214; 535956, 3628214; 535956, 3628154; 535926, 3628154; 535926, 3628094; 535896, 3628094; 535896, 3628064; 535866, 3628064; 535866, 3627944; 535836, 3627944; 535836, 3627914; 535806, 3627914; 535806, 3627884; 535776, 3627884; 535776, 3627854; 535746, 3627854; 535746, 3627794; 535716, 3627794; 535716, 3627764; 535656, 3627764; 535656, 3627734; 535506, 3627734; 535506, 3627704; 535476, 3627704; 535476, 3627734; 535446, 3627734; 535446, 3627704; 535386, 3627704; 535386, 3627674; 535356, 3627674; 535356, 3627644; 535326, 3627644; 535326, 3627614; 535266, 3627614; 535266, 3627554; 535206, 3627554; 535206, 3627524; 535266, 3627524; 535266, 3627404; 535236, 3627404; 535236, 3627314; 535146, 3627314; 535146, 3627284; 535116, 3627284; 535116, 3627254; 535056, 3627254; 535056, 3627224; 534726, 3627224; 534726, 3627164; 534756, 3627164; 534756, 3627104; 534726, 3627104; 534726, 3627074; 534696, 3627074; 534696, 3627044; 534666, 3627044; 534666, 3627014; 534636, 3627014; 534636, 3626984; 534576, 3626984; 534576, 3626954; 534546, 3626954; 534546, 3626924; 534516, 3626924; 534516, 3626864; 534486, 3626864; 534486, 3626624; 534456, 3626624; 534456, 3626564; 534426, 3626564; 534426, 3626534; 534366, 3626534; 534366, 3626504; 534246, 3626504; 534246, 3626414; 534216, 3626414; 534216, 3626384; 534186, 3626384; 534186, 3626324; 534156, 3626324; 534156, 3626294; 534096, 3626294; 534096, 3626264; 534036, 3626264; 534036, 3626144; 534006, 3626144; 534006, 3626084; 533946, 3626084; 533946, 3626054; 533766, 3626054; 533766, 3626024; 533706, 3626024; 533706, 3625994; 533676, 3625994; 533676, 3625934; 533706, 3625934; 533706, 3625904; 533736, 3625904; 533736, 3625844; 533766, 3625844; 533766, 3625784; 533796, 3625784; 533796, 3625604; 533766, 3625604; 533766, 3625574;

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(v) Subunit 19e: From USGS 1:24,000 quadrangle maps Potrero and Campo, land bounded by the following UTM coordinates (E, N): 544664, 3605968; 544693, 3605968; 544693, 3605997; 544664, 3605997; 544664, 3605968; 544551, 3605968; 544551, 3605940; 544494, 3605940; 544494, 3605968; 544466, 3605968; 544466, 3605940; 544380, 3605940; 544380, 3605911; 544352, 3605911; 544352, 3605883; 544295, 3605883; 544295, 3605911; 544267, 3605911; 544267, 3605940; 544239, 3605940; 544239, 3605968; 544012, 3605968; 544012, 3605997; 543785, 3605997; 543785, 3605940; 543756, 3605940; 543756, 3605826; 543785, 3605826; 543785, 3605770; 543813, 3605770; 543813, 3605684; 543785, 3605684; 543785, 3605628; 543756, 3605628; 543756, 3605599; 543728, 3605599; 543728, 3605571; 543700, 3605571; 543700, 3605514; 543643, 3605514; 543643, 3605486; 543615, 3605486; 543615, 3605458; 543586, 3605458; 543586, 3605429;

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(vi) Note: Map of Unit 19 is provided at paragraph (24)(v) of this entry.

(25) Unit 20: Upper Santa Ana River Basin, San Bernardino County, California.

(i) From USGS 1:24,000 quadrangle maps Cajon and Devore, land bounded by the following UTM coordinates (E, N): 457095, 3792110; 457067, 3792110; 457067, 3792138; 457095, 3792138; returning to 457095, 3792110.

(ii) Land bounded by the following UTM coordinates (E, N): 457208, 3796209; 457208, 3796237; 457236, 3796237; 457236, 3796209; returning to 457208, 3796209; thence from land bounded by the following UTM coordinates (E, N): 457208, 3796209; 457208, 3796153; 457180, 3796153; 457180, 3796069; 457208, 3796069; 457208, 3796040; 457236, 3796040; 457236, 3796012; 457264, 3796012; 457264, 3795984; 457320, 3795984; 457320, 3795956; 457404, 3795956; 457404, 3795928; 457517, 3795928; 457517, 3795872; 457545, 3795872; 457545, 3795816; 457573, 3795816; 457573, 3795760; 457601, 3795760; 457601, 3795704; 457629, 3795704; 457629, 3795676; 457657, 3795676; 457657, 3795647; 457685, 3795647; 457685, 3795619; 457713, 3795619; 457713, 3795591; 457741, 3795591; 457741, 3795563; 457769, 3795563; 457769, 3795535; 457797, 3795535; 457797, 3795507; 457825, 3795507; 457825, 3795451; 457853, 3795451; 457853, 3795395; 457910, 3795395; 457910, 3795339; 457994, 3795339; 457994, 3795254; 458022, 3795254; 458022, 3795086; 458050, 3795086; 458050, 3794974; 458078, 3794974; 458078, 3794946; 458106, 3794946; 458106, 3794889; 458134, 3794889; 458134, 3794777; 458162, 3794777; 458162, 3794749; 458190, 3794749; 458190, 3794693; 458218, 3794693; 458218, 3794637; 458246, 3794637; 458246, 3794553; 458275, 3794553; 458275, 3794244; 458303, 3794244; 458303, 3794131; 458331, 3794131; 458331, 3793823; 458359, 3793823; 458359, 3793738; 458387, 3793738; 458387, 3793710; 458359, 3793710; 458359, 3793654; 458331, 3793654; 458331, 3793486; 458303, 3793486; 458303, 3793402; 458275, 3793402; 458275, 3793205; 458303, 3793205; 458303, 3793149; 458331, 3793149; 458331, 3793121; 458415, 3793121; 458415, 3793037; 458387, 3793037; 458387, 3792980; 458359, 3792980; 458359, 3792868; 458387, 3792868; 458387, 3792812; 458415, 3792812; 458415, 3792784; 458471, 3792784; 458471, 3792756; 458527, 3792756; 458527, 3792700; 458499, 3792700; 458499, 3792616; 458527, 3792616; 458527, 3792503; 458555, 3792503; 458555, 3792447; 458527, 3792447; 458527, 3792363; 458499, 3792363; 458499, 3792335; 458471, 3792335; 458471, 3792138; 458443, 3792138; 458443, 3792054; 458415, 3792054; 458415, 3791998; 458387, 3791998; 458387, 3791970; 458359, 3791970; 458359, 3791914; 458331, 3791914; 458331, 3791858; 458359, 3791858; 458359, 3791801; 458331, 3791801; 458331, 3791829; 458275, 3791829; 458275, 3791858; 458190, 3791858; 458190, 3791829; 458078, 3791829; 458078, 3791858; 457966, 3791858; 457966, 3791829; 457910, 3791829; 457910, 3791801; 457881, 3791801; 457881, 3791773; 457853, 3791773; 457853, 3791745; 457825, 3791745; 457825, 3791717; 457769, 3791717; 457769, 3791689; 457601, 3791689; 457601, 3791661; 457404, 3791661; 457404, 3791689; 457320, 3791689; 457320, 3791661; 457264, 3791661; 457264, 3791633; 457236, 3791633; 457236, 3791577; 457208, 3791577; 457208, 3791549; 457152, 3791549; 457152, 3791521; 457095, 3791521; 457095, 3791493; 457067, 3791493; 457067, 3791465; 457039, 3791465; 457039, 3791408; 457011, 3791408; 457011, 3791212; 456983, 3791212; 456983, 3791100; 457011, 3791100; 457011, 3790959; 457039, 3790959; 457039, 3790903; 457067, 3790903; 457067, 3790875; 457095, 3790875; 457095, 3790819; 457124, 3790819; 457124, 3790678; 457152, 3790678; 457152, 3790650; 457180, 3790650; 457180, 3790622; 457264, 3790622; 457264, 3790594; 457320, 3790594; 457320, 3790566; 457348, 3790566; 457348, 3790510; 457376, 3790510; 457376, 3790482; 457404, 3790482; 457404, 3790454; 457573, 3790454; 457573, 3790426; 457601, 3790426; 457601, 3790454; 457629, 3790454; 457629, 3790482; 457657, 3790482; 457657, 3790454; 457685, 3790454; 457685, 3790426; 457713, 3790426; 457713, 3790398; 457769, 3790398; 457769, 3790426; 457797, 3790426; 457797, 3790482; 457825, 3790482; 457825, 3790454; 457853, 3790454; 457853, 3790426; 457881, 3790426; 457881, 3790370; 457910, 3790370; 457910, 3790342; 457938, 3790342; 457938, 3790314; 457966, 3790314; 457966, 3790342; 458106, 3790342; 458106, 3790314; 458162, 3790314; 458162, 3790285; 458190, 3790285; 458190, 3790257; 458246, 3790257; 458246, 3790229; 458275, 3790229; 458275, 3790257; 458387, 3790257; 458387, 3790229; 458443, 3790229; 458443, 3790201; 458527, 3790201; 458527, 3790173; 458555, 3790173; 458555, 3790117; 458583, 3790117; 458583, 3790061; 458611, 3790061; 458611, 3790033; 458668, 3790033; 458668, 3790005; 458696, 3790005; 458696, 3789977; 458724, 3789977; 458724, 3789949; 458780, 3789949; 458780, 3789892; 458808, 3789892; 458808, 3789864; 458836, 3789864; 458836, 3789808; 458864, 3789808; 458864, 3789752; 458892, 3789752; 458892, 3789724; 458948, 3789724; 458948, 3789668; 458976, 3789668; 458976, 3789640; 459004, 3789640; 459004, 3789584; 459032, 3789584;

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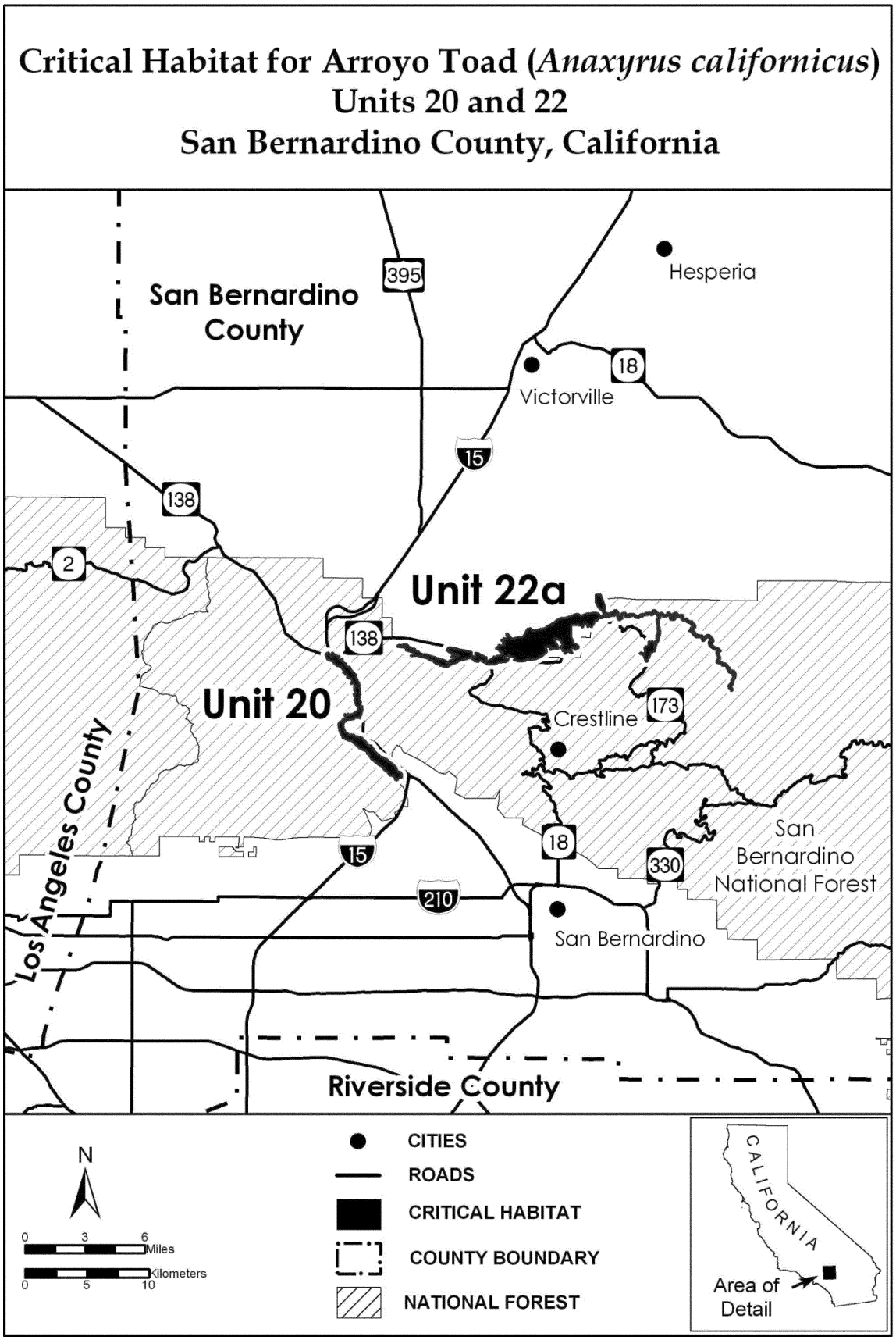
(iii) **Note:** Map of Units 20 and 22 follows.

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(26) Unit 21: Little Rock Creek Basin, Los Angeles County, California.

(i) From USGS 1:24,000 quadrangle maps Juniper Hills and Pacifico Mtn.,

land bounded by the following UTM coordinates (E, N): 406323, 3814876; 406323, 3814756; 406353, 3814756; 406353, 3814726; 406383, 3814726; 406383, 3814696; 406413, 3814696; 406413, 3814426; 406383, 3814426; 406383, 3814396; 406413, 3814396; 406413, 3814216; 406443, 3814216; 406443, 3814186; 406473, 3814186; 406473, 3814156; 406503, 3814156; 406503, 3813796; 406533, 3813796; 406533, 3813766; 406563, 3813766; 406563, 3813736; 406593, 3813736; 406593, 3813706; 406623, 3813706; 406623, 3813676; 406593, 3813676; 406593, 3813646; 406563, 3813646; 406563, 3813616; 406533, 3813616; 406533, 3813556; 406563, 3813556; 406563, 3813496; 406593, 3813496; 406593, 3813436; 406623, 3813436; 406623, 3813376; 406653, 3813376; 406653, 3813316; 406683, 3813316; 406683, 3813196; 406713, 3813196; 406713, 3813166; 406683, 3813166; 406683, 3813136; 406653, 3813136; 406653, 3813076; 406623, 3813076; 406623, 3813046; 406653, 3813046; 406653, 3812926; 406683, 3812926; 406683, 3812896; 406743, 3812896; 406743, 3812746; 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(ii) Note: Map of Unit 21 is provided at paragraph (12)(iii) of this entry

(27) Unit 22: Upper Mojave River Basin, San Bernardino County, California.

(i) Subunit 22a: From USGS 1:24,000 quadrangle maps Cajon, Silverwood Lake, Lake Arrowhead and Butler Peak, land bounded by the following UTM coordinates (E, N): 478323, 3800176; 478263, 3800176; 478263, 3800146; 478323, 3800146; 478323, 3800176; 478383, 3800176; 478383, 3800206; 478473, 3800206; 478473, 3800236; 478503, 3800236; 478503, 3800266; 478563, 3800266; 478563, 3800296; 478623, 3800296; 478623, 3800326; 478743, 3800326; 478743, 3800356; 478773, 3800356; 478773, 3800386; 478803, 3800386; 478803, 3800416; 478833, 3800416; 478833, 3800446; 478863, 3800446; 478863, 3800476; 478923, 3800476; 478923, 3800506; 479073, 3800506; 479073, 3800476; 479103, 3800476; 479103, 3800446; 479133, 3800446; 479133, 3800416; 479163, 3800416; 479163, 3800386; 479193, 3800386; 479193, 3800326; 479223, 3800326; 479223, 3800146; 479253, 3800146; 479253, 3800056; 479283, 3800056; 479283, 3800026; 479313, 3800026; 479313, 3799996; 479373, 3799996; 479373, 3800056; 479403, 3800056; 479403, 3800116; 479433, 3800116; 479433, 3800206; 479463, 3800206; 479463, 3800236; 479523, 3800236; 479523, 3800266; 479583, 3800266; 479583, 3800296; 479763, 3800296; 479763, 3800266; 479793, 3800266; 479793, 3800236; 479823, 3800236; 479823, 3800176; 479853, 3800176; 479853, 3800146; 479883, 3800146; 479883, 3800116; 479973, 3800116; 479973, 3800146; 480003, 3800146; 480003, 3800176; 480093, 3800176; 480093, 3800206; 480423, 3800206; 480423, 3800176; 480513, 3800176; 480513, 3800146; 480543, 3800146; 480543, 3800116; 480603, 3800116; 480603, 3800086; 480633, 3800086; 480633, 3800056; 480663, 3800056; 480663, 3800026; 480783, 3800026; 480783, 3800056; 480843, 3800056; 480843, 3800086; 480903, 3800086; 480903, 3800116; 480933, 3800116; 480933, 3800146; 480993, 3800146; 480993, 3800176; 481113, 3800176; 481113, 3800206; 481323, 3800206; 481323, 3800236; 481383, 3800236; 481383, 3800266; 481413, 3800266; 481413, 3800296; 481443, 3800296; 481443, 3800266; 481533, 3800266; 481533, 3800296; 481593, 3800296; 481593, 3800326; 481803, 3800326; 481803, 3800296; 481863, 3800296; 481863, 3800266; 481893, 3800266; 481893, 3800296; 481923, 3800296; 481923, 3800326; 481953, 3800326; 481953, 3800446; 481983, 3800446; 481983, 3800476; 482013, 3800476; 482013, 3800506; 482163, 3800506; 482163, 3800476; 482223, 3800476; 482223, 3800416;

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(ii) **Note:** Map of Unit 22 is provided at paragraph (25)(iii) of this entry.

* * * * *

Dated: January 20, 2011.

Signed:

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–1703 Filed 2–8–11; 8:45 am]

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FEDERAL REGISTER

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Part III

Department of Justice

Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act; Notice

DEPARTMENT OF JUSTICE

Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act; Notice

AGENCY: Office of the Assistant Attorney General, Civil Rights Division, Department of Justice.

ACTION: Notice.

SUMMARY: The Attorney General has delegated responsibility and authority for determinations under Section 5 of the Voting Rights Act to the Assistant Attorney General, Civil Rights Division, who finds that, in view of recent legislation and judicial decisions, it is appropriate to issue guidance concerning the review of redistricting plans submitted to the Attorney General for review pursuant to Section 5 of the Voting Rights Act.

FOR FURTHER INFORMATION CONTACT: T. Christian Herren, Jr., Chief, Voting Section, Civil Rights Division, United States Department of Justice, Washington, DC 20530, (202) 514–1416.

SUPPLEMENTARY INFORMATION: Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, requires jurisdictions identified in Section 4 of the Act to obtain a determination from either the Attorney General or the United States District Court for the District of Columbia that any change affecting voting which they seek to enforce does not have a discriminatory purpose and will not have a discriminatory effect.

Beginning in 2011, these covered jurisdictions will begin to seek review under Section 5 of the Voting Rights Act of redistricting plans based on the 2010 Census. Based on past experience, the overwhelming majority of the covered jurisdictions will submit their redistricting plans to the Attorney General. This guidance is not legally binding; rather, it is intended only to provide assistance to jurisdictions covered by the preclearance requirements of Section 5.

Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c

Following release of the 2010 Census data, the Department of Justice expects to receive several thousand submissions of redistricting plans for review pursuant to Section 5 of the Voting Rights Act. The Civil Rights Division has received numerous requests for guidance similar to that it issued prior to the 2000 Census redistricting cycle concerning the procedures and standards that will be applied during review of these redistricting plans. 67 FR 5411 (January 18, 2001). In addition, in 2006, Congress reauthorized the Section 5 review requirement and refined its definition of some substantive standards for compliance with Section 5. In view of these developments, issuing revised guidance is appropriate.

The "Procedures for the Administration of Section 5 of the Voting Rights Act," 28 CFR Part 51, provide detailed information about the Section 5 review process. Copies of these Procedures are available upon request and through the Voting Section Web site (*http://www.usdoj.gov/crt/voting*). This document is meant to provide additional guidance with regard to current issues of interest. Citations to judicial decisions are provided to assist the reader but are not intended to be comprehensive. The following discussion provides supplemental guidance concerning the following topics:

- The Scope of Section 5 Review;
- The Section 5 Benchmark;
- Analysis of Plans (discriminatory purpose and retrogressive effect);
- Alternatives to Retrogressive Plans; and
- Use of 2010 Census Data.

The Scope of Section 5 Review

Under Section 5, a covered jurisdiction has the burden of establishing that a proposed redistricting plan "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in [Section 4(f)(2) of the Act]" (i.e., membership in a language minority group defined in the Act). 42 U.S.C 1973c(a). A plan has a discriminatory effect under the statute if, when compared to the benchmark plan, the submitting jurisdiction cannot establish that it does not result in a "retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer* v. *United States,* 425 U.S. 125, 141 (1976).

If the proposed redistricting plan is submitted to the Department of Justice for administrative review, and the Attorney General determines that the jurisdiction has failed to show the absence of any discriminatory purpose or retrogressive effect of denying or abridging the right to vote on account of race, color or membership in a language minority group defined in the Act, the Attorney General will interpose an objection. If, in the alternative, the jurisdiction seeks a declaratory judgment from the United States District Court for the District of Columbia, that court will utilize the identical standard to determine whether to grant the request; i.e., whether the jurisdiction has established that the plan is free from discriminatory purpose or retrogressive effect. Absent administrative preclearance from the Attorney General or a successful declaratory judgment action in the district court, the jurisdiction may not implement its proposed redistricting plan.

The Attorney General may not interpose an objection to a redistricting plan on the grounds that it violates the one-person one-vote principle, on the grounds that it violates *Shaw* v. *Reno,* 509 U.S. 630 (1993), or on the grounds that it violates Section 2 of the Voting Rights Act. The same standard applies in a declaratory judgment action. Therefore, jurisdictions should not regard a determination of compliance with Section 5 as preventing subsequent legal challenges to that plan under other statutes by the Department of Justice or by private plaintiffs. 42 U.S.C. 1973c(a); 28 CFR 51.49.

The Section 5 "Benchmark"

As noted, under Section 5, a jurisdiction's proposed redistricting plan is compared to the "benchmark" plan to determine whether the use of the new plan would result in a retrogressive effect. The "benchmark" against which a new plan is compared is the last legally enforceable redistricting plan in force or effect. *Riley* v. *Kennedy,* 553 U.S. 406 (2008); 28 CFR 51.54(b)(1). Generally, the most recent plan to have received Section 5 preclearance or to have been drawn by a Federal court is the last legally enforceable redistricting plan for Section 5 purposes. When a jurisdiction has received Section 5 preclearance for a new redistricting plan, or a Federal court has drawn a new plan and ordered it into effect, that plan replaces the last legally enforceable plan as the Section 5 benchmark. *McDaniel* v. *Sanchez,* 452 U.S. 130 (1981); *Texas* v. *United States,* 785 F. Supp. 201 (D.D.C. 1992); *Mississippi* v. *Smith,* 541 F. Supp. 1329, 1333 (D.D.C. 1982), appeal dismissed, 461 U.S. 912 (1983).

A plan found to be unconstitutional by a Federal court under the principles of *Shaw* v. *Reno* and its progeny cannot serve as the Section 5 benchmark, *Abrams* v. *Johnson,* 521 U.S. 74 (1997), and in such circumstances, the benchmark for Section 5 purposes will be the last legally enforceable plan predating the unconstitutional plan. Absent such a finding of unconstitutionality under *Shaw* by a Federal court, the last legally enforceable plan will serve as the benchmark for Section 5 review. Therefore, the question of whether the

benchmark plan is constitutional will not be considered during the Department's Section 5 review.

Analysis of Plans

As noted above, there are two necessary components to the analysis of whether a proposed redistricting plan meets the Section 5 standard. The first is a determination that the jurisdiction has met its burden of establishing that the plan was adopted free of any discriminatory purpose. The second is a determination that the jurisdiction has met its burden of establishing that the proposed plan will not have a retrogressive effect.

Discriminatory Purpose

Section 5 precludes implementation of a change affecting voting that has the purpose of denying or abridging the right to vote on account of race or color, or membership in a language minority group defined in the Act. The 2006 amendments provide that the term "purpose" in Section 5 includes "any discriminatory purpose," and is not limited to a purpose to retrogress, as was the case after the Supreme Court's decision in *Reno* v. *Bossier Parish* ("*Bossier II*), 528 U.S. 320 (2000). The Department will examine the circumstances surrounding the submitting authority's adoption of a submitted voting change, such as a redistricting plan, to determine whether direct or circumstantial evidence exists of any discriminatory purpose of denying or abridging the right to vote on account of race or color, or membership in a language minority group defined in the Act.

Direct evidence detailing a discriminatory purpose may be gleaned from the public statements of members of the adopting body or others who may have played a significant role in the process. *Busbee* v. *Smith,* 549 F. Supp. 494, 508 (D.D.C. 1982), *aff'd,* 459 U.S. 1166 (1983). The Department will also evaluate whether there are instances where the invidious element may be missing, but the underlying motivation is nonetheless intentionally discriminatory. In the *Garza* case, Judge Kozinski provided the clearest example:

> Assume you are an anglo homeowner who lives in an all-white neighborhood. Suppose, also, that you harbor no ill feelings toward minorities. Suppose further, however, that some of your neighbors persuade you that having an integrated neighborhood would lower property values and that you stand to lose a lot of money on your home. On the basis of that belief, you join a pact not to sell your house to minorities. Have you engaged in intentional racial and ethnic discrimination? Of course you have. Your personal feelings toward minorities don't matter; what matters is that you intentionally took actions calculated to keep them out of your neighborhood.

Garza and United States v. *County of Los Angeles,* 918 F.2d 763, 778 n.1 (9th Cir. 1990) (Kozinski, J., concurring and dissenting in part), *cert. denied,* 498 U.S. 1028 (1991).

In determining whether there is sufficient circumstantial evidence to conclude that the jurisdiction has not established the absence of the prohibited discriminatory purpose, the Attorney General will be guided by the Supreme Court's illustrative, but not exhaustive, list of those "subjects for proper inquiry in determining whether racially discriminatory intent existed," outlined in *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.,* 429 U.S. 252, 268 (1977). In that case, the Court, noting that such an undertaking presupposes a "sensitive inquiry," identified certain areas to be reviewed in making this determination: (1) The impact of the decision; (2) the historical background of the decision, particularly if it reveals a series of decisions undertaken with discriminatory intent; (3) the sequence of events leading up to the decision; (4) whether the challenged decision departs, either procedurally or substantively, from the normal practice; and (5) contemporaneous statements and viewpoints held by the decision-makers. *Id.* at 266–68.

The single fact that a jurisdiction's proposed redistricting plan does not contain the maximum possible number of districts in which minority group members are a majority of the population or have the ability to elect candidates of choice to office, does not mandate that the Attorney General interpose an objection based on a failure to demonstrate the absence of a discriminatory purpose. Rather, the Attorney General will base the determination on a review of the plan in its entirety.

Retrogressive Effect

An analysis of whether the jurisdiction has met its burden of establishing that the proposed plan would not result in a discriminatory or "retrogressive" effect starts with a basic comparison of the benchmark and proposed plans at issue, using updated census data in each. Thus, the Voting Section staff loads the boundaries of the benchmark and proposed plans into the Civil Rights Division's geographic information system [GIS]. Population data are then calculated for each district in the benchmark and the proposed plans using the most recent decennial census data.

A proposed plan is retrogressive under Section 5 if its net effect would be to reduce minority voters' "effective exercise of the electoral franchise" when compared to the benchmark plan. *Beer* v. *United States* at 141. In 2006, Congress clarified that this means the jurisdiction must establish that its proposed redistricting plan will not have the effect of "diminishing the ability of any citizens of the United States" because of race, color, or membership in a language minority group defined in the Act, "to elect their preferred candidate of choice." 42 U.S.C. 1973c(b) & (d). In analyzing redistricting plans, the Department will follow the congressional directive of ensuring that the ability of such citizens to elect their preferred candidates of choice is protected. That ability to elect either exists or it does not in any particular circumstance.

In determining whether the ability to elect exists in the benchmark plan and whether it continues in the proposed plan, the Attorney General does not rely on any predetermined or fixed demographic percentages at any point in the assessment. Rather, in the Department's view, this determination requires a functional analysis of the electoral behavior within the particular jurisdiction or election district. As noted above, census data alone may not provide sufficient indicia of electoral behavior to make the requisite determination. Circumstances, such as differing rates of electoral participation within discrete portions of a population, may impact on the ability of voters to elect candidates of choice, even if the overall demographic data show no significant change.

Although comparison of the census population of districts in the benchmark and proposed plans is the important starting point of any Section 5 analysis, additional demographic and election data in the submission is often helpful in making the requisite Section 5 determination. 28 CFR 51.28(a). For example, census population data may not reflect significant differences in group voting behavior. Therefore, election history and voting patterns within the jurisdiction, voter registration and turnout information, and other similar information are very important to an assessment of the actual effect of a redistricting plan.

The Section 5 Procedures contain the factors that the courts have considered in deciding whether or not a redistricting plan complies with Section 5. These factors include whether minority voting strength is reduced by the proposed redistricting; whether minority concentrations are fragmented

among different districts; whether minorities are overconcentrated in one or more districts; whether alternative plans satisfying the jurisdiction's legitimate governmental interests exist, and whether they were considered; whether the proposed plan departs from objective redistricting criteria set by the submitting jurisdiction, ignores other relevant factors such as compactness and contiguity, or displays a configuration that inexplicably disregards available natural or artificial boundaries; and, whether the plan is inconsistent with the jurisdiction's stated redistricting standards. 28 CFR 51.56–59.

Alternatives to Retrogressive Plans

There may be circumstances in which the jurisdiction asserts that, because of shifts in population or other significant changes since the last redistricting (*e.g.,* residential segregation and demographic distribution of the population within the jurisdiction, the physical geography of the jurisdiction, the jurisdiction's historical redistricting practices, political boundaries, such as cities or counties, and/or state redistricting requirements), retrogression is unavoidable. In those circumstances, the submitting jurisdiction seeking preclearance of such a plan bears the burden of demonstrating that a less-retrogressive plan cannot reasonably be drawn.

In considering whether less-retrogressive alternative plans are available, the Department of Justice looks to plans that were actually considered or drawn by the submitting jurisdiction, as well as alternative plans presented or made known to the submitting jurisdiction by interested citizens or others. In addition, the Department may develop illustrative alternative plans for use in its analysis, taking into consideration the jurisdiction's redistricting principles. If it is determined that a reasonable alternative plan exists that is non-retrogressive or less retrogressive than the submitted plan, the Attorney General will interpose an objection.

Preventing retrogression under Section 5 does not require jurisdictions to violate the one-person, one-vote principle. 52 FR 488 (Jan. 6, 1987). Similarly, preventing retrogression under Section 5 does not require jurisdictions to violate *Shaw* v. *Reno* and related cases.

The one-person, one-vote issue arises most commonly where substantial demographic changes have occurred in some, but not all, parts of a jurisdiction. Generally, a plan for congressional redistricting that would require a greater overall population deviation than the submitted plan is not considered a reasonable alternative by the Department. For state legislative and local redistricting, a plan that would require significantly greater overall population deviations is not considered a reasonable alternative.

In assessing whether a less retrogressive plan can reasonably be drawn, the geographic compactness of a jurisdiction's minority population will be a factor in the Department's analysis. This analysis will include a review of the submitting jurisdiction's historical redistricting practices and district configurations to determine whether the alternative plan would (a) abandon those practices and (b) require highly unusual features to link together widely separated minority concentrations.

At the same time, compliance with Section 5 of the Voting Rights Act may require the jurisdiction to depart from strict adherence to certain of its redistricting criteria. For example, criteria that require the jurisdiction to make the least possible change to existing district boundaries, to follow county, city, or precinct boundaries, protect incumbents, preserve partisan balance, or in some cases, require a certain level of compactness of district boundaries may need to give way to some degree to avoid retrogression. In evaluating alternative or illustrative plans, the Department of Justice relies upon plans that make the least departure from a jurisdiction's stated redistricting criteria needed to prevent retrogression.

The Use of 2010 Census Data

The most current population data are used to measure both the benchmark plan and the proposed redistricting plan. 28 CFR 51.54(b)(2) (Department of Justice considers "the conditions existing at the time of the submission."); *City of Rome* v. *United States,* 446 U.S. 156, 186 (1980) ("most current available population data" to be used for measuring effect of annexations); *Reno* v. *Bossier Parish School Board,* 528 U.S. 320, 334 (2000) ("the baseline is the status quo that is proposed to be changed: If the change 'abridges the right to vote' relative to the status quo, preclearance is denied * * *.").

For redistricting after the 2010 Census, the Department of Justice will, consistent with past practice, evaluate redistricting submissions using the 2010 Census population data released by the Bureau of the Census for redistricting pursuant to Public Law 94–171, 13 U.S.C. 141(c). Thus, our analysis of the proposed redistricting plans includes a review and assessment of the Public Law 94–171 population data, even if those data are not included in the submission or were not used by the jurisdiction in drawing the plan. The failure to use the Public Law 94–171 population data in redistricting does not, by itself, constitute a reason for interposing an objection. However, unless other population data used can be shown to be more accurate and reliable than the Public Law 94–171 data, the Attorney General will consider the Public Law 94–171 data to measure the total population and voting age population within a jurisdiction for purposes of its Section 5 analysis.

As in 2000, the 2010 Census Public Law 94–171 data will include counts of persons who have identified themselves as members of more than one racial category. This reflects the October 30, 1997, decision by the Office of Management and Budget [OMB] to incorporate multiple-race reporting into the Federal statistical system. 62 FR 58782–58790. Likewise, on March 9, 2000, OMB issued Bulletin No. 00–02 addressing "Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Enforcement." Part II of that Bulletin describes how such census responses will be allocated by Federal executive agencies for use in civil rights monitoring and enforcement.

The Department will follow both aggregation methods defined in Part II of the Bulletin. The Department's initial review of a plan will be based upon allocating any multiple-item response that includes white and one of the five other race categories identified in the response. Thus, the total numbers for "Black/African American," "Asian," "American Indian/Alaska Native," "Native Hawaiian or Other Pacific Islander" and "Some other race" reflect the total of the single-race responses and the multiple responses in which an individual selected a minority race and white race.

The Department will then move to the second step in its application of the census data to the plan by reviewing the other multiple-race category, which is comprised of all multiple-race responses consisting of more than one minority race. Where there are significant numbers of such responses, we will, as required by both the OMB guidance and judicial opinions, allocate these responses on an iterative basis to each of the component single-race categories for analysis. *Georgia* v. *Ashcroft,* 539 U.S. 461, 473, n.1 (2003).

As in the past, the Department will analyze Latino voters as a separate group for purposes of enforcement of the Voting Rights Act. If there are significant numbers of responses which

report Latino and one or more minority races (for example, Latinos who list their race as Black/African-American), those responses will be allocated alternatively to the Latino category and the minority race category.

Dated: February 3, 2011.

Thomas E. Perez,

Assistant Attorney General, Civil Rights Division.

[FR Doc. 2011–2797 Filed 2–8–11; 8:45 am]

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Part IV

The President

Memorandum of February 7, 2011—Annual Update to the Report Specified in Section 1251 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84)

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Presidential Documents

Title 3—

The President

Memorandum of February 7, 2011

Annual Update to the Report Specified in Section 1251 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84)

Memorandum for the Secretary of Defense [and] the Secretary of Energy

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the Secretaries of Defense and Energy to jointly provide annual updates to the report specified in section 1251 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84) (the "1251 Report"). I further authorize and direct the Secretaries of Defense and Energy to jointly submit this annual update to the 1251 Report concurrently with the President's budget each year, beginning in calendar year 2011.

The Secretary of Defense is authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, February 7, 2011.

[FR Doc. 2011–3053
Filed 2–8–11; 11:15 am]
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H.R. 366/P.L. 112-1
To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes. (Jan. 31, 2011)

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