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WHEN: Tuesday, June 14, 2011
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–1420]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendment.

SUMMARY: The Board is publishing amendments to Regulation B (Equal Credit Opportunity Act) to update the address where questions should be directed concerning creditors for which the Federal Deposit Insurance Corporation administers compliance with the regulation.

DATES: *Effective Date:* July 1, 2011. Compliance is optional until May 31, 2012.

FOR FURTHER INFORMATION CONTACT: Jamie Z. Goodson or Priscilla Walton-Fein, Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For the users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691–1691f, makes it unlawful for a creditor to discriminate against an applicant in any aspect of a credit transaction on the basis of the applicant's national origin, marital status, religion, sex, color, race, age (provided the applicant has the capacity to contract), receipt of public assistance benefits, or the good faith exercise of a right under the Consumer Credit Protection Act, 15 U.S.C. 1601 *et seq.* The ECOA is implemented by the Board's Regulation B.

In addition to the general prohibition against discrimination, Regulation B contains specific rules concerning the taking and evaluation of credit applications, including procedures and notices for credit denials and other adverse actions. Under section 202.9 of Regulation B, notification given to an applicant when adverse action is taken must contain the name and address of the federal agency that administers compliance with respect to the creditor. Appendix A of Regulation B contains the names and addresses of the enforcement agencies where questions concerning a particular creditor shall be directed. This amendment updates the address for the Federal Deposit Insurance Corporation. Creditors for which the Federal Deposit Insurance Corporation administers compliance with Regulation B must include this new address on their adverse action notices starting May 31, 2012.

12 CFR Chapter II

List of Subjects in 12 CFR Part 202

Aged, Banks, Banking, Civil rights, Consumer protections, Credit, Discrimination, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Sex discrimination.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends 12 CFR part 202 to read as set forth below:

PART 202—EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

■ 1. The authority citation for part 202 continues to read as follows:

Authority: Section 15 U.S.C. 1691–1691f.

■ 2. Appendix A is amended by removing the fourth paragraph and adding a new paragraph in its place to read as follows:

Appendix A to Part 202—Federal Enforcement Agencies

* * * * *

Nonmember Insured Banks and Insured State Branches of Foreign Banks: FDIC Consumer Response Center, 1100 Walnut Street, Box #11, Kansas City, MO 64106.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, May 25, 2011.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. 2011–13430 Filed 5–31–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM450; Special Conditions No. 25–430–SC]

Special Conditions: Boeing Model 747–8 Airplanes; Stairway Between the Main Deck and Upper Deck

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for Boeing Model 747–8 airplanes. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features include a stairway between the main deck and upper deck. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of Boeing 747–8 airplanes.

DATES: *Effective Date:* July 1, 2011

FOR FURTHER INFORMATION CONTACT: Jayson Claar, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2194; facsimile (425) 227–1232.

SUPPLEMENTARY INFORMATION:

Background

On November 4, 2005, The Boeing Company, PO Box 3707, Seattle, WA, 98124, applied for an amendment to Type Certificate Number A20WE to include the new Model 747–8 series passenger airplane. The Model 747–8 is a derivative of the 747–400. The Model 747–8 is a four-engine jet transport

airplane that will have a maximum takeoff weight of 975,000 pounds, new General Electric GEnx –2B67 engines, and the capacity to carry 605 passengers.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 747–8 (hereafter referred as 747–8) meets the applicable provisions of part 25, Amendments 25–1 through 25–120, plus Amendment 25–127 for § 25.795(a), except for earlier amendments as agreed upon by the FAA. These regulations will be incorporated into Type Certificate No. A20WE after type certification approval of the 747–8.

In addition, the certification basis includes other regulations, special conditions, and exemptions that are not relevant to these special conditions. Type Certificate No. A20WE will be updated to include a complete description of the certification basis for these airplanes.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the 747–8 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model or series that incorporates the same or similar novel or unusual design feature, or should any other model or series already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model or series under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the 747–8 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued under § 11.38, and become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Boeing Model 747–8 will incorporate the following novel or unusual design features: The 747–8 design offers seating capacity on two separate decks, the main deck with a maximum passenger capacity of 495 and the upper deck with a maximum passenger capacity of 110. Occupants can move between decks via a staircase located near door 2 on the main deck of the airplane in the forward part of the cabin. With large seating capacities on the main deck and upper deck of the 747–8, the stairway must be designed to support evacuation between decks of the airplane in an in-flight emergency.

Discussion

The regulations governing the certification of the 747–8 do not adequately address the certification requirements for a two-deck passenger airplane. The Airbus A380–800 and all of the earlier Boeing 747 passenger airplane models were certified with seating capacity on two separate decks. When the seating capacity of the upper deck of the Boeing 747 exceeded 24 passengers, the FAA issued Special Condition No. 25–61–NW–1 for a maximum seat capacity of 32 passengers on the upper deck for take-off and landing. A second set of special conditions, Special Condition No. 25–71–NW–3, was issued to include airplanes up to a maximum seating capacity of 45 passengers on the upper deck for take-off and landing. The second set of special conditions was modified to address airplanes with a maximum seating capacity of 110 passengers on the upper deck for take-off and landing. Special Conditions No. 25–326–SC for the Airbus A380–800 allowed a seating capacity on two separate decks: the main deck with a maximum passenger capacity of 542 and the upper deck with a maximum passenger capacity of 308. Although these previously issued special conditions for the A380–800 provided a starting point for developing the 747–8 special conditions, the 747–8 special conditions are specific to the unique aspects of this airplane's design.

The regulations do not adequately address a passenger airplane with separate decks for passenger occupancy, thus the FAA considers this to be a novel design. Therefore, the FAA has determined that special conditions, in addition to the requirements of §§ 25.803 and 25.811 through 25.813, are required to address the proposed design.

Discussion of Comments

Notice of proposed special conditions No. 25–11–08–SC for Boeing Model 747–8 airplanes was published in the **Federal Register** on March 18, 2011 (76 FR 14819). No comments were received and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 747–8 airplanes. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features of Boeing Model 747–8 airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 747–8 airplanes.

1. The stairway must have essentially straight route segments with a landing at each significant change in segment direction.

2. The stairway must have essentially rectangular treads.

3. With the airplane in level attitude and in each attitude resulting from the collapse of one or more legs of the landing gear, the stairway must have entrance, exit, and gradient characteristics that allow the upper deck passengers, with assistance from a crewmember, to merge with passengers on the main deck during an emergency evacuation and exit the airplane through a main deck exit. This must be shown by demonstration, tests, analysis, or any combination thereof.

4. The stairway must accommodate the carriage of an incapacitated occupant from the upper deck to the main deck. The crewmember procedures for such carriage must be established and included in the airplane flight manual.

5. The stairway must be located to provide occupants an adequate descent rate under probable emergency conditions, including a condition in which an occupant falls or is incapacitated while on the stairway.

6. The stairway must be designed and located to minimize damage to its structure during an emergency landing or ditching.

7. General illumination must be provided so, when measured along the center lines of each tread and landing, the illumination is not less than 0.05 foot-candle. This is in lieu of compliance with § 25.812(c), at Amendment 25–116.

8. Means must be provided to assist passengers in locating the stairway in dense smoke conditions as part of compliance with § 25.811(c), at Amendment 25–88.

9. An emergency exit sign meeting § 25.812(b)(1)(i), at Amendment 25–116, must be provided in the upper deck near the stairway visible to passengers approaching along the main aisle as required by § 25.811(d)(1), at Amendment 25–88.

10. Floor proximity lighting required by § 25.812(e), at Amendment 25–120, must be provided along the stairs.

11. When passengers occupy the upper deck, at least one flight attendant must also be present during taxi, take-off, and landing.

12. The stairway must have a handrail on at least one side to allow occupants to steady themselves during foreseeable conditions, including but not limited to, gear collapse on the ground and moderate turbulence in flight. The handrail(s) must be constructed so there is no obstruction on them that will cause the user to release his/her grip or hinder the continuous movement of the hands along the handrail. Handrail(s) must be terminated in a manner that will not interfere with occupants walking by or create a hazard (such as catching clothing). Boeing must demonstrate that the design can accommodate the stature of a fifth percentile female and a ninety-fifth percentile male.

13. The public address system must be intelligible in the stairway during all flight phases.

14. "No smoking" and "return to seat" signs must be installed and visible in the stairway both going up and down and at the stairway entrances.

Issued in Renton, Washington, on May 25, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–13433 Filed 5–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM439; Special Conditions No. 25–428–SC]

Special Conditions: Gulfstream Model GVI Airplane; Single-Occupant Side-Facing Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Gulfstream GVI airplane. This airplane will have a novel or unusual design feature(s) associated with single-occupant side-facing seats. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* July 1, 2011.

FOR FURTHER INFORMATION CONTACT: Daniel Jacquet, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington, 98057–3356; telephone (425) 227–2676; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

On March 29, 2005, Gulfstream Aerospace Corporation (hereafter referred to as "Gulfstream") applied for an FAA type certificate for its new Gulfstream Model GVI passenger airplane. Gulfstream later applied for, and was granted, an extension of time for the type certificate, which changed the effective application date to September 28, 2006. The Gulfstream Model GVI airplane will be an all-new, two-engine jet transport airplane. The maximum takeoff weight will be 99,600 pounds, with a maximum passenger count of 19 passengers.

Type Certification Basis

Under provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Gulfstream must show that the Gulfstream Model GVI airplane (hereafter referred to as "the GVI") meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–119, 25–122, and 25–124. If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the GVI because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, the special conditions would also apply to the other model under provisions of § 21.101.

In addition to complying with the applicable airworthiness regulations and special conditions, the GVI must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. The FAA must also issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Gulfstream model GVI airplane will incorporate the following novel or unusual design feature: A single-occupant side-facing seat intended to be occupied during takeoff and landing.

Discussion

Section 25.785(b), requires that "each seat * * * at each station designated as occupiable during takeoff and landing must be designed so that a person making proper use of these facilities will not suffer serious injury in an emergency landing as a result of the inertia forces specified in §§ 25.561 and 25.562." Additionally, § 25.562 requires dynamic testing of all seats occupied during takeoff and landing. The relative forces and injury mechanisms affecting the occupants of side-facing seats during an emergency landing are different from those of standard forward or aft facing seats. Therefore, the FAA has determined that, in addition to the requirements of part 21 and part 25, these special conditions are needed to address this seat installation.

Discussion of Comments

Notice of proposed special conditions No. 25–10–04–SC for Gulfstream GVI airplanes was published in the **Federal Register** on January 4, 2011 (76 FR 291). No comments were received and these

special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Gulfstream model GVI airplane. Should Gulfstream apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features of the GVI. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Gulfstream GVI airplanes.

In addition to the airworthiness standards in §§ 25.562 and 25.785, the following special conditions provide injury criteria and installation/testing guidelines that represent the minimum acceptable airworthiness standard for single-occupant side-facing seats:

A. The Injury Criteria

1. Existing Criteria: All injury protection criteria of § 25.562(c)(1) through (c)(6) apply to the occupant of a side-facing seat. Head injury criterion (HIC) assessments are only required for head contact with the seat and/or adjacent structures.

2. Body-to-Wall/Furnishing Contact: The seat must be installed aft of a structure such as an interior wall or furnishing that will support the pelvis, upper arm, chest, and head of an occupant seated next to the structure. A conservative representation of the structure and its stiffness must be included in the tests. It is recommended, but not required, that the contact surface of this structure be covered with at least two inches of energy absorbing protective padding (foam or equivalent), such as Ensolite.

3. Thoracic Trauma: Thoracic trauma index (TTI) injury criterion must be substantiated by dynamic test or by rational analysis based on previous test(s) of a similar seat installation. Testing must be conducted with a side impact dummy (SID), as defined by Title 49, Code of Federal Regulations (49 CFR) part 572, subpart F, or its equivalent. TTI must be less than 85, as defined in 49 CFR part 572, subpart F. SID TTI data must be processed as defined in Federal Motor Vehicle Safety Standard (FMVSS) part 571.214, section S6.13.5.

4. Pelvis: Pelvic lateral acceleration must be shown by dynamic test or by rational analysis based on previous test(s) of a similar seat installation not to exceed 130g. Pelvic acceleration data must be processed as defined in FMVSS part 571.214, section S6.13.5.

5. *Shoulder Strap Loads:* Where upper torso straps (shoulder straps) are used for occupants, tension loads in individual straps must not exceed 1,750 pounds. If dual straps are used for restraining the upper torso, the total strap tension loads must not exceed 2,000 pounds.

B. General Test Guidelines

1. One longitudinal test with the SID or its equivalent, undeformed floor, no yaw, with all lateral structural supports (armrests/walls).

Pass/fail injury assessments: TTI and pelvic acceleration.

2. One longitudinal test with the Hybrid II anthropomorphic test dummy (ATD), deformed floor, yaw at 10 degrees, with all lateral structural support (armrests/walls).

Pass/fail injury assessments: HIC; and upper torso restrain load, restraint system retention and pelvic acceleration.

3. Vertical (14g) test with modified Hybrid II ATDs using existing pass/fail criteria.

Issued in Renton, Washington, on May 20, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–13435 Filed 5–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM445; Special Conditions No. 25–429–SC]

Special Conditions: Gulfstream Model GVI Airplane; Automatic Speed Protection for Design Dive Speed

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Gulfstream GVI airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features include a high speed protection system. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* July 1, 2011.

FOR FURTHER INFORMATION CONTACT: Carl Niedermeyer, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2279; electronic mail *Carl.Niedermeyer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On March 29, 2005, Gulfstream Aerospace Corporation (hereafter referred to as "Gulfstream") applied for an FAA type certificate for its new Gulfstream Model GVI passenger airplane. Gulfstream later applied for, and was granted, an extension of time for the type certificate, which changed the effective application date to September 28, 2006. The Gulfstream Model GVI airplane will be an all-new, two-engine jet transport airplane. The maximum takeoff weight will be 99,600 pounds, with a maximum passenger count of 19 passengers.

Type Certification Basis

Under provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Gulfstream must show that the Gulfstream Model GVI airplane (hereafter referred to as "the GVI") meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–119, 25–122, and 25–124. If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the GVI because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, the special conditions

would also apply to the other model under provisions of § 21.101.

In addition to complying with the applicable airworthiness regulations and special conditions, the GVI must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. The FAA must also issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Gulfstream Model GVI airplane is equipped with a high speed protection system that limits nose down pilot authority at speeds above V_C/M_C, and prevents the airplane from actually performing the maneuver required under § 25.335(b)(1). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions are identical or nearly identical to those previously required for type certification of other airplane models.

Discussion

Gulfstream proposes to reduce the speed margin between V_C and V_D required by § 25.335(b), based on the incorporation of a high speed protection system in the GVI flight control laws. The GVI is equipped with a high speed protection system that limits nose down pilot authority at speeds above V_C/M_C and prevents the airplane from actually performing the maneuver required under § 25.335(b)(1).

Section 25.335(b)(1) is an analytical envelope condition which was originally adopted in Part 4b of the Civil Air Regulations to provide an acceptable speed margin between design cruise speed and design dive speed. Freedom from flutter and the airframe design loads are affected by the design dive speed. While the initial condition for the upset specified in the rule is 1g level flight, protection is afforded for other inadvertent overspeed conditions as well. Section 25.335(b)(1) is intended as a conservative enveloping condition for all potential overspeed conditions, including non-symmetric ones.

To establish that all potential overspeed conditions are enveloped, the applicant would demonstrate that the dive speed will not be exceeded during pilot-induced or gust-induced upsets in non-symmetric attitudes.

In addition, the high speed protection system in the GVI must have a high level of reliability.

Discussion of Comments

Notice of proposed special conditions No. 25–11–04–SC for Gulfstream GVI airplanes was published in the **Federal Register** on February 16, 2011 (76 FR 8917). One supportive comment was received.

On March 29, 2011, Advisory Circular (AC) 25–7B, *Flight Test Guide for Certification of Transport Category Airplanes,* was issued. This revision supersedes the reference to AC 25–7A, Change 1, in special condition 2 of the proposed special conditions. Therefore, the reference to AC 25–7A, Change 1, section 32, paragraphs c.(3)(i) and (iii) has been updated to AC 25–7B, section 32, paragraph c.3(a) and (c), and the title of the AC has been included. Except for the updated AC reference in special condition 2, these special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Gulfstream Model GVI airplane. Should Gulfstream apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features of the GVI. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Gulfstream GVI airplanes.

1. In lieu of compliance with § 25.335(b)(1), if the flight control system includes functions that act automatically to initiate recovery before the end of the 20 second period specified in § 25.335(b)(1), V_D/M_D must be determined from the greater of the speeds resulting from conditions (a) and (b) below. The speed increase occurring in these maneuvers may be calculated if reliable or conservative aerodynamic data are used.

(a) From an initial condition of stabilized flight at V_C/M_C, the airplane is upset so as to take up a new flight path 7.5 degrees below the initial path. Control application, up to full authority, is made to try to maintain this new flight path. Twenty seconds after initiating the upset, manual recovery is made at a load factor of 1.5 g (0.5 acceleration increment), or a greater load factor that is automatically applied by the system with the pilot's pitch control neutral. Power, as specified in § 25.175(b)(1)(iv), is assumed until recovery is initiated, at which time power reduction and the use of pilot controlled drag devices may be used.

(b) From a speed below V_C/M_C, with power to maintain stabilized level flight at this speed, the airplane is upset so as to accelerate through V_C/M_C at a flight path 15 degrees below the initial path (or at the steepest nose down attitude that the system will permit with full control authority if less than 15 degrees). The pilot's controls may be in the neutral position after reaching V_C/M_C and before recovery is initiated. Recovery may be initiated three seconds after operation of high speed warning system by application of a load factor of 1.5g (0.5 acceleration increment), or such greater load factor that is automatically applied by the system with the pilot's pitch control neutral. Power may be reduced simultaneously. All other means of decelerating the airplane, the use of which are authorized up to the highest speed reached in the maneuver, may be used. The interval between successive pilot actions must not be less than one second.

2. The applicant must also demonstrate that the speed margin, established as above, will not be exceeded in inadvertent or gust induced upsets resulting in initiation of the dive from non-symmetric attitudes, unless the airplane is protected by the flight control laws from getting into non-symmetric upset conditions. The upset maneuvers described in AC 25–7B, *Flight Test Guide for Certification of Transport Category Airplanes,* section 32, paragraphs c.3(a) and (c) may be used to comply with this requirement.

3. Any failure of the high speed protection system that would affect the speed margin determined by paragraphs 1. and 2. must be improbable (occur at a rate less than 10^{-5} per flight hour).

4. Failures of the system must be annunciated to the pilots, and flight manual instructions must be provided to reduce the maximum operating speeds, V_{MO}/M_{MO}. The operating speed

must be reduced to a value that maintains a speed margin between V_{MO}/M_{MO} and V_D/M_D that is consistent with showing compliance with § 25.335(b) without the benefit of the high speed protection system.

5. Master minimum equipment list (MMEL) relief for the high speed protection system may be considered by the FAA Flight Operations Evaluation Board (FOEB) provided that the flight manual instructions indicate reduced maximum operating speeds as described in paragraph 4., and that no additional hazards are introduced with the high speed protection system inoperative. In addition, the cockpit display of the reduced operating speeds, as well as the overspeed warning for exceeding those speeds, must be equivalent to that of the normal airplane with the high speed protection system operative.

Issued in Renton, Washington, on May 24, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–13434 Filed 5–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM446; Special Conditions No. 25–427–SC]

Special Conditions: Gulfstream Model GVI Airplane; Electronic Flight Control System: Control Surface Position Awareness

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Gulfstream GVI airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features include an electronic flight control system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* July 1, 2011.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, FAA, Airplane and Flightcrew Interface Branch, ANM–111, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington, 98057–3356; telephone (425) 227–2011; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

On March 29, 2005, Gulfstream Aerospace Corporation (hereafter referred to as "Gulfstream") applied for an FAA type certificate for its new Gulfstream Model GVI passenger airplane. Gulfstream later applied for, and was granted, an extension of time for the type certificate, which changed the effective application date to September 28, 2006. The Gulfstream Model GVI airplane will be an all-new, two-engine jet transport airplane with an executive cabin interior. The maximum takeoff weight will be 99,600 pounds, with a maximum passenger count of 19 passengers.

Type Certification Basis

Under provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Gulfstream must show that the Gulfstream Model GVI airplane (hereafter referred to as "the GVI") meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–119, 25–122, and 25–124. If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the GVI because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to complying with the applicable airworthiness regulations and special conditions, the GVI must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. The FAA must also issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, the special conditions would also apply to the other model under provisions of § 21.101.

Novel or Unusual Design Features

The Gulfstream Model GVI airplane has an electronic flight control system and no direct coupling from the cockpit controller to the control surface, so the pilot may not be aware of the actual surface position utilized to fulfill the requested command. Some unusual flight conditions, such as those arising from atmospheric conditions, aircraft malfunctions, or engine failures, may result in full or near-full control surface deflection. Unless the flightcrew is made aware of excessive deflection or impending control surface limiting, piloted or auto-flight system control of the airplane might be inadvertently continued to a point that could cause a loss of aircraft control or other unsafe stability or performance characteristic. Because electronic flight control system technology has outpaced existing regulations, a special condition is proposed to ensure control surface position awareness by the flightcrew.

Discussion

This special condition requires that suitable flight control position annunciation be provided to the flightcrew when a flight condition exists in which near-full surface authority (not crew-commanded) is being utilized. The suitability of such an annunciation must take into account that some pilot-demanded maneuvers, such as a rapid roll, are necessarily associated with intended full performance, and which may saturate the control surface. Simple alerting systems which would annunciate either intended or unexpected control-limiting situations must be properly balanced between providing necessary crew awareness and avoiding undesirable nuisance warnings.

This special condition establishes a level of safety equivalent to that provided by a conventional flight control system and that contemplated in existing regulations.

Discussion of Comments

Notice of proposed special conditions No. 25–11–05–SC for Gulfstream GVI airplanes was published in the **Federal Register** on February 17, 2011 (76 FR 9265). One supportive comment was received and these special conditions are adopted as proposed.

Applicability

As discussed above, this special condition is applicable to the Gulfstream Model GVI airplane. Should Gulfstream apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, this

special condition would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features of the GVI. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for the Gulfstream GVI airplanes.

In addition to compliance with §§ 25.143, 25.671, 25.672, and 25.1322, the following special condition applies:

When a flight condition exists where, without being commanded by the flightcrew, control surfaces are coming so close to their limits that return to the normal flight envelope and/or continuation of safe flight requires a specific flightcrew member action, a suitable flight control position annunciation must be provided to the flightcrew, unless other existing indications are found adequate or sufficient to prompt that action.

Note: The term "suitable" also indicates an appropriate balance between necessary operation and nuisance factors.

Issued in Renton, Washington, on May 20, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–13436 Filed 5–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0231; Directorate Identifier 2011–CE–003–AD; Amendment 39–16706; AD 2011–11–07]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries GmbH Model DA 42 Airplanes

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

ACTION: Final rule.

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

Cracks have been reportedly found on DA 42 Main Landing Gear (MLG) Damper-to-Trailing Arm joints during standard maintenance. Depending on environmental-, operating- and runway conditions, the affected MLG joint, Part Number (P/N) D60–3217–23–5x (4 different lengths are available), which is made of aluminum, is susceptible to cracking.

This condition, if not detected and corrected, may lead to failure of the joint and subsequent damage or malfunction of the MLG, possibly resulting in damage to the aeroplane during landing and injury to occupants.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective July 6, 2011.

On July 6, 2011, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at 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 service information identified in this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A–2700 Wiener Neustadt, Austria, telephone: +43 2622 26700; fax: +43 2622 26780; e-mail: *office@diamond-air.at;* Internet: *http://www.diamond-air.at.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 16, 2011 (76 FR 14346). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Cracks have been reportedly found on DA 42 Main Landing Gear (MLG) Damper-to-Trailing Arm joints during standard maintenance. Depending on environmental-, operating- and runway conditions, the affected MLG joint, Part Number (P/N) D60–3217–23–5x (4 different lengths are available), which is made of aluminum, is susceptible to cracking.

This condition, if not detected and corrected, may lead to failure of the joint and subsequent damage or malfunction of the MLG, possibly resulting in damage to the aeroplane during landing and injury to occupants.

To address this unsafe condition, EASA issued AD 2010–0155 to require repetitive inspections of the MLG joint and, depending on findings, replacement with a serviceable part. Since that AD was issued, DAI developed an improved design MLG joint, P/N D64–3217–23–0x (also 4 different lengths available), which is made of steel and less susceptible to cracking.

For the reasons described above, this new AD retains the requirements of EASA AD 2010–0155R1, which is superseded, and adds the terminating action requirement to modify the aeroplane by installing the improved steel part. This new AD also prohibits re-installation of the aluminum part.

Comments

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

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

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

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies.

Any such differences are highlighted in a note within the AD.

Costs of Compliance

We estimate that this AD will affect 162 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $729 per product.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $131,868, or $814 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866;

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

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

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

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 the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–11–07 Diamond Aircraft Industries GmbH: Amendment 39–16706; Docket No. FAA–2011–0231; Directorate Identifier 2011–CE–003–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 6, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Diamond Aircraft Industries GmbH Model DA 42 airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 32: Landing Gear.

Reason

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

Cracks have been reportedly found on DA 42 Main Landing Gear (MLG) Damper-to-Trailing Arm joints during standard maintenance. Depending on environmental-, operating- and runway conditions, the affected MLG joint, Part Number (P/N) D60–3217–23–5x (4 different lengths are available), which is made of aluminum, is susceptible to cracking.

This condition, if not detected and corrected, may lead to failure of the joint and subsequent damage or malfunction of the MLG, possibly resulting in damage to the aeroplane during landing and injury to occupants.

To address this unsafe condition, EASA issued AD 2010–0155 to require repetitive inspections of the MLG joint and, depending on findings, replacement with a serviceable part. Since that AD was issued, DAI developed an improved design MLG joint, P/N D64–3217–23–0x (also 4 different lengths available), which is made of steel and less susceptible to cracking.

For the reasons described above, this new AD retains the requirements of EASA AD 2010–0155R1, which is superseded, and adds the terminating action requirement to modify the aeroplane by installing the improved steel part. This new AD also prohibits re-installation of the aluminum part.

Actions and Compliance

(f) Unless already done, do the following actions following Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB 42–088/2, dated February 3, 2011; and Work Instruction WI–MSB 42–088, dated February 3, 2011:

(1) *For airplanes installed with main landing gear (MLG) joint P/N D60–3217–23–5x:* Within 100 hours time-in-service (TIS) after the effective date of this AD, replace each MLG joint P/N D60–3217–23–5x with a MLG joint P/N D64–3217–23–0x.

(2) *For all airplanes:* As of the effective date of this AD, do not install MLG joint P/N D60–3217–23–5x.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: EASA originally established an initial and repetitive inspection of the MLG joint part. We are not establishing an initial or repetitive inspection, and instead we are just requiring a mandatory one-time replacement of the part within 100 hours TIS after the effective date of this AD.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) Reporting Requirements: For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor

shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

Related Information

(h) Refer to MCAI EASA AD No.: 2011–0020, dated February 7, 2011; Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB 42–088/2, dated February 3, 2011; and Work Instruction WI–MSB 42–088, dated February 3, 2011, for related information. For service information related to this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A–2700 Wiener Neustadt, Austria, telephone: +43 2622 26700; fax: +43 2622 26780; e-mail: *office@diamond-air.at;* Internet: *http://www.diamond-air.at.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Material Incorporated by Reference

(i) You must use Diamond Aircraft Industries GmbH Mandatory Service Bulletin No. MSB 42–088/2, dated February 3, 2011; and Work Instruction WI–MSB 42–088, dated February 3, 2011, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A–2700 Wiener Neustadt, Austria, telephone: +43 2622 26700; fax: +43 2622 26780; e-mail: *office@diamond-air.at;* Internet: *http://www.diamond-air.at.*

(3) You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued in Kansas City, Missouri, on May 18, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–12898 Filed 5–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0673; Directorate Identifier 2009–NM–208–AD; Amendment 39–16705; AD 2011–11–06]

RIN 2120–AA64

Airworthiness Directives; BAE SYSTEMS (OPERATIONS) LIMITED Model BAe 146 and Avro 146–RJ Airplanes

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

ACTION: Final rule.

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

In June 2000, prompted by a crack found at the top of the Nose Landing Gear (NLG) oleo, BAE Systems Operations) Ltd (BAE Systems) issued Inspection Service Bulletin (ISB) ISB.32–158. * * *

Later, as part of an accident investigation, the examination of a fractured NLG main fitting showed that M–D (Messier-Dowty) SB.146–32–150 was not accomplished * * *. BAE Systems determined that more NLG units could be similarly affected. * * *

Subsequently, investigation and analysis by M–D identified the need for a reduction of the inspection threshold and the repetitive inspection interval for the affected NLG units * * *.

* * * * *

* * * [I]nvestigation by M–D showed that if any undetected crack was present at the time of the embodiment of M–D SB 146–32–150, Part B or Part C, it could continue to grow while the NLG is in service and could lead to the failure of the main fitting and possible collapse of the NLG. * * * [B]AE Systems have received additional reports of cracked NLG main fittings. One operator reported a crack in a premodification main fitting. * * *

* * * * *

Undetected cracks could lead to failure of the NLG Main Fitting and collapse of the NLG.

* * * * *

The unsafe condition is cracking of the NLG, which could adversely affect the airplane's safe landing. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective July 6, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 6, 2011.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on February 7, 2011 (76 FR 6575), and proposed to supersede AD 2002–03–10, Amendment 39–12651 (67 FR 6855, February 14, 2002). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

In June 2000, prompted by a crack found at the top of the Nose Landing Gear (NLG) oleo, BAE Systems (Operations) Ltd (BAE Systems) issued Inspection Service Bulletin (ISB) ISB.32–158. This ISB was classified mandatory by the United Kingdom Civil Aviation Authority under AD number 002–06–2000, requiring repetitive Non-Destructive Testing (NDT) crack inspections on the upper end of the NLG oleo. The AD also provided an optional terminating action for the repetitive inspections, by embodiment of Messier-Dowty (M–D) Service Bulletin (SB) SB.146–32–150.

Later, as part of an accident investigation, the examination of a fractured NLG main fitting showed that M–D SB.146–32–150 was not accomplished, although the records indicated that it had been. BAE Systems determined that more NLG units could be similarly affected. These NLG units were overhauled at Messier Services in Sterling, Virginia, in the United States. To address this situation, [European Aviation Safety Agency]

EASA issued Emergency AD 2009–0043–E to require repetitive NDT inspections of each affected NLG unit and, if cracks are found, replacement with a serviceable unit, in accordance with the instructions of BAE Systems Alert ISB.A32–180 and M–D SB.146–32–149.

Subsequently, investigation and analysis by M–D identified the need for a reduction of the inspection threshold and the repetitive inspection interval for the affected NLG units and replaced M–D SB 146–32–149 with M–D SB.146–32–174. Consequently, BAE Systems SB 32–158 was withdrawn and superseded by BAE Systems Alert ISB.A32–180 Revision 1, which was mandated by EASA Emergency AD 2009–0197–E.

As further information became available, BAE Systems saw a need to clarify the compliance instructions in the ISB and issued Revision 2 of Alert Service Bulletin ISB.A32–180. The layout of Revision 2 was no longer compatible with the instructions of EASA Emergency AD 2009–0197–E, so EASA issued AD 2010–0001–E which superseded EASA AD 2009–0197–E and which reduced the threshold and interval of the repetitive NDT inspections and required repetitive NDT inspections of each affected NLG unit and, if cracks were found, the replacement of the NLG with a serviceable unit.

The optional closing action of EASA AD 2010–0001–E is embodiment of M–D SB 146–32–150 (polishing and shot peening of the NLG main fitting) or confirmation that it has already been accomplished, as applicable. Further investigation by M–D showed that if any undetected crack was present at the time of the embodiment of M–D SB 146–32–150, Part B or Part C, it could continue to grow while the NLG is in service and could lead to the failure of the main fitting and possible collapse of the NLG. For this reason, EASA issued AD 2010–0072 (and its revision 1) which required the introduction of repetitive NDT inspections (defined in BAE Systems ISB 32–181) on NLG main fittings following embodiment of M–D SB 146–32–150. Despite the aforementioned measures, BAE Systems have received additional reports of cracked NLG main fittings. One operator reported a crack in a pre-modification main fitting. Shot peening was not present, as this was a pre-modification gear, but the surface finish was better than that required for a post-modification fitting. This implies that the surface finish achieved by the modification may not be effective in preventing cracking. In addition, a positive inspection return from BAE Systems ISB 32–181 also questions whether the combination of improved surface finish and shot peening are effective, as a crack may have initiated from a surface which is compliant with the modification standard.

It has been concluded that the polishing and the shot peening of the NLG main fitting embodied through M–D SB 146–32–150 are potentially ineffective in preventing cracks and that all NLG main fittings should be subject to the same 300 Flight Cycles (FC) repetitive inspection to ensure pre-critical crack detection.

Undetected cracks could lead to failure of the NLG Main Fitting and collapse of the NLG.

With that view, BAE Systems issued ISB.32–182 to implement this repetitive 300 FC inspection on all NLG main fittings regardless of their modification standard. ISB.32–182 supersedes existing ISBs A32–180 and 32–181, initially with no closing action.

For the reasons described above, this AD supersedes EASA Emergency AD 2010–0001–E and EASA AD 2010–0072 Revision 1 and requires repetitive NDT inspections of all NLG main fittings and, if cracks are found, replacement of the NLG with a serviceable unit.

This AD is revised to require corrective actions on the NLG main fittings and not on the whole NLGs. NLGs and NLG main fittings may have accumulated different flight cycle amounts.

The unsafe condition is cracking of the NLG, which could adversely affect the airplane's safe landing. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 1 product of U.S. registry.

There are no retained actions in this final rule that are required by AD 2002–03–10.

We estimate that it will take about 1 work-hour per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $85.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

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

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

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

Examining the AD Docket

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

section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–12651 (67 FR 6855, February 14, 2002) and adding the following new AD:

2011–11–06 BAE Systems (Operations) Limited: Amendment 39–16705. Docket No. FAA–2010–0673; Directorate Identifier 2009–NM–208–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 6, 2011.

Affected ADs

(b) This AD supersedes AD 2002–03–10, Amendment 39–12651.

Applicability

(c) This AD applies to BAE Systems (OPERATIONS) LIMITED Model BAe 146–100A, –200A, and –300A airplanes and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category; all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing Gear.

Reason

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

In June 2000, prompted by a crack found at the top of the Nose Landing Gear (NLG) oleo, BAE Systems (Operations) Ltd (BAE Systems) issued Inspection Service Bulletin (ISB) ISB.32–158. * * *

Later, as part of an accident investigation, the examination of a fractured NLG main fitting showed that M–D (Messier-Dowty) SB.146–32–150 was not accomplished * * *. BAE Systems determined that more NLG units could be similarly affected. * * *

Subsequently, investigation and analysis by M–D identified the need for a reduction of the inspection threshold and the repetitive inspection interval for the affected NLG units * * *.

* * * * *

* * * [I]nvestigation by M–D showed that if any undetected crack was present at the time of the embodiment of M–D SB 146–32–150, Part B or Part C, it could continue to grow while the NLG is in service and could lead to the failure of the main fitting and possible collapse of the NLG. * * * [B]AE Systems have received additional reports of cracked NLG main fittings. One operator reported a crack in a premodification main fitting. * * *

* * * * *

Undetected cracks could lead to failure of the NLG Main Fitting and collapse of the NLG.

* * * * *

The unsafe condition is cracking of the NLG, which could adversely affect the airplane's safe landing.

Compliance

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

Inspection

(g) Before the accumulation of 5,000 total flight cycles on the NLG main fitting, or within 300 flight cycles after the effective date of this AD, whichever occurs later, do an ultrasonic inspection on the upper part of the NLG main fitting for any crack, in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin 146–32–174, Revision 2, dated August 16, 2010, including Appendix A, Revision 1, dated September 2, 2009. Thereafter, repeat the inspection at intervals not to exceed 300 flight cycles.

(h) An inspection that has been done in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin 146–32–174, Revision 1, dated September 2, 2009; or in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin 146–32–175, Revision 2, dated March 5, 2010; before the effective date of this AD but not more than 300 flight cycles before the effective date of this AD, is considered acceptable for compliance with the initial inspection required by paragraph (g) of this AD.

Replacement

(i) If any crack is found from the inspections required by paragraph (g) of this AD, before further flight, replace the NLG main fitting with a serviceable NLG main fitting, using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

Note 1: Guidance on replacing the NLG main fitting with a serviceable NLG main fitting can be found in Subsection 32–20–11 of BAE SYSTEMS (OPERATIONS) LIMITED BAe 146 Series/Avro 146–RJ Series Aircraft Maintenance Manual, AMM 146.153, Revision 101, dated July 15, 2010.

(j) Replacing the NLG main fitting with a serviceable NLG main fitting is not a terminating action for the repetitive inspections required by paragraph (g) of this AD.

Parts Installation

(k) As of the effective date of this AD, no person may install an affected NLG main fitting on any airplane, unless that NLG main fitting has been inspected in accordance with paragraph (g) of this AD and no cracking is found.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(m) Refer to MCAI EASA Airworthiness Directive 2010–0202R1, dated October 14, 2010; and Messier-Dowty Service Bulletin 146–32–174, Revision 2, dated August 16, 2010, including Appendix A, Revision 1, dated September 2, 2009; for related information.

Material Incorporated by Reference

(n) You must use Messier-Dowty Service Bulletin 146–32–174, Revision 2, dated August 16, 2010, including Appendix A, Revision 1, dated September 2, 2009; to do the actions required by this AD, unless the AD specifies otherwise. (Page 6 of this document does not contain a revision level or date.)

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

(2) For Messier-Dowty service information identified in this AD, contact Messier Services Americas, Customer Support Center, 45360 Severn Way, Sterling, Virginia 20166–8910; telephone 703–450–8233; fax 703–404–1621; Internet *https://techpubs.services.messier-dowty.com.*

(3) For BAE SYSTEMS (OPERATIONS) LIMITED service information identified in this AD, contact BAE SYSTEMS

(OPERATIONS) LIMITED, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; e-mail *RApublications@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.*

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

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

Issued in Renton, Washington, on May 13, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–12585 Filed 5–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1044; Directorate Identifier 2010–NM–033–AD; Amendment 39–16704; AD 2011–11–05]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F; Model MD–10–10F, MD–10–30F, MD–11, and MD–11F Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for the products listed above. That AD currently requires an inspection to determine if a certain fuel pump housing electrical connector is installed. The existing AD also requires a revision to the FAA-approved airplane flight manual (AFM) to advise the flightcrew of the appropriate procedures for disabling certain fuel pump electrical circuits following failure of a fuel pump housing electrical connector if applicable. The existing AD also requires the deactivation of certain fuel tanks or fuel pumps and the installation of placards if applicable. The existing AD allows the optional replacement of the fuel pump housing electrical connectors with new, improved parts, which would terminate the AFM revisions, deactivation of certain fuel tanks and fuel pumps, and placard installation. This new AD instead requires replacing the fuel pump housing electrical connector assembly with a new part and doing repetitive inspections for continuity, resistance, and insulation resistance, and doing corrective actions if necessary. This AD was prompted by reports of failures of a certain fuel pump housing electrical connector. We are issuing this AD to detect and correct insulation resistance degradation and arcing in the potted backside of the electrical connector assembly of the fuel boost/transfer pump housing, which could compromise its performance and cause an ignition source in the fuel tank, resulting in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective July 6, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of July 6, 2011.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

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: Philip Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: 562–627–5263; fax: 562–627–5210.; e-mail: *philip.kush@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede airworthiness directive (AD) 2007–15–05, amendment 39–15134 (72 FR 40216, July 24, 2007). That AD applies to the specified products. The NPRM published in the **Federal Register** on November 5, 2010 (75 FR 68246). That NPRM proposed to require replacing the fuel pump housing electrical assembly with a new part and doing repetitive inspections for continuity, resistance, and insulation resistance, and doing corrective actions, if necessary.

Comments

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

Request for Addition of Part Number

FedEx requested that we add, in the header above the Summary and paragraphs (c), (e), and (f) of the proposed AD, the part number of the fuel pump housing electrical connector assembly requiring replacement. FedEx stated that the change will clarify the AD and avoid unnecessary work and cost to the operators.

We partially agree with the commenter. We disagree with adding the part number of the fuel pump housing electrical connector assembly requiring replacement to the header information, paragraph (c), and paragraph (f) of this AD because the affected part could be rotated onto any of the airplanes listed in the applicability. However, we agree that clarification of paragraph (h) of this AD (referred to as paragraph (g) in the NPRM) is needed. In order to comply with this AD, for all airplanes in the applicability it must be determined if the fuel pump housing electrical connector assembly having part number (P/N) 60–84355–1 is installed. We have added paragraph (g) to specify the inspection to determine the part number. We have also added a reference of P/N 60–84355–1 to paragraph (h) of this AD for clarification. In addition, we have added a reference of P/N 60–84355–1 to paragraph (e) of this AD for clarification.

Clarification of Paragraph (i) of This AD

We have revised paragraph (i) of this AD by replacing the phrase, "replacing the fuel pump electrical connector assembly as required by paragraph (g) of this AD" with the phrase, "installing the fuel pump housing electrical connector assembly having P/N 60–84351, in accordance with Boeing Alert Service Bulletin DC10–28A261 or Boeing Alert Service Bulletin MD11–28A143," to clarify that P/N 60–84351 must be repetitively inspected after installation.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD with the change described previously—and minor editorial changes. We have determined that these minor changes:

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

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 281 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	Between 20 and 36 per inspection cycle.	$85	$0	Between $1,700 and $3,060 per inspection cycle.	281	Between $477,700 and $859,860 per inspection cycle.
Replacement	Up to 44	85	Up to $4,478	Up to $8,218	281	Up to $2,309,258.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2007–15–05, Amendment 39–15134 (72 FR 40216, July 24, 2007), and adding the following new AD:

2011–11–05 The Boeing Company: Amendment 39–16704; Docket No. FAA–2010–1044; Directorate Identifier 2010–NM–033–AD.

Effective Date

(a) This airworthiness directive (AD) is effective July 6, 2011.

Affected ADs

(b) This AD supersedes AD 2007–15–05, Amendment 39–15134.

Applicability

(c) This AD applies to all The Boeing Company Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes, certificated in any category.

Subject

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

Unsafe Condition

(e) This AD results from reports of failures of the fuel pump housing electrical connector having P/N 60–84355–1. The Federal Aviation Administration is issuing this AD to detect and correct insulation resistance degradation and arcing in the potted backside of the electrical connector assembly of the fuel boost/transfer pump housing, which could compromise its performance and cause an ignition source in the fuel tank, resulting in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Inspection and Change

(g) For all airplanes: Within 10 months after the effective date of this AD, do an inspection of the fuel pump housing electrical connector to determine if part number (P/N) 60–84355–1 is installed. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the fuel pump housing electrical connector can be conclusively determined from that review.

(h) If, during the inspection required by paragraph (g) of this AD, any airplane is determined to have fuel pump housing electrical connector assembly having P/N 60–84355–1: Within 10 months after the effective

date of this AD, do the actions in paragraph (h)(1) or (h)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–28A261, dated December 1, 2009; or Boeing Alert Service Bulletin MD11–28A143, dated December 2, 2009; as applicable.

(1) Replace the fuel pump housing electrical connector assembly having P/N 60–84355–1 with new P/N 60–84351; or

(2) Do the actions required by paragraphs (h)(2)(i) and (h)(2)(ii) of this AD.

(i) Using a digital multi-meter, do a continuity, resistance, and insulation resistance inspection from the terminal strip through the fuel boost/transfer pump; and all applicable corrective actions specified in Boeing Alert Service Bulletin DC10–28A261, dated December 1, 2009; or Boeing Alert Service Bulletin MD11–28A143, dated December 2, 2009; as applicable. Do all applicable corrective actions before further flight.

(ii) Within 12 months after accomplishing the inspection required by paragraph (h)(2)(i) of this AD: Replace the fuel pump housing electrical connector assembly having P/N 60–84355–1 with a new fuel pump housing electrical connector assembly having P/N 60–84351.

(i) Before further flight after installing the new fuel pump housing electrical connector assembly, insert the applicable interim operating procedure regarding abnormal operations for failure of the fuel pump housing electrical connector into the Procedures section of the applicable Boeing airplane flight manual, in accordance with the applicable service information identified in Table 1 of this AD.

TABLE 1—SERVICE INFORMATION

Bulletin—	Date—	To the—
Boeing DC–10 Operations Bulletin 2–001B	January 25, 2010	Boeing DC–10 Flight Crew Operating Manual.
Boeing MD–10 Flight Crew Operations Manual Advisory Bulletin 2–01B	January 25, 2010	Boeing MD–10 Flight Crew Operations Manual.
Boeing MD–11 Flight Crew Operations Manual Advisory Bulletin 2–05C	January 25, 2010	Boeing MD–11 Flight Crew Operations Manual.

Repetitive Inspections for P/N 60–84351

(j) Within 18 months after installing the fuel pump housing electrical connector assembly having P/N 60–84351, in accordance with Boeing Alert Service Bulletin DC10–28A261 or Boeing Alert Service Bulletin MD11–28A143: Do a continuity, resistance, and insulation resistance inspection from the terminal strip through the fuel boost/transfer pump, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–28A261, dated December 1, 2009; or Boeing Alert Service Bulletin MD11–28A143, dated December 2, 2009; as applicable. Do all applicable corrective actions before further flight in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–28A261, dated December 1, 2009; or Boeing Alert Service Bulletin MD11–28A143, dated December 2, 2009; as applicable. Repeat the inspections thereafter at intervals not to exceed 18 months.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Philip Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: 562–627–5263; fax: 562–627–5210; e-mail: *philip.kush@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

Material Incorporated by Reference

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

TABLE 2—ALL MATERIAL INCORPORATED BY REFERENCE

Document	Date
Boeing Alert Service Bulletin DC10-28A261	December 1, 2009.
Boeing Alert Service Bulletin MD11-28A143	December 2, 2009.
Boeing DC–10 Operations Bulletin 2-001B to the Boeing DC–10 Flight Crew Operating Manual	January 25, 2010.
Boeing MD–10 Flight Crew Operations Manual Advisory Bulletin 2–01B to the Boeing MD–10 Flight Crew Operations Manual.	January 25, 2010.
Boeing MD–11 Flight Crew Operations Manual Advisory Bulletin 2–05C to the Boeing MD–11 Flight Crew Operations Manual.	January 25, 2010.

(The document number of Boeing DC–10 Operations Bulletin 2–001B is specified only on the first page of the document.)

(1) The Director of the Federal Register approved the incorporation by reference of the service information contained in table 2 of this AD under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone: 206–544–5000, extension 2; fax: 206–766–5683; e-mail: *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington, on May 12, 2011.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–12592 Filed 5–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0504; Directorate Identifier 2011–CE–014–AD; Amendment 39–16702; AD 2011–11–03]

RIN 2120–AA64

Airworthiness Directives; Various Aircraft Equipped With Rotax Aircraft Engines 912 A Series Engine

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

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

During a production process review, a deviation in hardening of certain Part Number (P/N) 944072 washers has been detected, which exceeds the hardness of the design specification.

The affected washers are part of the magneto ring flywheel hub installation and have been installed on a limited number of engines. No defective washers have been shipped as spare parts.

This condition, if not corrected, could lead to cracks in the washer, loosening of the magneto flywheel hub and consequent ignition failure, possibly resulting in damage to the engine, in-flight engine shutdown and forced landing, damage to the aeroplane and injury to occupants.

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

DATES: This AD becomes effective June 16, 2011.

On June 16, 2011, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive comments on this AD by July 18, 2011.

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

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

For service information identified in this AD, contact BRP–Rotax GmbH & Co. KG, Welser Strasse 32, A–4623 Gunskirchen, Austria; phone: +43 7246 601 0; fax: +43 7246 601 9130; Internet: *http://www.rotax-aircraft-engines.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090; e-mail: *sarjapur.nagarajan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No. 2011–0067–E, dated April 15, 2011 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

During a production process review, a deviation in hardening of certain Part Number (P/N) 944072 washers has been detected, which exceeds the hardness of the design specification.

The affected washers are part of the magneto ring flywheel hub installation and have been installed on a limited number of engines. No defective washers have been shipped as spare parts.

This condition, if not corrected, could lead to cracks in the washer, loosening of the magneto flywheel hub and consequent ignition failure, possibly resulting in damage to the engine, in-flight engine shutdown and forced landing, damage to the aeroplane and injury to occupants.

For the reasons described above, this AD requires, for the affected engines, the replacement of the P/N 944072 washer and associated gasket ring P/N 950141 with serviceable parts, having the same P/N.

This AD also prohibits installation of an affected engine on an aeroplane, unless the washer on that engine has been replaced as required by this AD.

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

Relevant Service Information

Rotax Aircraft Engines has issued Mandatory Service Bulletin SB–912–058 and SB–914–041 (same document), dated April 15, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

We might have also required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements take precedence over those copied from the MCAI.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because cracks in the washer of the magneto ring flywheel hub could cause loosening of the magneto flywheel hub. This failure could result in ignition

failure and/or damage to the engine, causing in-flight engine shutdown leading to a forced landing. A forced landing could result in damage to the airplane and injury to the occupants. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0504; Directorate Identifier 2011–CE–014–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD will affect 475 products of U.S. registry. We also estimate that it would take about 24 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $20 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $978,500, or $2,060 per product.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a "significant regulatory action" under Executive Order 12866;

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–11–03 Various Aircraft: Amendment 39–16702; Docket No. FAA–2011–0504; Directorate Identifier 2011–CE–014–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 16, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all serial numbers of the following aircraft, equipped with a Rotax Aircraft Engines 912 A series engine, serial number 4,410.888 through 4,410.899, installed and certificated in any category:

Type certificate holder	Aircraft model	Engine model
Aeromot-IndustriaMecanico Metalurgica ltda	AMT–200 and AMT–300	912 A2
Diamond Aircraft Industries GmbH	H–36 "DIMONA" and HK 36 R "SUPER DIMONA"	912 A
Diamond Aircraft Industries Inc.	DA20–A1	912 A3
HOAC-Austria	DV 20 KATANA	912 A3
Iniziative Industriali Italiane S.p.A	Sky Arrow 650 TC, Sky Arrow 650 TCN, and Sky Arrow 650TCNS.	912 A2 or 912 A3
SCHEIBE-Flugzeugbau GmbH	SF 25C	912 A2

Subject

(d) Air Transport Association of America (ATA) Code 74: Ignition.

Reason

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

During a production process review, a deviation in hardening of certain Part Number (P/N) 944072 washers has been detected, which exceeds the hardness of the design specification.

The affected washers are part of the magneto ring flywheel hub installation and have been installed on a limited number of engines. No defective washers have been shipped as spare parts.

This condition, if not corrected, could lead to cracks in the washer, loosening of the magneto flywheel hub and consequent ignition failure, possibly resulting in damage

to the engine, in-flight engine shutdown and forced landing, damage to the aeroplane and injury to occupants.

For the reasons described above, this AD requires, for the affected engines, the replacement of the P/N 944072 washer and associated gasket ring P/N 950141 with serviceable parts, having the same P/N.

This AD also prohibits installation of an affected engine on an aeroplane, unless the washer on that engine has been replaced as required by this AD.

Actions and Compliance

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

(1) Within the next 10 hours time-in-service (TIS) after June 16, 2011 (the effective date of this AD) or within 4 months after June 16, 2011 (the effective date of this AD), whichever occurs first, replace washer, part number (P/N) 944072, and associated gasket ring, P/N 950141, on the magneto ring flywheel hub with FAA-approved serviceable parts with the same P/Ns. Do the replacements following the Accomplishment Instructions in Rotax Aircraft Engines Mandatory Service Bulletin SB–912–058 and SB–914–041 (same document), dated April 15, 2011.

(2) As of June 16, 2011 (the effective date of this AD), do not install a Rotax Aircraft Engines 912 A series engine listed in paragraph (c) of this AD unless the washer, P/N 944072, and the gasket ring, P/N 950141, have been replaced as required in paragraph (f)(1) of this AD.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: EASA AD 2011–0067–E, dated April 15, 2011, requires returning the removed P/N 944072 to Rotax Aircraft Engines. We are not requiring this because FAA regulation, specifically 14 CFR 43.10, already requires disposition of unairworthy parts.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) Reporting Requirements: For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2011–0067–E, dated April 15, 2011, and Rotax Aircraft Engines Mandatory Service Bulletin SB–912–058 and SB–914–041 (same document), dated April 15, 2011, for related information.

Material Incorporated by Reference

(i) You must use Rotax Aircraft Engines Mandatory Service Bulletin SB–912–058 SB–914–041, dated April 15, 2011, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact BRP-Rotax GmbH & Co. KG, Welser Strasse 32, A–4623 Gunskirchen, Austria; phone: +43 7246 601 0; fax: +43 7246 601 9130; Internet: *http://www.rotax-aircraft-engines.com.*

(3) You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued in Kansas City, Missouri, on May 10, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–13336 Filed 5–31–11; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 259

Guide Concerning Fuel Economy Advertising for New Automobiles

AGENCY: Federal Trade Commission.

ACTION: Postponement of amendment of guide.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") gives notice that it is postponing any amendments to its Guide Concerning Fuel Economy Advertising for New Automobiles ("Fuel Economy Guide" or "Guide") pending completion of ongoing review by the Environmental Protection Agency ("EPA") and the National Highway Traffic Safety Administration ("NHTSA") of current fuel economy labeling requirements and the Commission's accelerated regulatory review of its own Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles Rule ("Alternative Fuels Rule").

DATES: This action is effective as of June 1, 2011.

ADDRESSES: Requests for copies of this notice should be sent to the Consumer Response Center, Room 113, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580. The notice is also available on the Internet at the Commission's Web site, *http://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Hampton Newsome at (202) 326–2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Commission adopted the Fuel Economy Guide [1] in 1975 to prevent deceptive fuel economy advertising for new automobiles and to facilitate the use of fuel economy information in such advertising. The Guide helps advertisers of new automobiles avoid making unfair or deceptive claims.[2] To accomplish this goal, the Fuel Economy Guide advises marketers to disclose established fuel economy estimates (e.g.,

[1] 16 CFR part 259.

[2] The Commission issues industry guides, such as the Fuel Economy Guide, to help marketers avoid making advertising claims that are unfair or deceptive under Section 5 of the FTC Act, 15 U.S.C. 45. Guides such as these are administrative interpretations of the law. Therefore, they do not have the force and effect of law and are not independently enforceable. The Commission, however, can take action under the FTC Act if a marketer makes a fuel economy claim inconsistent with the Guide. In any such enforcement action, the Commission must prove that the challenged act or practice is unfair or deceptive.

miles per gallon or "mpg") as determined by the mandatory EPA testing protocols. If advertisers make fuel economy claims based on non-EPA tests, the Guide directs them to disclose EPA-derived fuel economy information with substantially more prominence than other estimates [3] and provide details about the non-EPA tests such as the source of the test, driving conditions, and vehicle configurations.

On April 28, 2009,[4] the Commission published a Notice of Proposed Rulemaking ("NPRM") soliciting comments on proposed amendments to the Guide. The Commission's proposed revisions to the Guide included: (1) updating the Guide's definitions and guidance to reflect the new "combined" fuel economy estimates established by the EPA's fuel economy labeling requirements; and (2) extending advertising guidance to alternative fueled vehicles based on the Commission's Alternative Fuels Rule.[5] The Commission received eight comments from sources including the automobile manufacturing industry, local government, and consumers groups.[6] Generally, the comments supported retaining the Guide and recognized its benefits. Several, however, noted inconsistencies between calculations and standards found in the FTC's Alternative Fuels Rule and those established by the EPA's fuel economy labeling requirements.[7]

On September 28, 2009, during the course of the Commission's regulatory review for the Guide, EPA and NHTSA announced their "Proposed Rulemaking To Establish Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards." [8] In that Federal Register Notice, the EPA and the NHTSA announced the creation of a "National Program * * * to reduce greenhouse gas emission and to improve fuel economy." [9] To fulfill the statutory requirements of the Energy Independence and Security Act [10] and to conform with the goals of the National Program, the agencies are developing labels that "reflect fuel economy and greenhouse gas and other emissions * * * [and also include] a rating system that would make it easy for consumers to compare the fuel economy and greenhouse gas and other emissions of automobiles at the point of purchase." [11] In addition, the agencies proposed creating their own label for alternative fueled vehicles, and solicited comment on proposed label formats in September 2010.[12]

The EPA's proposed rulemaking impacts both the Commission's Alternative Fuels Rule and its Fuel Economy Guide. That rulemaking will increase the coverage of EPA's new fuel economy labels to include alternative fueled vehicles, many of which would also have additional labeling requirements under the existing Alternative Fuels Rule. Therefore, in a separate notice published today, the Commission is accelerating its review of the Alternative Fuels Rule to reduce the potential for conflicting or redundant labeling requirements. The result of the Commission's review also may affect the guidance that the Commission would issue to new vehicle advertisers in the FTC's Fuel Economy Guide. Therefore, the Commission has determined that it would be premature to publish amended guidance concerning fuel economy advertising until the EPA and the NHTSA conclude their regulatory reviews and the Commission completes its Regulatory Review of the Alternative Fuels Rule. The Commission continues to believe that guidance in this area would be beneficial but recognizes the value in issuing consistent government guidance.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–13519 Filed 5–31–11; 8:45 am]

BILLING CODE 6750–01–P

[3] For audio advertisements, EPA fuel economy estimates must be given equal prominence as non-EPA estimates. 16 CFR 259.2(c)(1).

[4] 74 FR 19148.

[5] 16 CFR Part 309.

[6] Comments are available at: *http://www.ftc.gov/os/comments/fueleconadguidepropamend/index.shtm.*

[7] 40 CFR Part 600, subpart D.

[8] 74 FR 49454 (Sep. 28, 2009).

[9] *Id.*

[10] Public Law 110–140.

[11] 74 FR at 49739.

[12] 75 FR 58078 (Sept. 23, 2010).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 5, 10, 14, 19, 20, 21, 314, 350, 516, and 814

[Docket No. FDA–2011–N–0318]

Division of Freedom of Information; Change of Office Name, Address, Telephone Number, and Fax Number; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is amending the Agency's regulations to reflect changes to the Division of Freedom of Information's office name, address, telephone number, and fax number and the Division of Freedom of Information Public Reading room's fax and room number. This action is editorial in nature and is intended to improve the accuracy of the Agency's regulations.

DATES: This rule is effective June 1, 2011.

FOR FURTHER INFORMATION CONTACT: Fred Sadler, Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857, 301–796–8975.

SUPPLEMENTARY INFORMATION: FDA is making technical amendments in the Agency's regulations under 21 CFR parts 5, 10, 14, 19, 20, 21, 314, 350, 516, and 814 as a result of a recent office move. The former address, telephone number, and fax number was: rm. 6–30, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857, telephone: 301–827–6567, FAX: 301–443–1726. The new address is: Division of Freedom of Information (ELEM–1029), 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857, telephone: 301–796–3900, FAX: 301–796–9267. The Division of Freedom of Information Public Reading Room number is 1050.

Publication of this document constitutes final action of these changes under the Administrative Procedures Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because these amendments are merely correcting nonsubstantive errors.

List of Subjects

21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

21 CFR Part 10

Administrative practice and procedure, News media.

21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

21 CFR Part 19

Conflict of interests.

21 CFR Part 20

Confidential business information, Courts, Freedom of Information, Government employees.

21 CFR Part 21

Privacy.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 350

Labeling, Over-the-counter drugs.

21 CFR Part 516

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 5, 10, 14, 19, 20, 21, 314, 350, 516, and 814 are amended as follows:

PART 5—ORGANIZATION

■ 1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 552; 21 U.S.C. 301–397.

■ 2. Revise § 5.1110(b) to read as follows:

§ 5.1110 FDA public information offices.

* * * * *

(b) *Division of Freedom of Information.* The Division of Freedom of Information Public Reading Room is located in rm. 1050, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857; Telephone: 301–796–3900.

* * * * *

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

■ 3. The authority citation for 21 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 551–558, 701–706; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–397, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

§ 10.85 [Amended]

■ 4. In § 10.85(d)(4), remove "Freedom of Information Staff (HFI–35)" and in its place add "Division of Freedom of Information (ELEM–1029)".

§ 10.90 [Amended]

■ 5. In § 10.90(d), remove "Freedom of Information Staff (HFI–35)," and in its place add "Division of Freedom of Information (ELEM–1029)".

§ 10.95 [Amended]

■ 6. In § 10.95, remove "Freedom of Information Staff" and "Freedom of Information Staff (HFI–35)" everywhere they appear and in their places add "Division of Freedom of Information (ELEM–1029)".

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

■ 7. The authority citation for 21 CFR part 14 continues to read as follows:

Authority: 5 U.S.C. App. 2; 15 U.S.C. 1451–1461, 21 U.S.C. 41–50, 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264; Pub. L. 107–109; Pub. L. 108–155.

§ 14.65 [Amended]

■ 8. In § 14.65(c), remove "Freedom of Information Staff (HFI–35)" and in its place add "Division of Freedom of Information (ELEM–1029)".

PART 19—STANDARDS OF CONDUCT AND CONFLICTS OF INTEREST

■ 9. The authority citation for 21 CFR part 19 continues to read as follows:

Authority: 21 U.S.C. 371.

§ 19.10 [Amended]

■ 10. In § 19.10(d) introductory text, remove "Freedom of Information Staff" and in its place add "Division of Freedom of Information".

PART 20—PUBLIC INFORMATION

■ 11. The authority citation for 21 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531–2582; 21 U.S.C. 321–393, 1401–1403; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1.

■ 12. Revise § 20.3(b) to read as follows:

§ 20.3 Certification and authentication of Food and Drug Administration records.

* * * * *

(b) A request for certified copies of records or for authentication of records shall be sent in writing to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

■ 13. Revise § 20.26(b), to read as follows:

§ 20.26 Indexes of certain records.

* * * * *

(b) Each such index will be made available through the Internet at *http://www.fda.gov.* A printed copy of each index is available by writing to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857, or by visiting the Division of Freedom of Information Public Reading Room, located in rm. 1050, at the same address.

■ 14. Revise § 20.30 to read as follows:

§ 20.30 Food and Drug Administration Division of Freedom of Information.

(a) The office responsible for Agency compliance with the Freedom of Information Act and this part is the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

(b) All requests for Agency records shall be sent in writing to this office.

■ 15. In § 20.40, revise paragraph (a); and in paragraph (c), remove "Freedom of Information Staff" and in its place add "Division of Freedom of Information" to read as follows:

§ 20.40 Filing a request for records.

(a) All requests for Food and Drug Administration records shall be made in writing by mailing or delivering the request to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857; or by faxing it to 301–796–9267. All requests must contain the postal address and telephone number of the requester and the name of the person responsible for payment of any fees that may be charged.

* * * * *

§ 20.41 [Amended]

■ 16. In § 20.41 paragraph (a), paragraph (b) introductory text, and paragraph (c), remove "Freedom of Information Staff" and in its place add "Division of Freedom of Information".

§ 20.44 [Amended]

■ 17. In § 20.44(e), remove "Freedom of Information Staff" and in its place add "Division of Freedom of Information".

■ 18. In § 20.107(a), revise the second sentence to read as follows:

§ 20.107 Food and Drug Administration manuals.

(a) * * * An index of all such manuals is available by writing to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857; or by visiting the Division of Freedom of Information Public Reading Room,

located in rm. 1050, at the same address. * * *

* * * * *

■ 19. In § 20.108, remove "Freedom of Information Public Room" everywhere it appears and in its place add "Division of Freedom of Information Public Reading Room".

■ 20. In § 20.120, revise paragraph (a); paragraph (b) introductory text; and paragraph (b)(4) to read as follows:

§ 20.120 Records available in Food and Drug Administration Public Reading Rooms.

(a) The Food and Drug Administration operates two public reading rooms. The Division of Freedom of Information Public Reading Room is located in rm. 1050, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857; the telephone number is 301–796–3900. The Division of Dockets Management Public Reading Room is located in rm. 1061, 5630 Fishers Lane, Rockville, MD 20852; the telephone number is 301–827–6860. Both public reading rooms are open from 9 a.m. to 4 p.m., Monday through Friday, excluding legal public holidays.

(b) The following records are available at the Division of Freedom of Information Public Reading Room:

* * * * *

(4) Indexes of records maintained in the Division of Freedom of Information Public Reading Room; and

* * * * *

PART 21—PROTECTION OF PRIVACY

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

Authority: 21 U.S.C. 371; 5 U.S.C. 552, 552a.

§ 21.32 [Amended]

■ 22. In 21.32(b)(2), remove "(HFI–30)" and in its place add "(ELEM–1029)".

§ 21.40 [Amended]

■ 23. In § 21.40(b), remove "(HFI–30), Food and Drug Administration, 5600 Fishers Lane," and in its place add "(ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg.,".

§ 21.41 [Amended]

■ 24. In § 21.41, remove "Freedom of Information Staff" everywhere it appears and in its place add "Division of Freedom of Information (ELEM–1029)"; and remove "(HFI–30)" everywhere it appears.

§ 21.43 [Amended]

■ 25. In § 21.43(a)(2), remove "Freedom of Information Staff public room" and in its place add "Division of Freedom of Information Public Reading Room".

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

■ 26. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 356a, 356b, 356c, 371, 374, 379e.

■ 27. In § 314.53(e), revise the last two sentences to read as follows:

§ 314.53 Submission of patent information.

* * * * *

(e) * * * Patent information received by the Agency between monthly publication of supplements to the list will be placed on public display in FDA's Division of Freedom of Information. A request for copies of the file shall be sent in writing to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

* * * * *

PART 350—ANTIPERSPIRANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

■ 28. The authority citation for 21 CFR part 350 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

§ 350.60 [Amended]

■ 29. In § 350.60, in the last sentence, remove "FOI Staff (HFI–35), 5600 Fishers Lane, rm. 12A–16," and in its place add "Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg.,".

PART 516—NEW ANIMAL DRUGS FOR MINOR USE AND MINOR SPECIES

■ 30. The authority citation for part 516 continues to read as follows:

Authority: 21 U.S.C. 360ccc–1, 360ccc–2, 371.

§ 516.157 [Amended]

■ 31. In § 516.157(a), remove "Freedom of Information Staff or by visiting the FDA Freedom of Information Public Reading Room" and in its place add "Division of Freedom of Information or by visiting FDA's Division of Freedom of Information Public Reading Room".

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

■ 32. The authority citation for 21 CFR part 814 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 379, 379e, 381.

§ 814.45 [Amended]

■ 33. In § 814.45(d)(2), remove "Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane," and in its place add "Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg.,".

Dated: May 18, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–13488 Filed 5–31–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 545

Taliban (Afghanistan) Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control ("OFAC") is removing from the Code of Federal Regulations the Taliban (Afghanistan) Sanctions Regulations, 31 CFR part 545, as a result of the termination of the national emergency and revocation of the Executive order on which part 545 was based. Sanctions against the Taliban pursuant to Executive Order 13224 and the Global Terrorism Sanctions Regulations, 31 CFR part 594, remain in place.

DATES: *Effective Date:* June 1, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Assistant Director for Policy, tel.: 202/622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treasury.gov/ofac).* Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-

hour fax-on-demand service, tel.: 202/622–0077.

Background

On July 4, 1999, the President issued Executive Order 13129 (64 FR 36759, July 7, 1999), invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) ("IEEPA") and the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (the "NEA"). In Executive Order 13129, the President determined that the actions and policies of the Taliban in Afghanistan, in allowing territory under its control in Afghanistan to be used as a safe haven and base of operations for Usama bin Ladin and Al-Qaida, constituted an unusual and extraordinary threat to the national security and foreign policy of the United States and declared a national emergency to deal with that threat. In response to this national emergency, the President, in Executive Order 13129, ordered the blocking of all property and interests in property of the Taliban and of persons determined to be owned or controlled by, or to act for or on behalf of, the Taliban, or to provide financial, material, or technological support for, or services in support of, any of the foregoing. In addition, Executive Order 13129 imposed a trade embargo against the Taliban, any persons designated pursuant to the order, and the territory of Afghanistan controlled by the Taliban. On January 11, 2001, the Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued the Taliban (Afghanistan) Sanctions Regulations, 31 CFR part 545, to implement Executive Order 13219 (66 FR 2726, January 11, 2001).

On September 23, 2001, the President issued Executive Order 13224 (66 FR 49079, September 25, 2001), invoking the authority of, *inter alia,* IEEPA, the NEA, and section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c). In Executive Order 13224, the President determined that grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the terrorist attacks in New York, Pennsylvania, and the Pentagon committed on September 11, 2001, and the continuing and immediate threat of further attacks on United States nationals or the United States constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States and declared a national emergency to deal with that threat. Executive Order 13224 blocks the property and interests in property of foreign persons listed in the Annex to the order or determined to have committed or to pose a significant risk of committing acts of terrorism that threaten U.S. nationals or the United States, as well as of, *inter alia,* persons determined to be owned or controlled by, to act for or on behalf of, or to provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex or determined to be subject to the order. On June 6, 2003, OFAC issued the Global Terrorism Sanctions Regulations, 31 CFR part 594 (68 FR 34196, June 6, 2003) (the "GTSR"), to carry out the purposes of Executive Order 13224.

On July 2, 2002, the President issued Executive Order 13268 (67 FR 44751, July 3, 2002), determining that the situation that gave rise to the declaration of a national emergency in Executive Order 13129 of July 4, 1999, with respect to the Taliban was significantly altered. As a result, the President terminated the national emergency declared in Executive Order 13129 with respect to the actions and policies of the Taliban in Afghanistan and revoked that order. In addition, Executive Order 13268 amended the Annex to Executive Order 13224 of September 23, 2001, by adding the Taliban and one individual who had previously been listed in the Annex to Executive Order 13129, Mohammed Omar, the leader of the Taliban. As a result, transactions involving the Taliban remain subject to the GTSR.

Accordingly, OFAC is removing the Taliban (Afghanistan) Sanctions Regulations, 31 CFR part 545, from 31 CFR chapter V. Pursuant to section 202 of the NEA and section 4 of Executive Order 13268, removal of this part does not affect ongoing enforcement proceedings or prevent the initiation of enforcement proceedings based on an act committed prior to the date of Executive Order 13268 where the relevant statute of limitations has not run.

Public Participation

Because the Taliban (Afghanistan) Sanctions Regulations involve a foreign affairs function, the provisions of Executive Order 12866 of September 30, 1993, as amended, and the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

List of Subjects in 31 CFR Part 545

Administrative practice and procedure, Afghanistan, Banks, Banking, Blocking of assets, Foreign investments in the United States, Foreign trade, Penalties, Reporting and recordkeeping requirements, Taliban, Travel restrictions.

For the reasons set forth in the preamble, and under the authority of 50 U.S.C. 1701–1706 and Executive Order 13268, 31 CFR chapter V is amended by removing part 545.

Dated: May 25, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–13581 Filed 5–31–11; 8:45 am]

BILLING CODE 4810–AL–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0361; FRL–8870–7]

Ethylene Glycol; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of ethylene glycol (CAS Reg. No. 107–21–1) when used as a pesticide inert ingredient as a solvent, stabilizer and/or antifreeze within pesticide formulations/products without limitation. Huntsman, *et. al,* submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of ethylene glycol. Also, this regulation establishes an exemption from the requirement of a tolerance for residues of ethylene glycol (CAS Reg. No. 107–21–1) when used as an inert ingredient as an encapsulating agent for pesticides being applied post-harvest as residual, and crack and crevice sprays in and around food and nonfood areas of residential and nonresidential structures, including food handling establishments, with no limit. The Sumitomo Chemical Company submitted a petition to EPA under FFDCA, requesting an establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of ethylene glycol.

DATES: This regulation is effective June 1, 2011. Objections and requests for hearings must be received on or before August 1, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for these actions under docket identification (ID) number EPA–HQ–OPP–2011–0361. 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., Confidential Business Information (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 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 Docket Facility is open 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: Lisa Austin, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7894; e-mail address: *austin.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. 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. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0361 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 1, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0361, 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.

II. Petition for Exemption

EPA received two petitions requesting that 40 CFR 180.910 and 40 CFR 180.920 be amended by establishing an exemption from the requirement of a tolerance for residues of ethylene glycol.

In the **Federal Register** of July 9, 2008 (73 FR 39291) (FRL–8371–2), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 8E7355) by Huntsman, 10003 Woodloch Forest Drive, The Woodlands, TX 77380; Dow AgroSciences L.L.C., 9330 Zionsville Road, Indianapolis, Indiana 46268; Nufarm Americas Inc., 150 Harvester Drive Suite 220, Burr Ridge, Illinois 60527; BASF, 26 Davis Drive, Research Triangle Park, NC 27709; Stepan Company, 22 W. Frontage Road, Northfield, IL 60093; Loveland Products Inc., PO Box 1286, Greeley, CO 80632; and Rhodia Inc., CN 1500, Cranbury, New Jersey 08512. The petition requested that 40 CFR 180.920 be amended by establishing an exemption from the requirement of a tolerance for residues of ethylene glycol (CAS Reg. No. 107–21–1) when used as an inert ingredient solvent, stabilizer and/or antifreeze without limitation in pesticide formulations applied to pre-harvest crops. That notice referenced a summary of the petition prepared by Huntsman, Dow AgroSciences L.L.C., Nufarm Americas Inc., BASF, Stepan Company, Loveland Products Inc., and Rhodia Inc., which is available in the docket, *http://www.regulations.gov.* The Agency received one comment in response to the notice of filing.

Also, in the **Federal Register** of August 4, 2004 (69 FR 47149) (FRL–7367–7), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 4E6828) by the Sumitomo Chemical Company, Ltd., 5–33 Kitahama, 4-chrome, chuo-ku, Osaka 541–8550 Japan. The petition requested that 40 CFR 180.910 be amended by establishing an exemption from the requirement of a tolerance for residues of ethylene glycol (CAS Reg. No. 107–21–1) when used as an inert ingredient in encapsulating agents for pesticides being applied post-harvest as residual, and crack and crevice sprays in and around food and nonfood areas of residential and nonresidential structures, including food handling establishments, with no limit. That notice referenced a summary of the petition prepared by the Sumitomo Chemical Company, which is available

in the docket, *http://www.regulations.gov.* The Agency received one comment in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *."

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(c)(2)(A) of FFDCA, and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for ethylene glycol including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with ethylene glycol follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by ethylene glycol as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

Acute oral toxicity in rodents, as expressed as a lethal dose $(LD)_{50}$, ranges from 1,500 milligram/kilogram (mg/kg) to 8,800 mg/kg. In the guinea pig, the acute oral toxicity is about 6,600 mg/kg and in the rabbit, 5,000 mg/kg. In the dog, the acute oral LD_{50} is greater than 8,000 mg/kg. It is minimally irritating to the eyes and skin of rabbits. Acute inhalation and dermal toxicity data were not identified. However, given the vapor pressure of undiluted ethylene glycol (0.092 millimeter (mm) mercury (Hg) @ 25 °C) acute inhalation concerns are not expected. According to the National Institute of Occupational Safety and Health (NIOSH) (1999), a "harmful contamination of the air will be reached rather slowly on evaporation of this substance at 20 °C."

In subchronic and chronic testing, rats were more sensitive to the effects of ethylene glycol treatment than mice at comparable dose levels. Among rats, males appeared to be more sensitive than females. In subchronic toxicity testing in rats and mice, the kidney was adversely affected in all studies considered. Effects common to all studies include increased kidney weights, formation of lesions, and formation of oxalate crystals. In the rat, NOAELs range from 71 to 4,000 mg/kg/day and in the mouse the NOAELs range from 1,000 to 3,230 mg/kg/day. In chronic testing in rats, kidney effects similar to those seen in subchronic testing were observed. In addition, effects to the liver were seen (*i.e.,* decreased liver weight; fatty changes). The lowest NOAEL (71 mg/kg/day) in the toxicity database occurred in a subchronic toxicity study in rats. The LOAEL in this study was 180 mg/kg/day based on kidney effects. In chronic studies, the lowest NOAEL of 150 mg/kg/day was observed in rats, the most sensitive species.

Developmental toxicity testing was conducted in rats, mice, and rabbits. Overall, fetal toxicity was exhibited as increased fetal deaths, skeletal and external malformations, and reduced body weight. Maternal toxicity was manifested as decreased body weight gain, kidney effects (lesions, increased organ weight), and liver effects (decreased organ weight). The relative sensitivities of these species in terms of developmental toxicity during organogenesis are: Mice are the most sensitive and rabbits are the least sensitive. For maternal toxicity per se the sensitivity is: Rats are the most sensitive and rabbits are the least sensitive.

In rabbits, statistically-significant fetal developmental toxicity was not observed; however, maternal toxicity was seen at 2,000 mg/kg/day; it was manifested as renal toxicity (lesions, oxalate formation). In rats, fetal toxicity was seen at doses ranging from 1,000 mg/kg/day to 2,500 mg/kg/day. It manifested as decreased viability (2,250 mg/kg/day); decreased body weight gain and decreased pup weight (1,000 to 2,500 mg/kg/day); and skeletal effects and malformations (1,000 to 2,500 mg/kg/day). The skeletal effects and malformations included: Poorly ossified and unossified vertebral centra; decrease in total ossification; hydrocephaly; and pup malformation. Maternal toxicity in rats was manifested as: Decreased body weight gain (1,250 to 2,500 mg/kg/day); decreased liver weight (5,000 mg/kg/day); and kidney effects such as lesions and increased weight (1,250 to 2,500 mg/kg/day). In mice, fetal toxicity was seen at doses ranging from 500 to 1,500 mg/kg/day. As with rats it manifested as decreased

fetal body weight and/or weight gain (750 to 1,500 mg/kg/day) and skeletal effects (500 to 1,500 mg/kg/day) which included: Pup malformations, fused ribs and arches, poor ossification in thoracic and lumbar centra, and increased occurrence of an extra 14th rib. The lowest developmental NOAEL in mice was 150 mg/kg/day. Maternal toxicity was demonstrated as decreased weight gain (1,500 mg/kg/day) and decreased liver weight (1,500 mg/kg/day).

The reproductive toxicity of ethylene glycol was studied in rats and mice. In rats, no reproductive toxicity was noted. In mice, reproductive toxicity was seen at doses ranging from 897 to 2,826 mg/kg/day. It manifested as: Decreased numbers of live implants and increased number of dead implants; sperm effects (abnormal sperm, decreased motility, decreased sperm count); testicular lesions; and decreased testes weight.

Ethylene glycol is not known to be mutagenic. In a standard battery of *in vitro* genotoxicity assays conducted by the National Toxicology Program; Health and Human Services (NTP; HHS 1993), all results were negative. Ethylene glycol is not considered to be carcinogenic. In carcinogenicity testing conducted by the NTP in rats and mice, no evidence of carcinogenic potential was noted. Therefore, based on the lack of mutagenicity and lack of carcinogenicity in rodents, ethylene glycol is not expected to pose a carcinogenic risk in humans.

Metabolism studies demonstrated that ethylene glycol was rapidly absorbed, metabolized and excreted. It is primarily metabolized via the liver and kidneys. Ethylene glycol and metabolites (glycolic acid and oxalic acid) are primarily excreted in the urine within 12–18 hours after administration.

Specific information on the studies received and the nature of the adverse effects caused by the ethylene glycol, as well as, the NOAEL and the LOAEL from the toxicity studies can be found at *http://www.regulations.gov* in the document "800009, Ethylene Glycol; Human Health Risk Assessment and Ecological Effects Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations," pp. 7–24 in EPA–HQ–OPP–2008–0474 and EPA–HQ–OPP–2004–0207.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern (LOC) to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which the NOAEL and the LOAEL are identified. Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD)(acute = a and chronic = c) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for ethylene glycol used for human risk assessment is shown in the Table of this unit.

No acute endpoint of concern for general population was identified in the available data base. However, the endpoint of concern for females 13 plus age was identified in a developmental toxicity study in mice with a NOAEL of 150 mg/kg/day and LOAEL of 500 mg/kg/day based on an increased incidence of total malformations and bilateral extra rib14.

The endpoint selected for the cRfD was based on a chronic toxicity study in rats. The NOAEL in this study was 150 mg/kg/day based on kidney lesions and mortality observed at 300 mg/kg/day. Although 71 mg/kg/day is the lowest NOAEL in the database identified in a subchronic study in rats, the confidence in this subchronic study is low because subchronic and chronic studies support the NOAEL of 150 mg/kg/day and above. The NOAEL 150 mg/kg/day selected for the cRfD is protective of any developmental effects. Therefore, the Agency selected the point of departure of 150 mg/kg/day to establish the cRfD.

The EPA Integrated Risk Information System (IRIS) established a oral cRfD based on the NOAEL of 200 mg/kg/day and uncertainty factor 100. The currently chosen endpoint and the dose used for this risk assessment provide the most conservative assessment.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR ETHYLENE GLYCOL FOR USE IN HUMAN RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–50 years of age).	NOAEL = 150 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 1.5 mg/kg/day aPAD = 1.5 mg/kg/day	Developmental toxicity study—mice. LOAEL = 500 mg/kg bw/day, based on increased incidence of total malformations and bilateral extra rib 14.
Chronic dietary (All populations).	NOAEL = 150 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 1.5 mg/kg/day cPAD = 1.5 mg/kg/day	Chronic toxicity study. LOAEL = 300 mg/kg/day based on kidney lesions and death in males.
Incidental oral short-term (1 to 30 days).	NOAEL = 150 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Chronic toxicity study. LOAEL = 300 mg/kg/day based on kidney lesions and death in males.
Incidental oral intermediate-term (1 to 6 months).	NOAEL = 150 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Chronic toxicity study. LOAEL = 300 mg/kg/day based on kidney lesions and death in males.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR ETHYLENE GLYCOL FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Dermal short-term (1 to 30 days).	NOAEL = 150 mg/kg/day (dermal absorption rate = 25%. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Chronic toxicity study. LOAEL = 300 mg/kg/day based on kidney lesions and death in males.
Dermal intermediate-term (1 to 6 months).	NOAEL = 150 mg/kg/day (dermal absorption rate = 25% when appropriate). UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Chronic toxicity study. LOAEL = 300 mg/kg/day based on kidney lesions and death in males.
Inhalation short-term (1 to 30 days).	NOAEL = 150 mg/kg/day (inhalation absorption rate = 100%). UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Chronic toxicity study. LOAEL = 300 mg/kg/day based on kidney lesions and death in males.
Inhalation (1 to 6 months).	NOAEL = 150 mg/kg/day (inhalation absorption rate = 100%). UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Chronic toxicity study. LOAEL = 300 mg/kg/day based on kidney lesions and death in males.
Cancer (Oral, dermal, inhalation).	Not expected to be carcinogenic based on the lack of mutagenicity and lack of carcinogenicity in rodents.		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_L = use of a LOAEL to extrapolate a NOAEL. UF_S = use of a short-term study for long-term risk assessment. UF_{DB} = to account for the absence of data or other data deficiency. FQPA SF = Food Quality Protection Act Safety Factor.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to ethylene glycol, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from ethylene glycol in food as follows:

i. *Acute and chronic exposure.* In conducting the acute and chronic dietary exposure assessments, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, no residue data were submitted for the ethylene glycol. In the absence of specific residue data, EPA has developed an approach which uses surrogate information to derive upper bound exposure estimates for the subject inert ingredient. Upper bound exposure estimates are based on the highest tolerance for a given commodity from a list of high-use insecticides, herbicides, and fungicides. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data is contained in the memorandum entitled "Alkyl Amines Polyalkoxylates (Cluster 4): Acute and Chronic Aggregate (Food and Drinking Water) Dietary Exposure and Risk Assessments for the Inerts." (D361707, S. Piper, 2/25/09) and can be found at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2008–0738.

In the dietary exposure assessment, the Agency assumed that the residue level of the inert ingredient would be no higher than the highest tolerance for a given commodity. Implicit in this assumption is that there would be similar rates of degradation (if any) between the active and inert ingredient and that the concentration of inert ingredient in the scenarios leading to these highest of tolerances would be no higher than the concentration of the active ingredient.

The Agency believes the assumptions used to estimate dietary exposures lead to an extremely conservative assessment of dietary risk due to a series of compounded conservatisms. First, assuming that the level of residue for an inert ingredient is equal to the level of residue for the active ingredient will overstate exposure. The concentration of active ingredient in agricultural products is generally at least 50 percent of the product and often can be much higher. Further, pesticide products rarely have a single inert ingredient; rather there is generally a combination of different inert ingredients used which additionally reduces the concentration of any single inert ingredient in the pesticide product in relation to that of the active ingredient.

Second, the conservatism of this methodology is compounded by EPA's decision to assume that, for each commodity, the active ingredient which will serve as a guide to the potential level of inert ingredient residues is the active ingredient with the highest tolerance level. This assumption overstates residue values because it would be highly unlikely, given the high number of inert ingredients, that a single inert ingredient or class of ingredients would be present at the level of the active ingredient in the highest tolerance for every commodity. Finally, a third compounding conservatism is EPA's assumption that all foods contain the inert ingredient at the highest tolerance level. In other words, EPA assumed 100 percent of all foods are treated with the inert ingredient at the rate and manner necessary to produce the highest residue legally possible for an active ingredient. In summary, EPA chose a very conservative method for estimating what level of inert residue could be on food, then used this methodology to choose the highest possible residue that

could be found on food and assumed that all food contained this residue. No consideration was given to potential degradation between harvest and consumption even though monitoring data shows that tolerance level residues are typically one to two orders of magnitude higher than actual residues in food when distributed in commerce.

Accordingly, although sufficient information to quantify actual residue levels in food is not available, the compounding of these conservative assumptions will lead to a significant exaggeration of actual exposures. EPA does not believe that this approach underestimates exposure in the absence of residue data.

ii. *Cancer.* Ethylene glycol is not expected to be carcinogenic since it was negative for carcinogenicity in mice and rats in the available published studies and there was a negative response for mutagenicity. Since the Agency has not identified any concerns for carcinogenicity relating to ethylene glycol, a dietary exposure assessment to evaluate cancer risk was not performed.

iii. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for ethylene glycol. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for ethylene glycol, a conservative drinking water concentration value of 100 parts per billion (ppb) based on screening level modeling was used to assess the contribution to drinking water for the chronic dietary risk assessments for parent compound. These values were directly entered into the dietary exposure model.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

Ethylene glycol may be used in inert ingredients in products that are registered for specific uses that may result in residential exposure. A screening level residential exposure and risk assessment was completed for products containing ethylene glycol as inert ingredients. The ethylene glycol inerts may be present in consumer personal (care) products and cosmetics (at concentrations up to 1%) (http://hpd.nlm.nih.gov/index.htm). The Agency conducted exposure assessments based on end-use product application methods and labeled application rates. The Agency conducted an assessment to represent worst-case residential exposure by assessing ethylene glycol in pesticide formulations used in crack and crevice applications. The Agency conducted an assessment to represent worst-case residential exposure by assessing post application exposures and risks from ethylene glycol in pesticide formulations.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found ethylene glycol to share a common mechanism of toxicity with any other substances, and ethylene glycol does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that ethylene glycol does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA SF. In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* In the case of the ethylene glycol, some of the available studies suggest increased susceptibility to the offspring of rodents following pre-natal and post-natal exposure. However, the effects (described in this unit) occurred at doses that were > 500 mg/kg/day. The established cRfD of 1.5 mg/kg/day will be protective of these effects. Therefore, the concern for increased fetal susceptibility is low and there are no residual concerns.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for ethylene glycol is adequate. The following acceptable studies are available:

Developmental toxicity studies in rodents (6);

Multi-generation reproduction studies in rodents (4);

Subchronic toxicity studies in multiple species;

Inhalation and dermal toxicity studies;

Chronic/carcinogenicity studies in rodents (5).

ii. Signs of neurotoxicity (when observed) occurred at high doses and at doses above that which produced kidney toxicity. The established cRfD of 1.5 mg/kg/day (NOAEL = 150 mg/kg/day) is protective of kidney toxicity and is therefore protective of neurotoxic effects. Also, the International Programme on Chemical Safety Concise International Chemical Assessment Document 45 Ethylene Glycol: Human Health Aspects (IPCS CICAD 2002) concluded that "data are limited, results of identified toxicity studies conducted (via oral, inhalation, or dermal routes) in rodents, rabbits, and monkeys do not indicate that neurological effects are critical end-points for ethylene glycol." IPCS (2002) also states that generally neurotoxicity effects occur at a dose higher than the dose producing kidney toxicity. Since the current cRfD is protective of kidney toxicity, the concern for neurotoxicity is low to none. Therefore, EPA concluded that the developmental neurotoxicity is not required.

iii. Evidence of potential immunotoxicity was observed in a subchronic toxicity study in rats. Decreased relative thymus weights were observed at 4,000 mg/kg/day. Again, this effect occurred at a high dose and at a dose above that which produced kidney toxicity. The established cRfD of 1.5 mg/kg/day (NOAEL = 150 mg/kg/day) is protective of kidney toxicity and is approximately 2,600 times lower than the dose where decreased relative thymus weights were observed. Therefore, the cRfD will be protective of this immunotoxicity effects. The IPCS CICAD for ethylene glycol finds that although "data are limited, results of

identified toxicity studies conducted (via oral, inhalation, or dermal routes) in rodents, rabbits, and monkeys do not indicate that immunological effects are critical end-points for ethylene glycol." (IPCS 2002).

iv. Evidence of increased susceptibility was not observed in the developmental toxicity study in the rabbit. However, evidence of increased susceptibility was observed following prenatal exposure to ethylene glycol in mice. An increased incidence of total malformations and bilateral extra rib 14 were observed at 500 mg/kg/day. These effects occurred in the absence of maternal toxicity. In a developmental study in rats, there was evidence of qualitative fetal susceptibility. Maternal (tubular dilation and regeneration in the kidneys, increased gestational period, and decreased relative kidney weights) and developmental (decreased pup weight, increased cumulative mortality/litter, increased incidence of hydrocephaly, decreased relative kidney weights, decreased absolute brain weights, and increased incidences of hydrocephaly; defects in ribs, sternebrae, and vertebrae) were observed at the same dose (1,250 mg/kg/day). There was no evidence of increased fetal susceptibility in another developmental study in rats, maternal (pre-implantation loss) and developmental (poorly ossified and unossified vertebral centra) effects were observed at the same dose (1,000 mg/kg/day). However, there was a well established NOAEL in these two developmental toxicity studies in rats protecting fetuses. In addition, these fetal effects were generally seen at relatively high doses. In a reproduction study in mice, increased fetal susceptibility was observed but again it occurred above the limit dose. Developmental toxicity manifested as decrease number of live pups/litter, and mean live pup weight was observed in the absence of maternal toxicity at 1,640 mg/kg/day.

In another reproduction study in mice, maternal (kidney lesions and oxalate crystals) and developmental toxicity (decrease in pup weight adjusted for litter size) were observed at 897 mg/kg/day.

However, the concern for this increased susceptibility was low based on the following rationale:

a. There is a well established NOAEL in these studies protecting fetuses/offspring from the aforementioned effects;

b. Although increased susceptibility was observed, this occurred at doses close to the limit dose of 1,000 mg/kg/day;

c. The effects seen in the developmental study were not reproduced in the reproduction studies; and

d. The established chronic reference dose of 1.5 mg/kg/day will be protective of these effects. Therefore, based on the weight of evidence the concern for increased fetal susceptibility is low.

v. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed using very conservative assumptions. EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to ethylene glycol in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by ethylene glycol.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. Using the exposure assumptions described in this unit for acute exposure, EPA has concluded that acute exposure to ethylene glycol from food and water will utilize 26.5% of the aPAD for females 13–49, the only population group identified as potentially facing an acute risk from exposure to ethylene glycol.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to ethylene glycol from food and water will utilize 12.8% of the cPAD for the general population and 41.6% of the cPAD for children 1–2 yrs old, the population group receiving the greatest exposure.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Ethylene glycol is currently used as an inert ingredient in pesticide products that are registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to ethylene glycol.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 200 for both adult males and females, respectively. Adult residential exposure combines high end dermal and inhalation handler exposure from homeowner mixer/loader/applicators using a trigger sprayer with a high end post application dermal exposure from contact with treated lawns. EPA has concluded that the combined short-term aggregated food, water, and residential exposures result in an aggregate MOE of 170 for children. Children's residential exposure includes total exposures associated with contact with treated surfaces (dermal and hand-to-mouth exposures). Because EPA's LOC for ethylene glycol is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Ethylene glycol is currently used as an inert ingredient in pesticide products that are registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to ethylene glycol.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in aggregate MOEs of 580 for both adult males and females, respectively. Adult residential exposure combines high end dermal and inhalation handler exposure from homeowner mixer/loader/applicators using a trigger sprayer with a high end post application dermal exposure from contact with treated lawns. EPA has concluded that the combined short-term aggregated food, water, and residential exposures result in an aggregate MOE of 200 for children. Children's residential exposure includes total exposures associated with contact with treated surfaces (dermal and hand-to-mouth exposures). Because EPA's LOC for ethylene glycol is a MOE of 100

or below, these MOEs are not of concern.

5. *Aggregate cancer risk for U.S. population.* The Agency has not identified any concerns for carcinogenicity relating to ethylene glycol.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to ethylene glycol residues.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/ World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for ethylene glycol.

C. Response to Comments

The two comments were received from private citizens who opposed the authorization to sell any pesticide that leaves a residue on food. The Agency understands the commentors' concerns and recognizes that some individuals believe that no residue of pesticides should be allowed. However, under the existing legal framework provided by section 408 of FFDCA, EPA is authorized to establish pesticide tolerances or exemptions where persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by the statute.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.910 for ethylene glycol (107–21–1) when used as an inert ingredient (in encapsulating agents for pesticides being applied post-harvest as residual, and crack and crevice sprays in and around food and nonfood areas of residential and nonresidential structures, including food handling establishments) and 40 CFR 180.920 for ethylene glycol when used as an (inert ingredient as a solvent, stabilizer and/or antifreeze within pesticide formulations/products without limitation) applied to pre-harvest crops.

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 18, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.910, the table is amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
*	*	*
Ethylene glycol (CAS Reg. No. 107–21–1)	Without limitation	Encapsulating agent for pesticides being applied post-harvest as residual, and crack and crevice sprays in and around food and nonfood areas of residential and nonresidential structures, including food handling establishments.
*	*	*

■ 3. In § 180.920, the table is amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
*	*	*
Ethylene glycol (CAS Reg. No. 107–21–1)	Without limitation	Pesticide inert ingredient as a solvent, stabilizer and/or anti-freeze.
*	*	*

[FR Doc. 2011–13577 Filed 5–31–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0426; FRL–8873–5]

Pyraflufen-ethyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of pyraflufen-ethyl in or on multiple commodities which are identified and discussed later in this document. Nichino America, Inc., requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective June 1, 2011. Objections and requests for hearings must be received on or before August 1, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0426. 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., Confidential Business Information (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 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 Docket Facility is open 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: Kathryn V. Montague, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–1243; e-mail address: *montague.kathryn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. 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. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an

objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0426 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 1, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0426, 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.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of June 23, 2010 (75 FR 35801) (FRL–8831–3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F7718) by Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808. The petition requested that 40 CFR 180.585 be amended by establishing tolerances for residues of the herbicide, pyraflufen-ethyl, ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1*H*-pyrazol-3-yl)-4-fluorophenoxyacetate and its acid metabolite, *E*-1, 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1*H*-pyrazol-3-yl)-4-fluorophenoxyacetic acid, expressed in terms of the parent, in or on almond hulls at 0.02 parts per million (ppm); nuts, tree, group 14 at 0.01 ppm; pistachio at 0.01 ppm; fruit, pome, group 11 at 0.01 ppm; fruit, stone, group 12 at 0.01 ppm; pomegranates at 0.01 ppm; olives at 0.01 ppm; grapes at 0.01 ppm, and hops at 0.05 ppm. The notice referenced a summary of the petition prepared by Nichino America, Inc., the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA is not establishing, at this time, the requested hop tolerance due to the lack of field trial information for the hop study. EPA is updating the proposed crop commodities terminology. The reason for the changes is explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *"

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for pyraflufen-ethyl including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with pyraflufen-ethyl follows:

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Pyraflufen-ethyl has low to moderate toxicity from acute exposure and it is not a dermal sensitizer. The liver, kidney, and possibly the hematopoietic system are the target organs for pyraflufen-ethyl in the rat and/or the mouse. There is no evidence of increased sensitivity to the young in developmental and reproductive studies with pyraflufen-ethyl. Pyraflufen-ethyl was not shown to be mutagenic in a battery of tests. Pyraflufen-ethyl was classified as "Likely to be Carcinogenic to Humans" based on male mouse hepatocellular adenomas, carcinomas and/or hepatoblastomas (combined) observed in the mouse carcinogenicity study. The method of quantification was linear cancer slope factor (Q*).

Specific information on the studies received and the nature of the adverse effects caused by pyraflufen-ethyl as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document "Pyraflufen-ethyl: Human Health Risk Assessment for a Section 3 Registration of New Food Uses on Tree Nuts (Crop Group 14), Pistachios, Pome Fruit (Crop Group 11–10), And Stone Fruits (Crop Group 12), Hops, Grapes, Olives And Pomegranates," at page 17 in docket ID number EPA–HQ–OPP–2010–0426.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticides. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe

exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for Pyraflufen-ethyl used for human risk assessment is shown in the following Table.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR PYRAFLUFEN-ETHYL FOR USE IN HUMAN HEALTH RISK ASSESSMENTS

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including infants and children).	None	None	An endpoint attributable to a single dose was not identified from the available data.
Chronic dietary (All populations)	NOAEL = 20 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.20 mg/kg/day. cPAD = 0.2 mg/kg/day	Mouse Carcinogenicity LOAEL = 98 mg/kg/day based on liver toxicity.
Incidental oral short-term (1 to 30 days)	NOAEL = 20 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Developmental Toxicity-Rabbit LOAEL = 60 mg/kg/day based on decreases in body weight and food consumption, GI observations, and abortions.
Incidental oral intermediate-term (1 to 6 months).	NOAEL = 20 mg/kg/day UF_A= 10x UF_H= 10x FQPA SF = 1x	LOC for MOE = 100	Mouse Carcinogenicity LOAEL = 98 mg/kg/day based on liver toxicity at interim sacrifice.
Dermal (All Durations)	None	None	In a 28-day dermal toxicity study in rats, no dermal or systemic toxicity was seen at the Limit Dose (1,000 mg/kg/day).
Inhalation (All Durations)	Maternal NOAEL= 20 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE (residential) = 100.	Developmental Toxicity-Rabbit LOAEL = 60 mg/kg/day based on decreases in body weight and food consumption, GI observations, and abortions.
Cancer (Oral, dermal, inhalation)	Classification: "Likely to be Carcinogenic to Humans" by the oral route. $Q_1^* = 3.32 \times 10^{-2}$ (mg/kg/day)$^{-1}$		

GI = gastrointestinal. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. LOC = level of concern. Mg/Kg/Day = milligram/kilogram/day.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to pyraflufen-ethyl, EPA considered exposure under the petitioned-for tolerances as well as all existing pyraflufen-ethyl tolerances in 40 CFR 180.585. EPA assessed dietary exposures from pyraflufen-ethyl in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

No such effects were identified in the toxicological studies for pyraflufen-ethyl; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the following assumptions: 100 percent crop treated (PCT) and tolerance-level residues for pyraflufen-ethyl on all treated crops except corn, cottonseed, potato, soybean, wheat, pome fruit, stone fruit, pomegranate, olive, grape, tree nuts and pistachio for which one half of the combined Levels of Quantification (LOQs) for the parent and the metabolite were used since all field trial residue levels were less than the LOQ.

iii. *Cancer.* EPA determines whether quantitative cancer exposure and risk assessments are appropriate for a food-use pesticide based on the weight of the evidence from cancer studies and other relevant data. If quantitative cancer risk assessment is appropriate, cancer risk may be quantified using a linear or nonlinear approach. If sufficient information on the carcinogenic mode of action is available, a threshold or non-linear approach is used and a cancer RfD is calculated based on an earlier noncancer key event. If carcinogenic mode of action data are not available, or if the mode of action data determines a mutagenic mode of action, a default linear cancer slope factor approach is utilized. Based on the data summarized in Unit III.A., EPA has concluded that pyraflufen-ethyl should be classified as "Likely to be Carcinogenic to Humans" and a linear approach has been used to quantify cancer risk.

In conducting the cancer dietary exposure assessment EPA used the same food consumption data from the U.S. Department of Agriculture (USDA) and assumptions for residue levels in food as the chronic exposure in Unit III. C. 1. ii., above.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for pyraflufen-ethyl in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of pyraflufen-ethyl. Further information

regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the First Index Reservoir Screening Tool (FIRST), Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of pyraflufen-ethyl for acute exposures are estimated to be 1,247 parts per trillion (ppt) for surface water and 1.8 ppt for ground water and for chronic exposures for non-cancer and cancer assessments, the EDWCs are estimated to be 281 ppt for surface water and 1.8 ppt for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic and cancer dietary risk assessment, the water concentration of value 281 ppt was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Pyraflufen-ethyl is currently registered on the following residential sites that could result in residential exposures: Airports, nurseries, ornamental turf, golf courses, roadsides, railroads, non-crop land, and uncultivated agricultural areas. The risk assessment was conducted using the following residential exposure assumptions: Adults and children may be exposed to residues of pyraflufen-ethyl through short term post application contact with treated residential/recreational areas and residential handlers mixing, loading and applying liquid pyraflufen-ethyl in these areas.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found pyraflufen-ethyl to share a common mechanism of toxicity with any other substances, and pyraflufen-ethyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that pyraflufen-ethyl does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no evidence of increased susceptibility of rat or rabbit fetuses following *in utero* exposure in the developmental studies with pyraflufen-ethyl. There is no evidence of increased susceptibility of young rats in the reproduction study with pyraflufen-ethyl. EPA concluded there are no residual uncertainties for prenatal and/or postnatal exposure.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for pyraflufen-ethyl is complete except for a 28-day inhalation study, acute and subchronic neurotoxicity studies and immunotoxicity study which are now included under 40 CFR 158.500 as part of the toxicology data requirements for registration of a pesticide (food and non-food uses).

In the absence of a route specific inhalation toxicity study, a point of departure (POD) for inhalation exposure risk assessment has been extrapolated from an oral study. EPA does not believe the aggregate risk assessment is under-protective of adult handlers. Residential handler MOEs based on the extrapolated endpoint are quite high (greater than 35 million), and the contribution of residential exposure to aggregate risk is small. Therefore, even if an inhalation study were to provide a lower POD than the oral study, it's not expected to have a significant impact on aggregate risk.

ii. Pyraflufen-ethyl primarily impacts the parameters of food consumption, decreased body weight, and histopathological changes in the liver. There is no evidence that pyraflufen-ethyl causes neurotoxic effects in any of the available toxicity studies. Evidence of immunotoxic potential is limited to an adverse effect on the spleen reported in one study at a dose level (1,489 mg/kg/day) which is above the limit dose, and also caused death. EPA does not believe that conducting immunotoxicity and acute/subchronic neurotoxicity testing will result in a NOAEL less than 20 mg/kg/day, which is presently used as the POD for chronic risk assessment.

iii. There is no evidence that pyraflufen-ethyl results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% of the crop treated and a conservative estimate of residues in food. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to pyraflufen-ethyl in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by pyraflufen-ethyl.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified

and no acute dietary endpoint was selected. Therefore, pyraflufen-ethyl is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to pyraflufen-ethyl from food and water will utilize less than 1% of the cPAD for all population groups. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of pyraflufen-ethyl is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Pyraflufen-ethyl is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to pyraflufen-ethyl.

A short-term aggregate risk assessment was performed for residential handler exposure, children's incidental post-application oral exposure (from residential treatment) and dietary exposure to food and water (considered to be a background exposure level). The anticipated exposure level for children ages 1–2 years old (the highest exposed population) is below EPA's level of concern, with a MOE greater than 60,000.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Pyraflufen-ethyl is not registered for any use patterns that would result in intermediate-term residential exposure. No residential handler exposure is expected and post application inhalation exposure is expected to be negligible. Post application exposure to infants and children over the intermediate term duration (1–6 months) is not likely based on the use pattern. Therefore, the intermediate-term aggregate risk is the sum of the risk from exposure to pyraflufen-ethyl through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population.* The aggregate cancer risk assessment for the general population takes into account exposure estimates from dietary consumption of pyraflufen-ethyl from food and drinking water sources. Average food plus water source dietary exposure was used. Estimated cancer risk for the U.S. population includes infants and children. The aggregate cancer risk estimate for pyraflufen-ethyl is 2.8×10^{-6}. This risk estimate is based, in part, on the conservative assumption that 100% of all crops for which pyraflufen-ethyl is registered or proposed for registration are treated. Additional refinement using PCT estimates would result in a lower estimate of cancer risk.

EPA generally considers cancer risks in the range of one in one million (1×10^{-6}) or less to be negligible. The precision which can be assumed for cancer risk estimates is best described by rounding to the nearest integral order of magnitude on the log scale; for example, risks falling between 3×10^{-7} and 3×10^{-6} are expressed as risks in the range of 10^{-6}. Considering the precision with which cancer hazard can be estimated, the conservativeness of low-dose linear extrapolation, and the rounding procedure described above, cancer risk should generally not be assumed to exceed the benchmark level of concern of the range of 10^{-6} until the calculated risk exceeds approximately 3×10^{-6}. This is particularly the case where some conservatism is maintained in the exposure assessment. Although the pyraflufen-ethyl exposure risk assessment is somewhat refined, it retains significant conservatism due, among other things, to the assumption that 100 percent of registered crops are treated. Accordingly, EPA has concluded the cancer risk for all existing pyraflufen-ethyl uses and the uses associated with the tolerances established in this action fall within the range of 1×10^{-6} and are thus negligible.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to pyraflufen-ethyl residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (Gas Chromatography with Mass Spectrometry (GC/MS)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for pyraflufen-ethyl. Canada has not established MRLs for the proposed use sites for pyraflufen-ethyl.

C. Revisions to Petitioned-for Tolerances

In the **Federal Register** of December 8, 2010 (75 FR 76284) (FRL–8853–8), EPA issued a final rule that revised the crop grouping regulations. As part of this action, EPA expanded and revised the existing pome fruit group 11. Changes to crop group 11 included adding azarole; medlar; Asian pear; Chinese quince; Japanese quince; and tejocote; creating subgroups; revising the representative commodities; and naming the new crop group, Pome Fruit Group 11–10. Therefore, consistent with this rule, EPA is establishing tolerances for pyraflufen-ethyl residues on Pome Fruit Group 11–10 instead of the requested Pome Fruit Group 11 and is correcting the crops proposed in the Notice of Filing to the crop commodities specified in 40 CFR 180.41: grape; nut, tree, group 14; olive and pomegranate.

V. Conclusion

Therefore, previously established tolerances are amended and new tolerances are established for residues of pyraflufen-ethyl, including its metabolites and degradates, as set forth in the regulatory text.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735,

October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995, Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 18, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.585 is amended by revising the introductory text of paragraph (a) and by alphabetically adding commodities to the table in paragraph (a) to read as follows:

§ 180.585 Pyraflufen-ethyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide, pyraflufen-ethyl, including its metabolites and degradates, in the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring pyraflufen-ethyl, ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methyl-1*H*-pyrazol-3-yl)-4-fluorophenoxyacetate, and its acid metabolite, *E*-1, 2-[2-chloro-5-(4-chloro-5-(difluoromethoxy)-1-methyl-1*H*-pyrazol-3-yl)-4-fluorophenoxy]acetic acid, in or on the commodity:

Commodity	Parts per million	Expiration/ revocation date
Almond, hulls	0.02	None.
* * * * * * *		
Fruit, pome, group 11–10	0.01	None.
Fruit, stone, group 12	0.01	None.
Grape	0.01	None.
* * * * * * *		
Nut, tree, group 14	0.01	None.
Olive	0.01	None.
Pistachio	0.01	None.
Pomegranate	0.01	None.
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[FR Doc. 2011–13587 Filed 5–31–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0268; FRL–8873–9]

Bromoxynil; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation revises established tolerances for residues of bromoxynil in or on multiple commodities which are identified and discussed later in this document. Bayer CropScience LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective June 1, 2011. Objections and requests for hearings must be received on or before August 1, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0268. 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., Confidential Business Information (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 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 Docket Facility is open 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 Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5218; e-mail address: *stanton.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. 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. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr.* To access the harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select "Test Methods and Guidelines."

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0268 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 1, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0268, 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.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of June 23, 2010 (75 FR 35801) (FRL–8831–3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9F7678) by Bayer CropScience LLC, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.324 be amended by increasing existing tolerances for residues of the herbicide bromoxynil, 3,5-dibromo-4-hydroxybenzonitrile, in or on sorghum, grain, grain from 0.05 parts per million (ppm) to 0.2 ppm; grass, hay from 3.0 ppm to 5.0 ppm; and grass, forage from 3.0 ppm to 18 ppm. That notice referenced a summary of the petition prepared by Bayer CropScience LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has determined that the existing tolerances for aspirated grain fractions, milk, and grain sorghum forage must also be increased as a result of the proposed changes to the use patterns for sorghum and grasses. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *."

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for bromoxynil including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with bromoxynil follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Bromoxynil phenol has moderate acute toxicity via the oral and inhalation routes of exposure and low acute toxicity via the dermal route. Bromoxynil octanoate has moderate acute toxicity via the oral and dermal routes and low acute toxicity via the inhalation route. Due to rapid conversion of the ester forms of the chemical (heptanoate and octanoate) to the phenol, toxicity testing was conducted with both phenol and octanoate material, but the risk assessment is based on exposure to the phenol.

In the repeated dose studies of the mammalian toxicology database, the liver was the primary target organ of bromoxynil toxicity. Across species, duration and gender, changes in weight, clinical chemistry and pathology indicated treatment-related perturbations in and adverse effects on liver function. Treatment-related effects were also observed on body weight and body weight gain in rats, mice, dogs, and rabbits. Subchronic and chronic studies in dogs showed that bromoxynil elevated body temperature, manifested by increased panting at lower dose levels, and hyperthermia and death as dose levels increased.

Developmental toxicity was manifested in rats, mice and rabbits via the oral and dermal routes by increased incidence of supernumerary (13th and/or 14th) ribs at dose levels as low as 5 milligrams/kilogram/day (mg/kg/day) in rats. At higher dose levels, malformations such as hydrocephalus, enophthalmia, micropththalmia, fused ribs, scoliosis, misshapen thoracic centrum and incomplete ossification of sternebrae were observed in rabbits. In reproduction studies, delayed development manifested as decreased body weight and body weight gain, and delayed eye opening.

Bromoxynil is classified as a "possible human carcinogen" based on the presence of hepatocellular tumors in male and female mice. There is no concern for mutagenicity. The method of quantification of cancer risk is linear, using the cancer slope factor (Q*) of 0.103 $(mg/kg/day)^{-1}$ in human equivalents.

Specific information on the studies received and the nature of the adverse effects caused by bromoxynil as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document "Bromoxynil: Human Health Risk Assessment for Amended Uses on Grass Grown for Seed, Conservation Reserve Program Areas, and Grain Sorghum," p. 50 in docket ID number EPA–HQ–OPP–2010–0268.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern (LOC) to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which the NOAEL and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) (a = acute and c = chronic) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for bromoxynil used for human risk assessment is shown in the following table.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR BROMOXYNIL FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–50 years of age).	NOAEL = 4 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.04 mg/kg/day aPAD = 0.04 mg/kg/day	Developmental Studies in Rats. LOAEL = 5 mg/kg/day based on an increase of supernumerary ribs. The NOAEL is derived from a co-critical rat developmental study.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR BROMOXYNIL FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including infants and children).	NOAEL = 8 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.08 mg/kg/day aPAD = 0.08 mg/kg/day	Subchronic Study in Dogs. LOAEL = 12 mg/kg/day based on panting. In addition to panting, elevated rectal temperatures occurred at 16 mg/kg and above, and death occurred at 30 mg/kg and above after a single dose on day 1.
Chronic dietary (All populations)	NOAEL= 1.5 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.015 mg/kg/day cPAD = 0.015 mg/kg/day	Chronic (1 year) Study in dogs. LOAEL = 7.5 mg/kg/day based on increased incidences of salivation, panting, liquid feces and pale gums; statistically significant decreased body weight gain over entire duration of study, but particularly during first 8 weeks of study; statistically significant decreased erythrocytes (RBC), hemoglobin (Hb) and packed cell volume (PCV); statistically significant increased urea nitrogen; increased absolute liver weights and liver/body weight ratios.
Cancer (Oral, dermal, inhalation).	Bromoxynil phenol has been classified by EPA as a Group C, possible human carcinogen, based on male mouse hepatocellular tumors. The Agency has determined that a linear low dose extrapolation model (Q_1*) should be applied to the experimental animal tumor data for quantification of human risk. Q_1* = 0.103 $(mg/kg/day)^{-1}$		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = Food Quality Protection Act Safety Factor. Pad = population adjusted dose (a = acute, c = chronic), LOC = level of concern, RfD = Reference dose.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to bromoxynil, EPA considered exposure under the petitioned-for tolerances as well as all existing bromoxynil tolerances in 40 CFR 180.324. EPA assessed dietary exposures from bromoxynil in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. Such effects were identified for bromoxynil. As shown in the table in this unit, EPA identified different PODs for assessing acute dietary exposure for the general population (including infants and children) and women of childbearing age (13 to 50 years).

In estimating acute dietary exposure, EPA used food consumption information from the U. S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residues in food, EPA assumed either tolerance level or anticipated residues. Tolerance levels were assumed for cotton, garlic, onion, peppermint, and spearmint. For all grains, average field trial values were used, since grains are considered to be blended commodities. Livestock anticipated residues were estimated using results from the crop field trials in conjunction with animal feeding studies. Additionally, maximum percent crop treated (PCT) estimates were used for all crop commodities. Default processing factors were used to estimate residues in processed commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA used average field trial residues for all commodities except spearmint and peppermint, for which tolerance values were assumed. Livestock anticipated residues were estimated using average percent crop treated data, average field trial residue values, and results from the animal feeding studies. Additionally, average PCT estimates were used for all crop commodities. Default processing factors were used to estimate residues in processed commodities.

iii. *Cancer.* EPA determines whether quantitative cancer exposure and risk assessments are appropriate for a food-use pesticide based on the weight-of-the-evidence from cancer studies and other relevant data. If quantitative cancer risk assessment is appropriate, cancer risk may be quantified using a linear or nonlinear approach. If sufficient information on the carcinogenic mode of action is available, a threshold or non-linear approach is used and a cancer RfD is calculated based on an earlier noncancer key event. If carcinogenic mode of action data are not available, or if the mode of action data determines a mutagenic mode of action, a default linear cancer slope factor approach is utilized. Based on the data summarized in Unit III.A., EPA has concluded that bromoxynil should be classified as a "Possible Human Carcinogen," and a linear approach has been used to quantify cancer risk. Cancer risk was quantified using the same exposure estimates as discussed in Unit III.C.1.ii.—*chronic exposure.*

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the maximum PCT for existing uses in the acute dietary exposure assessment as follows: Alfalfa 2.5%; barley 35%; corn 5%; cotton 5%; flax 35%; garlic 70%; mint 25%; oats 5%; onion 70%; rye 1%; sorghum 2.5%; and wheat 35%.

The Agency estimated the average PCT for existing uses in the chronic and cancer dietary exposure assessments as follows: Alfalfa 1%; barley 20%; corn 2.5%; cotton 2.5%; flax 35%; garlic 50%; mint 25%; oats 5%; onion 55%; rye 1%; sorghum 2.5%; and wheat 15%.

The sorghum PCT values used in the acute and chronic assessments were based on existing uses. Because there is a proposed change in the sorghum use pattern (i.e., shorter pre-harvest interval), there is a potential for a change in the PCT value. However, grain sorghum is a small contributor to the overall livestock dietary burden estimate. If the PCT value for sorghum was assumed to be 100%, the overall impact to dietary exposure and risk assessment would be negligible.

In most cases, EPA uses available data from U. S. Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations are taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which bromoxynil may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for bromoxynil in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of bromoxynil. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the FQPA Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of bromoxynil for acute exposures are estimated to be 11.5 parts per billion (ppb) for surface water and 3.26 parts per trillion (ppt) for ground water. EDWCs for chronic exposures for non-cancer assessments and cancer assessments are estimated to be 0.19 ppb for surface water and 3.26 ppt for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 11.5 ppb was used to assess the contribution to drinking water. For chronic and cancer dietary risk assessment, the water concentration value of 0.19 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Bromoxynil is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found bromoxynil to share a common mechanism of toxicity with any other substances, and bromoxynil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that bromoxynil does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA SF. In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The prenatal and postnatal toxicity database for bromoxynil includes five developmental toxicity studies in rats, two developmental toxicity studies in rabbits, a developmental study in mice, and 2- and 3-generation reproduction toxicity studies in rats. The available data indicate that bromoxynil produces developmental effects (supernumerary ribs) in rats and rabbits at or below the maternal NOAELs in both oral and dermal studies, and that bromoxynil octanoate produces supernumerary ribs at the maternal NOAEL in a dermal study. Supernumerary ribs were observed in rats, mice and rabbits after oral and/or dermal administration. Therefore, there is evidence of quantitative susceptibility in the database. However, clear NOAELs exist for the developmental effects, and basing the point of departure on these effects addresses Agency concerns for quantitative susceptibility.

In EPA's previous risk assessment for bromoxynil (1998), the FQPA SF was retained at 10X for the acute dietary endpoint for females, 13 to 50 years old, despite the POD being an adverse effect (supernumerary ribs) in the fetus. The primary reason for the retention was an apparent steepness of the dose-response curve (NOAEL = 4 mg/kg/day, LOAEL = 5 mg/kg/day) derived by combining the results of two co-critical studies. However, since the previous risk assessment for bromoxynil was conducted, a more refined data evaluation tool, benchmark dose (BMD) analysis, has become available and EPA has used it in this risk assessment to better characterize the dose-response relationship for supernumerary ribs. The analysis was conducted using the fetal and/or litter data available from the two rat developmental studies, plus a third developmental study which demonstrated similar results at similar dose levels. EPA also re-examined the underlying data for each study. EPA concluded that it was no longer appropriate to combine the rat developmental study with a NOAEL of 4 mg/kg/day with other studies in characterizing the dose-response relationship and that none of the studies indicate a steep dose-response curve. EPA further found that the results of the BMD analysis as to the study used to derive the POD (the rat developmental study with a NOAEL of 4 mg/kg/day) suggest a POD substantially higher than the NOAEL of 4 mg/kg/day, which supports the position that the NOAEL of 4 mg/kg/day is adequately protective of the adverse effect of supernumerary ribs in rat fetuses without an additional safety factor. Accordingly, EPA has determined, after re-examining all three studies, that the data on developmental effects do not raise any residual concerns.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for bromoxynil is complete, except for an immunotoxicity study (OPPTS Guideline 870.7800), and acute and subchronic neurotoxicity studies (OPPTS Guideline 870.6200a and 870.6200b), now required under 40 CFR 158.500 for pesticide registration. In the absence of specific immunotoxicity and acute and subchronic neurotoxicity studies, EPA has evaluated the available bromoxynil toxicity database to determine whether an additional database UF is needed to account for potential immunotoxicity or neurotoxicity.

With the exception of a marginal increase in the severity, but not the incidence, of thymic lymphocyte necrosis at otherwise toxic dose levels in a subchronic rat study, there is no evidence of immunotoxicity in the toxicology database for bromoxynil. Similarly, there is no evidence of neurotoxicity in the database. Consequently, EPA believes the existing data are sufficient for endpoint selection for exposure/risk assessment scenarios and for evaluation of the requirements under FQPA, and an additional database UF is not needed to account for the lack of these studies.

ii. Although there is evidence that bromoxynil results in increased quantitative susceptibility in *in utero* rats and rabbits in the prenatal developmental studies, EPA did not identify any residual uncertainties after establishing toxicity endpoints and traditional UFs to be used in the risk assessment of bromoxynil.

iii. There are no residual uncertainties identified in the exposure databases. Although the dietary assessments were refined, they were based on reliable and acceptable field trial and feeding studies and valid estimates of PCT. EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to bromoxynil in drinking water. These assessments will not under estimate the exposure and risks posed by bromoxynil.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure to bromoxynil from food and water will occupy 7.4% of the aPAD for infants less than 1 year old, the population group receiving the greatest exposure. The acute dietary exposure to bromoxynil from food and water will occupy 4.4% of the aPAD for females 13 to 50 years old.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to bromoxynil from food and water will utilize <1% of the cPAD for all population groups, including infants and children. There are no residential uses for bromoxynil.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure take into account short- or intermediate-term residential exposure plus chronic exposure from food and water (considered to be a background exposure level). Short- and intermediate-term adverse effects were identified; however, bromoxynil is not registered for any use patterns that would result in short- or intermediate-term residential exposure. Short- and intermediate-term risks are assessed based on short- or intermediate-term residential exposure plus chronic dietary exposure. Because there is no short- or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short- and intermediate-term risk), no further assessment of short- or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risk for bromoxynil.

4. *Aggregate cancer risk for U.S. population.* Using the exposure assumptions described in this unit for the cancer risk assessment, EPA has concluded that exposure to bromoxynil from food and water will result in a lifetime cancer risk of 1.5×10^{-6} for the

general U.S. population. EPA generally considers cancer risks in the range of one in one million (1×10^{-6}) or less to be negligible. The precision which can be assumed for cancer risk estimates is best described by rounding to the nearest integral order of magnitude on the log scale; for example, risks falling between 3×10^{-7} and 3×10^{-6} are expressed as risks in the range of 10^{-6}. Considering the precision with which cancer hazard can be estimated, the conservativeness of low-dose linear extrapolation, and the rounding procedure described above, cancer risk should generally not be assumed to exceed the benchmark level of concern of the range of 10^{-6} until the calculated risk exceeds approximately 3×10^{-6}. This is particularly the case where some conservatism is maintained in the exposure assessment. Although the bromoxynil exposure risk assessment is refined, it retains some conservatism due, among other things, to the use of field trial data and screening level PCT information to estimate residues in food. Accordingly, EPA has concluded the cancer risk for all existing bromoxynil uses and the uses associated with the tolerances established in this action falls within the range of 1×10^{-6} and is thus negligible.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to bromoxynil residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression for residues of bromoxynil in grass and grain sorghum commodities. Method I in the *Pesticide Analytical Manual* (PAM), Vol. II, is a gas liquid chromatography/microcoulometric detection (GLC/MCD) method that has undergone a successful EPA method validation on wheat grain. Method Ia is the same method except that it uses gas chromatography/electron capture detection (GC/ECD) for determination of methylated bromoxynil.

Adequate residue analytical methodology is available for tolerance enforcement for bromoxynil in livestock commodities. Method A is a GC/MCD or GC/ECD method for the analysis of bromoxynil residues in livestock tissues and is essentially the same as Method I. Method B is a GC/ECD method that is also similar to Method I, with modifications to the cleanup procedures. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for bromoxynil on the commodities in this rule.

C. Revisions to Petitioned-For Tolerances

The proposed increases in the tolerance levels for "grass, forage;" "grass, hay;" and "sorghum, grain" were determined to be appropriate for these commodities. However, EPA determined that the existing tolerance for "sorghum, grain, forage" must also be increased from 0.5 ppm to 0.8 ppm, based on analysis of the field trial data using the Agency's tolerance/MRL calculator in accordance with the Agency's *Guidance for Setting Pesticide Tolerances Based on Field Trial Data.* In addition, because the tolerance on the grain of grain sorghum is being increased from 0.05 ppm to 0.2 ppm, higher residues may occur in aspirated grain fractions; and EPA has determined that the existing tolerance should be increased from 0.3 ppm to 1.2 ppm. Finally, based on calculated livestock dietary burdens in light of the new tolerances and data from a cattle feeding study, EPA has determined that the established tolerance for milk must be increased from 0.1 ppm to 0.4 ppm.

EPA is also revising the tolerance expression for existing tolerances and the new tolerances to clarify the chemical moieties that are covered by the tolerances and specify how compliance with the tolerances is to be determined. Tolerances for most plant commodities are currently expressed in terms of "bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) resulting from application of its octanoic and/or heptanoic acid ester." Livestock tolerances and tolerances for cotton commodities are currently expressed in terms of "bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) and its metabolite 3,5-dibromo-4-hydroxybenzoic acid (DBHA) resulting from application of its octanoic and/or heptanoic acid ester." The tolerance expression for plants, except cotton, is being revised to make clear that the tolerances cover residues of bromoxynil, including its metabolites and degradates, but that compliance with the tolerances is to be determined by measuring only bromoxynil. Similarly, the tolerance expression for livestock commodities and cotton is being revised to clarify that the tolerances cover residues of bromoxynil, including its metabolites and degradates, but that compliance with the tolerance levels will be determined by measuring only bromoxynil and its metabolite DBHA. EPA has determined that it is reasonable to make these changes final without prior proposal and opportunity for comment, because public comment is not necessary, in that the changes have no substantive effect on the tolerances, but rather are merely intended to clarify the existing tolerance expressions.

V. Conclusion

Therefore, previously established tolerances are amended for residues of bromoxynil, including its metabolites and degradates, as set forth in the regulatory text.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,*

nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled C*onsultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995, Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 18, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.324 is amended as follows:

■ i. Revise the introductory text in paragraph (a)(1), and the entries for grain, aspirated fractions; grass, forage; grass, hay; sorghum, grain, forage; and sorghum, grain, grain in the table to paragraph (a)(1).

■ ii. Revise the introductory text in paragraph (a)(2), and the entry for "milk" in the table to paragraph (a)(2).

The revisions read as follows:

§ 180.324 Bromoxynil; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the herbicide bromoxynil, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels is to be determined by measuring only bromoxynil, 3,5-dibromo-4-hydroxybenzonitrile, resulting from application of its octanoic and/or heptanoic acid ester, in or on the commodities.

Commodity	Parts per million
* * * * *	
Grain, aspirated fractions	1.2
Grass, forage	18
Grass, hay	5.0
* * * * *	
Sorghum, grain, forage	0.8
Sorghum, grain, grain	0.2
* * * * *	

(2) Tolerances are established for residues of the herbicide bromoxynil, 3,5-dibromo-4-hydroxybenzonitrile, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels is to be determined by measuring only bromoxynil and its metabolite, 3,5-dibromo-4-hydroxybenzoic acid (DBHA), resulting from application of its octanoic and/or heptanoic acid ester, in or on the commodities.

Commodity	Parts per million
* * * * *	
Milk	0.4
* * * * *	

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[FR Doc. 2011–13565 Filed 5–31–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110502274–1275–01]

RIN 0648–BB05

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Nantucket Lightship Access Area

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

ACTION: Temporary rule; emergency action.

SUMMARY: NMFS issues this temporary rule pursuant to its authority to implement emergency measures under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This emergency rule closes the Nantucket Lightship Access Area (NLS) prior to its scheduled opening on June 15, 2011, and is consistent with Framework Adjustment 22 to the Atlantic Sea Scallop Fishery Management Plan (FMP) (Framework 22), which is currently being proposed and subject to public comments, and which would close the NLS in FY 2011 as well. This closure prevents potentially high levels of scallop and yellowtail flounder (yellowtail) catch that could result from opening the area prior to the approval and implementation of Framework 22, which could be detrimental to the long-term management and health of the scallop fishery.

DATES: Effective June 1, 2011, through November 28, 2011. Comments must be received by July 1, 2011.

ADDRESSES: The Environmental Assessment (EA) is available by request from: Patricia Kurkul, Regional Administrator, National Marine Fisheries Service, Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930–2276, or via the Internet at *http://www.nero.noaa.gov.* You may submit comments, identified by RIN 0648–BB05, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking portal *http://www.regulations.gov;*
- *Fax:* (978) 281–9135, Attn: Emily Gilbert;
- Mail to NMFS, Northeast Regional Office, 55 Great Republic Dr, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Emergency Rule to Close the Nantucket Lightship Access Area."
- *Instructions:* All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Emily Gilbert, Fishery Policy Analyst, 978–281–9244; fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council (Council) adopted Amendment 15 to the Scallop FMP (Amendment 15) and Framework 22 at its September and November 2010 meetings, respectively. Amendment 15 proposes the process for setting annual catch limits (ACLs) and accountability measures (AMs) for the scallop fishery, and sub-ACLs and AMs for the Georges Bank and Southern New England/Mid-Atlantic (SNE/MA) yellowtail stocks. Framework 22 proposes scallop management measures for fishing years (FY) 2011 through 2013 based on the ACL/AM process in Amendment 15, and is thus contingent upon approval and implementation of Amendment 15. Framework 22 would make adjustments to the current scallop access area rotational schedule outlined in the regulations, including the closure of the NLS, which is scheduled to open on June 15, 2011, and allocating trips into three other access areas that were closed in FY 2010 (i.e., Closed Area I, Closed Area II, and Hudson Canyon Access Areas). NMFS published the proposed rules for Amendment 15 and Framework 22 in the **Federal Register** on April 11 and April 29, 2011, respectively (76 FR 19929 and 76 FR 23940), with the comment period ending on May 26, 2011, for Amendment 15, and May 31, 2011, for Framework 22. Amendment 15 and Framework 22, if approved, are expected to be implemented as soon as possible, but likely after June 15, 2011.

FY 2011 began on March 1, 2011, and FY 2010 scallop fishery regulations remain in effect until superseded by Amendment 15 and Framework 22, if approved. These two actions were originally intended to be in place on or around March 1, 2011, or at least before the June 15 date when the NLS area was scheduled to be opened. Due to circumstances more fully described below, these actions were delayed and it is not possible to implement before June 15, meaning the NLS area will open, if this emergency action is not taken. If the NLS opens, scallop vessels, which still have trips allocated into NLS under the current regulations, will be able to fish their NLS trips beginning June 15, 2011. Limited access vessels could take up to one trip; limited access general category (LAGC) vessels could take up to 714 trips fleetwide. If all limited access vessels fished their full NLS trip, the fleet could land up to 6 M lb (2,727 mt) of scallops from the area. In addition, potential LAGC effort could increase the total scallop landings from NLS. This amount of landings would jeopardize the fishery's ability to remain below the ACL proposed for the scallop fishery and for yellowtail, in turn potentially triggering the AMs, to the detriment of the scallop fishery as a whole. Moreover, harvest of scallops from NLS in FY 2011 could undermine the rotational area management program for FY 2012 and beyond, thereby jeopardizing the cornerstone of scallop fishery management. While NMFS and the Council anticipated the implementation of Amendment 15 and Framework 22 after June 15, 2011, neither NMFS nor the Council anticipated the level of catch expected during the short period that the NLS would be open if this rule is not implemented.

Because of complications in developing Amendment 15 and Framework 22, the Council was not able to submit these actions to NMFS in time for them to be promulgated by June 15, 2011. Initially, the Council intended to take final action on Amendment 15 in June 2010. Due to delays in fully vetting the alternatives, the Council did not take final action on Amendment 15 until its September 2010 meeting. The Council took final action on Framework 22 at its November 2010 meeting. Because of various issues with the development of the environmental impact statement (EIS) for Amendment 15, as well as the environmental assessment (EA) for Framework 22, final submission of the EIS and EA for these actions did not occur until January 11, 2011, and March 22, 2011, respectively.

Because a delay was anticipated, the Council included an individual payback measure in Framework 22, which was designed to discourage fishing in NLS, should that area open prior to the implementation of Framework 22. Specifically, if a vessel lands scallops from NLS in FY 2011, it would have those pounds deducted from an allocated access area trip in FY 2012 to account for the overage. Similar payback measures, also designed to be disincentives, were included in Framework 22 for other access areas and open area days-at-sea (DAS). However, Framework 22 did not fully anticipate or account for the impacts of a delayed implementation of Framework 22 if the majority of the fleet fished this additional effort in FY 2011. Based on similar payback measures enacted in previous FYs, NMFS expected that the majority of vessels would not be willing to suffer the penalty of having scallops caught in FY 2011 deducted from their FY 2012 allocation. However, in the days leading up to the Council meeting on April 28, 2011, the scallop industry reported that many industry members might fish an NLS trip in FY 2011 and accept the consequences in FY 2012 because they view the benefits of high scallop prices this year as outweighing the negative consequences of having a reduced allocation in FY 2012. Based on this rationale, the scallop industry has commented to NMFS and the Council that, if some vessels fish in NLS, it is likely that the majority of other scallop-permitted vessels will follow suit so that they remain competitive with scallop landings of other vessels. As a result, similar to FY 2010, a very high level of unanticipated scallop fishing effort could occur in NLS within the first 2 or 3 weeks it is open, in the absence of this emergency action.

On April 28, 2011, at the request of the Fisheries Survival Fund, an organization that represents a large portion of the scallop industry, and that is an active participant in the development of scallop fishery management measures, the Council passed a motion requesting that NMFS take emergency action to close NLS in FY 2011 to prevent vessels from landing scallops and catching yellowtail in the area. NMFS has reviewed this request and determined that there is good cause to implement this emergency rule to keep the NLS closed after June 15, 2011, as intended by Framework 22.

NMFS' policy guidelines for the use of emergency rules (62 FR 44421; August 21, 1997) specify the following three criteria that define what an emergency situation is, and justification for final rulemaking: (1) The emergency results from recent, unforeseen events or recently discovered circumstances; (2) the emergency presents serious conservation or management problems in the fishery; and (3) the emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. NMFS' policy guidelines further provide that emergency action is justified for certain situations where emergency action would prevent significant direct economic loss, or to preserve a significant economic opportunity that otherwise might be foregone. NMFS has determined that the issue of closing the NLS meets the three criteria for emergency action for the reasons outlined below.

The emergency results from recent, unforeseen events or recently discovered circumstance. Although the delay in Framework 22's implementation was expected, as explained above, and measures were included at the vessel level to account for the delay, there are potential impacts of NLS opening on June 15 that were not anticipated or accounted for during the Council's development of Framework 22 that NMFS considers to be "recently discovered circumstances." Because Framework 22 proposes payback measures as individual disincentives, it was not anticipated that many vessels would still take their NLS trips if that area opened. However, because of unexpectedly high scallop prices, the disincentive value of payback measures have been undermined, and the scallop industry believes that the majority of the fleet may be willing to risk the payback measures in order to capitalize on these high prices and stay competitive in the scallop market. The impact of most vessels fishing in the NLS area would result in unanticipated high level of scallop landings from NLS in FY 2011 which likely would have long-term negative impacts on the scallop fleet and management of the scallop fishery, for reasons described in greater detail below.

The emergency also presents serious conservation and management problems in the fishery. If the limited access scallop fleet exceeded the fleet's proposed sub-ACL as a result of large fishing effort in NLS, the entire fleet, including those that may not choose to fish their NLS trip, could be subject to a DAS deduction in FY 2012. Based on Amendment 15 ACL specifications, Framework 22 set a buffer of about 7.8 M lb (3,538 mt) between the limited access fleet's sub-ACL and allocated catch (as an annual catch target (ACT)), primarily to account for varying open area catch levels and carryover DAS. However, the buffer does not take into account the effects of delayed implementation of specification frameworks. If access into NLS in FY 2011 results in nearly 6 M lb (2,727 mt) of additional landings, there is a strong possibility that the fishery-wide ACL would be exceeded in the first year of managing the fishery under ACL measures. The ACL measures are intended to promote the conservation of the scallop resource, and exceeding them could undermine those efforts, and would be contrary to the Magnuson-Stevens Act.

Additionally, the scallop fishery's yellowtail sub-ACL in FY 2011, already allocated through Framework 45 to the Northeast Multispecies FMP, does not include trips into NLS, an area with relatively high yellowtail catch rates. The scallop fishery's sub-ACL of yellowtail was based, in part, on projections of what amount of yellowtail scallop vessels would catch in order to harvest the scallop allocations in the areas proposed in Framework 22. Unanticipated high fishing effort in the NLS would likely increase the amount of yellowtail catch in the scallop fishery beyond what is allocated to the scallop fishery, and what was anticipated in the event that Framework 22 was not implemented before June 15, resulting in a seasonal closure of a portion of SNE/MA waters to scallop vessels in FY 2012. The length of the closure depends on the extent of the overage of the yellowtail sub-ACL.

Finally, the potential impacts on the long-term scallop biomass within, and yield from, NLS if fishing effort occurs during FY 2011 was not anticipated in the development of Framework 22. Based on the status of the resource that was analyzed in developing Framework 22, the current scallop biomass within NLS would benefit from a closure in FY 2011, and from limited fishing effort in FY 2012, and result in higher scallop yield in future fishing years. The 2007 scallop year class, which is now large enough to be vulnerable to commercial fishing gear, is the only substantial recent year class in NLS. The closure of NLS in FY 2011 under Framework 22 was, in part, to protect this year class from harvesting and/or discarding until it grows to a larger size. With the NLS closed in FY 2011, Framework 22 projected sufficient biomass in NLS to provide access into the area in FY 2012 for half of the full-time scallop vessels, and one trip each for all full-time scallop vessels in FY 2013. These projections did not account for significantly high levels of fishing effort in FY 2011 in NLS, and this unanticipated effort could compromise future scallop resource levels and access to this area, resulting in reduced overall yield. Rotational area management is a cornerstone of the Scallop FMP, and jeopardizing its success in future years in turn jeopardizes the overall and long-term success of the management program.

These potentially serious conservation and management consequences of high fishing effort in the NLS in FY 2011 justify the emergency closure of this area.

NMFS also finds that this emergency can be addressed through emergency regulations for which the immediate benefits to both the scallop resource and those who depend on it outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. Because of the delayed development and submission of Amendment 15 and Framework 22, addressing the NLS closure issue in a timely fashion through Council action is not now possible. Secretarial emergency authority, which does not include the delay of further public comment, is the only means available to avoid the negative consequences to the scallop and yellowtail resources described above. Closing the NLS prior to June 15, 2011, is critical, given the potential for a very high level of scallop fishing effort in NLS that would otherwise occur during the first 2 to 3 weeks it is open. Although this emergency action would be implemented without specific prior public comment, this specific measure

was part of Framework 22, and was subject to extensive public comment during the development of that rule. That public comment opportunity may mitigate the impact of waiving prior public notice for this specific emergency rule. Moreover, this measure is subject to public comment in connection with the proposed rule to approve and implement this framework.

Although taking no action would result in higher vessel short-term revenues in FY 2011, the benefits would be short-lived if Framework 22 is approved, because a vessel that fished its NLS trip would have those landings deducted pound-for-pound from an access area trip in FY 2012. At the fleet level, the high risk that scallop and yellowtail ACLs would be exceeded and that future scallop yield would be negatively impacted for vessels in FY 2012 and beyond indicate that the future costs for the entire fleet, not just vessels that choose to fish in NLS, would likely outweigh the benefits of the short-term revenue gain in FY 2011. Additionally, fishing a resource in an area that could not support that level of harvest in FY 2011 has negative impacts on both the resource and those who depend upon it. This level of fishing in NLS jeopardizes the long-term success of the rotational management program and negatively impacts the scallop resource for future years.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and is consistent with the national standards and other provisions of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws. The rule may be extended for a period of not more than 186 days as described under section 305(c)(3)(B) of the Magnuson-Stevens Fishery Conservation Management Act.

The Assistant Administrator for Fisheries, NOAA, finds under section 553(b)(B) of the Administrative Procedure Act (APA) that it would be contrary to the public interest and impracticable to provide prior notice and opportunity for the public to comment on this rule, and therefore good cause exists to waive those requirements. As more fully explained above, the reasons justifying promulgation of this rule on an emergency basis make solicitation of public comment contrary to the public interest.

This action provides benefits to both the scallop resource and the scallop fishery by not jeopardizing the success of the access area program in future years, not compromising future scallop biomass levels and subsequent scallop yield for short-term gain, and ensuring that the scallop fleet, including those that did not fish in NLS, would not be inequitably subjected to possible FY 2012 AMs. Although the measure being implemented by this action is receiving public comment in connection with Framework 22, the immediate need for this particular measure does not allow for prior public comment. Due to the inherent time constraints associated with the process and the fact that the information on which this action is based (i.e., the much higher interest in fishing in NLS than initially anticipated and the fleetwide impacts that would result) became available very recently, the review process and determination could not have been completed any earlier. Indeed, this emergency action is necessary due to the inadequate time to receive prior public comment on Framework 22, which proposed this measure in the first place.

If this rulemaking were delayed to allow for notice and comment, vessels would be able to fish in NLS beginning June 15, 2011. If this were to occur, it is likely that limited access vessels would harvest most, if not all, of their scallop allocations in NLS within the first 2 to 3 weeks of its opening. The time necessary to provide for prior notice, opportunity for public comment, and delayed effectiveness for this action could result in the scallop fishery incurring long-term negative impacts on scallop yield. A delay could also potentially trigger DAS deductions and seasonal closures in future FYs, and the scallop resource being harvested more quickly than anticipated, thus potentially resulting in future biomass concerns within an important scallop management access area *(i.e.,* the same impacts that this action itself is striving to avoid).

A delay would also be impracticable. The Magnuson-Stevens Act tasks NMFS with conserving fishing resources, and allowing the potential over-harvest of scallops by not enacting this rule would impede NMFS' ability to comply with those provisions of the Act. For these reasons, NMFS finds good cause under section 553(d) of the APA to waive the 30-day delay in effectiveness of this emergency rule. In the interest of receiving public input on this action, the EA analyzing this action will be made available to the public and this temporary final rule solicits public comment.

The Office of Management and Budget has determined that this rule is not significant according to Executive Order 12866.

This rule is exempt from the procedures of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment. Nevertheless, Framework 22, which proposes the same measure, if approved, will assess impacts as required by the RFA.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: May 25, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.58, paragraph (e) is added to read as follows:

§ 648.58 Rotational Closed Areas.

* * * * *

(e) *Nantucket Lightship Closed Area.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Nantucket Lightship Closed Area. No vessel may possess scallops in the Nantucket Lightship Closed Area, unless such vessel is only transiting the area as provided in paragraph (c) of this section. The Nantucket Lightship Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
NLSA1	40°50′ N	69°00′ W
NLSA2	40°30′ N	69°00′ W
NLSA3	40°30′ N	69°14.5′ W
NLSA4	40°50′ N	69°29.5′ W
NLAA1	40°50′ N	69°00′ W

§ 648.59 [Amended]

■ 3. In § 648.59, paragraph (d) is suspended.

[FR Doc. 2011–13526 Filed 5–26–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 105
Wednesday, June 1, 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 205

[Doc. No. AMS–NOP–11–0003; NOP–10–13]

RIN 0581–AD13

National Organic Program, Sunset Review (2013)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Advance notice of proposed rulemaking with request for comments.

SUMMARY: The Organic Foods Production Act of 1990 (OFPA) requires sunset (expiration) of the exempted or prohibited use of substances on the National List of Allowed and Prohibited Substances (National List) under the National Organic Program (NOP). The exemptions and prohibitions granted on the National List under the OFPA are required to be reviewed every 5 years by the National Organic Standards Board (NOSB). The Secretary of Agriculture has authority under the OFPA to renew such exemptions and prohibitions. If the substances are not reviewed by the NOSB and renewed by the Secretary within 5 years of their inclusion on the National List, then their authorized use or prohibition expires. As required by the OFPA, the allowed use of 11 synthetic and nonsynthetic substances in organic production and handling will expire on November 3, 2013. A prohibition on one nonsynthetic substance in organic production will expire on November 3, 2013. This advance notice of proposed rulemaking (ANPR) begins the public comment process on whether the identified existing exemptions or prohibition should be continued. This ANPR also establishes that the sunset review and renewal process must be concluded by November 3, 2013. Finally, this ANPR discusses how the NOP will manage the sunset review and renewal process.

DATES: Comments must be submitted on or before August 1, 2011.

ADDRESSES: Interested persons may submit written comments on this ANPR using one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Toni Strother, Agricultural Marketing Specialist, National Organic Program, USDA–AMS–NOP, Room 2646–So., Ag Stop 0268, 1400 Independence Ave., SW., Washington, DC 20250–0268.

Written comments responding to this ANPR should be identified with the docket number AMS–NOP–11–0003; NOP–10–13. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Guidance on Submitting Your Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document. The NOP intends to have all comments concerning this ANPR, including names and addresses when provided, whether submitted by mail or internet, available for viewing on the Federal eRulemaking Portal internet site, *http://www.regulations.gov.* Comments submitted in response to this ANPR will also be available for viewing in person at USDA–AMS, National Organic Program, Room 2646–South Building, 1400 Independence Ave., SW., Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this ANPR are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Melissa Bailey, Director, Standards Division, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave., SW., Room 2646–So., Ag Stop 0268, Washington, DC 20250–0268. Telephone: (202) 720–3252.

SUPPLEMENTARY INFORMATION:

Background

The Organic Foods Production Act of 1990 (OFPA), 7 U.S.C. 6501 *et seq.,* authorizes the establishment of the National List. The National List identifies synthetic substances that are exempted (allowed) and nonsynthetic substances that are prohibited in organic crop and livestock production. The National List also identifies nonsynthetic and synthetic substances that are exempted for use in organic handling. The exemptions and prohibitions granted under the OFPA are required to be reviewed every 5 years by the National Organic Standards Board (NOSB). The Secretary of Agriculture has authority under the OFPA to renew such exemptions and prohibitions. If the substances are not reviewed by the NOSB and renewed by the Secretary within 5 years of their inclusion on the National List, their authorized use or prohibition expires under OFPA's sunset provision.

This ANPR announces the sunset of 11 exempted substances and 1 prohibition added to the National List on November 3, 2003 (68 FR 61987) and November 4, 2003 (68 FR 62215), and previously renewed under the sunset process on November 3, 2008 (73 FR 59479). This ANPR establishes November 3, 2013, as the date by which the sunset review and renewal process must be concluded. The exemptions and prohibitions not renewed by this date will be removed from the National List. This ANPR also begins the public comment process on whether the existing specific exemptions on the National List should be continued. This ANPR discusses how the NOP will manage the sunset review and renewal process.

Because these substances may be critical to the production and handling of raw and processed organic agricultural products, their expiration could cause disruption of well-established and accepted organic production, handling, and processing systems. Therefore, the NOP is initiating the sunset review and renewal process now, to provide ample opportunity for the public to make their views known and to inform the decisions of the NOSB.

Crops Production Substances

The NOSB Crops Committee will review the continued exemption (use) of six listings of synthetic substances allowed for use in organic crop production on § 205.601: copper sulfate (2 listings), ozone gas, peracetic acid (2 listings), and EPA List 3 inert ingredients. These six listings are scheduled to sunset (expire) on November 3, 2013. The Crops Committee will also review the continued prohibition of one

nonsynthetic substance, calcium chloride, listed on § 205.602, scheduled to sunset on November 3, 2013. Table 1 contains the full listings of crop production substances to be reviewed under the 2013 sunset process.

TABLE 1—CROPS COMMITTEE SUNSET 2013 SUBSTANCES

National list section	Substance listing	Sunset date
Synthetic substances allowed for use in organic crop production.		
205.601(a)(3)	Copper sulfate—for use as an algicide in aquatic rice systems, is limited to one application per field during any 24-month period. Application rates are limited to those which do not increase baseline soil test values for copper over a timeframe agreed upon by the producer and accredited certifying agent.	November 3, 2013.
205.601(a)(5)	Ozone gas—for use as an irrigation system cleaner only	November 3, 2013.
205.601(a)(6)	Peracetic acid—for use in disinfecting equipment, seed, and asexually propagated planting material.	November 3, 2013.
205.601(e)(4)	Copper sulfate—for use as tadpole shrimp control in aquatic rice production, is limited to one application per field during any 24-month period. Application rates are limited to levels which do not increase baseline soil test values for copper over a timeframe agreed upon by the producer and accredited certifying agent.	November 3, 2013.
205.601(i)(8)	Peracetic acid—for use to control fire blight bacteria	November 3, 2013.
205.601(m)(2)	EPA List 3—Inerts of unknown toxicity—for use only in passive pheromone dispensers	November 3, 2013.
Nonsynthetic substances prohibited for use in organic crop production.		
205.602(c)	Calcium chloride, brine process is natural and prohibited for use except as a foliar spray to treat a physiological disorder associated with calcium uptake.	November 3, 2013.

Handling Substances

The NOSB Handling Committee will review the continued exemption (use) of six nonagricultural (nonorganic), nonsynthetic substances allowed as ingredients in or on processed products labeled as "organic" or "made with organic (specified ingredients or food groups(s))." The allowed uses of the following six substances listed on § 205.605(a) are scheduled to expire on November 3, 2013: agar-agar, animal enzymes, calcium sulfate, carrageenan, glucono delta-lactone, and tartaric acid.

The Handling Committee will also review the continued exemption (use) of two nonagricultural (nonorganic), synthetic substances allowed as ingredients in or on processed products labeled as "organic" or "made with organic (specified ingredients or food groups(s))." The allowed uses of the following two substances listed on § 205.605(b) are scheduled to expire November 3, 2013: cellulose and tartaric acid. Table 2 contains the full listings of handling substances that will be reviewed under the 2013 sunset process.

TABLE 2—HANDLING COMMITTEE SUNSET 2013 SUBSTANCES

National list section	Substance listing	Sunset date
Nonsynthetics allowed:		
205.605(a)	Agar-agar	November 3, 2013.
205.605(a)	Animal enzymes—(Rennet-animals derived; Catalase-bovine liver; Animal lipase; Pancreatin; Pepsin; and Trypsin).	November 3, 2013.
205.605(a)	Calcium sulfate—mined	November 3, 2013.
205.605(a)	Carrageenan	November 3, 2013.
205.605(a)	Glucono delta-lactone—production by the oxidation of D-glucose with bromine water is prohibited.	November 3, 2013.
205.605(a)	Tartaric acid—made from grape wine	November 3, 2013.
Synthetics allowed:		
205.605(b)	Cellulose—for use in regenerative casings, as an anti-caking agent (non-chlorine bleached) and filtering aid.	November 3, 2013.
205.605(b)	Tartaric acid—made from malic acid	November 3, 2013.

The Sunset Process

All substances currently on the National List have been previously evaluated by the NOSB for consistency with OFPA and its implementing regulations. According to § 6517(e) of the OFPA, these substances must be reviewed by the NOSB and renewed by the Secretary for their use or prohibition to continue after 5 years of their addition to the National List which will be November 3, 2013. All substances identified under this notice were previously renewed under the sunset

process on November 4, 2008 (73 FR 59479), and must be reviewed again by November 3, 2013.

This notice requests public comments about the continued use or prohibition of the substances identified. Public comments submitted will be considered in the review and renewal process. The NOP will forward comments received under this notice to the NOSB for review. The NOSB will review the listings of allowed and prohibited substances scheduled to sunset, including the public comments received during this review. The NOSB will review each of the substances listed in this notice and may determine that certain substances warrant a more in-depth review and require additional information or research that considers new scientific data and technological and market advances.

Following the NOSB's review, the NOSB will make a recommendation to the Secretary about the continuation of specific exemptions and prohibitions for the substances listed in this ANPR. After the Secretary receives and reviews the NOSB's recommendations, the NOP will publish a proposed rule regarding the NOSB recommendations. This proposed rule will provide an additional opportunity for the public to submit written comments. Comments received on the proposed rule will be used to develop a final rule. Because the sunset review and renewal process involves rulemaking, the NOP believes it is appropriate to initiate the process now for substances scheduled to sunset in 2013.

Guidance on Submitting Your Comments

Written comments responding to this ANPR should be identified with the docket number AMS–NOP–11–0003; NOP–10–13. You should clearly indicate your position on continuing the allowance or prohibition of the substances identified in this ANPR and the reasons for your position. You should include relevant information and data to support your position (e.g., scientific, environmental, manufacturing, industry impact information, etc.).

Comments, regardless of whether they support or do not support the continued use of a substance(s) listed within this ANPR, should provide evidence concerning the viability of alternatives for the substance under sunset review. Viable alternatives include, but are not limited to, alternative management practices that would eliminate the need for the specific substance; other currently exempted substances that are on the National List, which could eliminate the need for this specific substance; and other organic or nonorganic agricultural substances. Such evidence should adequately address whether any alternatives have a function and effect equivalent to or better than the specific exempted substance, and whether you want the substance to be renewed or do not want its use to be continued. Assertions about alternative substances, except for those alternatives that already appear on the National List, should, if possible, include the name and address of the manufacturer of the alternative. Further, your comments should include a copy or the specific source of any supportive literature, which could include product or practice descriptions; performance and test data; reference standards; names and addresses of producers or handlers who have used the alternative under similar conditions and the date of use; and an itemized comparison of the function and effect of the proposed alternative(s) with the substance under review. The information provided in Table 3 can help you describe recommended alternatives for different types of organic operations in place of a current exempted substance that you do not want to be continued.

An Appendix to this ANPR contains worksheets to assist you in gathering relevant information concerning these issues. These worksheets are not required to submit a comment. These worksheets are used by the NOSB to develop their recommendations to the Secretary to include an exempted substance on the National List. You do not have to answer the questions on the worksheets; they are intended only to help you provide substantive comments to the NOSB when you provide comments on the specific substance.

Comments That Support Existing Exemptions and Prohibitions

Comments in support of a continued exemption of a substance should demonstrate that the substance is: (1) Not harmful to human health or the environment, (2) necessary to the production of the agricultural products because of the unavailability of wholly nonsynthetic substitute products, and (3) consistent with organic production and handling. Comments in support of a continued prohibition should explain how the use of the substance would continue to be: (1) harmful to human health or the environment, or (2) inconsistent with organic farming and handling.

Comments That DO NOT Support Continuing Existing Exemptions or Prohibitions

The current exemptions were originally recommended by the NOSB based on evidence available to the NOSB at the time of review which demonstrated that the substances were found to be: (1) Not harmful to human health or the environment, (2) necessary because of the unavailability of wholly nonsynthetic alternatives, and (3) consistent and compatible with organic practices.

If you provide comments that do not support continuing an existing exemption or prohibition, you should provide reasons why the use of the substance should no longer be allowed or prohibited in organic agricultural production and handling. Specifically, comments that support the removal of a substance from the National List should provide information to demonstrate that the substance is: (1) Harmful to human health or the environment; (2) unnecessary because of the availability of alternatives; or (3) inconsistent with organic farming or handling. Comments that do not support a continued prohibition should explain how the use of the substance would not be: (1) harmful to human health or the environment, or (2) inconsistent with organic farming and handling.

TABLE 3—GUIDANCE ON SUBMITTING COMMENTS FOR ALTERNATIVES TO SUBSTANCES ON THE NATIONAL LIST.

If the currently listed substance is used in . . .	And is a . . .	Then the recommended alternative should be a (an) . . .
Crop Production	Synthetic substance	—Another currently listed synthetic substance; —Nonsynthetic substance; or —Management practice.

TABLE 3—GUIDANCE ON SUBMITTING COMMENTS FOR ALTERNATIVES TO SUBSTANCES ON THE NATIONAL LIST.—Continued

If the currently listed substance is used in . . .	And is a . . .	Then the recommended alternative should be a (an) . . .
Crop Production	Synthetic inert substance (pesticidal)	—Another currently listed synthetic substance; or —Nonsynthetic substance.
Handling	Nonsynthetic (non-agricultural) substance	—Agricultural substance; or —Management practice.
Handling	Synthetic substance	—Another currently listed synthetic substance; —Nonsynthetic (non-agricultural) substance; or —Management practice.

The NOP understands that supportive technical or scientific information for synthetic alternatives not currently on the National List may not be easily available to organic producers and handlers. Such information may, however, be available from the research community including universities, or other sources, including international organic programs.

Request for Comments

The NOP requests that you comment whether the NOSB should continue to recommend the exemptions and prohibitions listed above on the National List of Allowed and Prohibited Substances for organic agricultural production and handling. All comments will be considered in the development of the NOSB's recommendations to the Secretary.

Authority: 7 U.S.C. 6501–6522 and 7 CFR part 205

Dated: May 24, 2011.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

Appendix

This Appendix contains worksheets to assist you in gathering relevant information concerning the compatibility of substances with evaluation criteria of the OFPA. These worksheets are not required to submit a comment. These worksheets are used by the NOSB to develop their recommendations to the Secretary to include an exempted or prohibited substance on the National List. You do not have to answer the questions on the worksheets; they are intended only to help you provide substantive comments to the NOSB when you provide comments on the specific substance.

NOSB EVALUATION CRITERIA FOR SUBSTANCES ADDED TO THE NATIONAL LIST

Question	Yes	No	N/A[1]	Documentation (TAP; petition; regulatory agency; other)
Category 1. Adverse impacts on humans or the environment?				
1. Are there adverse effects on environment from manufacture, use, or disposal? [§ 205.600 b.2].				
2. Is there environmental contamination during manufacture, use, misuse, or disposal? [§ 6518 m.3].				
3. Is the substance harmful to the environment? [§ 6517(c)(1)(A)(i);6517(c)(2)(A)(i)].				
4. Does the substance contain List 1, 2, or 3 inerts? [§ 6517(c)(1)(B)(ii); § 205.601(m)(2)].				
5. Is there potential for detrimental chemical interaction with other materials used? [§ 6518(m)(1)].				
6. Are there adverse biological and chemical interactions in agro-ecosystem? [§ 6518(m)(5)].				
7. Are there detrimental physiological effects on soil organisms, crops, or livestock? [§ 6518(m)(5)].				
8. Is there a toxic or other adverse action of the material or its breakdown products? [§ 6518(m)(2)].				
9. Is there undesirable persistence or concentration of the material or breakdown products in environment?[§ 6518(m)(2)].				
10. Is there any harmful effect on human health? [§ 6517(c)(1)(A)(i); § 6517(c)(2)(A)(i); § 6518(m)(4)].				
11. Is there an adverse effect on human health as defined by applicable Federal regulations? [§ 205.600(b)(3)].				
12. Is the substance GRAS when used according to FDA's good manufacturing practices? [§ 205.600(b)(5)].				
13. Does the substance contain residues of heavy metals or other contaminants in excess of FDA tolerances? [§ 205.600(b)(5)].				

[1] If the substance under review is for crop or livestock production, all of the questions from § 205.600(b) are N/A—not applicable.

Category 2. Is the substance essential for organic production?

1. Is the substance formulated or manufactured by a chemical process? [§ 6502(21)].				
2. Is the substance formulated or manufactured by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral, sources? [§ 6502(21)].				
3. Is the substance created by naturally occurring biological processes? [§ 6502(21)].				
4. Is there a natural source of the substance? [§ 205.600(b)(1)]				
5. Is there an organic substitute? [§ 205.600(b)(1)]				
6. Is the substance essential for handling of organically produced agricultural products? [§ 205.600(b)(6)].				
7. Is there a wholly natural substitute product? [§ 6517(c)(1)(A)(ii)]				
8. Is the substance used in handling, not synthetic, but not organically produced? [§ 6517(c)(1)(B)(iii)].				
9. Is there any alternative substances? [§ 6518(m)(6)]				
10. Is there another practice that would make the substance unnecessary? [§ 6518(m)(6)].				

[1] If the substance under review is for crop or livestock production, all of the questions from § 205.600(b) are N/A—not applicable.

Category 3. Is the substance compatible with organic production practices?

1. Is the substance compatible with organic handling? [§ 205.600(b)(2)] ...				
2. Is the substance consistent with organic farming and handling? [§ 6517(c)(1)(A)(iii); § 6517(c)(2)(A)(ii)].				
3. Is the substance compatible with a system of sustainable agriculture? [§ 6518(m)(7)].				
4. Is the nutritional quality of the food maintained with the substance? [§ 205.600(b)(3)].				
5. Is the primary use as a preservative? [§ 205.600(b)(4)]				
6. Is the primary use to recreate or improve flavors, colors, textures, or nutritive values lost in processing (except when required by law, e.g., vitamin D in milk)? [§ 205.600(b)(4)].				
7. Is the substance used in production, and does it contain an active synthetic ingredient in the following categories:.				
a. copper and sulfur compounds;				
b. toxins derived from bacteria;				
c. pheromones, soaps, horticultural oils, fish emulsions, treated seed, vitamins and minerals?				
d. livestock parasiticides and medicines?				
e. production aids including netting, tree wraps and seals, insect traps, sticky barriers, row covers, and equipment cleaners?				

[1] If the substance under review is for crop or livestock production, all of the questions from 205.600(b) are N/A—not applicable.

[FR Doc. 2011–13496 Filed 5–31–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 92, 93, 94, 96, and 98

[Docket No. APHIS–2009–0035]

RIN 0579–AD05

Lists of Regions Classified With Respect to Certain Animal Diseases and States Approved To Receive Certain Imported Horses

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to remove lists of regions classified with respect to certain animal diseases and pests from our animal and animal product import regulations and, instead, post them to the Animal and Plant Health Inspection Service's (APHIS') Web site. The regulations would provide the Web address and would explain APHIS' criteria and process for adding a region to, or removing a region from, each of the lists. The technical criteria APHIS uses to evaluate whether a region should be added to or removed from a list would not change. We are also proposing to remove lists of States approved to receive horses imported from foreign regions where we consider contagious equine metritis to exist and, instead, post approved States to our Web site. The criteria for approving a State would not change. We would continue to provide an opportunity for public comment on changes to the lists. This action would enable the Agency to respond more quickly to changes in the disease status of regions.

DATES: We will consider all comments that we receive on or before August 1, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0035* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2009–0035, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2009–0035.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the

USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: Dr. Laurel Voelker, Regional Evaluation Services—Import, National Center for Import and Export, VS, APHIS, 920 Main Campus Drive, Suite 150, Raleigh, NC 27606; (919) 855–7736.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 govern the importation into the United States of certain animals and animal products in order to prevent the introduction of specified livestock diseases into the United States. The regulations currently list regions affected with or free of various diseases of livestock. The regulations also list Member States of the European Union (EU) that are part of the APHIS-defined region of the European Union that we recognize as low risk for classical swine fever (CSF). The regulations in 9 CFR part 93 govern the importation of animals into the United States. Part 93 also contains lists of regions affected with certain diseases of livestock and lists of regions where screwworm is considered to exist. It also contains lists of States that are approved by APHIS to receive stallions or mares over 731 days of age that are imported under specified conditions from regions affected with contagious equine metritis (CEM). The regulations in 9 CFR part 98 govern the importation into the United States of animal embryos and semen. Part 98 also lists the Member States of the European Union (EU) that are part of the APHIS-defined region of the European Union that we recognize as low risk for CSF. Each time we add or remove a Member State or other region from a list in the regulations, we must do so through rulemaking in order to change the Code of Federal Regulations.

We are proposing to remove the lists of States approved to receive stallions or mares from regions affected with CEM, the lists of Member States, and most of the other lists of regions from parts 93, 94, and 98 and instead post them to APHIS' Web site. The regulations would provide the Web address and a contact for requesting copies of the lists by mail, fax, or email. The regulations also would explain APHIS' process for adding or removing a Member State or other region to or from the lists. The technical criteria APHIS uses to evaluate whether a region should be added to or removed from a list would not change. With respect to States approved to receive stallions or mares from regions affected with CEM, the regulations currently set forth the conditions States must meet in order to be approved. These conditions would not change.

The proposed action would allow more timely changes to the lists. This should be particularly useful when a region must be added to a list of regions affected with a disease. APHIS considers a disease to exist in a region when we receive reports of an outbreak of the disease in the region from veterinary officials of the national government of the region and/or the World Organization for Animal Health (the OIE), or from another source that the Administrator determines to be reliable; *e.g.*, APHIS inspectors based in foreign countries.

As now, when APHIS determines that a disease is present in a region and presents a potential threat to animal health in the United States, we would take immediate action to restrict imports from that region. We would no longer need to follow that action with an interim rule in the **Federal Register** to change text in the regulations. Instead, we would immediately list the region on the APHIS Web site and announce the listing through a notice, rather than a rule, in the **Federal Register**. The notice would provide an opportunity for public comment.

We would add a region to a list of regions we recognize as free of a particular disease only after completing an evaluation and making it available for public comment. We would do this through a notice in the **Federal Register**. Following the close of the comment period, we would publish another notice responding to comments and announcing APHIS' decision. The criteria for evaluating a region's disease status, as outlined in 9 CFR part 92, "Importation of Animals and Animal Products: Procedures for Requesting Recognition of Regions," would not change. Additional details about the factors APHIS reviews to determine a region's status may be found on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/reg_request.shtml.*

In conjunction with our proposed removal of lists of regions from the regulations, we are proposing to amend part 92 to remove language that states we will do rulemaking to add or remove a region from one of the lists. We are also proposing to amend references in 9 CFR parts 93, 96, and 98 to the lists of regions in part 94. Instead of referring to regions listed "in" the regulations, we would refer to regions listed "under" the regulations.

We are also proposing to replace the term "infected" with the term "affected" in several places where the term is used to describe a region where a disease exists. We generally use the term "infected" when referring to an animal that has a disease, and "affected" when referring to a region in which the disease exists.

We are not proposing in this document to remove the lists in §§ 94.6 and 94.26 of regions free of exotic Newcastle disease or regions where highly pathogenic avian influenza subtype H5N1 is considered to exist because we are addressing the process for amending these lists in a separate rulemaking (see APHIS Docket 2006–0074 at *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0074*). Similarly, this proposal will not address the lists in § 94.18 of regions from which imports are restricted because of bovine spongiform encephalopathy (BSE) because we are currently evaluating our BSE regulations.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. Currently, rulemaking is required to amend the Code of Federal Regulations to change the disease or pest status of a region. The basis for such a change is either an outbreak of a disease or pest in a foreign region that results in a downgrade in status or an evaluation by APHIS that provides a basis for an upgrade in status. The changes we are proposing would remove the need for rulemaking to change the disease or pest status of a foreign region, while still providing opportunity for public comment on the basis for the action. This action would enable APHIS to respond more quickly to changes in the disease or pest status of foreign regions. We are not proposing to change our criteria for recognizing a region as free of or affected with a disease or pest, or to add or remove any Member State or other region to or from the lists as part of this rulemaking.

Similarly, rulemaking is required whenever APHIS approves a State to receive stallions or mares over 731 days of age from regions affected with CEM. The changes we are proposing would remove the need for rulemaking while still providing opportunity for public comment on the basis for the action. We are not proposing to change our criteria for approving a State to receive stallions or mares from CEM-affected regions.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) No retroactive effect will be given to this rule, and (2) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Region, Reporting and recordkeeping requirements.

9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 96

Imports, Livestock, Reporting and recordkeeping requirements.

9 CFR Part 98

Animal diseases, Imports.

Accordingly, we propose to amend 9 CFR parts 92, 93, 94, 96, and 98 as follows:

PART 92—IMPORTATION OF ANIMALS AND ANIMAL PRODUCTS: PROCEDURES FOR REQUESTING RECOGNITION OF REGIONS

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. Section 92.2 is amended as follows:

a. In paragraph (d), by removing the word "rulemaking".

b. By revising paragraphs (e) and (f) to read as set forth below.

§ 92.2 Application for recognition of the animal health status of a region.

* * * * *

(e) If, after review and evaluation of the information submitted, APHIS believes the request can be safely granted, APHIS will indicate its intent and make its evaluation available for public comment through a document published in the **Federal Register**.

(f) APHIS will provide a period of time during which the public may comment on its evaluation. During the comment period, the public will have access to the information upon which APHIS based its evaluation, as well as the evaluation itself. Once APHIS has reviewed all comments received, it will make a final determination regarding the request and will publish that determination in the **Federal Register**.

* * * * *

3. Section 92.4 is revised to read as follows:

§ 92.4 Reestablishment of a region's disease-free status.

This section applies to regions that are designated under this subchapter as free of a specific animal disease and then experience an outbreak of that disease.

(a) *Interim designation.* If a region recognized as free of a specified animal disease in this subchapter experiences an outbreak of that disease, APHIS will take immediate action to prohibit or restrict imports of animals and animal products from that region. The prohibitions or restrictions may be imposed on only a portion of the region previously recognized as free of a disease. In these cases, APHIS will inform the public as soon as possible through notice in the **Federal Register** of the basis for its decision to prohibit or restrict imports from the smaller area of that region previously recognized as free.

(b) *Reassessment of the disease situation.* (1) Following removal of disease-free status from all or part of a region, APHIS may reassess the disease situation in that region to determine whether it is necessary to continue the interim prohibitions or restrictions. In reassessing a region's disease status, APHIS will take into consideration the standards of the World Organization for Animal Health Office (OIE) for reinstatement of disease-free status, as well as all relevant information obtained through public comments or collected by or submitted to APHIS through other means.

(2) Prior to taking any action to relieve prohibitions or restrictions, APHIS will make information regarding its reassessment of the region's disease status available to the public for comment. APHIS will announce the availability of this information in the **Federal Register**.

(c) *Determination.* Based on the reassessment conducted in accordance with paragraph (b) of this section, including comments regarding the reassessment information, APHIS will take one of the following actions:

(1) Publish a notice of its decision to reinstate the disease-free status of the region, or a portion of the region;

(2) Publish a notice of its decision to continue the prohibitions or restrictions on the imports of animals and animal products from that region; or

(3) Publish another document in the **Federal Register** for comment.

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, FISH, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

4. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

5. Section 93.301 is amended as follows:

a. By revising paragraph (c)(1), paragraphs (h)(6) and (h)(7), and paragraph (j), introductory text, to read as set forth below.

b. In paragraphs (c)(2)(ix), (d)(3), (e)(1) introductory text, (e)(2)(i), (f)(10)(i), (g) introductory text, and (h) introductory text, by removing the words "listed in" each time they appear and adding in their place the words "listed under".

§ 93.301 General prohibitions; exceptions.

* * * * *

(c) * * *

(1) Importation prohibited. Except as provided in paragraph (c)(2) of this section, notwithstanding the other provisions of this part concerning the

importation of horses into the United States, the importation of all horses from any region that APHIS considers to be affected with contagious equine metritis (CEM) and the importation of all horses that have been in any such region within the 12 months immediately preceding their being offered for entry into the United States is prohibited.

(i) A list of regions that APHIS considers to be affected with CEM is maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.* Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issue Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

(ii) APHIS will add a region to the list upon determining that the disease exists in the region based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable, or upon determining that the region trades horses freely with a region in which CEM exists without testing for CEM. In the case of a region formerly not on this list that is added due to an outbreak, the region may be removed from the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter.

* * * * *

(h) * * *

(6) A list of States approved by APHIS to receive stallions over 731 days of age imported under paragraph (e) of this section is maintained on the APHIS site at *http://www.aphis.usda.gov/import_export/animals/downloads/states_app_conduct_cem_testing.pdf.* Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issue Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

(7) A list of States approved by APHIS to receive mares over 731 days of age imported under paragraph (e) of this section is maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/downloads/states_app_conduct_cem_testing.pdf.* Copies of the list will also be available via postal mail, fax, or e-mail upon request to the Sanitary Trade Issue Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

* * * * *

(j) *Examination and treatment for screwworm.* Horses from regions where APHIS considers screwworm to exist may be imported into the United States only if they meet the requirements in paragraphs (j)(1) through (j)(7) of this section and all other applicable requirements of this part. APHIS will maintain a list of regions where screwworm is considered to exist on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.* Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issue Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737. APHIS will add a region to the list upon determining that screwworm exists in the region based on reports APHIS receives of detections of the pest from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable. APHIS will remove a region from the list after conducting an evaluation of the region in accordance with § 92.2 of this subchapter and finding that screwworm is not present in the region. In the case of a region formerly not on this list that is added due to a detection, the region may be removed from the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter.

* * * * *

6. In § 93.308, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 93.308 Quarantine requirements.

(a) * * *

(1) Except as provided in §§ 93.317 and 93.324 and in paragraph (a)(1)(i) of this section, horses intended for importation from the Western Hemisphere shall be quarantined at a port designated in § 93.303 for not less than 7 days to be evaluated for signs of Venezuelan equine encephalomyelitis.

(i) Horses imported from regions of the Western Hemisphere that APHIS considers to be free of Venezuelan equine encephalomyelitis are exempt from the requirements of this paragraph. A list of regions that APHIS has declared free of Venezuelan equine encephalomyelitis is maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_import/equine/equine_import_quarantine.shtml.* Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issue Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

(ii) APHIS will add a region to the list of those it has declared free of Venezuelan equine encephalomyelitis after it conducts an evaluation of the region in accordance with § 92.2 of this subchapter and finds that the disease is not present. In the case of a region formerly on this list that is removed due to an outbreak, the region may be returned to the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter. APHIS will remove a region from the list of those it has declared free of Venezuelan equine encephalomyelitis upon determining that the disease exists in the region based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable.

(2) Horses intended for importation from regions APHIS considers to be affected with African horse sickness may enter the United States only at the port of New York, and must be quarantined at the New York Animal Import Center in Newburgh, New York, for at least 60 days. This restriction also applies to horses that have stopped in or transited a region considered affected with African horse sickness.

(i) A list of regions that APHIS considers affected with African horse sickness is maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.* Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issue Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

(ii) APHIS will add a region to the list upon determining that the disease exists in the region based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable. In the case of a region formerly not on this list that is added

due to an outbreak, the region may be removed from the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter.

* * * * *

7. In § 93.405, paragraph (a)(3) introductory text is revised to read as follows:

§ 93.405 Health certificate for ruminants.

(a) * * *

(3) If the ruminants are from any region where screwworm is considered to exist, the ruminants may be imported into the United States only if they meet the requirements of paragraphs (a)(3)(i) through (a)(3)(iv) of this section and all other applicable requirements of this part. APHIS will maintain a list of regions where screwworm is considered to exist on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.* Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issue Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737. APHIS will add a region to the list upon determining that screwworm exists in the region based on reports APHIS receives of detections of the pest from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable. APHIS will remove a region from the list after conducting an evaluation of the region in accordance with § 92.2 of this subchapter and finding that screwworm is not present in the region. In the case of a region formerly not on this list that is added due to a detection, the region may be removed from the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter.

* * * * *

8. In § 93.505, paragraph (b) introductory text is revised to read as follows:

§ 93.505 Certificate for swine.

* * * * *

(b) Swine from any region where screwworm is considered to exist may only be imported into the United States if they meet the requirements of paragraphs (b)(1) through (b)(4) of this section and all other applicable requirements of this part. APHIS will maintain a list of regions where screwworm is considered to exist on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.* Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issue Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737. APHIS will add a region to the list upon determining that screwworm exists in the region based on reports APHIS receives of detections of the pest from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable. APHIS will remove a region from the list after conducting an evaluation of the region in accordance with § 92.2 of this subchapter and finding that screwworm is not present in the region. In the case of a region formerly not on this list that is added due to a detection, the region may be removed from the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter.

* * * * *

9. In § 93.600, paragraph (a) introductory text is revised to read as follows:

§ 93.600 Importation of dogs.

(a) *All dogs.* Dogs from any region of the world where screwworm is considered to exist may only be imported into the United States if they meet the requirements of paragraphs (a)(1) and (a)(2) of this section and all other applicable requirements of this part. APHIS will maintain a list of regions where screwworm is considered to exist on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.* Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issue Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737. APHIS will add a region to the list upon determining that screwworm exists in the region based on reports APHIS receives of detections of the pest from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable. APHIS will remove a region from the list after conducting an evaluation of the region in accordance with § 92.2 of this subchapter and finding that screwworm is not present in the region. In the case of a region formerly not on this list that is added due to a detection, the region may be removed from the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter.

* * * * *

PART 94—RINDERPEST, FOOT–AND–MOUTH DISEASE, EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, SWINE VESICULAR DISEASE, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

10. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

11. Section § 94.0 is amended by revising the definition of *APHIS-defined EU CSF region* to read as follows:

§ 94.0 Definitions.

* * * * *

APHIS-defined EU CSF region. A single region of the European Union recognized by APHIS as low risk for classical swine fever.

(1) A list of Member States included in the region is maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.* Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issue Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

(2) APHIS will add a Member State to the region after it conducts an evaluation of the area to be added in accordance with § 92.2 of this subchapter and finds that the risk profile for the Member State is equivalent with respect to classical swine fever to the risk profile for the region it is joining.

* * * * *

12. In § 94.1, paragraph (a) is revised to read as follows:

§ 94.1 Regions where rinderpest or foot-and-mouth disease exists; importations prohibited.

(a) APHIS considers rinderpest or foot-and-mouth disease to exist in all regions of the world except those declared free of one or both of these diseases by APHIS.

(1) A list of regions that APHIS has declared free of rinderpest and a list of

regions APHIS has declared free of foot and mouth disease are maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.* Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issue Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

(2) APHIS will add a region to the list of those it has declared free of rinderpest or foot-and-mouth disease, or both, after it conducts an evaluation of the region in accordance with § 92.2 of this subchapter and finds that the disease, or diseases, are not present. In the case of a region formerly on this list that is removed due to an outbreak, the region may be returned to the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter. APHIS will remove a region from the list of those it has declared free of rinderpest or foot-and-mouth disease upon determining that the disease exists in the region based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable.

* * * * *

§ 94.2 [Amended]

13. Section § 94.2 is amended by removing the word "infected" each time it appears and adding in its place the word "affected".

14. Section § 94.8 is amended as follows:

a. By redesignating paragraphs (a), (b), and (c) as paragraphs (b), (c), and (d), respectively.

b. By removing the introductory text, including footnote 8, and adding a new paragraph (a) to read as set forth below.

c. In redesignated paragraphs (b)(3)(i) and (b)(4) introductory text, by removing the citation to "(a)(5)" and adding in its place a citation to "(b)(5)".

d. In redesignated paragraph (b)(5) introductory text, by redesignating footnote 9 as footnote 8.

e. In redesignated paragraph (c), by removing the citation to '(a)(2)" and adding in its place a citation to "(b)(2)".

§ 94.8 Pork and pork products from regions where African swine fever exists or is reasonably believed to exist.

(a) African swine fever exists or the Administrator has reason to believe that African swine fever exists in the regions listed under paragraph (a)(2) of this section.

(1) The Administrator bases the reason to believe African swine fever exists in a region on the following factors:

(i) When a region allows the importation of host animals, pork or pork products, or vectors of African swine fever from a region in which African swine fever exists under conditions which the Administrator has determined are less stringent than those prescribed by this chapter for importing host animals, pork or pork products, or vectors of African swine fever into the United States from a region in which African swine fever exists; or

(ii) When a region allows the importation or use of African swine fever virus or cultures under conditions which the Administrator has determined are less stringent than those prescribed by this chapter for the importation or use of African swine fever virus or cultures into or within the United States; or

(iii) When a region has a contiguous border with, or is subject to commercial exchange or natural spread of African swine fever host animals, host materials, or vectors with, another region with known outbreaks of African swine fever; or

(iv) A region's lack of a disease detection, control, or reporting system capable of detecting or controlling African swine fever and reporting it to the United States in time to allow the United States to take appropriate action to prevent the introduction of African swine fever into the United States; or

(v) Any other fact or circumstance found to exist which constitutes a risk of introduction of African swine fever into the United States.

(2) A list of regions where African swine fever exists or the Administrator has reason to believe that African swine fever exists is maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.* Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issue Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

(3) APHIS will add a region to the list upon determining that the disease exists in the region based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable, or upon determining that there is reason to believe the disease exists in the region. APHIS will remove a region from the list after conducting an evaluation of the region in accordance with § 92.2 of this subchapter and finding that the disease is not present and that there is no reason to believe the disease is present. In the case of a region formerly not on this list that is added due to an outbreak, the region may be removed from the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter.

* * * * *

15. Section 94.9 is amended as follows:

a. By removing footnote 10 in paragraph (a) and redesignating footnote 11 in paragraph (c)(3) and footnote 12 in paragraph (e)(2) introductory text as footnotes 10 and 11, respectively.

b. By revising paragraph (a) to read as set forth below.

c. By adding a new footnote 9 at the end of paragraph (c) introductory text to read as set forth below.

d. In paragraphs (c)(1)(iii)(C)(*1*) and (c)(1)(iii)(C)(*2*), by removing the words "in paragraph (a)" and adding in their place the words "under paragraph (a)".

§ 94.9 Pork and pork products from regions where classical swine fever exists.

(a) APHIS considers classical swine fever to exist in all regions of the world except those declared free of the disease by APHIS.

(1) A list of regions that APHIS has declared free of classical swine fever is maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.* Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issue Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

(2) APHIS will add a region to the list of those it has declared free of classical swine fever after it conducts an evaluation of the region in accordance with § 92.2 of this subchapter and finds that the disease is not present. In the case of a region formerly on this list that is removed due to an outbreak, the region may be returned to the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter. APHIS will remove a region from the list of those it has declared free of classical swine fever upon determining that the disease exists in the region based on reports APHIS receives of outbreaks of the disease from veterinary

officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable.

* * * * *

(c) * * * [9]

[9] See also other provisions of this part and parts 93, 95, and 96 of this chapter, and part 327 of this title, for other prohibitions and restrictions upon the importation of swine and swine products.

* * * * *

16. In § 94.10, paragraph (a) is revised to read as follows:

§ 94.10 Swine from regions where classical swine fever exists.

(a) APHIS considers classical swine fever to exist in all regions of the world except those declared free of the disease by APHIS.

(1) A list of regions that APHIS has declared free of classical swine fever is maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.* Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issue Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

(2) APHIS will add a region to the list of those it has declared free of classical swine fever after it conducts an evaluation of the region in accordance with § 92.2 of this subchapter and finds that the disease is not present. In the case of a region formerly on this list that is removed due to an outbreak, the region may be returned to the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter. APHIS will remove a region from the list of those it has declared free of classical swine fever upon determining that the disease exists in the region based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable.

* * * * *

17. Section 94.11 is amended as follows:

a. By revising paragraph (a) to read as set forth below.

b. In paragraph (c) introductory text, by removing the words "regions designated in paragraph (a)" and adding in their place the words "any region listed under paragraph (a)(2)".

c. In paragraph (c)(1), by removing the words "listed in § 94.1(a) as a region infected with rinderpest or foot-and-mouth disease" and adding in their place the words "designated under § 94.1(a) as a region where rinderpest or foot-and-mouth disease exists".

d. In paragraph (c)(2), by removing the word "infected" each time it appears and adding in its place the word "affected".

e. In paragraph (c)(3), by removing the words "in § 94.1(a)(2)" and adding in their place the words "under § 94.1(a)".

§ 94.11 Restrictions on importation of meat and other animal products from specified regions.

(a) The meat of ruminants or swine, and other animal products, and ship stores, airplane meals, and baggage containing such meat or animal products originating in any region listed as provided in paragraph (a)(2) of this section may not be imported into the United States unless the requirements in this section, in addition to other applicable requirements of chapter III of this title, are met. However, meat and meat products that meet the requirements of § 94.4 do not have to comply with the requirements of this section. As used in this section, the term "other animal product" means all parts of the carcass of any ruminant or swine, other than meat and articles regulated under part 95 or part 96 of this chapter.

(1) The regions listed under paragraph (a)(2) of this section have been declared free of rinderpest and foot-and-mouth disease by APHIS as provided in § 94.1(a) but supplement their national meat supply by the importation of fresh (chilled or frozen) meat of ruminants or swine from regions that APHIS considers to be affected with rinderpest or foot-and-mouth disease as provided in § 94.1(a); or have a common land border with regions considered to be affected with rinderpest or foot-and-mouth disease; or import ruminants or swine from regions considered to be affected with rinderpest or foot-and-mouth disease under conditions less restrictive than would be acceptable for importation into the United States. Thus, the meat may be commingled with the fresh (chilled or frozen) meat of animals from an affected region, resulting in an undue risk of introducing rinderpest or foot-and-mouth disease into the United States.

(2) A list of regions whose products are regulated under this section is maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.* Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issue Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

(3) APHIS will add a region to the list of those whose products are regulated under this section after conducting an evaluation of the region and determining that one or more of the circumstances described in paragraph (a)(1) of this section exists. APHIS will remove a region from the list upon conducting an evaluation of the region and determining that the circumstances in paragraph (a)(1) of this section no longer exist or upon determining that rinderpest or foot-and-mouth disease exists in the region.

* * * * *

18. Section 94.12 is amended as follows:

a. By revising paragraph (a) to read as set forth below.

b. In paragraph (b)(1)(iii)(B), by redesignating footnote 13 as footnote 12.

c. In paragraph (b)(1)(iv)(B)(*1*), by removing the word "infected" and adding in its place the word "affected"; and by removing the words "in paragraph (a)" and adding in their place the words "under paragraph (a)(1)".

d. In paragraph (b)(1)(iv)(B)(*2*)(*i*), by removing the word "infected" and adding in its place the word "affected".

e. In paragraph (b)(1)(iv)(B)(*2*)(*ii*), by removing the words "in paragraph (a)" and adding in their place the words "under paragraph (a)(1)".

f. In paragraph (b)(3), by redesignating footnote 14 as footnote 13.

g. By revising redesignated footnote 13 in paragraph (b)(3) to read "[13] See footnote 10."

§ 94.12 Pork and pork products from regions where swine vesicular disease exists.

(a) APHIS considers swine vesicular disease to exist in all regions of the world except those declared free of the disease by APHIS.

(1) A list of regions that APHIS has declared free of swine vesicular disease is maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.* Copies of the list will also be available via postal mail, fax, or e-mail upon request to the Sanitary Trade Issue Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

(2) APHIS will add a region to the list of those it has declared free of swine vesicular disease after it conducts an evaluation of the region in accordance with § 92.2 of this subchapter and finds that the disease is not present. In the

case of a region formerly on this list that is removed due to an outbreak, the region may be returned to the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter. APHIS will remove a region from the list of those it has declared free of swine vesicular disease upon determining that the disease exists in the region based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable.

* * * * *

19. Section 94.13 is amended as follows:

a. By redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively.

b. By designating the introductory text as paragraph (a) and revising newly designated paragraph (a) to read as set forth below.

c. By revising redesignated paragraph (c)(1) to read as set forth below.

d. In redesignated paragraph (c)(2), by removing the words "in § 94.12" and adding in their place the words "under § 94.12(a)".

§ 94.13 Restrictions on importation of pork or pork products from specified regions.

(a) The pork or pork products and ship's stores, airplane meals, and baggage containing pork or pork products, other than those articles regulated under part 95 or part 96 of this chapter, produced in any region listed under paragraph (a)(2) of this section may not be imported into the United States unless the requirements of this section, in addition to other applicable requirements of part 327 of this title, are met.

(1) The regions listed under paragraph (a)(2) of this section have been declared free of swine vesicular disease as provided in § 94.12(a) but supplement their national pork supply by the importation of fresh (chilled or frozen) meat of animals from regions where swine vesicular disease is considered to exist, or have a common border with such regions, or have trade practices that are less restrictive than are acceptable to the United States. Thus, the pork or pork products may be commingled with fresh (chilled or frozen) meat of animals from a region where swine vesicular disease is considered to exist, resulting in an undue risk of swine vesicular disease introduction into the United States.

(2) A list of regions whose products are regulated under this section is maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.* Copies of the list will also be available via postal mail, fax, or e-mail upon request to the Sanitary Trade Issue Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

(3) APHIS will add a region to the list of those whose products are regulated under this section after conducting an evaluation of the region and determining that one or more of the circumstances listed in paragraph (a)(1) of this section exists. APHIS will remove a region from the list upon conducting an evaluation of the region and determining that the circumstances in paragraph (a)(1) of this section no longer exist or upon determining that swine vesicular disease exists in the region.

* * * * *

(c) * * *

(1) The slaughtering establishment is not permitted to receive animals that originated in a region considered to have swine vesicular disease or that have ever been in a region in which swine vesicular disease existed.

* * * * *

§ 94.14 [Amended]

20. In § 94.14, paragraph (a) is amended by removing the words "listed in" and adding in their place the words "listed under".

21. Section 94.16 is amended as follows:

a. By revising paragraph (b) introductory text to read as set forth below.

b. In paragraph (b)(2), by redesignating footnote 15 as footnote 14.

c. By revising paragraph (c) introductory text and paragraph (d) to read as set forth below.

§ 94.16 Milk and milk products.

* * * * *

(b) Milk and milk products originating in, or shipped from, any region where rinderpest or foot-and-mouth disease is considered to exist under § 94.1(a) may be imported into the United States if they meet the requirements of paragraphs (b)(1), (b)(2), or (b)(3) of this section:

* * * * *

(c) Milk and milk products originating in and shipped from regions listed under § 94.1(a) as free of rinderpest and foot-and-mouth disease but which have entered a port or otherwise transited a region where APHIS considers either disease to exist may not be imported into the United States unless:

* * * * *

(d) Except for milk and milk products imported from Canada, and except as provided in this paragraph, milk or milk products imported from a region listed under § 94.1(a) as free of rinderpest and foot-and-mouth disease must be accompanied by a certificate endorsed by a full-time, salaried veterinarian employed by the region of export. The certificate must state that the milk was produced and processed in a region listed under § 94.1(a) as free of rinderpest and foot-and-mouth disease, or that the milk product was processed in one such region from milk produced in another such region. The certificate must name the region in which the milk was produced and the region in which the milk or milk product was processed. Further, the certificate must state that, except for movement under seal as described in § 94.16(c), the milk or milk product has never been in a region in which rinderpest or foot-and-mouth disease exists. Milk or milk products from a region listed under § 94.1(a) as free of rinderpest and foot-and-mouth disease and that were processed in whole or in part from milk or milk products from a region not listed under § 94.1(a) as free of rinderpest and foot-and-mouth disease may be imported into the United States only in accordance with paragraph (b)(3) of this section.

* * * * *

§ 94.17 [Amended]

22. Section 94.17 is amended as follows:

a. Footnote 16 in paragraph (e) and footnote 17 in paragraph (p)(1) are redesignated as footnotes 15 and 16, respectively.

b. Redesignated footnote 16 is revised to read "[16] See footnote 15."

§ 94.18 [Amended]

23. In § 94.18, footnote 18 in paragraph (c)(2) and footnote 19 in paragraph (d)(1) are redesignated as footnotes 17 and 18, respectively.

§ 94.24 [Amended]

24. Section § 94.24 is amended as follows:

a. In paragraphs (a)(1)(i) and (b)(2)(i), by removing the words "in §§ 94.9(a) and 94.10(a) as one" and adding in their place the words "under §§ 94.9(a) and 94.10(a) as a region".

b. In paragraph (a)(5), by redesignating footnote 20 as footnote 19.

c. In paragraph (b)(6) by redesignating footnote 21 as footnote 20.

25. Section 94.25 is amended as follows:

a. By removing the introductory text.

b. By revising paragraph (a) to read as set forth below.

c. In paragraph (b) introductory text, paragraph (c) introductory text, and paragraphs (c)(1) and (c)(5), by removing the words "designated in" and by adding in their place the words "listed under".

d. In paragraphs (b)(1), (b)(2), (b)(3), (c)(2), (c)(3), and (c)(4), by removing the words "designated in §§ 94.9 and 94.10 as affected with CSF" and adding in their place the words "classified under §§ 94.9 and 94.10 as a region in which CSF is known to exist".

§ 94.25 Restrictions on the importation of live swine, pork, or pork products from certain regions free of classical swine fever.

(a) Live swine, pork, or pork products and ship stores, airplane meals, and baggage containing pork or pork products, other than those articles regulated under part 95 or part 96 of this chapter, may not be imported into the United States from a region listed under paragraph (a)(2) of this section unless the requirements in this section, in addition to other applicable requirements of part 93 of this chapter and part 327 of this title, are met.

(1) The regions listed under paragraph (a)(2) of this section have been declared free of classical swine fever (CSF) by APHIS in accordance with §§ 94.9(a) and 94.10(a) but either supplement their pork supplies with fresh (chilled or frozen) pork imported from regions considered to be affected by CSF, or supplement their pork supplies with pork from CSF-affected regions that is not processed in accordance with the requirements of this part, or share a common land border with CSF-affected regions, or import live swine from CSF-affected regions under conditions less restrictive than would be acceptable for importation into the United States. Thus, the live swine, pork, or pork products from those regions may be commingled with live swine, pork, or pork products from CSF-affected regions, resulting in a risk of CSF introduction into the United States.

(2) A list of regions whose live swine, pork, and pork products are regulated under this section is maintained on the APHIS Web site at *http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml.* Copies of the list will also be available via postal mail, fax, or email upon request to the Sanitary Trade Issue Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

(3) APHIS will add a region to the list of those whose live swine, pork, and pork products are regulated under this section after conducting an evaluation of the region and determining that one or more of the circumstances described in paragraph (a)(1) of this section exists. APHIS will remove a region from the list upon conducting an evaluation of the region and determining that the circumstances in paragraph (a)(1) of this section no longer exist or upon determining that classical swine fever exists in the region.

* * * * *

PART 96—RESTRICTION OF IMPORTATIONS OF FOREIGN ANIMAL CASINGS OFFERED FOR ENTRY INTO THE UNITED STATES

26. The authority citation for part 96 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.4.

§ 96.2 [Amended]

27. Section § 96.2 is amended as follows:

a. In paragraph (a) introductory text, by removing the words "in § 94.8" and adding in their place the words "under § 94.8(a)".

b. In paragraph (a)(1), by removing the words "in § 94.8(a)" and adding in their place the words "under § 94.8(a)".

c. In paragraph (a)(2), by removing the words "in § 94.8" and adding in their place the words "under § 94.8(a)".

d. In paragraph (a)(5), by removing the words "in § 94.8" each time they appear and adding in their place the words "under § 94.8(a)".

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

28. The authority citation for part 98 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 98.3 [Amended]

29. In § 98.3, the introductory text is amended by removing the words "listed in § 94.1(a)(2)" and adding in their place "listed under § 94.1(a)".

§ 98.30 [Amended]

30. Section 98.30 is amended by removing the definition of *APHIS-defined EU CSF region.*

§ 98.38 [Amended]

31. Section 98.38 is amended as follows:

a. In the introductory text, by adding the words ", as defined in § 94.0 of this subchapter," immediately after the words "APHIS-defined EU CSF region".

b. In paragraph (b)(1), by removing the words "in §§ 94.9(a) and 94.10(a) of this chapter as one" and adding in their place the words "under §§ 94.9(a) and 94.10(a) of this chapter as a region".

Done in Washington, DC, this 25th day of May 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–13504 Filed 5–31–11; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 40 and 150

[NRC–2009–0079]

RIN 3150–AI50

Domestic Licensing of Source Material—Amendments/Integrated Safety Analysis

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a proposed rule that was published in the **Federal Register** (FR) on May 17, 2011 (76 FR 28336). The proposed rule announced the availability of a draft regulatory analysis for public comment. This document corrects the NRC's Agencywide Documents Access and Management System (ADAMS) accession number that appeared in Section XI, "Regulatory Analysis." The correct ADAMS accession number is ML102380243.

DATES: The proposed rule published at 76 FR 28336 is corrected as of June 1, 2011.

FOR FURTHER INFORMATION CONTACT: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Office of Administration, Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–492–3667; e-mail: *Cindy.Bladey@nrc.gov.*

SUPPLEMENTARY INFORMATION: The following correction is made to FR Doc. 2011–11927, published in the **Federal Register** on May 17, 2011, on Page 28351, in the center column, under Section XI, "Regulatory Analysis," third paragraph, seventh line; "ML102380248" is corrected to read "ML102380243."

Dated at Rockville, Maryland, this 25 day of May, 2011.

For the Nuclear Regulatory Commission.

Cindy Bladey,

Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2011–13403 Filed 5–31–11; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0476; Directorate Identifier 2010–NM–247–AD]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aerosystems Model SAAB 2000 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

> Corrosion damage has been found on the aft pressure bulkhead of SAAB 2000 aeroplanes, located on the rear side of the bulkhead at the bottom outboard flange. Corrosion damage in this area can become the starting point for future crack initiation and propagation.
>
> This condition, if not detected and corrected, could affect the structural integrity of the aft pressure bulkhead, possibly resulting in in-flight decompression of the fuselage and injury to occupants.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by July 18, 2011.

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

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

For service information identified in this proposed AD, contact Saab AB, Saab Aerosystems, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; e-mail *saab2000.techsupport@saabgroup.com*; Internet *http://www.saabgroup.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0476; Directorate Identifier 2010–NM–247–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0184, dated September 6, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Corrosion damage has been found on the aft pressure bulkhead of SAAB 2000 aeroplanes, located on the rear side of the bulkhead at the bottom outboard flange. Corrosion damage in this area can become the starting point for future crack initiation and propagation.
>
> This condition, if not detected and corrected, could affect the structural integrity of the aft pressure bulkhead, possibly resulting in in-flight decompression of the fuselage and injury to occupants.
>
> For the reasons described above, this AD requires a detailed visual inspection of the aft pressure bulkhead at the bottom outboard flange [for corrosion and drain hole] and, depending on findings, corrective action.

Corrective actions include contacting the FAA or EASA (or its delegated agent) for repair instructions if corrosion is found, and drilling a drain hole. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Saab AB, Saab Aerosystems has issued Service Bulletin 2000–53–048, Revision 01, dated September 3, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making

these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect 8 products of U.S. registry. We also estimate that it would take 12 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $8,160, or $1,020 per product.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions specified in this proposed AD. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Saab AB, Saab Aerosystems: Docket No. FAA–2011–0476; Directorate Identifier 2010–NM–247–AD.

Comments Due Date

(a) We must receive comments by July 18, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Saab AB, Saab Aerosystems Model SAAB 2000 airplanes, all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Reason

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

Corrosion damage has been found on the aft pressure bulkhead of SAAB 2000 aeroplanes, located on the rear side of the bulkhead at the bottom outboard flange. Corrosion damage in this area can become the starting point for future crack initiation and propagation.

This condition, if not detected and corrected, could affect the structural integrity of the aft pressure bulkhead, possibly resulting in in-flight decompression of the fuselage and injury to occupants.

* * * * ** *

Compliance

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

Inspection and Corrective Actions

(g) Within 12 months after the effective date of this AD: Do a detailed inspection for corrosion of the aft pressure bulkhead at the bottom outboard flange, and to determine if there is a drain hole on the left-hand side inboard of the ventral fin, in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–53–048, Revision 01, dated September 3, 2009.

(h) If any corrosion is found during the inspection required by paragraph (g) of this AD: Before further flight, repair the corrosion in accordance with a method approved by the Manager, International Branch, ANM 116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or its delegated agent.

(i) If no drain hole is found during the inspection required by paragraph (g) of this AD, before further flight, drill a drain hole, in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–53–048, Revision 01, dated September 3, 2009.

(j) Within 30 days after accomplishing the inspection required by paragraph (g) of this AD, or within 30 days after the effective date of this AD, whichever is later: Report findings of corrosion to Saab at Saab AB, Saab Aerosystems, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; e-mail *saab2000.techsupport@saabgroup.com*. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.),* the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120 0056.

Credit for Actions Accomplished in Accordance With Previous Service Information

(k) Actions done before the effective date of this AD in accordance with Saab Service Bulletin 2000–53–048, dated July 6, 2009, are considered acceptable for compliance with the corresponding actions required by paragraph (g) of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Shahram Daneshmandi, Aerospace Engineer,

International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149. Information may be e-mailed to: *9–ANM–116–AMOC–REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(3) Reporting Requirements: A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

Related Information

(m) Refer to MCAI EASA Airworthiness Directive 2010–0184, dated September 6, 2010; and Saab Service Bulletin 2000–53–048, Revision 01, dated September 3, 2009; for related information.

Issued in Renton, Washington, on May 20, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–13505 Filed 5–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1330; Airspace Docket No. 10–ASO–41]

Proposed Amendment of Class E Airspace; Rutherfordton, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at Rutherfordton, NC, to accommodate the additional airspace needed for the Standard Instrument Approach Procedures (SIAPs) developed for Rutherford County Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before July 18, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA, Order 7400.9 and publication of conforming amendments.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2010–1330; Airspace Docket No. 10–ASO–41, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2010–1330; Airspace Docket No. 10–ASO–41) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Annotators wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–1330; Airspace Docket No. 10–ASO–41." The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace at Rutherfordton, NC to provide controlled airspace required to support new standard instrument approach procedures for Rutherford County Airport. The existing Class E airspace extending upward from 700 feet above the surface would be modified for the safety and management of IFR operations.

Class E airspace designations are published in Paragraph 6005 of FAA order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR

71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 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. This proposed rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would amend Class E airspace at Rutherford County Airport, Rutherfordton, NC.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, effective September 15, 2010, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO NC E5 Rutherfordton, NC [Amended]

Rutherford County Airport, NC
(Lat. 35°25′44″ N., Long. 81°56′06″ W.)

That airspace extending upward from 700 feet above the surface within an 11.6-mile radius of the Rutherford County Airport.

Issued in College Park, Georgia, on May 13, 2011.

Barry A. Knight,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2011–13561 Filed 5–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 217, 241, 298

(Docket Nos OST–98–4043)

RIN 2105–AC71

Aviation Data Modernization

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of withdrawal of proposed rulemaking.

SUMMARY: The Department of Transportation (the Department) is withdrawing a Notice of Proposed Rulemaking (NPRM) issued on February 17, 2005 (70 FR 8140 *et seq.*) that proposed revisions to the rules governing the nature, scope, source of and means for collecting and processing aviation traffic data.

We are withdrawing this NPRM because, after review of all comments, we have determined that the approach we proposed to solve the identified problems does not adequately address a number of aspects, including measures that could both enhance the utility, integrity and accuracy of the data and reduce the cost of reporting. This action is being taken to allow for later revision and refinement of a proposed methodology for aviation data modernization.

DATES: June 1, 2011.

FOR FURTHER INFORMATION CONTACT: Richard Pittaway, Office of Aviation Analysis, 1200 New Jersey Ave., SE., Room W86–461, Washington, DC 20590, (202) 366–8856.

Electronic Access: You can view and download related documents and public comments by going to the Web site *http://www.regulations.gov*. Enter the docket number DOT–OST–1998–4043 in the search field.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 1998, the Department published an Advance Notice of Proposed Rulemaking (ANPRM) (63 FR 28128) requesting comment on a variety of issues related to aviation economic data collection. The ANPRM noted that the Origin-Destination Survey of Airline Passenger Traffic (O&D Survey) and Form 41, Schedule T–100—U.S. Air Carrier Traffic and Capacity Data by Nonstop Segment and On-flight Market and Form 41, and Schedule T–100(f)—Foreign Air Carrier Traffic and Capacity Data by Nonstop Segment and On-flight Market (the last two are known collectively as the T–100/T–100(f))O&D Survey and the T–100/T–100(f)) may not provide sufficiently reliable data in some circumstances to ensure that the Department can meet its obligation to disseminate information that enables the transportation system to adapt to the present and future needs of the American public. At that time, we stated our concern that the aviation data systems should be reviewed and modernized in order to meet our statutory responsibilities.

Also, because of difficulties private industry would have in assembling these data, the need for scheduled air traffic information cannot be satisfied other than through governmental means. However, while there are no other sources of comprehensive traffic data available in the aviation industry, a significant market exists in supplying services to supplement the Department's information offerings using the service provider's own statistical insight and experience. The public, academics, manufacturers, airports, air carriers, local, state and various branches of the Federal government all remain dependent on the reliability of this commercially enhanced data.

Approximately 50 comments were filed in response to the ANPRM by airlines, airports, trade associations, unions, and private citizens who use this data. Commenters confirmed that these data are not only critical to the work of both private and public aviation stakeholders (including the reporting airlines themselves), but that there are universal concerns about the capability and accuracy of the existing data collection to satisfy the changing needs of the industry and its stakeholders. The respondents overwhelmingly agreed

that the O&D Survey and the T100 segment data were essential. Commenters repeatedly mentioned that the current data elements collected were insufficient to meet the data needs of the public and the aviation industry now and in the future. There was near universal agreement that the data suffer from lack of quality and lack of consistency. Deficiencies in the O&D Survey and in the T–100/T–100(f) further reduce the ability of the data to meet the needs of the aviation community.

On February 17, 2005, OST published a notice of proposed rulemaking (NPRM) (70 FR 8140 *et seq.*) as part of the Department's effort to revise the requirements for aviation data to modernize the way we collect, process, and disseminate aviation data. The NPRM reflected analysis of the O&D Survey and T–100/T–100(f) data, and it documented the use of that data by the government, the airline industry, consumers, and other stakeholders. We proposed revisions to the rules governing the nature, scope, source of and means for collecting and processing this aviation traffic data.

At the time the notice was published, we noted that the Department has a statutory responsibility to collect and disseminate information about aviation transportation in the U.S. The Department must, at minimum, collect information on the origin and destination of passengers and information on the number of passengers traveling by air between any two points in air transportation, 49 U.S.C. sec. 329(b). Additionally, the Department is charged with maintaining a sound regulatory system that is responsive to the needs of the public, and must disseminate information to make it easier to adapt the air transportation system to the present and future needs of the commerce of the United States (49 U.S.C. 40101(a) (7)).

We also acknowledged the Department's responsibility to maximize the quality, objectivity, utility, and integrity of influential statistical information it disseminates. Although the O&D Survey collected quarterly and the T–100/T–100(f) collected monthly are the means by which the Department disseminates aviation traffic information, the NPRM identified various technical deficiencies and limitations in the data.

In the 2005 NPRM, we also proposed a plan to create the O&D Survey using a fundamentally different collection methodology and considered commensurate changes in the collection of the T–100/T–100(f). In addition to seeking comments on the change of methodology, we sought input into other key topics such as information about what kind of data should be withheld from release for reasons of competitive sensitivity.

Discussion of Comments

In response to the 2005 NPRM, the Department received substantive comments from ten organizations or groups, and limited comments from twelve additional groups or organizations. Most of the commenters were airlines or aviation trade associations, but some of the other users of the data also provided comments. While there was opposition to certain aspects of the Department's proposed methodology for collecting data, no comments filed in response to the NPRM disputed the Department's authority to gather aviation information, the Department's review of the data's current deficiencies, the Department's assessment of the data's limitations, or the Department's assertion that the current traffic statistics had outlived the economic model for which it was designed. We, therefore, conclude that there is support for obtaining and disseminating accurate aviation traffic data by aligning it with modern airline business practices, but that the methodology we proposed may not have been the best solution to repair the deficiencies in the system.

The Department's proposal for collecting aviation traffic data continued to rely on the airline passenger revenue accounting system as the principal source of data. However, we proposed changing the carrier designated to report the data, increasing the scope and volume of data collected, and reducing the number of reporting exemptions. The NPRM also sought comments on several specific issues to achieve greater uniformity in statistical reporting in light of the industry's divergent business models. We believed that changing the carrier responsible for reporting a ticket to the ticket issuing carrier would be a significant simplification in the airline's process of reporting and would, therefore, result in a reduction of reporting costs. While there was considerable support for these changes, the comments indicated that some believed that the burdens of reporting the data would still be disproportionately high.

We proposed a specific set of data elements that we anticipated would be necessary in the new methodology to define one-way trips, and asked for comment on how to construct the one-way trips. However, no one-way trip methodology appeared in the record, leading a number of commenters to claim that the Department had not sufficiently articulated a rationale for collecting the newly proposed data elements.

Similarly, the Department proposed that the public supply guidance regarding how the Department should safeguard competitively sensitive information, but no such safeguards were suggested in the comments. With no specific proposals for safeguards in the record, a number of commenters asserted that the Department had not made sufficient plans to safeguard competitively sensitive information.

In addition, the Department pointed to evidence that the current ticket sample methodology produces a sample that could be impacted by decisions at travel agencies to assign ticket numbers at their own convenience for their own reasons. We have no authority to regulate such activities of travel agents, and so the Department proposed to either change the method of creating the sample or to do away with sampling and collect a census of data. Despite evidence presented in the NPRM that the current 10% sampling system produces a biased sample of inconsistent size and inadequate scope, and the Department's calculation indicating that to ensure reasonable accuracy the target sample size should be a minimum of 24.34% of the total enplaned passengers, several airlines commented that a 20% sample with no change in collection methodology would be easier to implement and therefore preferable to the Department's proposal.

Although many stakeholders provided comments on the manner in which data could be collected, it is the airlines who must supply the data and are, therefore, in the best position to effectively comment on the difficulty of producing the data. Some airlines questioned certain aspects of the rulemaking's data collection proposal, characterizing the changes as potentially expensive and cumbersome. No airline, however, suggested an alternative, statistically defensible proposal for collection of data that would be less expensive and less cumbersome while simultaneously producing the desired improvements in the utility of the data.

Reason for Withdrawal

The stated purposes of this rulemaking were to (1) Reduce the long-term reporting burden on the Participating Carriers, (2) make the O&D Survey more relevant and useful, (3) reduce the time it takes to disseminate the information and (4) achieve 95% statistical correlation between the O&D Survey and the T–100/T–100(f).

In light of the responses to the NPRM, we have determined that it will be in the public interest to significantly modify our proposal to modernize aviation data products. We have also determined that an additional request for public comment based on the current proposal would not provide us with the information we need in order to accomplish our purpose.

We have engaged a contractor with expertise in the industry to identify necessary and useful system features, and to address how data collection can be aligned with modern airline information technology so as to minimize the data-reporting burden on air carriers. Further, the contractor will assist the Department in assessing alternatives to the Department's proposal as stated in the NPRM that will help all stakeholders realize a better value for the investment in the data modernization effort.

Although this rulemaking is being withdrawn, the Department anticipates the issuance at a later date of a new NPRM and will continue to involve the public in its effort to increase efficiency, effectiveness, integrity, quality, and utility of the aviation traffic information available, in a way that is also sensitive to the information collection costs that would be imposed on the carriers.

Issued in Washington, DC on May 25, 2011.

Susan L. Kurland,

Assistant Secretary.

[FR Doc. 2011–13554 Filed 5–31–11; 8:45 am]

BILLING CODE 4910–9X–P

FEDERAL TRADE COMMISSION

16 CFR Part 309

Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission seeks public comment on its Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles (''Alternative Fuels Rule'' or ''Rule''). As part of its systematic review of all FTC rules and guides, the Commission requests public comment on the overall costs, benefits, necessity, and regulatory and economic impact of the Alternative Fuels Rule. The Commission also seeks comment on whether to merge its alternative fueled vehicle (AFV) labels with fuel economy labels proposed by the Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA); add new definitions for AFVs contained in recent legislation; and change labeling requirements for used AFVs.

DATES: Written comments must be received on or before July 25, 2011.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Regulatory Review for Alternative Fuels Rule, (16 CFR part 309, Matter No. R311002, Program Code M04)'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/altfuelsreviewanpr,* by following the instructions on the Web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex N), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2889.

SUPPLEMENTARY INFORMATION:

I. Background

The Energy Policy Act of 1992 (EPAct 92 or Act) [1] established federal programs that encourage the development of alternative fuels and alternative fueled vehicles (AFVs). Section 406(a) of the Act directed the Commission to establish uniform labeling requirements for alternative fuels and AFVs. Under the Act, such labels should provide "appropriate information with respect to costs and benefits [of alternative fuels and AFVs], so as to reasonably enable the consumer to make choices and comparisons." [2] In addition, the required labels must be "simple and, where appropriate, consolidated with other labels providing information to the consumer." [3]

In response to EPAct 92, the Commission published the Alternative Fuels Rule in 1995, addressing both alternative fuels and AFVs.[4] The Rule requires labels on fuel dispensers for *non-liquid* alternative fuels, such as electricity, compressed natural gas, and hydrogen.[5] The labels for electricity provide the dispensing system's kilowatt capacity, voltage, and other related information. The labels for other non-liquid fuels disclose the fuel's commonly used name and principal component (expressed as a percentage).[6] Examples of the fuel labels appear below.

[1] Public Law 102–486, 106 Stat. 2776 (1992).

[2] 42 U.S.C. 13232(a).

[3] *Id.* The provision also states that the Commission ''shall give consideration to the problems associated with developing and publishing useful and timely cost and benefit information, taking into account lead time, costs, the frequency of changes in costs and benefits that may occur, and other relevant factors.''

[4] 60 FR 26926 (May 19, 1995).

[5] The Commission's Fuel Labeling Rule, 16 CFR Part 306, addresses labeling for liquid alternative fuels, such as ethanol and liquefied natural gas.

[6] The Rule requires fuel importers, producers, or distributors to have a reasonable basis for the information disclosed on the label, maintain records, and provide certifications when transferring fuel. 16 CFR 309.11–14.

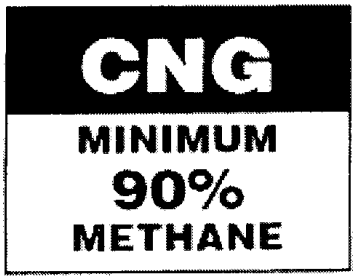


Figure 1

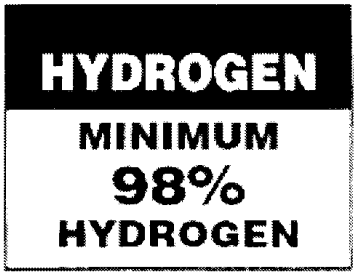


Figure 2

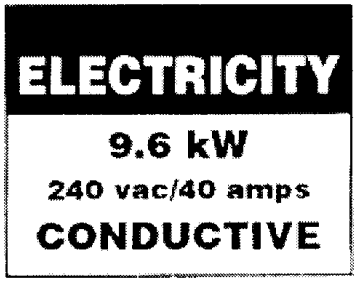


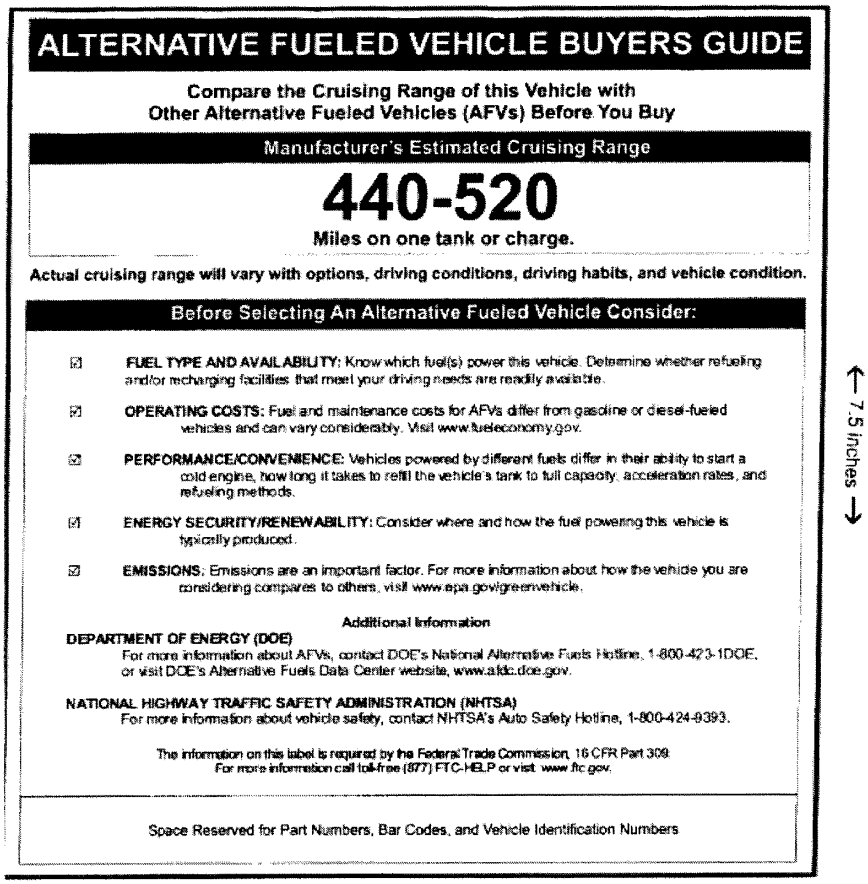
Figure 3

Sample FTC Non-Liquid Alternative Fuel Labels - 16 CFR Part 309, Appendix A

The Rule also requires labels on new and used AFVs that run on liquid and non-liquid fuels, such as ethanol and other alcohols including E85 ethanol-gasoline mixtures, natural gas, liquefied petroleum gas, hydrogen, coal-derived liquid fuels, fuels derived from biological materials (*e.g.,* 100% biodiesel), and electricity. The labels for new AFVs disclose the vehicle's estimated cruising range (*i.e.,* the travel distance on a single charge or tank of fuel), general factors consumers should consider before buying an AFV, and toll free telephone numbers and Web sites for additional information from the Department of Energy (DOE) and NHTSA.[7] An example of the label for new AFVs appears below. Labels for used AFVs contain only the general buying factors and DOE/NHTSA contact information.[8]

[7] The Rule requires manufacturers to have a reasonable basis for the vehicle cruising range, and, for certain AFVs, specifies the test method for calculating that range. 16 CFR 309.22.

[8] The general factors listed on the current label are information concerning fuel type, operating costs, fuel availability, performance, convenience, energy security, energy renewability, and emissions. See 16 CFR Part 309, Appendix A.



ALTERNATIVE FUELED VEHICLE BUYERS GUIDE

Compare the Cruising Range of this Vehicle with Other Alternative Fueled Vehicles (AFVs) Before You Buy

Manufacturer's Estimated Cruising Range

440-520

Miles on one tank or charge.

Actual cruising range will vary with options, driving conditions, driving habits, and vehicle condition.

Before Selecting An Alternative Fueled Vehicle Consider:

☑ FUEL TYPE AND AVAILABILITY: Know which fuel(s) power this vehicle. Determine whether refueling and/or recharging facilities that meet your driving needs are readily available.

☑ OPERATING COSTS: Fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably. Visit www.fueleconomy.gov.

☑ PERFORMANCE/CONVENIENCE: Vehicles powered by different fuels differ in their ability to start a cold engine, how long it takes to refill the vehicle's tank to full capacity, acceleration rates, and refueling methods.

☑ ENERGY SECURITY/RENEWABILITY: Consider where and how the fuel powering this vehicle is typically produced.

☑ EMISSIONS: Emissions are an important factor. For more information about how the vehicle you are considering compares to others, visit www.epa.gov/greenvehicle.

Additional Information

DEPARTMENT OF ENERGY (DOE)
For more information about AFVs, contact DOE's National Alternative Fuels Hotline, 1-800-423-1DOE, or visit DOE's Alternative Fuels Data Center website, www.afdc.doe.gov.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)
For more information about vehicle safety, contact NHTSA's Auto Safety Hotline, 1-800-424-9393.

The information on this label is required by the Federal Trade Commission, 16 CFR Part 309.
For more information call toll-free (877) FTC-HELP or visit www.ftc.gov.

Space Reserved for Part Numbers, Bar Codes, and Vehicle Identification Numbers

← 7.5 inches →

← 7 inches →

Figure 4

Sample FTC New AFV Label - 16 CFR Part 309, Appendix A

II. Regulatory Review

The Commission is accelerating its regularly scheduled review of the Alternative Fuels Rule, previously set for 2014, to ensure that FTC-required vehicle labels and EPA fuel economy labeling requirements are consistent. Regulatory reviews seek information about the costs and benefits of rules and guides as well as their regulatory and economic impact. The information obtained assists in identifying rules and guides that warrant modification or rescission. As part of this review, the Commission seeks comment on the current Alternative Fuels Rule. Among other things, commenters should address the economic impact of, and the continuing need for the Rule; the Rule's benefits to alternative fuel and AFV purchasers; and burdens the Rule places on firms subject to its requirements. In addition, the Commission seeks comment on three specific issues related to the Rule (Section III below) and response to general questions about the Rule (Section IV below).

III. Specific Issues For Comment

In conducting this regulatory review, the Commission seeks comment on the following three specific issues: (1) Whether to consolidate its AFV labels with EPA/NHTSA fuel economy labels; (2) how to address new definitions for AFVs that are contained in recent legislation; and (3) whether to change labeling requirements for used AFVs.

A. EPA and NHTSA Fuel Economy Labels

The Commission requests comment on whether it should consolidate its AFV labels with fuel economy labels recently proposed by EPA and NHTSA to ensure consistency between the two.[9] The proposed new fuel economy labels apply to both conventional and alternative fuel vehicles, including most AFVs subject to the FTC's labeling requirements.[10] The content of the proposed labels differs slightly depending on the type of AFV, as described below.

For various types of electric vehicles (including those operating solely on batteries and those operating on a combination of battery and conventional engine power) as well as compressed natural gas powered vehicles, EPA's proposed labels disclose the vehicle's fuel economy, CO2 and other emissions, cruising range, and estimated annual fuel cost.[11] The proposed labels also reference *http://www.fueleconomy.gov*, which provides comprehensive consumer information about fuel economy and alternative fuels.

For ethanol-fueled vehicles, including flexible fuel vehicles (FFVs) that operate on a combination of gasoline and ethanol, the EPA proposed three label

[9] *See* 75 FR 58078 (Sept. 23, 2010).

[10] Although EPA regulations (40 CFR Part 600) require labeling for all vehicles covered under the Alternative Fuels Rule, EPA did not propose a specific label for several vehicle types not generally available to individual consumers including those fueled by liquefied petroleum gas, hydrogen, coal-derived liquid fuels, or fuels (other than alcohol) derived from biological materials. See *http://www.fueleconomy.gov* (availability of vehicle types).

[11] EPA has requested comment on three different formats which vary in their presentation of information.

options: (1) Disclosing the fuel economy obtained using gasoline and a statement that alternative fuel use will yield different results;[12] (2) disclosing fuel economy for both gasoline and alternative fuel use (*e.g.*, E85); and (3) disclosing fuel economy for gasoline as well as miles per gallon equivalent information for the alternative fuel.[13]

In light of these proposals, the Commission seeks comment on whether it is appropriate to consolidate its label with EPA's by allowing use of the EPA label in lieu of FTC's. Although there are some differences between the labels (*e.g.*, the EPA label for ethanol FFVs would not disclose cruising range), all of the EPA's proposed labels provide vehicle-specific fuel economy information. The EPA's proposed labels also would not include the general buying tips that appear on the FTC's label, but would refer consumers to a website to obtain more information about fuel economy and alternative fuels. The Commission, therefore, requests comment on whether the EPA label accomplishes the EPAct 92's goal of providing appropriate information regarding the costs and benefits of AFVs and reasonably enabling consumers to make choices and comparisons. Consolidating the FTC and EPA labels would benefit consumers and industry by eliminating potential confusion caused by duplicative and possibly inconsistent labels,[14] and reducing the burden on manufacturers to create and post two labels.

B. Definition of Alternative Fueled Vehicles

The National Defense Authorization Act for Fiscal Year 2008 extended coverage of the EPAct 92 to hydrogen fuel cell motor vehicles (as defined in 26 U.S.C. 30B (b)(3)), advanced lean burn technology motor vehicles (as defined in 26 U.S.C. 30B(c)(3)), and hybrid motor vehicles (as defined in 26 U.S.C. 30B(d)(3)). Specifically, it added these three types of vehicles to the statutory definition of "alternative fuel vehicle."[15] Therefore, the Commission is now considering how the Rule should address these vehicles. Because the Alternative Fuels Rule already covers hydrogen fuel cell vehicles, additional labeling requirements for them appear unnecessary. Similarly, lean burn and hybrid vehicles already bear the EPA fuel economy label because they qualify as conventional vehicles under that program. Thus, it appears unlikely that new FTC labels for those models would provide significant benefit. Accordingly, the Commission seeks comment on whether to issue new labels for lean burn and hybrid vehicles or, instead, to allow the EPA label on these vehicles in lieu of a new FTC label.

C. Used AFV Labels

The Commission seeks comment on whether to change the Rule's labeling requirements for used AFVs.[16] Currently, used AFVs must bear labels with general tips and references to telephone numbers and websites that provide additional information. However, these labels do not contain any vehicle-specific information, such as cruising range. Because these used vehicle labels provide limited information and are likely to impose increasing burdens on used car dealers as the AFV market expands, the Commission seeks comment on whether to retain the requirement and, if so, whether to change the label's current content. Commenters should address whether the used vehicle labels provide "appropriate information"; whether the benefits to consumers justify the burdens imposed on used vehicle dealers; and whether other resources, such as *http://www.fueleconomy.gov*, provide used vehicle shoppers with adequate information. Comments should also address whether vehicle specific information (*e.g.*, cruising range) is appropriate for used AFV labels. For example, will an electric vehicle's original cruising range estimate, as determined by the manufacturer, remain valid when the vehicle is later sold in the used market?

IV. General Questions for Comment

In addition to the specific issues discussed in Section II, the Commission solicits comment on the following questions related to the Rule:

(1) Is there a continuing need for the Rule as currently promulgated? Why or why not?

(2) What benefits has the Rule provided to consumers? What evidence supports the asserted benefits?

(3) What modifications, if any, should the Commission make to the Rule to increase its benefits to consumers?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?

(4) What impact, if any, has the Rule had on the flow of appropriate information to consumers about alternative fuels and AFVs?

(5) What significant costs has the Rule imposed on consumers? What evidence supports the asserted costs?

(6) What modifications, if any, should be made to the Rule to reduce the costs imposed on consumers?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?

(7) Please provide any evidence that has become available since 2005 concerning consumer perception of AFV and non-liquid alternative fuel labeling. Does this new information indicate that the Rule should be modified? If so, why, and how? If not, why not?

(8) Please provide any evidence that has become available since 2005 concerning consumer interest in alternative fuel and AFV labeling. Does this new information indicate that the Rule should be modified? If so, why, and how? If not, why not?

(9) What benefits, if any, has the Rule provided to businesses, and in particular to small businesses? What evidence supports the asserted benefits?

[12] According to the EPA, 99% of FFV owners run their vehicles only on gasoline and never use alternative fuel. 75 FR at 58112.

[13] According to EPA, miles per gallon of gasoline-equivalent information provides a way to communicate the fact that E85 provides greater miles per unit of energy than gasoline even though E85 provides lower miles per gallon. 75 FR at 58112. Although this information may help some consumers, the Commission is concerned it may mislead many others by implying that E85 will provide better fuel economy (*i.e.*, miles per gallon) than gasoline.

[14] For example, proposed consolidation would eliminate current inconsistencies between cruising range values on FTC and EPA electric vehicle labels. To address new electric vehicles introduced before the completion of this rulemaking, the Commission has issued a policy stating that it will not enforce current FTC labeling requirements for any electric vehicle bearing an EPA-mandated fuel economy label and will encourage vehicle manufacturers to use the EPA label in lieu of the FTC label. *See http://www.ftc.gov/opa/2011/05/afr.shtm.*

[15] 42 U.S.C. 13211(3)(B). According to the legislative history, the purpose of these amendments is to "allow additional types of vehicles to be used to meet minimum" requirements for vehicle and fuel use by Federal agencies (i.e., "Federal fleet requirements"). Congressional Record 153:147 (Oct. 1, 2007) p. S12355.

[16] 16 CFR 309.21. The Act contains no specific requirement for used AFV labels nor does it specifically exclude used vehicles from its coverage. *See* 42 U.S.C. 13211 and 13232(a). In promulgating the original Rule in 1994, the Commission determined that used AFV labeling was "appropriate" because "consumers would likely have the same need for information, and would consider the same factors, whether they were contemplating a new or used AFV acquisition." 60 FR at 26941.

(10) What modifications, if any, should be made to the Rule to increase its benefits to businesses, and particularly to small businesses?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses?

(11) What significant costs, including costs of compliance, has the Rule imposed on businesses, particularly small businesses? What evidence supports the asserted costs?

(12) What modifications, if any, should be made to the Rule to reduce the costs imposed on businesses, particularly on small businesses?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses?

(13) What evidence is available concerning the degree of industry compliance with the Rule? Does this evidence indicate that the Rule should be modified? If so, why, and how? If not, why not?

(14) Are any of the Rule's requirements no longer needed? If so, explain. Please provide supporting evidence.

(15) What modifications, if any, should be made to the Rule to account for changes in relevant technology, including development of new alternative fuels, or economic conditions?

(a) What evidence supports the proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

(16) Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how?

(a) What evidence supports the asserted conflicts?

(b) With reference to the asserted conflicts, should the Rule be modified? If so, why, and how? If not, why not?

(c) Is there evidence concerning whether the Rule has assisted in promoting national uniformity with respect to the rating, certifying, and posting the rating of non-liquid alternative fuels and AFV labeling? If so, please provide that evidence.

(17) Are there foreign or international laws, regulations, or standards with respect to the rating, certifying, and posting the rating of non-liquid alternative fuels and AFV labeling that the Commission should consider as it reviews the Rule? If so, what are they?

(a) Should the Rule be modified to harmonize with these foreign or international laws, regulations, or standards? If so, why, and how? If not, why not?

(b) How would such harmonization affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

V. Instructions for Comment Submissions

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 25, 2011. Write "Regulatory Review for Alternative Fuels Rule, (16 CFR part 309, Matter No. R311002, Program Code M04)" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone'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. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do 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 FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[17] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/altfuelsreviewanpr,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that website.

If you file your comment on paper, write "Regulatory Review for Alternative Fuels Rule, (16 CFR part 309, Matter No. R311002, Program Code M04)" on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex N), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that 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 on or before July 25, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–13520 Filed 5–31–11; 8:45 am]

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[17] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 22 and 190

Public Roundtable on the Protection of Cleared Swaps Customer Collateral

AGENCY: Commodity Futures Trading Commission ("CFTC").

ACTION: Notice of roundtable discussion; request for comment.

SUMMARY: On June 3, 2011, commencing at 9:30 a.m. and ending at 5 p.m., staff of the CFTC will hold a public roundtable discussion at which invited participants will discuss certain issues related to the protection of cleared swaps customer collateral described in the CFTC's notice of proposed rulemaking regarding the Protection of Cleared Swaps Customer Contracts and Collateral and Conforming Amendments to the Commodity Broker Bankruptcy Provisions (the "NPRM"), a copy of which may be found on the CFTC's Web site at *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister042711b.pdf*. This is a preliminary version of the proposed rule; the version that will publish in the **Federal Register** may not be identical to this preliminary version.

The roundtable will include discussions of the issues surrounding the implementation of the complete legal segregation model proposed in the NPRM, the optional approach highlighted in the NPRM, with specific emphasis regarding the bankruptcy issues surrounding such approach, and the advantages and disadvantages of the models proposed in the NPRM.

DATES: The roundtable discussion will be held on June 3, 2011.

ADDRESSES: The roundtable discussion will be open to the public with seating on a first-come, first-served basis, and will take place in the Conference Center at the CFTC's headquarters at Three Lafayette Centre, 1155 21st Street, NW., Washington, DC. Members of the public may also listen by telephone. Call-in participants should be prepared to provide their first name, last name, and affiliation. The information for the conference call is set forth below.

- *US Toll-Free:* 866–844–9416
- *International Toll:* 203–369–5026
- *Passcode:* 6066025

A transcript of the public roundtable discussion will be published on the CFTC's website at *http://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF_6_SegBankruptcy/index.htm.*

FOR FURTHER INFORMATION CONTACT: The CFTC's Office of Public Affairs at (202) 418–5080.

SUPPLEMENTARY INFORMATION: The roundtable discussion will take place on Friday, June 3, 2011, commencing at 9:30 a.m. and ending at 5 p.m. Members of the public who wish to comment on the topics addressed at the discussion, or on any other topics related to customer collateral protection in the context of the Act, may do so via:

- Paper submission to David Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581; or
- Electronic submission by visiting *http://comments.cftc.gov* and following the instructions for submitting comments through the CFTC's Web site.

All comments must be in English or be accompanied by an English translation. All submissions provided to the CFTC in any electronic form or on paper may be published on the website of the CFTC, without review and without removal of personally identifying information. Please submit only information that you wish to make publicly available.

By the Commodity Futures Trading Commission.

Dated: May 25, 2011.

David A. Stawick,

Secretary.

[FR Doc. 2011–13585 Filed 5–31–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 239

[Release No. 33–9211; File No. S7–21–11]

RIN 3235–AK97

Disqualification of Felons and Other "Bad Actors" From Rule 506 Offerings

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing amendments to our rules to implement Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 926 requires us to adopt rules that disqualify securities offerings involving certain "felons and other 'bad actors'" from reliance on the safe harbor from Securities Act registration provided by Rule 506 of Regulation D. The rules must be "substantially similar" to Rule 262, the disqualification provisions of Regulation A under the Securities Act, and must also cover matters enumerated in Section 926 (including certain state regulatory orders and bars).

DATES: Comments should be received on or before July 14, 2011.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–21–11 on the subject line; or
- Use the Federal Rulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–21–11. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments also are available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Room 1580, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Johanna Vega Losert, Special Counsel; Karen C. Wiedemann, Attorney-Fellow; or Gerald J. Laporte, Office Chief, Office of Small Business Policy, at (202) 551–3460, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We propose to amend Rules 501[1] and 506[2] of Regulation D[3] and Form D[4] under the Securities Act of 1933 ("Securities Act").[5]

[1] 17 CFR 230.501.

[2] 17 CFR 230.506.

[3] 17 CFR 230.501 through 230.508.

[4] 17 CFR 239.500.

[5] 15 U.S.C. 77a *et seq.*

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I. Background and Summary

Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"),[6] entitled "Disqualifying felons and other 'bad actors' from Regulation D offerings," requires the Commission to adopt rules to disqualify certain securities offerings from reliance on the safe harbor provided by Rule 506 for exemption from registration under Section 4(2) of the Securities Act of 1933. This release proposes amendments to Rules 501 and 506 and Form D to implement Section 926 of the Dodd-Frank Act.

Rule 506 is one of three exemptive rules for limited and private offerings under Regulation D.[7] It is by far the most widely used Regulation D exemption, accounting for an estimated 90–95% of all Regulation D offerings [8] and the overwhelming majority of capital raised in transactions under Regulation D. Rule 506 permits sales of an unlimited dollar amount of securities to be made, without registration, to an unlimited number of accredited investors [9] and up to 35 non-accredited investors, so long as there is no general solicitation, appropriate resale limitations are imposed, any applicable information requirements are satisfied and the other conditions of the rule are met.[10]

"Bad actor" disqualification requirements, sometimes called "bad boy" provisions, prohibit issuers and others (such as underwriters, placement agents and the directors, officers and significant shareholders of the issuer) from participating in exempt securities offerings if they have been convicted of, or are subject to court or administrative sanctions for, securities fraud or other violations of specified laws. Rule 506 in its current form does not impose any bad actor disqualification requirements.[11] In addition, because securities sold under Rule 506 are "covered securities" under Section 18(b)(4)(D) of the Securities Act, state-level bad actor disqualification rules do not apply.[12]

In 2007, we proposed a number of amendments to Regulation D, including bad actor disqualification rules that would have applied to all Regulation D offerings (the "2007 Proposal").[13] Although we did not take final action on the 2007 Proposal, we have considered the issues raised and the comments received in respect of the 2007 Proposal in developing the rules we propose today.[14] We have also considered advance comments in letters we have received to date on this rulemaking project.[15]

Section 926 of the Dodd-Frank Act instructs the Commission to issue disqualification rules for Rule 506 offerings that are "substantially similar" to Rule 262,[16] the bad actor disqualification provisions of Regulation A,[17] and that are also triggered by an expanded list of disqualifying events, including certain actions by state regulators, enumerated in Section 926. The disqualifying events currently covered by Rule 262 include:

- Felony and misdemeanor convictions in connection with the purchase or sale of a security or involving the making of a false filing with the Commission (the same criminal conviction standard as in Section 926 of the Dodd-Frank Act) within the last five years in the case of issuers and ten years in the case of other covered persons;

[6] Public Law 111–203, § 926, 124 Stat. 1376, 1851 (July 21, 2010) (to be codified at 15 U.S.C. 77d note).

[7] The others are Rule 504 and Rule 505, 17 CFR 230.504 and 230.505, which are discussed in notes 100 and 98 below.

[8] For the twelve months ended September 30, 2010, the Commission received 17,292 initial filings for offerings under Regulation D, of which 16,027 (approximately 93%) claimed a Rule 506 exemption.

[9] Rule 501 of Regulation D lists eight categories of "accredited investor," including entities and natural persons that meet specified income or asset thresholds. *See* 17 CFR 230.501. In a separate rulemaking required by Section 413(a) of the Dodd-Frank Act, the Commission has proposed amendments to the accredited investor standards in our rules under the Securities Act of 1933 to exclude the value of a person's primary residence for purposes of the $1 million accredited investor net worth determination. See Release No. 33–9177 (Jan. 25, 2011) [76 FR 5307] (available at *http://www.sec.gov/rules/proposed/2011/33–9177.pdf.*)

[10] Offerings under Rule 506 are subject to all the terms and conditions of Rules 501 and 502, including limitations on the manner of offering (no general solicitation), limitations on resale and, if securities are sold to any non-accredited investors, specified information requirements. Where securities are sold only to accredited investors, the information requirements do not apply. *See* 17 CFR 230.502 and 230.506. In addition, any non-accredited investors must satisfy the investor sophistication requirements of Rule 506(b)(2)(ii). Offerings under Rule 506 must also comply with the notice of sale requirements of Rule 503. *See* 17 CFR 230.503.

[11] Rule 507 of Regulation D imposes a different kind of disqualification specific to Regulation D offerings. Under Rule 507, any person that is subject to a court order, judgment or decree enjoining such person for failure to file the notice of sale on Form D required under Rule 503 is disqualified from relying on Regulation D. 17 CFR 230.507(a). We are not proposing to amend Rule 507 at this time.

[12] *See* 15 U.S.C. 77r(b)(4)(D). This provision of Section 18 was added by Section 102(a) of the National Securities Markets Improvement Act of 1996, Public Law 104–290,110 Stat. 3416 (Oct. 11, 1996) ("NSMIA"). NSMIA preempts state registration and review requirements for transactions involving "covered securities," including securities offered or sold on a basis exempt from registration under Commission rules or regulations issued under Securities Act Section 4(2). Rule 506 is a safe harbor under Section 4(2).

[13] *See* Release No. 33–8828 (Aug. 3, 2007) [72 FR 45116] (available at *http://www.sec.gov/rules/proposed/2007/33-8828.pdf.*)

[14] Comment letters received on the 2007 Proposal are available at *http://www.sec.gov/comments/s7-18-07/s71807.shtml.*

[15] To facilitate public input on its Dodd-Frank Act rulemaking before issuance of actual rule proposals, the Commission has provided a series of e-mail links, organized by topic, on its Web site at *http://www.sec.gov/spotlight/regreformcomments.shtml.* In this release, we refer to comment letters we received on this rulemaking project in response to this invitation as "advance comment letters." The advance comment letters we received in anticipation of this rule proposal appear under the heading "Adding Disqualification Requirements to Regulation D Offerings," Title IX Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

[16] 17 CFR 230.262.

[17] 17 CFR 230.251 through 230.263. Regulation A is a limited offering exemption that permits public offerings of securities not exceeding $5 million in any 12-month period by companies that are not required to file periodic reports with the Commission. Regulation A offerings are required to have an offering circular containing specific mandatory information, which is filed with the Commission and subject to review by the staff of the Division of Corporation Finance.

- Injunctions and court orders within the last five years against engaging in or continuing conduct or practices in connection with the purchase or sale of securities, or involving the making of any false filing with the Commission;
- U.S. Postal Service false representation orders within the last five years;
- Filing, or being or being named as an underwriter in, a registration statement or Regulation A offering statement that is the subject of a proceeding to determine whether a stop order should be issued, or as to which a stop order was issued within the last five years; and
- For covered persons other than the issuer:
  - Being subject to a Commission order:
- Revoking or suspending their registration as a broker, dealer, municipal securities dealer, or investment adviser;
- Placing limitations on their activities as such;
- Barring them from association with any entity; or
- Barring them from participating in an offering of penny stock; or
  - Being suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or national securities association for conduct inconsistent with just and equitable principles of trade.

The disqualifying events specifically required by Section 926 are:

- Final orders issued by state securities, banking, credit union, and insurance regulators, Federal banking regulators, and the National Credit Union Administration that either
  - Bar a person from association with an entity regulated by the regulator issuing the order, or from engaging in the business of securities, insurance or banking, or from savings association or credit union activities; or
  - Are based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within a ten-year period; and
- Felony and misdemeanor convictions in connection with the purchase or sale of a security or involving the making of a false filing with the Commission.

We are proposing revisions to Rule 506 of Regulation D to implement these requirements. The substance of our proposal is derived from Section 926 of the Dodd-Frank Act and Rule 262. However, the proposed rule has been formatted in a way that is designed to make it easier to understand and apply than current Rule 262. Rule 262 currently provides three different categories of offering participants and related persons, with different disqualification triggers for each category. The amendments we propose would incorporate the substance of Rule 262, but simplify the framework to include one list of potentially disqualified persons and one list of disqualifying events. We propose to codify this in a new paragraph (c) of Rule 506.

To clarify the issuer's obligations under the new rules, we are also proposing a "reasonable care" exception, under which an issuer would not lose the benefit of the Rule 506 safe harbor, despite the existence of a disqualifying event, if it can show that it did not know and, in the exercise of reasonable care, could not have known of the disqualification. To establish reasonable care, the issuer would be expected to conduct a factual inquiry, the nature and extent of which would depend on the facts and circumstances of the situation.

In Part III of this Release, we discuss other possible amendments to our rules to make bad actor disqualification more uniform across other exemptive rules. We are soliciting public comment on these possible amendments, which would go beyond the specific mandates of Section 926. The possible amendments we are considering and on which we are soliciting comment include:

- Applying the new bad actor disqualification provisions proposed for Rule 506 offerings uniformly to offerings under Regulation A, Rule 505 of Regulation D and Regulation E (all of which are currently subject to bad actor disqualification under existing Rule 262 or under similar provisions based on that rule) and offerings under Rule 504 of Regulation D (which currently are not subject to Federal disqualification provisions); and

- For all disqualifying events that are subject to an express look-back period under current law (*e.g.,* criminal convictions within the last five or ten years, court orders within the last five years), providing a uniform ten-year look back period, to align with the ten-year look-back period required under the Dodd-Frank Act for specified regulatory orders and bars.

Part V of this Release is a chart that compares the provisions of Rule 262, Section 926 of the Dodd-Frank Act and proposed Rule 506(c).

II. Discussion of the Proposed Amendments

A. Introduction

Section 926(1) of the Dodd-Frank Act requires the Commission to adopt disqualification rules that are substantially similar to Rule 262, the bad actor disqualification provisions applicable to offerings under Regulation A, and that also cover the triggering events specified in Section 926. Accordingly, the rules we are proposing reflect the persons covered by and triggering events specified in those two sources.

B. Covered Persons

We propose that the disqualification provisions of Rule 506(c) would cover the following, which we sometimes refer to in this release as "covered persons":

- The issuer and any predecessor of the issuer or affiliated issuer;
- Any director, officer, general partner or managing member of the issuer;
- Any beneficial owner of 10% or more of any class of the issuer's equity securities;
- Any promoter connected with the issuer in any capacity at the time of the sale;
- Any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with sales of securities in the offering; and
- Any director, officer, general partner, or managing member of any such compensated solicitor.[18]

This generally corresponds to the persons covered by Rule 262, with the changes discussed below.

To clarify the treatment of entities organized as limited liability companies, we propose to cover managing members expressly, just as general partners of partnerships are covered.

To address the types of financial intermediaries likely to be involved in private placements under Rule 506, we are proposing to look to the current standards under Rule 505 of Regulation D rather than to Rule 262 directly. The disqualification provisions of Rule 505 are substantially identical to Rule 262 (and in effect incorporate it by reference), but adapt it to the private placement context. In particular, because Rule 505 transactions do not involve traditional underwritten public offerings but may involve the use of compensated placement agents and finders, Rule 505 substitutes "any

[18] *See* Proposed Rule 506(c)(1).

person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers" for the "underwriters" that are covered by Rule 262.[19] Since Rule 506 transactions, like transactions under Rule 505, would not involve traditional underwritten public offerings but may involve the use of compensated placement agents and finders, we propose to include the current Rule 505 standard described above in the proposed new rule.[20]

We also propose to incorporate and clarify the applicability of the second sentence of current Rule 262(a)(5), under which events relating to certain affiliated issuers are not disqualifying if they pre-date the affiliate relationship.[21] Under the existing rule, orders, judgments and decrees entered against affiliated issuers before the affiliation arose do not disqualify an offering if the affiliated issuer is not (i) in control of the issuer or (ii) under common control, together with the issuer, by a third party that controlled the affiliated issuer at the time such order, judgment or decree was entered. The proposed rule would clarify that this exclusion applies to all potentially disqualifying events that pre-date the affiliation.[22] We believe this is appropriate because the current placement of this language within paragraph (5) of Rule 262 may incorrectly suggest that it applies only to Postal Service false representation orders.

Given the legislative mandate to develop rules "substantially similar" to current Rule 262, however, we are not proposing to make other changes in the classes of persons that would be covered by the new disqualification rules. For example, we are proposing that beneficial owners of 10% of any class of an issuer's equity securities would be covered,[23] as they are under current Rule 262, rather than 20% holders, as in the 2007 Proposal.[24] For the same reason, we are proposing that all the officers of issuers and compensated solicitors of investors be covered, as provided in current rules, rather than only executive officers, as provided in the 2007 Proposal.[25]

With the extension of bad actor disqualifications to Rule 506 offerings, we are, however, concerned that continued use of the term "officer" may present significant challenges, particularly as applied to financial intermediaries. The term "officer" is defined under Securities Act Rule 405 to include "a president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any person routinely performing corresponding functions with respect to any organization."[26] Financial institutions that are acting as placement agents may have large numbers of employees that would come within this definition, many of whom would not have any involvement with any particular offering, but all of whom would be covered persons for purposes of disqualification. Issuers could potentially devote substantial amounts of time and incur significant costs in making factual inquiries.[27] Accordingly, we are requesting comment on whether disqualification should be reserved for executive officers[28]—those performing policy-making functions for a covered person—whether disqualification should apply only to officers actually involved with the offering or limited in some other way, or whether using the same broad category employed in the existing rules would be justified because it would provide a greater degree of investor protection.

We are also not proposing to cover the investment advisers of issuers, or the directors, officers, general partners, or managing members of such investment advisers. These persons are not currently covered under Rule 262 of Regulation A. However, a significant percentage of issuers in Rule 506 offerings are funds,[29] and in many fund structures, the investment adviser and the individuals that control it are the real decision-makers for the fund. For that reason, it may be appropriate for investment advisers and their directors, officers, general partners and managing members to be covered by the bad actor disqualification provisions of Rule 506, at least for issuers that identify themselves as "pooled investment funds" in Item 4 of Form D, or that are registered as investment companies under the Investment Company Act of 1940,[30] are "private funds" as defined in Section 202(a)(29) of the Investment Advisers Act of 1940[31] or that elect to be regulated as "business development companies" (or "BDCs"),[32] and perhaps for other types of issuers.

Request for Comment

(1) Is it appropriate to apply the provisions of Section 926 of the Dodd-Frank Act to all of the persons covered under existing Rule 262, as proposed? Should other categories of persons be included?

(2) Should we exclude any of the proposed covered persons for purposes of disqualification? If so, please explain why such persons should not subject an offering to disqualification, providing as much factual support for your views as possible.

(3) Is it appropriate to include the managing members of limited liability companies for purposes of disqualification in Rule 506(c), as proposed?

(4) Is the proposed coverage of 10% shareholders (which mirrors current rules) appropriate? Or should our disqualification provisions cover only persons that actually control the issuer (or that hold a larger percentage of its equity)? Should we increase the

[19] This is achieved by applying the Rule 262 disqualification standards but redefining the term "underwriter," for purposes of Rule 505, to mean "any person that has been or will be paid (directly or indirectly) remuneration for the solicitation of purchasers." Rule 505(b)(iii)(B), 17 CFR 230.505(b)(iii)(B). *See* Proposed Rule 506(c)(1).

[20] The current disqualification provisions of Rule 505 apply to any "partner, director or officer" of a compensated solicitor. We propose to incorporate the references to directors and officers, add a reference to managing members and modify the reference to include only general partners. When the current rules were adopted, financial intermediaries were often structured as general partnerships and the possibility of their having limited partners may not have been considered. We see no policy basis for imposing disqualification on a partnership based on violations of law by its limited partners, and accordingly propose to clarify that only general partners would be covered.

[21] The sentence provides: "The entry of an order, judgment or decree against any affiliated entity before the affiliation with the issuer arose, if the affiliated entity is not in control of the issuer and if the affiliated entity and the issuer are not under common control of a third party who was in control of the affiliated entity at the time of such entry does not come within the purview of this paragraph (a) of this section." 17 CFR 230.262(a)(5).

[22] *See* Proposed Rule 506(c)(3).

[23] *See* Proposed Rule 506(c)(1) *and* 17 CFR 230.262(b).

[24] *See* 2007 Proposal.

[25] *See* 2007 Proposal, Proposed Rule 506(c)(1).

[26] 17 CFR 230.405.

[27] While some types of disqualifying events are readily ascertainable from public records, others are not. *See* note 81 and accompanying text.

[28] The term "executive officer" is defined in Rule 501(f) of Regulation D (and in Rule 405) to mean a company's "president, any vice president * * * in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function or any other person who performs similar policy making functions." 17 CFR 230.501(f), 230.405.

[29] For the twelve months ended September 30, 2010, approximately 24% of issuers in transactions claiming a Rule 506 exemption described themselves as "pooled investment funds."

[30] 15 U.S.C. 80a–1 through 80a–52.

[31] A "private fund" is defined as "an issuer that would be an investment company, as defined in Section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), but for section 3(c)(1) or 3(c)(7) of that Act."

[32] A BDC is a closed-end investment company that has elected to be subject to Sections 55 through 65 of the Investment Company Act and that is operated for the purpose of investing in and making significant managerial assistance available to certain types of companies. *See* Investment Company Act § 2(a)(48), 15 U.S.C. 80a–2(48) *and* note 99.

threshold share ownership for covered persons to 20%, or to some other threshold of ownership (*e.g.,* 25% or a majority)? If we adopted a requirement based on actual control, would issuers be able to easily determine which shareholders were within the scope of the rule? [33] Should the requirements be different for privately-held companies as opposed to companies whose stock trades in the public markets? If so, should the ownership thresholds be higher or lower for private companies as compared to public companies?

(5) We intend that the terms used in the proposed rules would have the meanings provided in Rule 405. Would it be helpful to incorporate the relevant definitions as part of the rules?

(6) Is it appropriate, as proposed, to provide an exception from disqualification for events relating to certain affiliates that occurred before the affiliation arose, based on the current standard set forth in Rule 262(a)(5)?

(7) Should we replace the reference to "officers," which is based on current Rule 262, with a reference to "executive officers" (using the definition provided in Rule 501(f) [34]), at least as it applies to covered persons other than the issuer? In many organizations, titular officers such as vice presidents may not play an executive or policy-making role. Would it be more appropriate to limit coverage to individuals with policy-making responsibilities, as would result from using the term "executive officer"?

(8) Alternatively, with respect to officers of covered persons other than the issuer, should we limit coverage to those who are actually involved with or devote time to the relevant offering, or to some other specified subgroup of officers—perhaps together with executive officers?

(9) Would it be appropriate to expand the coverage of our rule to include investment advisers and their directors, officers, general partners, and managing members? If we were to do so, should such an extension apply only for particular types of issuers, such as those that identify themselves as "pooled investment funds" on Form D, or for registered "investment companies," "private funds" and BDCs? Or should it apply for all issuers?

C. Disqualifying Events

After covered persons, the other critical element of bad actor disqualification is the list of events and circumstances that give rise to disqualification. In this regard, our proposal would implement the Dodd-Frank Act requirement that our rules be substantially similar to existing Regulation A and also include the specific events listed in Section 926(2) of the Dodd-Frank Act.

The proposed rule would include the following types of disqualifying events:

- Criminal convictions;
- Court injunctions and restraining orders;
- Final orders of certain state regulators (such as state securities, banking and insurance regulators) and Federal regulators;
- Commission disciplinary orders relating to brokers, dealers, municipal securities dealers, investment advisers and investment companies and their associated persons;
- Suspension or expulsion from membership in, or suspension or bar from associating with a member of, a securities self-regulatory organization;
- Commission stop orders and orders suspending a Regulation A exemption; and
- U.S. Postal Service false representation orders.

We discuss each of these in turn below.

1. *Criminal convictions.* Section 926(2)(B) of the Dodd-Frank Act provides for disqualification if any covered person "has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission." This essentially mirrors the language of current Rule 262(a)(3), covering criminal convictions of issuers, and Rule 262(b)(1), covering criminal convictions of other covered persons. Section 926(2)(B) differs from Rule 262, however, in two ways.

First, unlike Rule 262(b)(1), Section 926(2)(B) does not address criminal convictions "arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer or investment adviser." We are not aware of any legislative history that explains why this type of conviction was not mentioned in Section 926(2)(B). However, because such convictions are covered in existing Rule 262, we believe that rules "substantially similar" to the existing rules should cover them. Accordingly, the proposed revision to Rule 506 would cover such convictions, and would add a reference to convictions arising out of the conduct of the business of a person compensated for soliciting purchasers, as provided in current Rule 505(b)(2)(iii).[35]

Second, Section 926(2)(B) does not include any express time limit on convictions that trigger disqualification. By contrast, Rule 262 provides a five-year look-back for criminal convictions of issuers and a ten-year look-back for criminal convictions of other covered persons (*i.e.,* only convictions handed down within the preceding five or ten years count, and older convictions are no longer disqualifying).[36] There currently are time limits on criminal convictions, as with other disqualifications, and we are therefore proposing the same five-year and ten-year look-back periods that apply under current Rule 262. We are soliciting comment on whether a longer, or permanent, look-back period would be appropriate for either issuers or other covered persons.

We are also soliciting comment on whether there are circumstances in which the rules for disqualification of entities should focus on the beneficial owners and management of such entities at the time of the disqualifying event, rather than the legal entities themselves, and provide for different treatment of entities that have undergone a change of control since the occurrence of the disqualifying event. This would be a broader application of the principle underlying existing Rule 262(a)(5) (reflected in the proposal in Rule 506(c)(3), discussed above), under which events relating to certain affiliates are not disqualifying if they pre-date the affiliate relationship.

For purposes of establishing the relevant look-back periods, we propose to measure from the date of the sale for which exemption is sought. Rule 262 of Regulation A currently measures from the date of the requisite filing with the Commission, which occurs before any offer of securities can be made under that exemption. This approach is not appropriate for Rule 506 offerings because no filing is required to be made with the Commission before an offer or sale is made in reliance on Regulation D.[37] Current Rule 505, which effectively applies Rule 262 in a Regulation D context, addresses this issue by substituting "the first sale of securities under this section" for the Rule 262 reference to filing a document with the

[33] We would look to the definition of "control" contained in Securities Act Rule 405, *id.*

[34] 17 CFR 230.501(f). The same definition appears in Rule 405.

[35] *See* Proposed Rule 506(c)(1)(i).

[36] The look-back period is to the date of the conviction, not to the date of the conduct that led to the conviction. This is similarly the case with the other look-back periods discussed below; the measurement date is the date of the relevant order or other sanction, not the date of the conduct that was the subject of the sanction.

[37] Under Rule 503, a notice on Form D is not required to be filed until 15 days after the first sale. 17 CFR 230.503.

Commission.[38] For purposes of Rule 506, we are proposing to refer to the date of the relevant sale, rather than the date of first sale, because we believe it creates a more appropriate look-back period for offerings that may continue for more than one year. Multiyear offerings are not uncommon under Rule 506.[39]

Request for Comment

(10) Are the proposed look-back periods for criminal convictions (five years for issuers, their predecessors and affiliated issuers; ten years for all other covered persons) appropriate? Or should we provide for a longer period? Should the look-back period for convictions be aligned with the ten-year look-back period required in some instances under Section 926 of the Dodd-Frank Act?

(11) Are there circumstances where a longer period of disqualification, even lifetime disqualification for individuals or permanent disqualification for entities, would be appropriate?

(12) Should our rules provide different disqualification periods for individuals and entities? In particular, should we provide different treatment under our rules (*e.g.,* a shorter look-back period or an exception from disqualification) for entities that have undergone a change of control since the occurrence of a disqualifying event? If so, how should change of control be defined for these purposes?

(13) Is the scope of the proposed provisions on criminal convictions sufficiently broad? In connection with the 2007 Proposal[40] and in an advance comment letter on this rulemaking,[41] the North American Securities Administrators Association ("NASAA") has urged that, in the interest of investor protection and uniformity with state laws, disqualification should apply to a broader range of criminal convictions. NASAA suggested that disqualification should arise from any criminal conviction involving fraud or deceit, as provided in the Model Accredited Investor Exemption and the Uniform Securities Act of 2002 adopted by many states, as well as "the making of a false filing with a state, or involving a commodity future or option contract, or any aspect of a business involving securities, commodities, investments, franchises, insurance, banking or finance."[42] Would it be appropriate for the new rules to impose disqualification for some or all of these other offenses, even though Section 926 of the Dodd-Frank Act does not require it?

(14) Under current rules and under our proposal, disqualification arises only from actions taken by U.S.-based courts and regulators. From the standpoint of disqualification, is conduct outside the United States as relevant as conduct within the United States? Should corresponding convictions in foreign courts trigger disqualification on the same basis as U.S. criminal convictions? Or are there reasons not to treat foreign criminal convictions on a par with U.S. Federal or state criminal convictions? What would be the impact on issuers and covered persons if the Commission included foreign court convictions as a disqualifying event under the proposed disqualification provision?

2. *Court injunctions and restraining orders.* Under current Rule 262(a)(4), an issuer is disqualified from reliance on Regulation A if it, or any predecessor or affiliated issuer, is subject to a court injunction or restraining order against engaging in or continuing any conduct or practice in connection with the purchase or sale of securities or involving the making of a false filing with the Commission.[43] Similarly, under current Rule 262(b)(2), an offering is disqualified if any other covered person is subject to such a court injunction or restraining order, or to one "arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer or investment adviser."[44] Disqualification is triggered by temporary or preliminary injunctions and restraining orders that are currently in effect, and by permanent injunctions and restraining orders entered within the last five years.[45]

The proposed provision would reflect the substance of these two provisions in a slightly simplified format.[46] To align with current Rule 505, the proposed rule would cover orders arising out of the conduct of business of paid solicitors of purchasers of securities.

Request for Comment

(15) We note that certain regulatory orders and bars are required to have a ten-year look-back period under Section 926(2)(a)(ii) of the Dodd-Frank Act (discussed below). Is it appropriate to limit the look-back period for court injunctions and restraining orders to five years, as proposed, based on current Rule 262? Or should we adopt a ten-year look-back period for injunctions and restraining orders? Should any disqualifying events, criminal and otherwise, result in permanent disqualification from participating in Rule 506 offerings?

(16) Alternatively, should we establish different look-back periods for different types of court orders and injunctions and restraining orders? For example, should we provide for a ten-year look-back for court injunctions and restraining orders involving fraudulent, manipulative or deceptive conduct, and a five-year look-back period for other court injunctions and restraining orders? If we did this, would it be easy to determine which category applied to a given court injunction or order? Should we provide different look-back periods for Federal and state court injunctions and restraining orders?

(17) Under current rules and under our proposal, a court injunction or restraining order issued more than five years before the relevant sale is no longer disqualifying, even if it is still in effect. Is it appropriate that court injunctions and restraining orders should cease to be disqualifying after a stated time, as proposed, or should disqualification continue for as long as the triggering injunction or order continues in effect (even if it is permanent)?

(18) Under our proposal, disqualification for court injunctions and restraining orders would be narrower in scope and would have a shorter look-back period than disqualification for regulatory orders (discussed in C.3 below).[47] The

[38] *See* 17 CFR 230.505(b)(2)(iii)(A) *and* 17 CFR 230.602(b)(2).

[39] Of the 16,027 initial Form D filings claiming a Rule 506 exemption in the twelve months ended September 30, 2010, 3,812 (or 24%) indicated that the offering was expected to last more than a year.

[40] *See* NASAA Comment Letter (Oct. 26, 2007) (available at *http://www.sec.gov/comments/s7-18-07/s71807-57.pdf*).

[41] *See* NASAA Advance Comment Letter (Nov. 4, 2010) (available at *http://www.sec.gov/comments/df-title-ix/regulation-d-disqualification/regulationddisqualification-1.pdf*).

[42] *See* Unif. Sec. Act § 508 (amended 2002) (available at *http://www.abanet.org/buslaw/newsletter/0009/materials/uniformsecure.pdf*).

[43] *See* 17 CFR 230.262(a)(4).

[44] 17 CFR 230.262(b)(2).

[45] The look-back period means that disqualification no longer arises from an injunction or restraining order after the requisite amount of time has passed, even though the injunction or order is still in effect. Because disqualification is triggered only when a person "is subject to" a relevant injunction or order, injunctions and orders that have expired or are otherwise no longer in effect are not disqualifying, even if they were issued within the relevant look-back period.

[46] *See* Proposed Rule 506(c)(1)(ii).

[47] For example, under the proposal and current Rule 262, court injunctions and restraining orders are disqualifying only if they relate to conduct or practices (i) in connection with the purchase or sale of a security, (ii) involving making a false filing with the Commission or (iii) arising out of the conduct of certain businesses. The proposed provisions for regulatory orders, discussed below, are broader, and would impose disqualification for any final order based on a violation of law that

Continued

treatment of court injunctions and restraining orders would reflect the position under current rules, while the treatment of regulatory orders is mandated by Section 926 of the Dodd-Frank Act. Should the two provisions be conformed? Or are there policy or other reasons that support differentiating between them?

(19) Should injunctions and orders of foreign courts have no consequences for disqualification, as proposed? Or should they trigger disqualification on the same basis as U.S. Federal and state court injunctions and orders, or on some other basis? Why? Should foreign court injunctions and orders have to meet additional criteria to be considered for disqualification purposes? If so, what should those criteria be?

3. *Final orders of certain regulators.* Section 926(2)(A) of the Dodd-Frank Act provides that Commission rules for Rule 506 offerings must disqualify any covered person that A) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

(i) Bars the person from—

(I) Association with an entity regulated by such commission, authority, agency, or officer;

(II) Engaging in the business of securities, insurance, or banking; or

(III) Engaging in savings association or credit union activities; or

(ii) Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of filing of the offer or sale.

Section 926(2)(A) is identical to Section 15(b)(4)(H) of the Securities Exchange Act of 1934 (the "Exchange Act")[48] and Section 203(e)(9) of the Investment Advisers Act of 1940 (the "Advisers Act),[49] except that Section 926(2)(A)(ii) contains a ten-year look-back period for final orders based on violations of statutes that prohibit fraudulent, manipulative and deceptive conduct, and the Exchange Act and Advisers Act provisions have no express time limit for such orders. These existing provisions form a basis on which the Commission may censure, suspend or revoke the registration of brokers, dealers and investment advisers based on financial industry bars and final regulatory orders issued against them by specified regulators, in the context of statutory provisions that provide for such sanctions based on a wide variety of other events.[50]

We propose to codify Section 926(2)(A) almost verbatim as new paragraph (c)(1)(iii) of Rule 506, with clarifying changes intended to eliminate potential ambiguities and make the new rule easier to apply.

With respect to bars, the proposed rule would provide that the order must bar the person "at the time of [the] sale" from one or more of the specified activities. This would clarify that a bar is disqualifying only for as long as it has continuing effect.[51] Thus, for example, a person who was barred by a state regulator from association with a broker-dealer for three years would be disqualified for three years. A person who was barred indefinitely, with the right to apply to reassociate after three years, would be disqualified until such time as he or she successfully applied to reassociate, assuming that the bar had no continuing effect after reassociation. (This would be true even if the bar order were also a "final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct," as contemplated by Dodd-Frank Section 926(2)(A)(ii), because the person would not be considered to be "subject to" an order that had no continuing effect.)

Also, recognizing that no Commission filing is required in a Regulation D offering before an offer or sale, we propose to measure the ten-year period required under 926(2)(A)(ii) from the date of the relevant sale, as would be the case for other look-back periods in the proposed rule. Finally, we propose to clarify that the orders described in Section 926(2)(A)(ii) must have been "entered" within the relevant ten-year period, so it is clear that we are measuring from the date of the order and not the date of the underlying conduct.

Request for Comment

(20) Should the rules clarify what constitutes a "bar"? For example, should the rule state that all orders that have the practical effect of a bar (prohibiting a person from engaging in a particular activity) be treated as bars, even if the relevant order is not called a bar?

(21) Under current interpretations of Rule 262, bars are disqualifying for as long as they have continuing effect, which means that permanent bars (for example, an "unqualified" bar, which does not contain any proviso for re-application after a specified period) are permanently disqualifying. By contrast, most other disqualifying events operate only for a specified period (for example, criminal convictions give rise to a disqualification period of five or ten years). Would it be appropriate to provide a cut-off date (for example, ten years), for permanent bars?[52]

Final Orders. The Dodd-Frank Act does not specify what should be deemed to constitute a "final order" that triggers disqualification. The term "final" suggests that only orders issued at the conclusion of a matter should be considered, but beyond that, it is not clear whether other procedural or substantive criteria should be applied.

As noted above, Section 15(b)(4)(H) of the Exchange Act and Section 203(e)(9) of the Advisers Act contain language identical to Section 926(2)(A), including the use of the term "final order." The Commission has not provided a definitive interpretation of "final order" in those contexts either, although it has approved forms for broker-dealers and their associated persons that include such a definition.[53] For purposes of

prohibits fraudulent, manipulative or deceptive conduct. As a result, under the proposal certain types of orders (*e.g.,* a ban on serving as an officer or director of a public company) would be disqualifying if issued by a regulator but may not be disqualifying if issued by a court.

[48] 15 U.S.C. 78*o*(b)(4)(H).

[49] 15 U.S.C. 80b(e)(9).

[50] For example, Section 15(b)(4) authorizes the Commission to sanction registered brokers and dealers for such matters as false statements in Commission filings; certain U.S. or foreign criminal convictions; certain court injunctions, willful violations of the securities laws or the Commodity Exchange Act, or the rules and regulations issued thereunder; aiding, abetting, counseling or procuring such a violation or failing adequately to supervise someone who committed such a violation; and professional bars issued by the Commission or non-U.S. financial regulatory authorities. *See* 15 U.S.C. 78*o*(b)(4). Section 203(f) authorizes the Commission to sanction registered investment advisers for similar matters. *See* 15 U.S.C. 80b–3(f).

[51] This accords with the Commission's current interpretive position on Rule 262. *See* Release No. 33–6289 (Feb. 13, 1981) [46 FR 13505, 13506 (Feb. 23, 1981)] (Commission consistently has taken the position that a person is "subject to" an order under section 15(b), 15B(a) or (c) of the Exchange Act or section 203(e) or (f) of the Investment Advisers Act only so long as some act is being performed (or not performed) pursuant to the order).

[52] If we established such a cut-off date, persons subject to a permanent bar would still be prevented from engaging in the barred conduct. (Someone permanently barred from the securities industry would still not be permitted to act as a placement agent, for example.) The difference would be that their presence or participation in an offering in some otherwise permissible capacity—as, for example, a 10% shareholder of the issuer—would not be disqualifying.

[53] *See* Release Nos. 34–48161 (Jul. 10, 2003) [68 FR 42444] (available at *http://www.sec.gov/rules/sro/nasd/34-48161.pdf*) and 34–49779 (May 27, 2004) [69 FR 32084] (available at *http://www.sec.gov/rules/sro/nyse/34-49779.pdf*).

registration of broker-dealers and associated persons, the Financial Industry Regulatory Authority ("FINRA") collects data regarding disciplinary actions, including relevant final orders, through its uniform registration Forms BD, U4, U5 and U6.[54] In that context, FINRA has defined "final order" to mean "a written directive or declaratory statement issued by an appropriate federal or state agency * * * pursuant to applicable statutory authority and procedures, that constitutes a final disposition or action by that federal or state agency."[55]

We also understand that at least some state securities laws may provide that orders do not become "final" unless the state securities administrator makes findings of fact and conclusions of law on a record in accordance with the state administrative procedure act and files a certified copy of the findings with a clerk of a court of competent jurisdiction, as provided in the Uniform Securities Act of 2002.[56] We are not aware that the laws covering orders of Federal and state banking, insurance, and credit union regulators, which are required to be covered in our Rule 506 disqualification rules by the Dodd-Frank Act, provide guidance on which of their orders should be regarded as "final orders."

Our preliminary view is that including a definition of "final order" in the rule would help issuers and other market participants determine whether any given regulatory action is disqualifying (and conversely, not including a definition could give rise to uncertainty in that regard). We are therefore proposing to amend Rule 501 of Regulation D to add a definition of "final order" for purposes of bad actor disqualification.[57] The proposed definition is based on the FINRA definition, and therefore is consistent with current practices implementing statutory language in the Exchange Act that is identical to Section 926. We believe that this definition is sufficiently broad to cover the different types of regulatory orders that might be relevant, but we are soliciting comment on that question.

The proposal defines "final order" to mean the final steps taken by a regulator. In at least some cases, however, judicial appeal of a regulatory order will be available. It may be appropriate for us to define "final order" to mean an order for which all rights of appeal have terminated or been exhausted. Given that the appeals process could take several years, however, we are concerned that such an approach could compromise investor protection. We are soliciting comment on whether and how to address rights of judicial appeal. We are also soliciting comment more generally on whether it is appropriate to include a definition of "final order" in the rule.

Request for Comment

(22) Is it appropriate, as proposed, to define the term "final order" for purposes of our disqualification rules? What general effects would a defined term or lack of a defined term impose on issuers and other covered persons?

(23) Is the proposed definition of "final order" (which is based on the FINRA definition) appropriate?

(24) Should we use a definition based on the Uniform Securities Act interpretation of final order instead? Alternatively, should we add concepts from that definition (for example, the requirement that the regulator have made findings of fact) to the proposed definition?

(25) Should an order be considered final only if it is a "final order" within the meaning of the law that governed its issuance? What if the law lacks clear guidance on what constitutes a final order?

(26) Should we consider an order final if it is the conclusion of an action by the relevant regulator? Or should only non-appealable orders be considered final, so that disqualification would not apply until all appeals, including potential judicial appeals, are exhausted? Would investor protection be compromised if judicial appeals are taken into account?

(27) Should specified minimum criteria apply in determining what constitutes a final order? For example, should we include only orders issued after a proceeding that affords the respondent certain due process rights, such as notice, a right to be heard, and a requirement for a record with written findings of fact and conclusions of law? Should settled matters be treated the same as non-settled matters in this respect?

(28) Should the authority that issues the relevant order be asked to express a view about whether the particular action is a final order for purposes of our disqualification rules? Would such authorities be authorized or be willing to express such a view? Should the Commission defer to the interpretation of the regulator that issued the order to determine whether an order is final?

Fraudulent, manipulative or deceptive conduct. Section 926(2)(A)(ii) of the Dodd-Frank Act provides that disqualification must result from final orders of the relevant regulators that are "based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct." We have received advance comment urging us to "differentiate between technical violations and intentional or other more egregious conduct,"[58] and to impose disqualification only with respect to the latter.

In light of the specificity of the language of Section 926, we are not proposing to include standards or guidance with respect to this requirement. We are aware, however, that any rule we adopt would apply to orders issued by regulators under a wide variety of different state and Federal laws and regulations. We understand that there may be concerns that this language could be interpreted or applied very broadly, and in particular that under some state laws and regulations, conduct that some may consider to be a "technical" violation might be defined as fraudulent, manipulative or deceptive.[59] We are, therefore, requesting comment on whether we should set forth minimum standards for this provision.

Request for Comment

(29) Should we provide guidance on what constitutes "fraudulent, manipulative or deceptive conduct" for purposes of bad actor disqualification under Rule 506? If so, should we provide such guidance by rule, and what should the rule say?

[54] Form BD is the Uniform Application for Broker-Dealer Registration, used by entities to register as broker-dealers. Form U4 is the Uniform Application for Securities Industry Registration or Transfer, used by broker-dealers to register associated persons. Form U5 is the Uniform Termination Notice for Securities Industry Registration, used by broker-dealers to report the termination of an associated person relationship. Form U6 is the Uniform Disciplinary Action Reporting Form, used by SROs and state and federal regulators to report disciplinary actions against broker-dealers and associated persons. Information on disciplinary history collected via these forms (as well as other information) can be reviewed through BrokerCheck. *See* note 81 for more information about BrokerCheck.

[55] *See* "Explanation of Terms" applicable to FINRA Forms U4, U5 and U6 (available at *http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/appsupportdocs/p116979.pdf*).

[56] *See* Unif. Sec. Act § 604 (2002).

[57] *See* Proposed Rule 501.

[58] Advance Comment Letter of Managed Funds Ass'n (Sept. 22, 2010) (available at *http://www.sec.gov/comments/df-title-iv/exemptions/exemptions-16.pdf*).

[59] *See* Advance Comment Letter of Investment Program Ass'n (Mar. 2, 2011) (available at *http://www.sec.gov/comments/df-title-ix/regulation-d-disqualification/regulationddisqualification-3.pdf*). *See also* Record of Proceedings of 29th Annual SEC Government-Business Forum on Small Business Capital Formation, at 18 (Nov. 18, 2010) (remarks of Deborah Froling) (available at *http://www.sec.gov/info/smallbus/sbforumtrans-111810.pdf*).

(30) Should disqualifying conduct be required to be fraudulent, manipulative or deceptive at common law or under some other standard? Should scienter be required?

(31) Should the Commission defer to the regulator that issued the order with respect to the determination of whether conduct is fraudulent, manipulative or deceptive?

(32) Should the authority that issues the relevant order be asked to express a view about whether the particular violation is the sort of violation that should give rise to disqualification under Rule 506? Should the Commission defer to the interpretation of the regulator on that issue? In that connection, should we provide greater scope for a regulator to determine that disqualification should not arise (in effect, a waiver of disqualification)?

Orders of Other Regulators

As mandated by Section 926 of the Dodd-Frank Act, bad actor disqualification would result under our proposed rule from final orders issued within a ten-year period by the state and Federal regulators identified in Section 926(2)(A) of the Dodd-Frank Act, a list that does not include the Commission or the Commodity Futures Trading Commission ("CFTC"). We are considering and soliciting comment on whether orders of the Commission and the CFTC should have the same effect for disqualification purposes as the orders of these other regulators.

Some types of orders issued by the Commission are covered by current bad actor disqualification rules, and some are not.[60] Most significantly, orders issued in stand-alone Commission cease-and-desist proceedings[61] are not disqualifying under current rules.[62] The reason for this omission appears to be largely historical: The Commission did not have authority to bring cease-and-desist proceedings when Rule 262 was originally adopted, and the rule has not been amended to take account of that authority.[63] Unless our disqualification rules cover Commission cease-and-desist orders, entities and individuals outside the securities industry would be subject to bad actor disqualification for Commission actions only if those persons are subject to a court order. In the 2007 Proposal, we proposed to include Commission and certain other cease-and-desist orders as disqualifying events in the Regulation D bad actor provisions.[64] Some commenters opposed this proposal on the basis that it would be overinclusive and could result in disqualification being imposed for minor technical violations.[65] We are soliciting comment as to whether Commission cease-and-desist orders may be an appropriate basis for disqualification and, if so, whether the rules should differentiate among different types of orders.

We are also considering whether orders of the CFTC are relevant for disqualification purposes. The CFTC is the only regulator in the financial services area whose orders are not directly addressed by the proposed rules, and the conduct that would typically give rise to CFTC sanctions is similar to the type of conduct that would trigger disqualification if it were the subject of action by a regulator in the securities, insurance, banking or credit union sectors. On that basis, we are soliciting comment as to whether CFTC orders may be an appropriate basis for disqualification.

Our preliminary view is that, if we were to include Commission and CFTC orders in our bad actor disqualification rules, we would do so by adding references to the Commission, the CFTC and the commodities business in the paragraph of the rules that addresses "final orders" of certain regulators.[66] In that way, any requirements the rule may impose on such orders and any interpretive positions that may apply (for example, on what constitutes a final order and what constitutes fraudulent, manipulative and deceptive conduct) would apply to orders of the Commission and the CFTC on the same basis as it did to orders of state and other Federal regulators covered by the rule. We would exclude from this provision Commission disciplinary orders that are already covered under current rules, and continue to treat them separately.[67]

If we were to adopt bad actor disqualification provisions that included orders of the Commission and the CFTC, we would also have to consider the impact on competition, efficiency and capital formation and the impact on small businesses. Our preliminary view is that adding new disqualifying events for Commission and CFTC orders would probably increase the number of offerings that would be disqualified, may enable the disqualification rules to more effectively screen out felons and other bad actors, and would contribute to creating an internally consistent set of rules that would treat relevant sanctions similarly for disqualification purposes. It may result in increased compliance costs for companies and funds that are seeking to raise capital. However, adding Commission and CFTC orders to the new rules could improve investor protection and reduce the risks of investment in private placements and limited offerings, and thereby help to reduce the cost or increase the availability of capital. We do not expect that it would affect small businesses differently than the rules we are proposing.

Request for Comment

(33) Would it be appropriate to include the Commission in the list of regulators whose final orders are potentially disqualifying?

(34) If so, should the rules specify that certain types of Commission cease-and-desist orders would always give rise to disqualification? For example, we could treat cease-and-desist orders related to violations of the anti-fraud provisions of our statutes and rules in this way (or perhaps those that require an element of scienter), by analogy to the Section 926 standard of "fraudulent, manipulative or deceptive conduct." Similarly, we could treat cease-and-desist orders related to

[60] Certain Commission orders involving regulated entities in the securities industry (*e.g.,* broker-dealers and investment advisers) and their associated persons already give rise to disqualification under Regulation A, Rule 505 and Regulation E as currently in effect. *See* Rule 262(b)(3) and Rule 602(b)(5) and (c)(3), 17 CFR 230.262(b)(5) and 230.602(c)(3).

[61] In cease-and-desist proceedings, the Commission can issue orders against "any person," including entities and individuals outside the securities industry, imposing sanctions such as penalties, accounting and disgorgement or officer and director bars. In contrast, administrative proceedings are generally limited to regulated entities and their associated persons.

[62] Current rules also exclude other types of Commission actions. For example, the Commission has authority under Section 9(b) of the Investment Company Act to bring proceedings against "any person" and may impose investment company bars, civil penalties and disgorgement under Sections 9(d) and (e) of the Investment Company Act. 15 U.S.C. 80a–9(b), (d) and (e). The Commission also has authority under Rule 102(e) of its Rules of Practice to censure persons (such as accountants and attorneys) who appear or practice before it, or to deny them the privilege of appearing before the Commission temporarily or permanently. 17 CFR 201.102(e). Orders under these sections are not currently disqualifying.

[63] The disqualification provisions of Rule 505 and Regulation E are derived from Rule 262 and reflect the same omission.

[64] Under the 2007 Proposal, disqualification would have arisen if a covered person "is currently subject to a cease and desist order, entered within the last 5 years, issued under federal or state securities, commodities, investment, insurance, banking or finance laws." *See* Release 33–8828, note 13 above.

[65] *See, e.g,* Comment Letter of Managed Funds Association (Oct. 19, 2007) (available at *http://www.sec.gov/comments/s7-18-07/s71807-56.pdf*); Comment Letter of G. Philip Rutledge (Oct. 5, 2007) (available at *http://www.sec.gov/comments/s7-18-07/s71807-26.pdf*).

[66] *See* Proposed Rule 506(c)(1)(iii).

[67] *See* Part II.C.4 of this Release and Proposed Rule 506(c)(1)(iv).

violations of Section 5 of the Securities Act in this way, on the basis that persons who violate Section 5 should lose the benefit of exemptive relief from Section 5 for some period of time afterward. Should other categories of orders be expressly covered in this way?

(35) Conversely, should some categories of cease-and-desist orders (for example, those relating to recordkeeping violations) be expressly excluded from coverage by the rule, so they could never give rise to disqualification? If so, what types of orders should be excluded?

(36) Would it be appropriate to include the CFTC in the list of regulators whose final orders are potentially disqualifying? If so, should the rules specify that certain types of CFTC orders would always give rise to disqualification, or that certain types would never give rise to disqualification? If so, what types of orders should be included or excluded?

(37) If we were to cover Commission and CFTC orders in our bad actor disqualification rules, should we do that by simply including references to them in the paragraph that addresses "final orders" of certain regulators? Or should we treat orders of the Commission and/or the CFTC separately? If so, why?

(38) What would the costs and benefits be of covering Commission and CFTC orders? Would the benefits justify the costs? How would extending our disqualification rules in that way affect competition, efficiency and capital raising? Would small businesses be affected differently than they would be under the rules as proposed and, if so, how?

(39) Are there any other regulators whose final orders should be taken into account for disqualification purposes?

(40) Under the proposal, corresponding orders of foreign securities regulators would not trigger disqualification. Should such orders be disqualifying on the same basis as U.S. Federal and state regulatory orders? If so, should the rules refer to any securities regulator or a country's principal securities regulator?

4. *Commission disciplinary orders.* Rule 262(b)(3) of Regulation A imposes disqualification on an issuer if any covered person is subject to an order of the Commission "entered pursuant to section 15(b), 15B(a), or 15B(c) of the Exchange Act, or section 203(e) or (f) of the Investment Advisers Act." [68] Under the cited provisions, the Commission has authority to order a variety of sanctions against registered brokers, dealers, municipal securities dealers and investment advisers and their associated persons, including suspension or revocation of registration, censure, placing limitations on their activities, imposing civil money penalties and barring individuals from being associated with specified entities and from participating in the offering of any penny stock. The Commission has historically interpreted Rule 262(b)(3) to require disqualification only for as long as some act is prohibited or required to be performed pursuant to the order, with the consequence that censures are not disqualifying, and a disqualification based on a suspension or limitation of activities expires when the suspension or limitation expires.[69] We are seeking comment on whether this, as well as certain interpretive positions of the staff of the Division of Corporation Finance, should be codified in the new rule.[70]

We are not proposing substantial changes to the substance of the current rule or its interpretation.[71] In particular, we do not believe that any look-back period is appropriate or should be added, on the basis that the duration of the suspension or limitation on activities imposed by the Commission should be sufficient from an investor protection standpoint.

To make the new provisions easier to understand and use, however, we are proposing to simplify the presentation and codify the current interpretation.[72] We are also proposing to eliminate an apparent anomaly in the current rule, whereby orders issued under Section 15B(a) of the Exchange Act (the basic registration requirements for municipal securities dealers) are treated as disqualifying. Section 15B(a) is not generally a source of sanctioning authority and we do not believe it is appropriate to refer to it in the context of bad actor disqualification. Disciplinary orders against municipal securities dealers are issued under Section 15B(c), a reference to which we propose to include in the new disqualification provisions.

Request for Comment

(41) Is it appropriate for the new rule to largely codify the current rule, as proposed?

(42) Should we impose any look-back period for Commission disciplinary sanctions?

(43) Should the rules provide that censure is disqualifying? If so, how long should disqualification last?

(44) For orders limiting activities and financial industry bars, should we impose a longer period of disqualification than the period that the order or bar remains in effect? For example, should we impose a look-back period so that anyone who was subject to such an order or bar within the prior five or ten years would be disqualified?

(45) Should the rules provide that orders to pay civil money penalties are disqualifying if the penalties are not paid as ordered? Should such orders be disqualifying in other circumstances?

(46) Should the reference to Section 15B(a) in the current rule be eliminated, as proposed, or included? If we include it, should coverage be limited to orders denying registration because of prior misconduct?

5. *Suspension or expulsion from SRO membership or association with an SRO member.* Rule 262(b)(4) imposes disqualification on an offering if any

[68] 17 CFR 230.262(b)(3) (citing 15 U.S.C. 78o(f), 78o(4)(a), 78o(4)(c), 80b–3(e) and 80b–3(f)). Section 21B(a) of the Exchange Act, 15 U.S.C. 78u–2(a), and Section 203(i) of the Investment Advisers Act, 15 U.S.C. 80b–3(i), give the Commission authority to impose civil money penalties in these disciplinary proceedings.

[69] *See* Release No. 33–6289 (Feb. 13, 1981) [46 FR 13505, 13506 (Feb. 23, 1981)] (in adopting amendments to Rule 252 of Regulation A (the predecessor to Rule 262), the Commission noted "In those instances where persons are subject to orders containing no definite time limitations, the Commission has consistently taken the position that a person is subject to an order only so long as some act is being performed pursuant to such order, [such as] establishing procedures to assure appropriate supervision of salesmen and reporting on such procedures.") The staff of the Division of Corporation Finance has taken the same view. *See* Release No. 33–6455, Question 66 (Mar. 3, 1983) [48 FR 10045, 10053 (Mar. 10, 1983)] (in interpretive release on Regulation D, the staff advised that censure has no continuing force and thus censured person is not "subject to an order of the Commission entered pursuant to section 15(b)" within the meaning of Rule 505); Howard, Prim, Rice, Nemerovski, Canady & Pollak, SEC No-Action Letter, 1975 WL 11300 (Jan. 8, 1975, publicly available Feb. 11, 1975) (Rule 252 does not comprehend a situation where an underwriter of a Regulation A offering has stipulated to a consent order in a Commission administrative proceeding providing only for a censure, with no suspension or other sanction); Samuel Beck, SEC No-Action Letter, 1975 WL 11471 (May 15, 1975, publicly available June 24, 1975).

[70] Based on similar reasoning as has been applied to censures, the staff of the Division of Corporation Finance has informally interpreted orders to pay civil money penalties as not disqualifying. We seek comment on whether we should formally codify that position, and also on whether orders to pay money penalties should be disqualifying if the fines are not paid as ordered.

[71] Because of our approach of having one list of covered persons and one list of disqualifying events, this provision would have slightly broader reach under the proposal than under current rules. Under current Rule 262(b)(3), disqualification for Commission disciplinary orders applies to covered persons other than issuers and their predecessors and affiliated issuers Under the proposal, all covered persons would be subject to it. For issuers that are (or whose predecessors or affiliated issuers are or were) registered brokers, dealers, municipal securities dealers or investment advisers, the proposal would therefore create a new triggering event for disqualification.

[72] *See* Proposed Rule 506(c)(1)(iv).

covered person is suspended or expelled from membership in, or suspended or barred from association with a member of, a securities self-regulatory organization or "SRO" (a registered national securities exchange or national securities association) for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade.[73] Again, we are not proposing to change the substance of the current rule (and in particular, are not proposing to add any look-back period).[74] The proposal would update the rule by adding a reference to a registered affiliated securities association.[75]

Request for Comment

(47) Should the rule also cover suspension or expulsion from membership or participation in any commodities exchange or commodities self-regulatory organization, or from any other organization?

(48) Should a look-back period be applied?

(49) Should suspension or expulsion from participation in foreign securities exchanges be covered?

6. *Stop orders and orders suspending the Regulation A exemption.* Paragraphs (a)(1) and (2) of Rule 262 impose disqualification on an offering if the issuer, or any predecessor or affiliated issuer, has filed a registration statement or Regulation A offering statement that was the subject of a Commission refusal order, stop order or order suspending the Regulation A exemption within the last five years, or is the subject of a pending proceeding to determine whether such an order should be issued.[76] In a similar vein, paragraphs (c)(1) and (2) impose disqualification if any underwriter of the securities proposed to be issued was, or was named as, an underwriter of securities under a registration statement or Regulation A offering statement that was the subject of a Commission refusal order, stop order or order suspending the Regulation A exemption within the last five years, or is the subject of a pending proceeding to determine whether such an order should be issued.[77] We propose to incorporate the substance of these four paragraphs into the rule but simplify the presentation and combine them into a single paragraph that would apply to all covered persons.[78]

Request for Comment

(50) Is it appropriate to include the current Regulation A five-year look-back period for these actions? Or should we impose a longer period, such as, for example, ten years?

(51) Should this provision cover comparable actions by commodities regulators or other regulators? If so, what actions, by which regulators, should be covered?

(52) Should this provision cover comparable actions by foreign securities regulators?

7. *U.S. Postal Service false representation orders.* Paragraphs (a)(5) and (b)(5) of Rule 262 impose disqualification on an offering if the issuer or another covered person is subject to a U.S. Postal Service false representation order entered within the preceding five years, or to a temporary restraining order or preliminary injunction with respect to conduct alleged to have violated the false representation statute that applies to U.S. mail.[79] We propose to incorporate the substance of these paragraphs but combine them into a single paragraph and simplify the presentation to eliminate unnecessary statutory citations. We are proposing to mirror the current five-year look-back period for U.S. Postal Service false representation orders.[80]

(53) Is it appropriate to mirror the current five-year look-back period for U.S. Postal Service false representation orders? Or should we extend the look-back period to ten years to correspond with the ten-year look-back period for regulatory orders under the Dodd-Frank Act?

D. Reasonable Care Exception

Under Section 926 of the Dodd-Frank Act, the events that generally give rise to bad actor disqualification under current rules, plus specified orders issued by a variety of state regulators (including securities, banking, credit union, savings association and insurance regulators) and Federal banking and credit union regulators, are required to result in disqualification under Rule 506. Once Section 926 is implemented, a substantially greater number of exempt securities offerings than before will be subject to bad actor disqualification requirements, effectively imposing a new burden of inquiry on many issuers with respect to potential disqualifying events.

Although some disqualifying events will be a matter of public record,[81] there is no central repository that aggregates information from all the Federal and state courts and regulatory authorities that would be relevant in determining whether a covered person has a disqualifying event in his or her past. In addition, the number of covered persons whose presence or participation could be disqualifying may be quite large, particularly if, as proposed, the rules cover all "officers" of persons compensated for soliciting investors. As noted above, broker-dealers may have large numbers of officers, many of whom would not have any involvement with the offering in question, but all of whom would be covered persons for purposes of disqualification.

Our proposal attempts to address the potential difficulty of ascertaining

[73] *See* 17 CFR 230.262(b)(4).

[74] The application of this provision is slightly broader under the proposal than under Rule 262(b)(4), in that it would apply to all covered persons, including issuers and their predecessors and affiliated issuers (which are excluded under Rule 262(b)(4)). *See* Proposed Rule 506(c)(1)(v).

[75] In 2007, the SEC approved the formation of FINRA, a consolidation of the enforcement arm of the New York Stock Exchange, NYSE Regulation, Inc. and the NASD. Once formed, FINRA became responsible for regulatory oversight of all securities firms that do business with the public. *See* SR–NASD–2007–023, Release No. 34–56145, Order Approving Proposed Rule Change to Amend the By-Laws of NASD to Implement Governance and Related Changes to Accommodate the Consolidation of the Member Firm Regulatory Functions of NASD and NYSE Regulation, Inc. (available at *http://www.sec.gov/rules/sro/nasd/2007/34-56145.pdf.*) Registered national securities exchanges maintain the right to enforce their own rules.

[76] 17 CFR 230.262(a)(1) and (2).

[77] 17 CFR 230.262(c)(1) and (2).

[78] *See* Proposed Rule 506(c)(1)(vi).

[79] Paragraph (a)(5) relates to issuers and their predecessors and affiliated issuers, and paragraph (b)(5) relates to other covered persons. Disqualification results if any covered person "is subject to a United States Postal Service false representation order entered under 39 U.S.C. § 3005 within 5 years prior to the filing of the offering statement, or is subject to a temporary restraining order or preliminary injunction entered under 39 U.S.C. § 3007 with respect to conduct alleged to have violated 39 U.S.C. § 3005." 17 CFR 230.262(a)(5) and (b)(5).

[80] *See* Proposed Rule 506(c)(1)(vii).

[81] For example, FINRA maintains BrokerCheck, an online tool that enables the public to check the licensing and securities industry disciplinary history of registered broker-dealers and their associated persons. The information included in BrokerCheck is derived from the Central Registration Depository, the securities industry online registration and licensing database. The staff of the Office of Investor Education and Advocacy has prepared a study, including recommendations, required by Section 919B of the Dodd-Frank Act on ways to improve investors' access to registration information (including disciplinary actions; regulatory, judicial and administrative proceedings; and other information) about broker-dealers, investment advisers and their associated persons. *See* Staff of the Office of Investor Education and Advocacy, Study and Recommendations on Improved Investor Access to Registration Information about Investment Advisers and Broker-Dealers (Jan. 2011) (available at *http://www.sec.gov/news/studies/2011/919bstudy.pdf*). In addition, FINRA has recently launched its new Disciplinary Actions Online database, which provides access to FINRA complaints against firms and individual brokers, settlement agreements, decisions by FINRA hearing panels and National Adjudicatory Council decisions. BrokerCheck reports will provide links to this new database.

whether disqualifications apply by including an exception from disqualification for offerings where the issuer establishes that it did not know and, in the exercise of reasonable care, could not have known that a disqualification existed because of the presence or participation of another covered person.[82] We are proposing a reasonable care exception out of a concern that the benefits of Rule 506—which, among other things, is intended to create a cost-effective method of raising capital, particularly for small businesses—may otherwise be substantially reduced. Issuers may be reluctant to offer or sell securities in reliance on an exemptive rule if the exemption could later be found, despite the issuer's exercise of reasonable care, not to have been available; the risk of a potential Section 5 violation or blue sky law violation may outweigh the potential benefits of relying on the exemption. On the other hand, issuers must have a responsibility to screen bad actors out of their Rule 506 offerings. We believe that providing a reasonable care exception would help to preserve the intended benefits of Rule 506 and avoid creating an undue burden on capital-raising activities, while giving effect to the legislative intent to screen out felons and bad actors.[83]

The language of the proposed exception is based on the standard of the Model Accredited Investor Exemption ("MAIE"), which was approved by NASAA in 1997.[84] We included a similar exception in the 2007 Proposal. Under both the MAIE and our proposed exception, the burden would be on the issuer to establish that it had exercised reasonable care (most likely in the context of an enforcement proceeding brought by a regulator or a private action brought by investors). The MAIE incorporates as part of the standard that reasonable care must be "after factual inquiry." In the 2007 Proposal, we did not include an express reference to "factual inquiry," but requested comment on whether the rule should require that reasonable care be based on a factual inquiry, as provided in the MAIE. The commenters who responded to this point were generally supportive of a requirement that issuers make an effort to assure themselves that no bad actors are involved with their offerings, but differed on whether an express reference to factual inquiry must be included in the rule itself.[85]

We believe the concept of reasonable care necessarily includes inquiry by the issuer into the relevant facts. Our proposed reasonable care exception, therefore, would include an instruction specifying that reasonable care would entail a factual inquiry, the nature of which would depend on the facts and circumstances.[86]

The steps an issuer should take to exercise reasonable care would vary according to the circumstances of the covered persons and the offering, taking into account such factors as the risk that bad actors could be present, the presence of other screening and compliance mechanisms and the cost and burden of the inquiry. In some circumstances, factual inquiry of the covered persons themselves (for example, by including additional questions in questionnaires issuers may already be using to support disclosures regarding directors, officers and significant shareholders of the issuer) may be adequate. Issuers should also consider whether investigating publicly available databases is reasonable. In some circumstances, further steps may be necessary.

Request for Comment

(54) Is it appropriate and consistent with investor protection to include a reasonable care exception in our disqualification rules?

(55) What would be the practical effect on issuers and other market participants of not including such an exception?

(56) What steps do issuers typically take to confirm the absence of a disqualification for offerings under current Regulation A and Rule 505 of Regulation D? How would practice norms under the proposed rules applicable to Rule 506 offerings be expected to compare to current norms if a reasonable care exception were introduced?

(57) Is it appropriate to condition the reasonable care exception on factual inquiry? Are there any circumstances in which factual inquiry should not be required? Should the rule specify what factual inquiry is required or provide examples of specific factual inquiries that might be undertaken by the issuer?

(58) With respect to officers of compensated solicitors of investors, in light of the potentially significant volume of inquiries required to determine whether there are disqualifying covered persons associated with a broker-dealer, should the rules provide specific steps to establish reasonable care? If so, what should those steps be?

E. Waivers

Currently, issuers may seek waivers from disqualification from the Commission under Regulation A.[87] The Commission may grant a waiver if it determines that the issuer has shown good cause "that it is not necessary under the circumstances that the [registration] exemption * * * be denied."[88] Consistent with Section 926 and its mandate to the Commission to promulgate disqualification rules "substantially similar" to Regulation A, we propose to carry over the current waiver provisions of Rule 262 to our new disqualification provisions.[89]

Request for Comment

(59) Is it appropriate for our bad actor disqualification rules to provide for Commission authority to waive disqualification, as proposed?

(60) Should the Commission exercise waiver authority under its

[82] *See* Proposed Rule 506(c)(2)(ii).

[83] Regulation D already has a provision, Rule 508, under which "insignificant deviations" from the terms, conditions and requirements of Regulation D will not necessarily result in loss of the exemption from Securities Act registration requirements. Rule 508 provides that the exemption will not be lost with respect to any offer or sale to a particular individual or entity as a result of a failure to comply with a term, condition or requirement of Regulation D if the person relying on the exemption shows that: (i) the failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; (ii) the failure to comply was insignificant with respect to the offering as a whole (provided that certain Regulation D requirements, including limitations on general solicitation and any applicable limits on the amount of securities offered and the number of investors, are always deemed significant); and (iii) a good faith and reasonable attempt was made to comply. 17 CFR 230.508. We do not believe that Rule 508 would cover circumstances in which an offering was disqualified based on Proposed Rule 506(c).

[84] As of the date of this Release, 31 states plus the District of Columbia had adopted some form of the MAIE. *See* CCH SmartCharts™, Blue Sky Topics, "Did the State Adopt the NASAA Model Accredited Investor Exemption?."

[85] *See* NASAA Comment Letter, note 40. *See also* Comment Letter from Carol Bavousett Mattick, P.C. Chair of the Securities Law Committee, Business Law Section of the State of Texas (Oct. 9, 2007) (available at *http://www.sec.gov/comments/s7-18-07/s71807-36.pdf*) (using questionnaires similar to the current practices for establishing a reasonable basis for determining accredited investor status would seem to be appropriate).

[86] *See* Proposed Rule 506(c)(2)(ii), where the instruction states: "*Instruction to paragraph (c)(2)(ii)* An issuer will not be able to establish that it has exercised reasonable care unless it has made factual inquiry into whether any disqualifications exist. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants."

[87] 17 CFR 230.262.

[88] *Id.*

[89] *See* Proposed Rule 506(c)(2)(i). Under current rules, the Commission has delegated authority to the Director of the Division of Corporation Finance to grant disqualification waivers under Regulation A. *See* 17 CFR 200.30–1(b). Under the proposal, there would be no delegation of authority for waivers of bad actor disqualification under new Rule 506(c), and all such waivers would have to be issued by a direct order of the Commission itself.

disqualification rules for cases involving final orders of state regulators? Under what circumstances should the Commission exercise that authority? With regard to state regulatory matters, should there be additional requirements (such as concurrence by the relevant regulator or lack of objection after notice) before the Commission should consider issuing a waiver?

(61) Should we provide guidance on circumstances that are likely to give rise to the grant or denial of a waiver?

(62) Should our rules include a provision (such as currently included in the MAIE) [90] that provides an exception from disqualification if the relevant authority of the state to which the disqualification relates waives the disqualification?

F. Transition Issues

1. *Disqualifying events that pre-date the rule.* Under the proposal, the new disqualification provisions would apply to all sales made under Rule 506 after the effective date of the new provisions. (The provisions would not affect any transaction that was completed before the effective date.) Offerings made after the effective date would be subject to disqualification for all disqualifying events that had occurred within the relevant look-back periods, regardless of whether the events occurred before enactment of the Dodd-Frank Act, or the proposal or effectiveness of the amendments to Rule 506. We believe that giving full effect to the bad actor provisions upon adoption carries out Congress' mandate.[91] We nevertheless recognize that application of the new disqualification provisions could affect a number of market participants. We are, therefore, seeking comment on potential approaches to alleviate any concerns about possible unfairness, as explained more fully below.

We believe that, under the text of Section 926 as enacted by Congress, past disqualifying events should be taken into account under our new disqualification rules.[92] Dodd-Frank Act Section 926(2)(A)(i), for example, states that these rules shall disqualify any offering or sale by a person who "is subject" to a final order of a State securities commission or other regulator that bars the person from certain activities. Section 926(2)(A)(ii) similarly requires disqualification of any offering or sale by a person subject to a final State order "that constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale". Section 926(2)(B) requires disqualification of any person who "has been convicted" of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission. In each case, the statutory directive states that our rules shall provide for disqualification based on a past event. In addition, Section 926(1) requires the new disqualification rules to be "substantially similar" to the existing disqualification provisions in Rule 262 of Regulation A. That rule currently disqualifies offerings based on past disqualifying events affecting issuers and other covered persons.[93]

In addition, we are mindful that Section 926 replaced a provision in an earlier bill that would have eliminated Federal pre-emption of Rule 506 offerings, thus subjecting such offerings to state "blue sky" regulation. Without pre-emption, existing convictions, disciplinary orders and other disqualifying events would have operated to disqualify offerings in the states that have bad actor disqualification rules. Replacing this provision with Section 926 was not seen as decreasing investor protection in this regard,[94] suggesting that Section 926 was intended to take into account pre-existing disqualifying events.

Rule 506 is an exemptive rule that establishes a safe harbor from statutory registration requirements for securities offerings. It does not create rights, so disqualification from participation in that type of exempt offering cannot inappropriately prejudice any person. Moreover, offerings that would be disqualified from reliance on Rule 506 under the new provisions could potentially still be effected on a registered basis, pursuant to an available statutory exemption such as Section 4(2) or Section 4(5) of the Securities Act, or pursuant to another exemptive rule. Alternatively, issuers may regain eligibility to rely on Rule 506 if they are able to terminate their relationship with the bad actor whose involvement triggers disqualification.

We are therefore not proposing to exempt, "grandfather," or otherwise make special provision for events that occurred before enactment of the Dodd-Frank Act or the effective date of the proposed amendments. We are soliciting comment, however, about whether the new disqualification provisions required under the Dodd-Frank Act would operate in an unfair manner in particular respects and, if so, how we should address that. For example, should the rules provide a different treatment for persons who entered into negotiated settlements prior to the enactment of the Dodd-Frank Act, the date of this Release or the effective date of our rules, on the basis that they might not have settled on the same terms (or at all) if they had known it would result in disqualification from future Rule 506 offerings? We are soliciting comment on whether we should provide grandfathering or other accommodation for some or all events that predate enactment of the Dodd-Frank Act, this Release or the effective date of our rules, provided such grandfathering or other accommodation would be consistent with the requirements of Section 926. We are also seeking comment on whether we should extend the benefit of waivers previously granted in respect of disqualification from Regulation A, Rule 505 of Regulation D or Regulation E, so that such waivers would cover the new

[90] *See* NASAA, Model Accredited Investor Exemption (D)(2)(b) (available at *http://www.nasaa.org/content/Files/Model_Accredited_Investor_Exemption.pdf*).

[91] Statement of Senator Christopher Dodd, CR S3813 (May 17, 2010).

[92] In *Landgraf* v. *USI Film Products,* 511 U.S. 244 (1994), the Supreme Court set forth a general framework for determining the temporal reach of a statute. The first step in that analysis is determining whether Congress has expressed a clear intent on the statute's proper reach. *See also Fernandez-Vargas* v. *Gonzales,* 548 U.S. 30, 37 (2006) (in the absence of express language regarding retroactive intent, "we try to draw a comparably firm conclusion about the temporal reach specifically intended by applying 'our normal rules of construction'"). If Congress has done so, that intention controls. If Congress has not expressed a clear intention on how the statute applies to past events, the second step of the *Landgraf* analysis is to determine whether the statute impairs rights a party possessed when he acted, increases liability for past conduct or imposes new duties with respect to transactions already completed. 511 U.S. at 280. However, the fact that a statute's operation draws on antecedent facts or may upset expectations based on prior law does not make it impermissibly retroactive. *Id.* at 269 and n.24. *See also Nat'l Cable & Telecommunications Assn.* v. *FCC,* 567 F.3d 659, 670 (DC Cir. 2009); *Boniface* v. *U. S. Dept. of Homeland Security,* 613 F.3d 282 (DC Cir. 2010); *Empresa Cubana Exportadora de Alimentos y Productos Varios* v. *U.S. Dept. of the Treasury,*___ F 3d ___, 2011 WL 1120271 (DC Cir. 2011).

[93] Senator Dodd's statement on the Senate floor, when he proposed adding this language, provides further support. "New section 926 would disqualify felons and other "bad actors" who have violated Federal and State securities laws from continuing to take advantage of the rule 506 private placement process. This will reduce the danger of fraud in private placements." Statement of Sen Dodd, CR S3813 (May 17, 2010)]. It suggests an intention to prevent previous violators from continuing to rely on our exemptions, which can only be accomplished if pre-existing disqualifying events are taken into account.

[94] *See* NASAA letter, dated April 27, 2010, quoted at CR S3813; *see also* letter of the Angel Capital Association, dated April 21, 2010, quoted at CR S3813).

disqualification provisions applicable to Rule 506.

Request for Comment

(63) Should the Commission provide for grandfathering of pre-existing disqualifying events, or other phase-in procedures for the new disqualification provisions? What would be the effect on issuers, other covered persons and investors of implementing the new bad actor disqualification provisions without grandfathering, as proposed? Would providing for grandfathering be consistent with the requirements of Section 926 of the Dodd-Frank Act?

(64) If we provide for grandfathering, should we grandfather disqualifying events that occurred before enactment of the Dodd-Frank Act, before the date of this Release or before adoption or effectiveness of the amendments to Rule 506? What impact would that have on investor protection? Would the impact on investor protection be reduced if we required disclosure of grandfathered events?

(65) Alternatively, should we grandfather only certain disqualifying events? For example, we could grandfather orders arising out of negotiated settlements agreed to before enactment of the Dodd-Frank Act, or before the rules were proposed, adopted or became effective, in light of the possibility that the party would not have agreed to the relevant order if it had known that a collateral consequence of the agreement would be disqualification from all Rule 506 offerings. This would be similar to the approach taken with respect to eligibility for being a "well-known seasoned issuer" when that category was created.[95] Would providing a different treatment for pre-existing negotiated settlements limit the effectiveness of the bad actor disqualification rules?

(66) Rather than, or in addition to, providing for grandfathering, should we extend waivers previously granted with respect to bad actor disqualification under Regulation A, Rule 505 or Regulation E to cover Rule 506 as well? If we were to consider that approach, are there any categories of such waivers that particularly should or should not be so extended?

2. *Effect on ongoing offerings.* As proposed, our bad actor disqualification provisions would apply to each sale of securities made in reliance on Rule 506 after the rule amendments go into effect. Sales of securities made before the effective date would not be affected by any disqualification that arises as a result of the adoption of the amendments, even if such sales were part of an offering that was intended to continue after the effective date. Only sales made after the effective date of the amendments would be subject to disqualification.

Under the proposal, disqualifying events that occur while an offering is underway would be analyzed in a similar fashion. Sales made before the occurrence of the disqualification would not be affected by it, but sales thereafter would be disqualified unless and until the disqualification is waived or removed.[96]

We believe this approach is consistent with our other rules and provides appropriate incentives to issuers and other covered persons, but are soliciting comment on other possible approaches. If we were to provide that disqualification would be measured only at the time of commencement of an offering, then disqualifying events that arise after commencement would be disregarded. Such an approach could make the rules easier to apply, but would be problematic in light of the statutory language and may compromise investor protection in the context of offerings that continue for extended periods. Conversely, we could provide that all sales in a continuous offering lose the benefit of the exemption if a disqualification arises during the offering. Such an approach could encourage issuers to avoid involving potentially problematic parties in their offerings, but may be too unpredictable and therefore undermine the benefits of the exemptions.

Request for Comment

(67) Is it appropriate for disqualification to apply to sales made after the effective date of the new rules in offerings that are underway at the time the new rules become effective, as proposed?

(68) Is it appropriate for disqualification requirements to apply to each sale of securities, as proposed? Or should we measure disqualifying events only at time of the commencement of an offering? Conversely, should we disqualify all sales in a continuous offering if a disqualification occurs during the offering, including sales that have already been made?

3. *Timing of implementation.* The proposal does not contemplate any phase-in period or delay before issuers would be required to comply with the new disqualification rules. However, given that the new rules may require issuers to take a number of actions before they could confirm that they were not disqualified from relying on Rule 506 (such as, for example, undertaking an inquiry of covered persons, modifying existing due diligence questionnaires, taking steps to remove any existing disqualifications and seeking waivers of disqualification if necessary), it may be appropriate to provide additional time after the rules are adopted but before compliance is required.

Request for Comment

(69) Is a relatively shorter implementation period (such as 60 days) appropriate for the new disqualification rules, or should we provide for delayed implementation? If so, how much time would be appropriate? (90 days? 120 days? Longer?) Please provide support for your views by reference to the actions that issuers would be required to take and an estimate of the time periods involved.

G. Amendment to Form D

We are proposing a conforming amendment to Form D to reflect that, under our proposal, bad actor disqualification would apply to Rule 506 transactions as well as Rule 505 transactions under Regulation D. The signature block of the current Form D contains a certification that applies only to transactions under Rule 505, confirming that the offering is not disqualified from reliance on Rule 505 for one of the reasons stated in current Rule 505(b)(2)(iii). Under the proposal, this certification would be broadened, so that issuers claiming a Rule 506 exemption would also confirm that the offering is not disqualified from reliance on Rule 506 for one of the reasons stated in Rule 506(c).

III. Possible Amendments To Increase Uniformity

In addition to the matters on which we solicit comment above, we are also soliciting public comment on additional changes to our rules that are not explicitly addressed in Section 926 of the Dodd-Frank Act. We are seeking input on whether any or all of these would enhance our rules by better protecting investors from recidivist bad

[95] For purposes of defining "ineligible issuer" (*i.e.,* an issuer that is not eligible to be a "well known seasoned issuer"), we provided that ineligibility based on settlements would apply only to judicial or administrative decrees or orders entered into after the effective date of the new rules. *See* Release No. 33–8591 (Jul. 19, 2005) [70 FR 44722, 44747]; (available at *http://www.sec.gov/rules/final/33-8591.pdf*).

[96] Disqualifying events that exist at the time the offering is commenced but are only discovered later would be treated the same way if the reasonable care exception applies; otherwise, the sales would not be eligible for reliance on Rule 506.

actors in exempt offerings, avoiding potential sources of confusion and making the rules easier to administer. Although we have not proposed rule text to implement these changes, we are considering them and may adopt them as part of this rulemaking.

A. Uniform Application of Bad Actor Disqualification to Regulations A, D and E

We are considering and requesting public comment on whether the new bad actor disqualification standards required by the Dodd-Frank Act for Rule 506 offerings should be applied on a more uniform basis. Under our proposal, Rule 506 of Regulation D would be the only exemption subject to the disqualification rules mandated by Section 926 of the Dodd-Frank Act. The other Securities Act exemptions that currently provide for "bad actor" disqualification (Regulation A,[97] Rule 505 of Regulation D,[98] and Regulation E [99]) would continue to follow the disqualification schemes that are currently in effect. Offerings under Rule 504,[100] the remaining Regulation D exemption, would be the only Regulation D exemption not subject to any Federal disqualification requirements. We are concerned that there may be confusion, and that compliance costs could be increased, if different disqualification standards apply to these exemptions.[101] We are also concerned that new disqualification standards applicable only to Rule 506 offerings could negatively affect the market for offerings under our other exemptive rules. We are therefore soliciting comment on whether the proposed new disqualification provisions of Rule 506 should be extended to cover these other exempt offerings.[102]

All bad actor disqualification provisions in our current Securities Act exemptive rules are substantially similar: Rule 505 effectively incorporates by reference Rule 262, with some changes in defined terms,[103] and Rule 602 is substantially similar in its language and effect, although it does not explicitly refer to Rule 262. We are considering whether to preserve this basic uniformity by conforming all existing bad actor disqualification requirements for exempt offerings to the standards proposed to be applied to Rule 506 offerings, and are requesting public comment on that approach.

In the 2007 Proposal, the Commission suggested a uniform approach to disqualification for all offerings under Regulation D.[104] Both in response to the 2007 Proposal [105] and in advance comments on this rulemaking,[106] NASAA voiced support for such a uniform approach. Most comment letters did not support the 2007 Proposal to subject all Regulation D offerings to bad actor disqualification, and particularly objected to applying bad actor disqualification requirements to Rule 506.[107] Given that the Dodd-Frank Act now requires bad actor disqualification for Rule 506 offerings, and that these constitute a significant majority of transactions under Regulation D, we are considering whether many of the same policy reasons for disqualifying bad actors could be applicable to each of the Regulation D exemptions, as well as to the exemptions under Regulation A and Regulation E, and that uniform disqualification may further investor protection. We are also considering whether imposing uniform disqualification standards across the remainder of Regulation D might promote clarity and simplicity in applying our exemptive rules, and reduce costs imposed by an inconsistent regulatory structure. We also have a concern that adding new disqualification provisions that apply only to offerings under Rule 506 may negatively affect the market for offerings under our other exemptive rules. Bad actors may be encouraged to migrate to offerings under these other exemptions, which would raise investor protection concerns. In addition, investors may perceive a higher risk of fraud in such offerings, which would potentially affect the marketability and issuance costs of all offerings under the exemptions without the new standards, whether or not bad actors are involved.

In order to adopt such a uniform approach, we would have to amend our rules and our proposal in a number of ways, including the following:

- If we applied bad actor disqualification to all Regulation D offerings, we would need to codify the provision as a new paragraph (e) of Rule 502 (the "General Conditions to be Met" for Regulation D offerings) rather than in Rule 506, and would need to delete the current disqualification provisions of Rule 505(b)(2)(iii). The disqualification provisions of Rule 262 of Regulation A and Rule 602 of Regulation E would need to be amended to conform to new Rule 502(e).
- We would add underwriters and their directors, officers, general partners and managing members to the categories of covered persons described in the proposal. This would generally

[97] *See* note 17.

[98] 17 CFR 230.505. Rule 505 permits offerings of up to $5 million of securities annually, without general solicitation, to an unlimited number of accredited investors and up to 35 non-accredited investors. Rule 505 offerings are subject to the same conditions as apply to Rule 506 offerings (*see* note 10 above), except that non-accredited investors are not required to be sophisticated.

[99] 17 CFR 230.601 through 230.610. Regulation E is an exemption for offerings up to $5 million by small business investment companies ("SBICs") and business development companies ("BDCs"). SBICs are investment funds licensed and regulated by the Small Business Administration that use their own capital plus funds borrowed with an SBA guarantee to make equity and debt investments in qualifying small businesses. *See* Investment Company Act § 2(a)(46), 15 U.S.C. 80a–2(46). A BDC is a closed-end investment company that has elected to be subject to Sections 55 through 65 of the Investment Company Act and that is operated for the purpose of investing in and making significant managerial assistance available to certain types of companies. *See* Investment Company Act § 2(a)(48), 15 U.S.C. 80a–2(48). Regulation E offerings are required to have an offering circular containing specific mandatory information, which is filed with the Commission and subject to review by the staff of the Division of Investment Management.

[100] 17 CFR 230.504. Rule 504 permits offerings of up to $1 million of securities by issuers that are not (i) reporting companies under the Securities Exchange Act, (ii) investment companies or (iii) development stage companies with no specific business plan or purpose, or whose business plan is to engage in a merger or acquisition with an unidentified entity or entities. Offerings under Rule 504 must generally comply with Regulation D requirements regarding limitations on manner of sale (no general solicitation) and limitations on resale. The manner of sale and resale limitations do not apply, however, to offerings that are subject to state-level registration or that rely on state law exemptions permitting general solicitation so long as sales are made only to accredited investors.

[101] Regulation A, Rules 504 and 505 of Regulation D and Regulation E are used much less frequently than Rule 506. For the year ended September 30, 2010, we received 17,292 initial filings for offerings under Regulation D, of which 16,027 claimed a Rule 506 exemption, 254 claimed a Rule 505 exemption, 713 claimed a Rule 504 exemption and 151 claimed both Rule 504 and 506 exemptions. Transactions relying on Regulation A or Regulation E are rare; for the year ended September 30, 2010, seven Regulation A offerings and one Regulation E offering were completed. Note that the staff of the Division of Corporation Finance does not routinely review Form D filings to confirm that claimed exemptions are actually available. The figures presented above are based on exemptions claimed in Form Ds that were filed during the relevant period.

[102] If we were to adopt a uniform approach, the rules applied to all exempt transactions would give effect to any changes from our proposal that were ultimately adopted (including, for example, the possible inclusion of final orders of the Commission and the CFTC as disqualifying events, on which we have requested comment in Part II.C.3 of this Release).

[103] *See* 17 CFR 230.505(b)(2)(iii).

[104] *See* note 13.

[105] *See* NASAA Comment Letter, note 40.

[106] *See* NASAA Advance Comment Letter, note 41.

[107] *See, e.g.,* Comment Letters of the American Bar Association (Oct. 12, 2007) (available at *http://www.sec.gov/comments/s7–18-07/s71807-52.pdf*); Tenant-in-Common Association (Oct. 17, 2007) (available at *http://www.sec.gov/comments/s7-18-07/s71807-55.pdf*); and Davis, Polk & Wardwell (Oct. 9, 2007) (available at *http://www.sec.gov/comments/s7-18-07/s71807-39.pdf*).

harmonize with Rule 262.[108] Underwriters may participate in offerings under Regulation A and Regulation E and in certain transactions under Rule 504 of Regulation D, and so would have to be included if our disqualification rules were to cover such transactions.

• We would need to make a number of changes to harmonize with existing Rule 602 of Regulation E. For example, we would need to add as covered persons, for issuers that are registered investment companies, "private funds" as defined in Section 202(a)(29) of the Investment Advisers Act of 1940 or that elect to be regulated as "business development companies," [109] their investment advisers and the general partners, managing members, directors and officers of such investment advisers.[110] We would need to add a reference in the paragraph addressing Commission disciplinary orders to orders suspending or revoking registration as an investment company issued under Section 8(e) of the Investment Company Act of 1940, and we would need to add references, in the paragraph addressing stop orders and orders denying an exemption, to similar proceedings and orders in relation to Regulation E offering circulars.[111]

• A uniform approach would result in a slightly broader universe of disqualifying events, in that events that are disqualifying under only one or two current exemptive rules would apply across the board to Regulation A, Regulation D and Regulation E transactions. Because the existing rules are so similar, the impact of this would be limited to a few matters.[112]

• Under a uniform approach, for the events that are subject to an express look-back period we are considering whether to use the date of the relevant sale, as proposed for Rule 506, rather than to the date of filing of an offering circular, as provided currently under Regulation A and Regulation E, as the measurement date.

• The certification in the signature line of Form D would need to be amended to apply to all Regulation D offerings, not only those under Rule 505 and Rule 506; every issuer claiming a Regulation D exemption would be required to confirm that the offering was not disqualified for any of the reasons stated in the bad actor disqualification rules applicable to Regulation D.

We seek comment on whether incremental changes such as these would unduly restrict reliance upon the exemptions under Regulation A, Rule 505 of Regulation D, and Regulation E, and whether uniform rules would provide clarity and simplicity that may be an overall benefit to investors and other market participants.

We are soliciting comment on a variety of possible approaches to uniformity. For example, we could choose not to pursue a uniform approach, and add new disqualification provisions applicable to Rule 506 transactions only, as proposed. This would leave the existing bad actor provisions applicable to other exemptive rules as they are, and would not subject Rule 504 transactions to bad actor disqualification. We could adopt rules that differentiate between offerings under Regulation A, Rules 505 and 506 of Regulation D and Regulation E, on the one hand (all of which would be subject to the same bad actor disqualification provisions), and Rule 504 offerings on the other hand (which could continue to be conducted without bad actor provisions, or could be subject to some alternative to disqualification, such as mandatory disclosure of the events and circumstances that give rise to disqualification under other exemptive rules). Alternatively, for purposes of Regulation A, Rules 504 and 505 of Regulation D, and Regulation E, we could require disclosure of events that would be disqualifying under Rule 506, without imposing a new disqualification regime.

We are also soliciting comment on whether broadening the impact of the rule changes by uniform application should affect our proposal to not provide for grandfathering of existing disqualifying events. For example, it may be appropriate in that context to differentiate between disqualification provisions that are explicitly addressed in Section 926 of the Dodd-Frank Act and those that are not.

Finally, in considering whether to adopt uniform rules we would also have to consider the relative costs and benefits of such rules and their impact on competition, efficiency and capital formation. We would give particular consideration to their impact on issuers and other market participants (such as placement agents) that are small businesses. Because Regulation A, Rule 505 of Regulation D and Regulation E are relatively little-used, we do not expect the impact in those areas to be significant.

Preliminarily, we believe that uniform application of disqualification standards could have the following effects:

• It may improve investor protection by more effectively excluding bad actors from the private placement and small offering markets.

• It may avoid any confusion that might otherwise arise in applying different disqualification standards to different exemptions and simplify implementation of the new rules.

• It would avoid the creation of actual or perceived loopholes in our rules, which might encourage felons and bad actors disqualified from Rule 506 offerings to migrate to less-regulated kinds of transactions, or create a perception that investors in Rule 506 offerings are more deserving of protection than other investors.

• It may increase investor trust in the integrity of the private placement and small offering markets (which could contribute to a lower cost of capital for issuers).

• On the other hand, it may result in increased costs for issuers, including costs associated with registration if exemptive rules are no longer available,

[108] All of these are covered persons under current Rule 262 except for the managing members of underwriters.

[109] See note 99.

[110] This is one area where the approach under Regulation D, Regulation A and Regulation E would not be completely uniform because of differences in the types of issuers eligible to rely on those regulations. As applied to Regulation D offerings, the rule would cover investment advisers of all entities that describe themselves as "pooled investment funds" on Form D, or that are registered investment company, private fund or BDC issuers, as described in the request for comment in Part II.B above. Regulation A Rule 262 would cover investment advisers of private fund issuers only, because registered investment companies and BDCs are not eligible to rely on Regulation A. Regulation E Rule 602 would cover every issuer's investment advisers; only BDCs and SBICs are eligible to rely on Regulation E (this is also consistent with the approach under current Regulation E Rule 602).

[111] To the extent that current bad actor disqualification rules in Rule 602 of Regulation E differ from those in Rule 262 of Regulation A, the uniform approach would result in changes to Rule 602 in addition to those described in Part II of this Release. These would include changes in covered persons (referring to "any beneficial owner of 10% or more of any class of the issuer's equity securities" rather than to any "principal securities holders" and referring to issuer predecessors, affiliated issuers rather than any "affiliate" of the issuer) and the addition of a provision similar to proposed Rule 506(c)(3) with regard to events that predate an affiliate relationship.

[112] Specifically, under current rules, an issuer that is disqualified from doing a Regulation E offering because it was the subject of a proceeding to revoke its registered investment company status, or had filed a Regulation E offering circular that was subject to an order suspending the Regulation E exemption, is not disqualified from doing an offering in reliance on Regulation A or D. Similarly, an issuer that is disqualified from doing a Regulation A or Rule 505 offering because it had filed a Regulation A offering circular that was subject to an order suspending the Regulation A exemption, is not disqualified from doing an offering in reliance on Regulation E. Finally, certain convictions and disciplinary orders against covered persons that are municipal securities dealers are currently disqualifying under Regulation A and Rule 505, but not Regulation E. If we were to adopt a uniform approach, any disqualifying event in relation to any covered person would disqualify an issuer from using any of these exemptions.

costs associated with terminating relationships with covered persons, or costs associated with executing exempt transactions that are outside the safe harbors and exemptions provided by our rules. It may also increase compliance costs for issuers, particularly in Rule 504 offerings, which are not currently subject to bad actor disqualification; such issuers could be required to bear additional costs associated with, for example, circulating questionnaires to covered persons, revising questionnaires based on state disqualification rules to cover the new Federal disqualification rules, checking publicly available databases and undertaking other factual inquiries.

- Uniform bad actor disqualification rules may increase investor protections and investor trust in the integrity of the private placement and limited offering markets generally, thereby increasing efficiency, potentially decreasing costs for issuers in those markets and providing other benefits to the public. On the other hand, they could impair efficiency if our rules are considered overbroad, or if increased compliance costs are not justified by the direct and indirect benefits of screening a larger universe of disqualified persons out of the market.
- We do not expect that uniform rules would have significant effects on competition, due to the ability of many issuers to avoid disqualification by eliminating bad actors, the availability of other statutory exemptions such as Section 4(2) and Section 4(5) of the Securities Act, and the ability to register offerings for which an exemption is no longer available. For the same reasons, we do not expect that such expanded rules would have a significant impact on costs of capital raising (although, as discussed above, we expect that issuers will incur some incremental costs).
- We expect that the impact on small businesses of uniform rules would be substantially the same as the impact of the amendments we are proposing. See Part IX of this Release for our preliminary analysis of such effects.

Request for Comment

(70) Would it be appropriate to apply the proposed disqualification standards uniformly to offerings under Regulation A, Regulation D and Regulation E? Or should we limit the disqualification provisions in the new rule only to those expressly required by the Dodd-Frank Act (*i.e.,* only to Rule 506 transactions), as proposed?

(71) If we were to expand the application of the rules beyond Rule 506 transactions, should we distinguish between conforming the provisions of the exemptive rules that currently have bad actor disqualification requirements (*i.e.,* Regulation A, Rule 505 of Regulation D and Regulation E), on the one hand, and imposing the same requirement on Rule 504 offerings, on the other, given that they are currently not subject to bad actor disqualification at the Federal level? Should we adopt disclosure or other rules for Rule 504 offerings as an alternative means of addressing investor protection concerns regarding bad actors in these offerings? What would be the costs and benefits of such a disclosure alternative?

(72) Should we conform the disqualification provisions of Regulation A and Regulation E to the standards proposed in Rule 506(c), or should these provisions continue to reflect current regulatory standards? Since offering documents for both Regulation A and Regulation E offerings are subject to both Commission and state "Blue Sky" review and regulation, would it be appropriate to subject them also to the new Federal disqualification provisions required by the Dodd-Frank Act for Rule 506 offerings?

(73) Should we make any additional changes to the proposed covered persons or disqualification events that are specific to Regulation A or Regulation E, reflecting the particular nature of those offerings?

(74) If we were to include investment advisers as covered persons, is it appropriate to limit coverage to the investment advisers of private fund issuers and BDCs? Or should investment advisers to other issuers also be covered?

(75) If we conformed the bad actor disqualification rules of Regulation A and Regulation E to the new rule we are proposing, should we nevertheless continue to measure look-back periods under Rule 262 of Regulation A and Rule 602 of Regulation E based on the date of filing of the relevant offering circular? Or should we consider a uniform measurement date based on the date of the relevant sale of a security?

(76) If we were to pursue a uniform approach to bad actor disqualification, should this affect our proposal to not provide for grandfathering of disqualifying events that predate adoption of the Dodd-Frank Act or the proposal or adoption of new rules? Would any of the possible changes to each of the current disqualifications have particular effects on those offerings or participants in those offerings that we should take into account? If so, how could we address those effects? Should grandfathering, if any, be limited to disqualification provisions other than those imposed on Rule 506 offerings?

(77) What would the costs and benefits of uniform rules be? Would the benefits justify the costs? How would uniform rules affect competition, efficiency and capital formation?

(78) What would the impact on small businesses be if we imposed uniform rules? Would that be different from the impact of the rule amendments we are proposing, which are limited to Rule 506 offerings? If so, how?

B. Uniform Look-Back Periods

We are also considering making uniform all of the look-back periods that apply to disqualifying events that have an express look-back period. Rather than using a ten-year period for the final orders of certain state and Federal regulators (as required under the Dodd-Frank Act), and for criminal convictions of covered persons other than the issuer, its predecessors and affiliated issuers (as provided under current Rule 262), and a five-year period for all other events subject to an express look-back period, we are considering applying a uniform ten-year look-back to all such events. We request public comment on whether a uniform look-back period would make the rules clearer and easier to apply or would otherwise better promote our regulatory objectives.

(79) Would it be appropriate for us to apply a uniform ten-year period to all disqualifying events that are subject to an express look-back period? Are there any disqualifying events for which the look-back period should be shorter (*e.g.,* five years)? Are there any events for which the look-back period should be longer than ten years? Are there events that should be permanently disqualifying?

(80) If look-back periods were extended, should events that are no longer disqualifying under current rules become disqualifying again? For example, under current rules a court order that is more than five years old is no longer disqualifying under Rule 262. If we extended the look-back period to ten years, a court order issued six years prior, which is no longer disqualifying, would again create a basis for disqualification. Is that appropriate?

(81) What would the costs and benefits be of applying a uniform ten-year look-back period? Would the benefits justify the costs? How would a uniform look-back period affect competition, efficiency and capital formation? Would small businesses be affected differently than they would be under the rules as proposed and, if so, how?

IV. General Request for Comment

We request comment, both specific and general, on each component of the proposals. We request and encourage any interested person to submit comments regarding the proposals that are the subject of this release and other matters that may have an effect on the proposals contained in this release.

Comment is solicited from the point of view of both investors and issuers, as well as of capital formation facilitators, such as investment banks, and other regulatory bodies, such as state securities regulators. Any interested person wishing to submit written comments on any aspect of the proposal is requested to do so.

V. Chart—Comparison of Felon and Other Bad Actor Disqualification Under Current Rule 262, Dodd-Frank Act Section 926 and Proposed Rule 506(c)

The following chart compares the terms of current Rule 262 (the bad actor disqualification provisions of Regulation A), Section 926 of the Dodd-Frank Act and proposed Rule 506(c). The chart is a convenience summary only and should be read together with (and is qualified in its entirety by) the current rules, any applicable interpretations and the full text of the proposed rules included in this release.

A. Covered Persons

Rule 262	Dodd-Frank Section 926	Proposed Rule 506(c)
262(a):	*926(1):*	
Issuer	Regulations that are "substantially similar to the provisions of" Rule 262	Issuer.
Issuer predecessors		Issuer predecessors.
Affiliated issuers		Affiliated issuers.
262(b):		
Directors		Directors.
Officers		Officers.
General partners		General partners.
		Managing members.
10% beneficial owners		10% beneficial owners.
Promoters presently connected with the issuer		Promoters connected with the issuer at the time of such sale.
262(c):		
Underwriters		Persons compensated for soliciting purchasers.[113]
Partners, directors and officers of underwriters		General partners, directors, officers and managing members of compensated solicitors.

B. Disqualifying Events

1. Criminal Convictions

Rule 262	Dodd-Frank Section 926	Proposed Rule 506(c)
262(a)(3): The issuer, any of its predecessors or any affiliated issuer: "has been convicted within 5 years * * * of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission"	*926(2)(B):* Rules must disqualify any offering or sale of securities by a person that: "has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission"	Any covered person: "has been convicted, within ten years before such sale (or five years, in the case of issuers, their predecessors and affiliated issuers), of any felony or misdemeanor: (A) in connection with the purchase or sale of any security; (B) involving the making of any false filing with the Commission; or (C) arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities;"
262(b)(1): Any other covered person: "has been convicted within 10 years * * * of any felony or misdemeanor in connection with the purchase or sale of any security, involving the making of any false filing with the Commission, or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser"		

2. Injunctions and Court Orders

Rule 262	Dodd-Frank Section 926	Proposed Rule 506(c)
262(a)(4):		

[113] As used in Regulation D Rule 505, the term "underwriter" is defined to mean "a person that has been or will be paid directly or indirectly remuneration for solicitation of purchasers in connection with sales of securities" under the rule. 17 CFR 230.505(b)(2)(iii)(B).

Rule 262	Dodd-Frank Section 926	Proposed Rule 506(c)
The issuer, any of its predecessors or any affiliated issuer: is subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, entered within 5 years prior to filing, permanently restraining or enjoining, such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the Commission" *262(b)(2):* Any other covered person: Identical to (a)(4), but adds "or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer or investment adviser."	No specific provision; regulations must be "substantially similar to the provisions of" Rule 262	Any covered person: is subject to any order, judgment, or decree of any court of competent jurisdiction, entered within five years before such sale, that, at the time of such sale, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice: (A) in connection with the purchase or sale of any security; (B) involving the making of any false filing with the Commission; or (C) arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities"

3. Final Orders of Certain Regulators

Rule 262	Dodd-Frank Section 926	Proposed Rule 506(c)
No general provision on administrative enforcement actions	Rules must disqualify any offering or sale of securities by a person that: "is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that— (i) bars the person from— (I) association with an entity regulated by such commission, authority, agency or officer; (II) engaging in the business of securities, insurance or banking; or (III) engaging in savings association or credit union activities; or (ii) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the ten-year period ending on the date of the filing of the offer or sale."	Any covered person: "is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions); a State authority that supervises or examines banks, savings associations, or credit unions; a State insurance commission (or an agency or officer of a State performing like functions); an appropriate Federal banking agency; or the National Credit Union Administration, that— (*2*) engaging in the business of securities, insurance or banking; or (A) at the time of such sale, bars the person from: (*1*) association with an entity regulated by such commission, authority, agency or officer; (*2*) engaging in the business of securities, insurance or banking; or (*3*) engaging in savings association or credit union activities; or (B) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within ten years before such sale."

4. Commission Disciplinary Orders

Rule 262	Dodd-Frank Section 926	Proposed Rule 506(c)
262(b)(3): Any covered person other than the issuer, its predecessors and affiliated issuers: "is subject to an order of the Commission entered pursuant to section 15(b), 15B(a) or 15B(c) of the Exchange Act,[114] or section 203(e) or (f) of the Investment Advisers Act"[115]	No specific provision; regulations must be "substantially similar to the provisions of" Rule 262	Any covered person: "is subject to an order of the Commission entered pursuant to section 15(b) or 15B(c) of the Exchange Act * * * or section 203(e) or (f) of the Investment Advisers Act of 1940 * * * that, at the time of such sale: (A) suspends or revokes such person's registration as a broker, dealer, municipal securities dealer or investment adviser; (B) places limitations on the activities, functions or operations of such person; or (C) bars such person from being associated with any entity or from participating in the offering of any penny stock;

5. Suspension or Expulsion From SRO Membership or Association With an SRO Member

Rule 262	Dodd-Frank Section 926	Proposed Rule 506(c)
262(b)(4): Any covered person other than the issuer, its predecessors and affiliated issuers: "is suspended or expelled from membership in, or suspended or barred from association with a member of, a national securities exchange registered under section 6 of the Exchange Act or a national securities association registered under section 15A of the Exchange Act for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade."	No specific provision; regulations must be "substantially similar to the provisions of" Rule 262	Any covered person: "is suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade;

6. Stop Orders and Orders Suspending Exemptions

Rule 262	Dodd-Frank Section 926	Proposed Rule 506(c)
262(a)(1): The issuer, any of its predecessors or any affiliated issuer: "has filed a registration statement which is the subject of any pending proceeding or examination under Section 8 of the Act,[116] or has been the subject of any refusal order or stop order thereunder within 5 years prior to the filing of the offering statement required by § 230.252." *262(c)(1):* Any underwriter was or was named as an underwriter of any securities:	No specific provision; regulations must be "substantially similar to the provisions of" Rule 262	Any covered person: "has filed (as a registrant or issuer), or was or was named as an underwriter in, any registration statement or Regulation A offering statement filed with the Commission that, within five years before such sale, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption, or is at the time of such sale the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued."

[114] The cited sections cover suspension or revocation of registration and certain other sanctions against brokers, dealers and municipal securities dealers.

[115] The cited sections cover suspension or revocation of registration and other sanctions against investment advisers.

[116] The provision under which stop orders are issued for Securities Act registration statements.

Rule 262	Dodd-Frank Section 926	Proposed Rule 506(c)
"covered by a registration statement which is the subject of any pending proceeding or examination under Section 8 of the Act, or has been the subject of any refusal order or stop order thereunder within 5 years prior to the filing of the offering statement required by § 230.252." *262(a)(2):* The issuer, any of its predecessors or any affiliated issuer: "is subject to a pending proceeding under § 230.258[117] or any similar rule adopted under section 3(b) of the Securities Act, or to any order entered thereunder within 5 years prior to the filing of such offering statement." *262(c)(2):* Any underwriter was or was named as an underwriter of any securities: "covered by any filing which is subject to any pending proceeding under § 230.258 or any similar rule adopted under section 3(b) of the Securities Act, or to any order entered thereunder within 5 years prior to the filing of such offering statement."	No specific provision; regulations must be "substantially similar to the provisions of" Rule 262	See above (one paragraph of 506(c) covers the substance of 262(a)(1), (a)(2), (c)(1) and (c)(2))

7. U.S. Postal Service False Representation Orders

Rule 262	Dodd-Frank Section 926	Proposed Rule 506(c)
262(a)(5) and (b)(5): Any covered person: "is subject to a United States Postal Service false representation order entered under 39 U.S.C. § 3005 within 5 years prior to filing, or is subject to a temporary restraining order or preliminary injunction entered under 39 U.S.C. § 3007 with respect to conduct alleged to have violated 39 U.S.C. § 3005."	No specific provision; regulations must be "substantially similar to the provisions of" Rule 262	Any covered person: "is subject to a United States Postal Service false representation order entered within 5 years before such sales or is at the time of such sale subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations."

C. Waivers/Exclusions

Rule 262	Dodd-Frank Section 926	Proposed Rule 506(c)
	Waivers	
262 (first unnumbered paragraph): Waiver by the Commission "upon showing of good cause and without prejudice to any other action by the Commission, [if] the Commission determines that it is not necessary under the circumstances that the exemption provided by this Regulation A be denied."	No specific provision; regulations must be "substantially similar to the provisions of" Rule 262.	Paragraph (c)(1) of this section shall not apply: (i) upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that the exemption be denied.

[117] The provision under which the Regulation A exemption would be suspended.

Rule 262	Dodd-Frank Section 926	Proposed Rule 506(c)
Reasonable Care Exception		
		(ii) if the issuer establishes that it did not know, and in the exercise of reasonable care could not have known, that a disqualification existed under paragraph (c)(1) of this section. *Instruction to paragraph (c)(2)(ii).* An issuer will not be able to establish that it has exercised reasonable care unless it has made factual inquiry into whether any disqualifications exist. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants.
Events Pre-dating Affiliation		
262(a)(5): "The entry of an order, judgment or decree against any affiliated entity before the affiliation arose, if the affiliate is not in control of the issuer and if the affiliated entity and the issuer are not under the common control of a third party who was in control of the affiliated entity at the time of such entry does not come within the purview of this paragraph (a) of this section.".	No specific provision; regulations must be "substantially similar to the provisions of" Rule 262.	For purposes of paragraph (c)(1) of this section, events relating to any affiliated issuer that occurred before the affiliation arose will be not considered disqualifying if the affiliated entity is not: (i) in control of the issuer or (ii) under common control with the issuer by a third party that was in control of the affiliated entity at the time of such events;

VI. Paperwork Reduction Act

The proposed amendments do not contain a "collection of information" requirement within the meaning of the Paperwork Reduction Act of 1995.[118] Accordingly, the Paperwork Reduction Act is not applicable and no Paperwork Reduction Act analysis is required.

VII. Cost-Benefit Analysis

A. Background and Summary of Proposals

As discussed above, we are proposing amendments to implement the requirements of Section 926 of the Dodd-Frank Act, relating to the disqualification of "felons and other 'bad actors'" from participation in Rule 506 offerings.

Section 926 of the Dodd-Frank Act requires the Commission to issue rules that disqualify securities offerings involving felons and other bad actors from reliance on the safe harbor provided by Rule 506 of Regulation D. These rules are required to be "substantially similar" to the disqualification rules in Rule 262 (which apply to Regulation A offerings as well as offerings under Rule 505 of Regulation D) and also to cover the matters enumerated in Section 926 (including certain state law orders and bars). The proposal includes a "reasonable care" exception that is not mandated by Section 926. This "reasonable care" exception would prevent an exemption from being lost, despite the existence of a disqualification with respect to a covered person, if the issuer can show that it did not know and, in the exercise of reasonable care, could not have known that the disqualification existed. The proposal also provides the Commission with authority to waive disqualification for good cause shown, similar to its waiver authority under Regulation A.

Section 926 of the Dodd-Frank Act is intended to exclude felons and bad actors from participating in Rule 506 offerings, thereby protecting investors in those offerings.[119] Our rules implementing Section 926 are designed to secure the benefits Congress intended. Our analysis focuses on the costs and benefits of the additional matters that we are proposing that are not specifically mandated by Section 926. Specifically, we have identified certain costs and benefits that may result from the proposal to include a "reasonable care" exception and to provide waiver authority for the Commission. These costs and benefits are analyzed below. We encourage the public to identify, discuss, analyze and supply relevant data regarding these or any additional costs and benefits in comment letters on these proposed rules.

B. Benefits

We anticipate that the "reasonable care" exception for issuers would provide a benefit by assuring that issuers would not lose the Rule 506 safe harbor from Securities Act registration because of a disqualification relating to another covered person, so long as they can show that they did not know and in the exercise of reasonable care could not have known of the disqualification. If we did not adopt such an exception, issuers would be at risk of liability for a violation of Section 5 of the Securities Act or of applicable state "blue sky" law if they conducted an offering in reliance on Rule 506 and later learned that a disqualification existed, even if they had exercised reasonable care in determining that there was no disqualification. Without a reasonable care exception, issuers might therefore choose not to undertake offerings in reliance on Rule 506, because the downside (a potential Section 5 or blue sky law violation under circumstances that the issuer cannot reasonably predict or control) may outweigh the intended upside (a relatively speedy and cost-effective means of raising capital). In that scenario, alternative approaches to capital raising may be more costly to the issuer or not available at all. Because Rule 506 is our most frequently relied-upon Securities Act exemptive rule, the

[118] 44 U.S.C. 3501 through 3521.

[119] *See* Statement of Senator Dodd, note 93.

impact of issuers shifting away from it could be significant. We believe that the proposed reasonable care exception would help to preserve the intended benefits of Rule 506, which might otherwise be impaired because of issuer concerns about strict liability for unknown disqualifications.

Similarly, we believe that providing waiver authority for the Commission would provide a benefit to issuers and other covered persons by giving them the opportunity to explain why disqualification should not arise as a consequence of a particular event or the participation of a particular covered person. The Commission's ability to grant waivers could allow more offerings to remain within the Rule 506 safe harbor than would otherwise be the case, which could result in cost savings for issuers relative to the cost of raising capital in a registered offering or in reliance on other exemptions.

C. Costs

The inclusion of a reasonable care exception for issuers may impose costs by increasing the likelihood that recidivists will participate in Rule 506 offerings and decreasing the deterrent effect of the bad actor disqualification rules mandated by Section 926 of the Dodd-Frank Act. Participation in Rule 506 offerings by bad actors could result in substantial harm. To the extent that inclusion of a reasonable care exception results in greater involvement of recidivist bad actors in Rule 506 offerings than would otherwise be the case, it would also reduce or eliminate benefits associated with increased investor trust and market integrity.

Issuers may also incur costs associated with conducting and documenting their factual inquiry into possible disqualifications, so they can demonstrate the exercise of reasonable care.

Providing for waiver authority may impose costs by decreasing the deterrent effect of the bad actor disqualification rules, and (to the extent the Commission may grant waivers) by enabling offerings involving bad actors to be conducted under Rule 506 that would otherwise be disqualified. In addition, persons seeking waivers would incur costs in doing so.

Our rules may impose costs on issuers and other market participants in terms of transactions foregone or effected by other means at higher cost. For example, imposing a new disqualification standard only on offerings under Rule 506 may result in higher costs for issuers relying on other exemptive rules, if investors lose trust in offerings under such other rules. We seek comment on any changes that could be made to the proposal, such as modifying the list of covered persons, the nature of disqualifying events, the time periods applicable to disqualifying events or the process for obtaining waivers of disqualification, that could reduce the burden on capital-raising activities without compromising investor protection.

Request for Comment

We solicit comments on the costs and benefits of the proposed amendment and on all aspects of this cost-benefit analysis. We request your views on the costs and benefits described above, as well as on any other costs and benefits not already identified that could result from the adoption of our proposal. We encourage the public to identify, discuss, and analyze these or any additional costs and benefits in comment letters. We request that comment letters responding to these requests provide empirical data and other factual support to the extent possible.

VIII. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 2(b) of the Securities Act [120] requires us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

Section 926 of the Dodd-Frank Act requires the Commission to adopt provisions to disqualify certain offerings from reliance on the Rule 506 exemption of Regulation D. To the extent our proposed amendments may go beyond the statutory mandate of Section 926 by providing a "reasonable care" exception for issuers and providing waiver authority for the Commission, we believe this would enable issuers to use Rule 506 more effectively and therefore would benefit efficiency and promote capital formation. In particular, the proposed rules are expected to reduce the risk of fraud and other potential securities law violations and increase investor trust in Rule 506 offerings, thereby lowering costs for issuers. We do not anticipate any significant effect on competition.

We request comment on whether the proposal, if adopted, would promote or burden efficiency, competition and capital formation. Finally, we request those who submit comment letters to provide empirical data and other factual support for their views, if possible.

IX. Initial Regulatory Flexibility Act Analysis

This initial regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed amendments to Rule 506 of Regulation D under the Securities Act which would disqualify certain offerings where "felons and other 'bad actors' " are participating or present from the safe harbor from Securities Act registration provided by Rule 506.

A. Reasons for the Proposed Action

The primary reason for the proposed amendments is to implement the requirements of Section 926 of the Dodd-Frank Act. Section 926 requires the Commission to issue rules under which certain offerings where "felons and other 'bad actors' " are participating or present will be disqualified from reliance on the safe harbor from registration provided by Rule 506 of Regulation D.

B. Objectives

Our primary objective is to implement the requirements of Section 926 of the Dodd-Frank Act. In general the rule we are proposing is a straightforward implementation of the statutory requirements. We have included a "reasonable care" exception in the proposed rule, which we believe will make the rule more useful to issuers and should encourage continued use of Rule 506 over exempt transactions outside the Rule 506 safe harbor.

C. Legal Basis

The amendment is being proposed under the authority set forth in Sections 4(2), 19, and 28 of the Securities Act and in Section 926 of the Dodd-Frank Act.

D. Small Entities Subject to the Proposed Rules

The proposal would affect issuers (including both operating businesses and investment funds that raise capital under Rule 506) and other covered persons, such as financial intermediaries, that are small entities. For purposes of the Regulatory Flexibility Act under our rules, an entity is a "small business" or "small organization" if it has total assets of $5 million or less as of the end of its most recent fiscal year.[121] For purposes of the Regulatory Flexibility Act, an investment company is a small entity if

[120] 15 U.S.C. 77b(b).

[121] 17 CFR 230.157.

it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.

The proposed amendment would apply to small issuers relying on Rule 506 of Regulation D to qualify for a safe harbor from Securities Act registration. All issuers that sell securities in reliance on Regulation D are required to file a Form D with the Commission reporting the transaction. For the fiscal year ended September 30, 2010, 17,292 issuers filed an initial notice on Form D. The vast majority of companies and funds filing notices on Form D are not required to provide information to the Commission that would enable us to establish their size. However, a significant portion of Rule 506 offerings (approximately 40% for the twelve month period ended September 30, 2010), were for amounts of $5,000,000 or less. We believe that many of the issuers in these offerings are small entities, but we currently do not collect information on total assets of companies and net assets of funds to determine if they are small entities for purposes of this analysis.

E. Reporting, Recordkeeping and Other Compliance Requirements

The proposed rule would not impose any reporting, recordkeeping or disclosure requirements.[122] We anticipate, however, that issuers would generally exercise reasonable care to ascertain whether a disqualification exists with respect to any covered person, and may document their exercise of reasonable care. The steps required would vary with the circumstances, but we anticipate may include such steps as making appropriate inquiry of covered persons and reviewing information on publicly available databases. We expect that the costs of compliance would generally be lower for small entities than for larger ones because of the relative simplicity of their organizational structures and securities offerings and the generally smaller numbers of individuals and entities involved.

F. Duplicative, Overlapping or Conflicting Federal Rules

We believe there are no Federal rules that conflict with or duplicate the proposed amendments.

G. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives of our proposals, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

- The establishment of different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- The clarification, consolidation, or simplification of the rule's compliance and reporting requirements for small entities;
- The use of performance rather than design standards; and
- An exemption from coverage of the proposed amendments, or any part thereof, for small entities.

With respect to the establishment of different compliance requirements or timetables under our proposed amendment for small entities, we do not think this is feasible or appropriate. Moreover, the proposal is designed to exclude "felons and other 'bad actors'" from involvement in Rule 506 securities offerings, which could benefit small issuers by protecting them and their investors from bad actors and increasing investor trust in such offerings. Increased investor trust could reduce the cost of capital and create greater opportunities for small businesses to raise capital. Nevertheless, we request comment on the feasibility and appropriateness for small entities to have different compliance requirements or timetables for compliance with our proposal.

Likewise, with respect to potentially clarifying, consolidating, or simplifying compliance and reporting requirements, the proposed rule does not impose any new reporting requirements. To the extent it may be considered to create a new compliance requirement to exercise reasonable care to ascertain whether a disqualification exists with respect to any offering, the precise steps necessary to meet that requirement will vary according to the circumstances. In general, we believe the requirement will more easily be met by small entities than by larger ones because we believe that their structures and securities offerings are generally less complex and involve fewer participants. We request comment on whether there are ways to clarify, consolidate, or simplify this requirement for small entities.

With respect to using performance rather than design standards, we note that the "reasonable care" exception is a performance standard.

With respect to exempting small entities from coverage of these proposed amendments, we believe such a proposal would be impracticable and contrary to the legislative intent of Section 926. Regulation D was largely designed to provide exemptive relief for small entities. Exempting small entities from bad actor provisions could result in a decrease in investor protection and trust in the private placement and small offerings markets, which would be contrary to the legislative intent of Section 926. We have endeavored to minimize the regulatory burden on all issuers, including small entities, while meeting our regulatory objectives and have included a "reasonable care" exception and waiver authority for the Commission, to give issuers and other covered persons additional flexibility with respect to the application of these proposed amendments. Nevertheless, we request comment on ways in which we could exempt small entities from coverage of any unduly onerous aspects of the proposed amendments.

H. Request for Comment

We encourage comments with respect to any aspect of this initial regulatory flexibility analysis. In particular, we request comments regarding:

- The number of small entities that may be affected by the proposal or the uniformity and updating alternatives;
- The existence or nature of the potential impact of the proposal and the alternatives on small entities discussed in this analysis; and
- How to quantify the impact of the proposed amendments, or amendments that would implement the alternatives.

We request members of the public to submit comments and ask them to describe the nature of any impact on small entities they identify and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the final regulatory flexibility analysis, if the proposals are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

X. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),[123] a rule is "major" if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on whether our proposals would be a "major rule" for

[122] As discussed in Part II.G of this Release, we are proposing to change the form of the signature block of Form D.

[123] Public Law 104–121, Tit. II, 110 Stat. 857.

purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment or innovation.

We request those submitting comments to provide empirical data and other factual support for their views if possible.

XI. Statutory Authority and Text of Proposed Amendments

We are proposing the amendments contained in this document under the authority set forth in Sections 4(2), 19 and 28 of the Securities Act, as amended,[124] and Section 926 of the Dodd-Frank Act.[125]

List of Subjects in 17 CFR Parts 230 and 239

Reporting and recordkeeping requirements, Securities.

For the reasons set out above, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The general authority citation for Part 230 is revised to read as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 111–203, § 413(a) and § 926, 124 Stat. 1577 (2010)(15 U.S.C. 77d note), unless otherwise noted.

* * * * *

2. Amend § 230.501 by redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively, and adding new paragraph (g) to read as follows:

§ 230.501 Definitions and terms used in Regulation D.

* * * * *

(g) *Final order. Final order* shall mean a written directive or declaratory statement issued pursuant to applicable statutory authority and procedures by a Federal or state agency described in § 230.506(c)(1)(iii), which constitutes a final disposition or action by that Federal or state agency.

* * * * *

3. Amend § 230.506 by redesignating the Note following paragraph (b)(2)(i) as "Note to paragraph (b)(2)(i)" and adding paragraph (c) to read as follows:

§ 230.506 Exemption for limited offers and sales without regard to dollar amount of offering.

* * * * *

(c) "*Bad Actor*"*disqualification.* (1) No exemption under this section shall be available for a sale of securities if the issuer; any predecessor of the issuer; any affiliated issuer; any director, officer, general partner or managing member of the issuer; any beneficial owner of 10% or more of any class of the issuer's equity securities; any promoter connected with the issuer in any capacity at the time of such sale; any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with such sale of securities; or any general partner, director, officer or managing member of any such solicitor:

(i) Has been convicted, within ten years before such sale (or five years, in the case of issuers, their predecessors and affiliated issuers), of any felony or misdemeanor:

(A) In connection with the purchase or sale of any security;

(B) Involving the making of any false filing with the Commission; or

(C) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities;

(ii) Is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years before such sale, that, at the time of such sale, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice:

(A) In connection with the purchase or sale of any security;

(B) Involving the making of any false filing with the Commission; or

(C) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities;

(iii) Is subject to a final order of a state securities commission (or an agency or officer of a state performing like functions); a state authority that supervises or examines banks, savings associations, or credit unions; a state insurance commission (or an agency or officer of a state performing like functions); an appropriate Federal banking agency; or the National Credit Union Administration that:

(A) At the time of such sale, bars the person from:

(*1*) Association with an entity regulated by such commission, authority, agency, or officer;

(*2*) Engaging in the business of securities, insurance or banking; or

(*3*) Engaging in savings association or credit union activities; or

(B) Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within ten years before such sale;

(iv) Is subject to an order of the Commission entered pursuant to section 15(b) or 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b) or 78o–4(c)) or section 203(e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(e) or (f)) that, at the time of such sale:

(A) Suspends or revokes such person's registration as a broker, dealer, municipal securities dealer or investment adviser;

(B) Places limitations on the activities, functions or operations of such person; or

(C) Bars such person from being associated with any entity or from participating in the offering of any penny stock;

(v) Is suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade;

(vi) Has filed (as a registrant or issuer), or was or was named as an underwriter in, any registration statement or Regulation A offering statement filed with the Commission that, within five years before such sale, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption, or is, at the time of such sale, the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued; or

(vii) Is subject to a United States Postal Service false representation order entered within five years before such sale, or is, at the time of such sale, subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations.

(2) Paragraph (c)(1) of this section shall not apply:

(i) Upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied; or

[124] 15 U.S.C. 77c(b), 77c(c), 77d(2), 77r, 77s and 77z–3.

[125] Public Law 111–203, § 926, 124 Stat. 1376 (July 21, 2010)(to be codified at 15 USC 77d note).

(ii) If the issuer establishes that it did not know, and in the exercise of reasonable care could not have known, that a disqualification existed under paragraph (c)(1) of this section.

Instruction to paragraph (c)(2)(ii). An issuer will not be able to establish that it has exercised reasonable care unless it has made factual inquiry into whether any disqualifications exist. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants.

(3) For purposes of paragraph (c)(1) of this section, events relating to any affiliated issuer that occurred before the affiliation arose will be not considered disqualifying if the affiliated entity is not:

(i) In control of the issuer; or

(ii) Under common control with the issuer by a third party that was in control of the affiliated entity at the time of such events.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

4. The general authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l,* 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll,* 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

5. Amend Form D (referenced in § 239.500) by revising the third paragraph under the heading "Terms of Submission" in the "Signature and Submission" section following Item 16 to read as follows:

Note: The text of Form D does not, and the amendments will not, appear in the Code of Federal Regulations.

Form D

* * * * *

• Certifying that, if the issuer is claiming an exemption under Rule 505 or Rule 506, the issuer is not disqualified from relying on such rule for one of the reasons stated in paragraph (b)(2)(iii) of Rule 505 or paragraph (c)(1) of Rule 506 (as the case may be).

* * * * *

By the Commission.

Dated: May 25, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–13370 Filed 5–31–11; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–118761–09]

RIN 1545–BI92

Controlled Groups; Deferral of Losses; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of public hearing on a notice of proposed rulemaking providing guidance concerning the time for taking into account deferred losses on the sale or exchange of property between members of a controlled group.

DATES: The public hearing is being held on Wednesday, August 3, 2011, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by Thursday, July 21, 2011.

ADDRESSES: The public hearing is being held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Send submissions to: CC: PA: LPD: PR (REG–118761–09), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC: PA: LPD: PR (REG–118761–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic outlines of oral comments via the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Bruce A. Decker at (202) 622–7790; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard A. Hurst at *Richard.A.Hurst@irscounsel.treas.gov* or (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–118761–09) that was published in the **Federal Register** on Thursday, April 21, 2011 (76 FR 22336).

Persons who wish to present oral comments at the hearing that submitted written comments, must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by Thursday, July 21, 2011.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue, NW. entrance, 1111 Constitution Avenue, NW., Washington, DC.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.

[FR Doc. 2011–13407 Filed 5–31–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–153338–09]

RIN 1545–BJ19

Disclosure of Returns and Return Information to Designee of Taxpayer; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of a notice of public hearing on a proposed rulemaking.

SUMMARY: This document cancels a public hearing on a proposed rulemaking pertaining to the period for submission to the IRS of taxpayer authorizations permitting disclosure of returns and return information.

DATES: The public hearing, originally scheduled for June 9, 2011 at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Funmi Taylor of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and a notice of

public hearing that appeared in the **Federal Register** on Friday, March 18, 2011 (76 FR 14827) announced that a public hearing was scheduled for June 9, 2011, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 6103 of the Internal Revenue Code.

The public comment period for the proposed rulemaking expired on May 17, 2011. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of May 23, 2011, no one has requested to speak. Therefore, the public hearing scheduled for June 9, 2011, is cancelled.

LaNita VanDyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.

[FR Doc. 2011–13408 Filed 5–31–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210–AB08

Requirements for Fee Disclosure to Plan Fiduciaries and Participants—Applicability Dates

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed extension of applicability dates.

SUMMARY: This document proposes to extend specified applicability dates of the Department's interim final rule concerning fiduciary-level fee disclosure (29 CFR 2550.408b–2(c), RIN 1210–AB08) and final rule concerning participant-level fee disclosure (29 CFR 2550.404a–5, RIN 1210–AB07). These rules were published in the **Federal Register** on July 16, 2010 and October 20, 2010, respectively. Extending these dates will more closely align the application of the two rules and ensure that parties have sufficient time to comply with the requirements of the rules.

DATES: Comments on the proposal to extend the applicability dates for the Department's fee disclosure rules should be submitted to the Department on or before June 15, 2011.

FOR FURTHER INFORMATION CONTACT: Michael Del Conte, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

ADDRESSES: To facilitate the receipt and processing of comments, EBSA encourages interested persons to submit their comments electronically to *e-ORI@dol.gov,* or by using the Federal eRulemaking portal *http://www.regulations.gov* (following instructions for submission of comments). Persons submitting comments electronically are encouraged not to submit paper copies. Persons interested in submitting comments on paper should send or deliver their comments (preferably three copies) to: Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Fee Disclosure Applicability. All comments will be available to the public, without charge, online at *http://www.regulations.gov* and *http://www.dol.gov/ebsa,* and at the Public Disclosure Room, Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION: On July 16, 2010, the Department published in the **Federal Register** an interim final rule enhancing required disclosure from certain pension plan service providers to plan fiduciaries as part of a "reasonable" contract or arrangement for services under ERISA section 408(b)(2) (75 FR 41600) (the "408(b)(2) regulation"). 29 CFR 2550.408b–2(c). The Department subsequently published in the **Federal Register**, on October 20, 2010, a final rule concerning the disclosure of plan fee and expense information by plan administrators to plan participants and beneficiaries (75 FR 64910) (the "participant-level disclosure regulation"). 29 CFR 2550.404a–5. The participant-level disclosure regulation includes modifications to the disclosure requirements in the Department's regulation under ERISA section 404(c), at 29 CFR 2550.404c–1 (the "404(c) regulation"), in order to avoid duplication and integrate its requirements with those of the new participant-level disclosure regulation.[1]

Unless extended, the effective date for the interim final 408(b)(2) regulation will be on July 16, 2011 as to both new, and pre-existing, contracts or arrangements between covered plans and covered service providers. The Department has received many requests that this effective date be extended. A significant number of parties have argued that more time is essential to update systems and procedures for information collection and disclosure. Pointing out that the Department has not yet published a final rule, parties have explained that, if the Department modifies the current interim final rule, service providers will need additional time to make further changes. Based on these concerns, the Department believes that an extension of the rule's effective date would lead to fuller and timelier compliance by plans and service providers, and thus would be in the interests of participants and beneficiaries. Moreover, as discussed below, an extension will enable the Department to align the effective date for this regulation with the applicability date of the participant-level disclosure regulation. Accordingly, in February 2011, the Department announced its intention to extend the 408(b)(2) regulation's effective date until January 1, 2012.[2] The Department has not received any negative comments on this announcement. The amendments proposed in this notice, if finalized, would effectuate this announcement.

Although the final participant-level disclosure regulation was effective on December 20, 2010, its requirements only begin to apply for plan years beginning on or after November 1, 2011. The regulation also includes a transitional rule, in paragraph (j)(3)(i), for furnishing disclosures required on or before the date on which a participant or beneficiary can first direct his or her investment. For participants or beneficiaries who, as of their plan's applicability date, had the right to direct the investment of their individual accounts, the plan must furnish these initial disclosures no later than 60 days after the applicability date. As with the 408(b)(2) regulation, the Department has continued to receive requests that additional time be provided in order for parties to comply. Further, because the Department announced its intention to extend the 408(b)(2) regulation's effective date to January 1, 2012, parties argue that it would be preferable to extend application of the participant-level disclosure regulation until after the effective date of the 408(b)(2) regulation. Specifically, these parties point to the provision in the 408(b)(2) interim final regulation which requires

[1] The amendments to the Department's 404(c) regulation apply for plan years beginning on or after November 1, 2011. The proposals contained in this document would have no effect on the applicability of these amendments.

[2] *See http://www.dol.gov/ebsa/newsroom/2011/ebsa021111.html.*

covered service providers to furnish information requested by a responsible plan fiduciary or plan administrator in order to comply with ERISA's reporting and disclosure requirements,[3] which would include relevant information required to comply with the participant-level disclosure regulation. It would facilitate compliance with the participant-level disclosure regulation, they argue, if contracts and arrangements were brought into compliance with the 408(b)(2) regulation, so that this reporting and disclosure provision is in effect, prior to the applicability of the participant-level disclosure regulation.

The Department agrees that aligning the application of these two regulations would assist plan fiduciaries and plan administrators in obtaining information required to comply with the participant-level disclosure regulation. Further, the Department believes that, similar to the 408(b)(2) regulation, a limited extension is in the best interests of covered individual account plans and their participants and beneficiaries. Delayed application will better afford plans sufficient time to ensure an efficient and effective implementation of the participant-level disclosure regulation. To accomplish this end, the Department does not believe it is necessary to extend the regulation's effective date or its general application to plan years beginning on or after November 1, 2011. However, the Department proposes to extend the transition rule in paragraph (j)(3)(i), which specifies the date by which initial disclosures must actually be provided. Under this proposal, a plan would have 120 days (rather than 60) after its applicability date to furnish the initial disclosures that are otherwise required to be furnished before the date on which a participant or beneficiary can first direct his or her investments. Thus, a calendar year plan would have to furnish the initial disclosures no later than April 30, 2012, and the disclosures required by paragraphs (c)(2)(ii) and (c)(3)(ii) (*e.g.,* quarterly statement of fees/expenses actually deducted) would have to be furnished no later than May 15, 2012. Under the proposed transition rule, the initial disclosures must be provided to all participants and beneficiaries who have the right to direct their investments when such disclosures are furnished, not just to those individuals who had the right to direct their investments on the applicability date. This is to ensure that individuals who become plan participants in between the applicability date and the end of the 120-day period receive the important information required under the regulation. To the extent the plan also has contracts or arrangements with covered service providers, as defined by the 408(b)(2) regulation, those contracts or arrangements must be in compliance with the 408(b)(2) regulation as of January 1, 2012, in advance of the required initial disclosures under the participant-level disclosure regulation.

The Department has not been persuaded to extend the application of the participant-level disclosure regulation, or the 408(b)(2) regulation, beyond these dates. Although the Department believes it is appropriate to provide some relief to help ensure a timely, efficient, and coordinated implementation of the two rules, the Department also believes that it is critical for responsible plan fiduciaries, plan administrators, and plan participants and beneficiaries to benefit from the increased transparency provided by the rules as soon as possible.

At this time, the Department solicits comments on this proposal to formally extend the effective date of the 408(b)(2) regulation and the transitional rule for application of the participant-level disclosure regulation.

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Exemptions, Fiduciaries, Investments, Pensions, Prohibited transactions, Real estate, Securities, Surety bonds, Trusts and Trustees.

For the reasons set forth in the preamble, the Department of Labor proposes to amend 29 CFR part 2550 as follows:

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

1. The authority citation for part 2550 continues to read as follows:

Authority: 29 U.S.C. 1135, sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 and Secretary of Labor's Order No. 6–2009, 74 FR 21524 (May 7, 2009). Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sec. 2550.404a–2 also issued under sec. 657, Pub. L. 107–16, 115 Stat. 38. Sections 2550.404c–1 and 2550.404c–5 also issued under 29 U.S.C. 1104. Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1). Sec. 2550.408b–19 also issued under sec. 611, Pub. L. 109–280, 120 Stat. 780, 972. Sec. 2550.412–1 also issued under 29 U.S.C. 1112.

2. Section 2550.404a–5 is amended by revising paragraph (j)(3)(i) to read as follows:

§ 2550.404a–5 Fiduciary requirements for disclosure in participant-directed individual account plans.

* * * * *

(j) * * *

(3) *Transitional rules.*

(i) Notwithstanding paragraphs (b), (c) and (d) of this section, the initial disclosures required on or before the date on which a participant or beneficiary can first direct his or her investments must be furnished no later than 120 days after such applicability date.

* * * * *

3. Section 2550.408b–2 is amended, in paragraph (c)(1)(xii), by removing the date "July 16, 2011" and adding in its place "January 1, 2012".

Signed at Washington, DC, this 26th day of May, 2011.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2011–13516 Filed 5–31–11; 8:45 am]

BILLING CODE 4510–29–P

[3] 29 CFR 2550.408b–2(c)(1)(vi).

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–34

[FMR Case 2011–102–2; Docket 2011–0011; Sequence 1]

RIN 3090–AJ14

Federal Management Regulation; Motor Vehicle Management

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration is proposing to amend the Federal Management Regulation (FMR) by revising current policy on the definitions relating to the rental versus the lease of motor vehicles. The proposed rule would increase the less than 60 continuous day rental timeframe to less than 120 continuous days and adjust the definition of the term "commercial lease or lease commercially" accordingly to allow for the instances when agencies have a valid temporary mission requirement for a motor vehicle of 60 continuous days or more in duration but of significantly fewer days in duration than is typically available under commercial leases, which commonly require a minimum lease period of one year.

DATES: Interested parties should submit comments in writing on or before

August 1, 2011 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FMR Case 2011–102–2 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "FMR Case 2011–102–2" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FMR Case 2011–102–2." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FMR Case 2011–102–2" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Rm. 783E, ATTN: Hada Flowers, Washington, DC 20417.

Instructions: Please submit comments only and cite FMR Case 2011–102–2, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. James Vogelsinger at (202) 501–1764 or e-mail at *james.vogelsinger@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FMR Case 2011–102–2.

SUPPLEMENTARY INFORMATION:

A. Background

Currently, as provided in 41 CFR 102–34.35, a motor vehicle rental is limited to less than 60 continuous days. If an agency obtains a motor vehicle for 60 continuous days or more, then it is a commercial lease under current regulations. Agencies, however, often have a valid temporary mission requirement for a motor vehicle of 60 continuous days or more in duration but of significantly fewer days in duration than is typically available under commercial leases, which commonly require a minimum lease period of one year. Also, some agencies have requirements from time to time for additional vehicles for relatively short periods of time. As a result, agencies are turning to short-term rentals to meet these motor vehicle needs but have encountered impediments when those needs meet or exceed 60 continuous days but are less than a year (for which commercial leases are commonly available). In order to address these issues, GSA is proposing to amend section 102–34.35 of the FMR (41 CFR 102–34.35) to redefine the term "motor vehicle rental" to increase the less than 60 continuous day rental timeframe to less than 120 continuous days and adjust the definition of the term "commercial lease or lease commercially" accordingly. GSA is cognizant of the impact of such a proposed policy change on motor vehicle identification in that the identification requirements attach to Government motor vehicles only, a term that does not encompass motor vehicle rentals.

This proposed regulatory amendment would provide greater flexibility to Federal agencies in meeting their motor vehicle needs.

B. Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. This proposed rule is also exempt from the Regulatory Flexibility Act per 5 U.S.C. 553(a)(2) because it applies to agency management. However, this proposed rule is being published to provide transparency in the promulgation of Federal policies.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FMR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This proposed rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 102–34

Energy conservation, Government property management, Motor Vehicle Management, Reporting and recordkeeping requirements.

Dated: March 14, 2011.

Kathleen M. Turco,

Associate Administrator.

For the reasons set forth in the preamble, GSA proposes to amend 41 CFR part 102–34 as set forth below:

PART 102–34—MOTOR VEHICLE MANAGEMENT

1. The authority citation for 41 CFR part 102–34 continues to read as follows:

Authority: 40 U.S.C. 121(c); 40 U.S.C. 17503; 31 U.S.C. 1344; 49 U.S.C. 32917; E.O. 12375.

2. In § 102–34.35, revise the definitions of the terms "Commercial lease or lease commercially" and "Motor vehicle rental" to read as follows:

§ 102–34.35 What definitions apply to this part?

* * * * *

Commercial lease or lease commercially means obtaining a motor vehicle by contract or other arrangement from a commercial source for 120 continuous days or more. (Procedures for purchasing and leasing motor vehicles through GSA can be found in 41 CFR subpart 101–26.5).

* * * * *

Motor vehicle rental means obtaining a motor vehicle by contract or other arrangement from a commercial source for less than 120 continuous days.

* * * * *

[FR Doc. 2011–13215 Filed 5–31–11; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 5

Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas; Notice of Meeting

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Negotiated Rulemaking Committee meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following meeting of the Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas.

DATES: Meetings will be held on June 22, 2011, 9:30 a.m. to 6 p.m.; June 23, 2011, 9 a.m. to 6 p.m.; and June 24, 2011, 9 a.m. to 3 p.m.

ADDRESSES: Meetings will be held at the Legacy Hotel and Meeting Centre, 1775 Rockville Pike, Rockville, Maryland 20852, (301) 881–2300.

FOR FURTHER INFORMATION CONTACT: For more information, please contact Nicole Patterson, Office of Shortage Designation, Bureau of Health Professions, Health Resources and Services Administration, Room 9A–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–9027, E-mail: *npatterson@hrsa.gov* or visit *http://www.hrsa.gov/advisorycommittees/shortage/.*

SUPPLEMENTARY INFORMATION:

Status: The meeting will be open to the public.

Purpose: The purpose of the Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas is to establish a criteria and a comprehensive methodology for Designation of Medically Underserved Populations and Primary Care Health Professional Shortage Areas, using a Negotiated Rulemaking (NR) process. It is hoped that use of the NR process will yield a consensus among technical experts and stakeholders on a new rule for designation of medically underserved populations and primary care health professions shortage areas, which would be published as an Interim Final Rule in accordance with Section 5602 of the Affordable Care Act, Public Law 111–148.

Agenda: The meeting will be held on Wednesday, June 22; Thursday, June 23; and Friday, June 24. It will include a discussion of various components of a possible methodology for identifying areas of shortage and underservice, based on the recommendations of the Committee in the previous meeting. Members of the public will have the opportunity to provide comments during the meeting on Friday afternoon.

Requests from the public to make oral comments or to provide written comments to the Committee should be sent to Nicole Patterson at the contact address above at least 10 days prior to the first day of the meeting, Wednesday, June 22. The meetings will be open to the public as indicated above, 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 above at least 10 days prior to the meeting.

Dated: May 24, 2011.

Wendy Ponton,

Director, Office of Management.

[FR Doc. 2011–13480 Filed 5–31–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 414

[CMS–3248–P]

RIN 0938–AR00

Medicare Program; Proposed Changes to the Electronic Prescribing (eRx) Incentive Program

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would modify the 2011 electronic prescribing (eRx) quality measure (that is, the eRx quality measure used for certain reporting periods in calendar year (CY) 2011), provide additional significant hardship exemption categories for eligible professionals and group practices to request an exemption during 2011 for the 2012 eRx payment adjustment due to a significant hardship, and extend the deadline for submitting requests for consideration for the two significant hardship exemption categories for the 2012 eRx payment adjustment that were finalized in the CY 2011 Medicare Physician Fee Schedule (PFS) final rule with comment period.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on July 25, 2011.

ADDRESSES: In commenting, please refer to file code CMS–3248–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

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

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3248–P, P.O. Box 8013, Baltimore, MD 21244–8013.

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

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3248–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

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

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

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

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–1066 in advance to schedule your arrival with one of our staff members.

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

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Christine Estella, (410) 786–0485.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments

received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

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

I. Background

Section 132 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), Public Law 110–275, authorized the Secretary to establish a program to encourage the adoption and use of eRx technology. Implemented in 2009, the program offers a combination of financial incentives and payment adjustments to eligible professionals, which are defined under section 1848(k)(3)(B) of the Social Security Act (the Act). We understand that the term "eligible professional" is used in multiple CMS programs. However, for the purpose of this proposed rule, the eligible professionals to whom we refer are only those professionals eligible to participate in the eRx Incentive Program unless we specify otherwise. For more information on which professionals are eligible to participate in the eRx Incentive Program, we refer readers to the Eligible Professionals page of the eRx Incentive Program section of the CMS Web site at: *http://www.cms.gov/ERxIncentive/05_Eligible%20Professionals.asp#TopOfPage.* Under section 1848(m)(2)(C) of the Act, an eligible professional (or group practice participating in the eRx group practice reporting option (GPRO)) who is a successful electronic prescriber during 2011 can qualify for an incentive payment equal to 1.0 percent of its total estimated Medicare Part B Physician Fee Schedule (PFS) allowed charges for covered professional services furnished during the 2011 reporting period.

In accordance with section 1848(a)(5)(A) of the Act, a PFS payment adjustment will begin in 2012 for those eligible professionals and group practices who are not successful electronic prescribers and will increase each year through 2014. Specifically, under 42 CFR 414.92(c)(2), for covered professional services furnished by an eligible professional during 2012, 2013, and 2014, if an eligible professional (or in the case of a group practice, the group practice) is not a successful electronic prescriber (as specified by CMS for purposes of the payment adjustment) for an applicable reporting period (as specified by CMS), then the PFS amount for such services furnished by such professional (or group practice) during the year shall be equal to the applicable percent (99 percent for 2012, 98.5 percent for 2013, and 98 percent for 2014) of the PFS amount that would otherwise apply. For each year of the program thus far, we have established program requirements for the eRx Incentive Program in the annual Medicare PFS rulemaking, including the applicable reporting period(s) for the year and how an eligible professional can become a successful electronic prescriber for the year. For example, we finalized the program requirements for qualifying for 2009 and 2010 eRx incentive payments in the CY 2009 and 2010 PFS final rules with comment period (73 FR 69847 through 69852 and 74 FR 61849 through 61861), respectively. In the November 29, 2010 **Federal Register** (75 FR 73551 through 73556), we published the CY 2011 PFS final rule with comment period, which set forth the requirements for qualifying for a CY 2011 incentive payment, as well as the requirements for the 2012 and 2013 eRx payment adjustments.

Since publication of the CY 2011 PFS final rule with comment period, we have received a number of inquiries from stakeholders regarding the eRx Incentive Program. Many stakeholders voiced concerns about differences between the requirements under the eRx Incentive Program and the Medicare Electronic Health Record (EHR) Incentive Program, which also requires, among other things, eligible professionals to satisfy an eRx objective and measure to be considered a meaningful user of certified EHR technology ("eligible professional" is defined at 42 CFR 495.100 for purposes of the Medicare EHR Incentive Program). (For more information regarding the EHR Incentive Program see the published **Federal Register** on July 28, 2010; 75 FR 44314 through 44588.) While Medicare eligible professionals and group practices cannot earn an incentive under both the eRx Incentive Program and the EHR Incentive Program for the same year, eligible professionals will be subject to an eRx payment adjustment if they do not meet the requirements under the eRx Incentive Program, regardless of whether the eligible professional participates in and earns an incentive under the Medicare EHR Incentive Program.

Stakeholders claim that the requirements under both programs are administratively confusing, cumbersome, and unnecessarily duplicative. On February 17, 2011, the Government Accountability Office (GAO) also published a report which indicated that CMS should address the inconsistencies between the eRx Incentive Program and the EHR Incentive Program (GAO–11–159, "Electronic Prescribing: CMS Should Address Inconsistencies in Its Two Incentive Programs That Encourage the Use of Health Information Technology," available at *http://www.gao.gov/products/GAO–11–159*).

As a result of the above concerns and in accordance with Executive Order 13563, which directs government agencies to identify and reduce redundant, inconsistent, or overlapping regulatory requirements and, among other things, identify and consider regulatory approaches that reduce burden and maintain flexibility of choice when possible, we are proposing to make changes to the eRx Incentive Program. As described further in section II.A. of the proposed rule, we are specifically proposing to modify the 2011 eRx quality measure (that is, the eRx quality measure used for certain reporting periods in CY 2011) and to create additional significant hardship exemption categories for the 2012 eRx payment adjustment.

II. Provisions of the Proposed Regulations

A. Modification of the CY 2011 Electronic Prescribing Quality Measure

In the CY 2011 PFS final rule with comment period (75 FR 73553 through 76566), we finalized an eRx quality measure that would be used during the reporting periods in 2011 used to determine whether an eligible professional is a successful electronic prescriber under the eRx Incentive Program for the 2011 eRx incentive, as well as for the 2012 and 2013 eRx payment adjustments. The measure that we adopted for reporting in 2011 (which is the same measure that was adopted for the 2010 eRx Incentive Program) is described as a measure that documents whether an eligible professional or group practice has adopted a "qualified" eRx system.

A qualified eRx system is a system that is capable of performing the following four specific functionalities:

- Generate a complete active medication list incorporating electronic

data received from applicable pharmacies and pharmacy benefit managers (PBMs), if available.

• Allow eligible professionals to select medications, print prescriptions, electronically transmit prescriptions, and conduct alerts (that is, written or acoustic signals to warn the prescriber of possible undesirable or unsafe situations including potentially inappropriate doses or routes of administration of a drug, drug-drug interactions, allergy concerns, or warnings and cautions) and this functionality must be enabled,

• Provide information related to lower cost therapeutically appropriate alternatives (if any) (that is, the ability of an eRx system to receive tiered formulary information, if available, would again suffice for this requirement for 2011 and until this function is more widely available in the marketplace)

• Provide information on formulary or tiered formulary medications, patient eligibility, and authorization requirements received electronically from the patient's drug plan (if available).

In addition, to be a qualified eRx system under the eRx Incentive Program, electronic systems must convey the information above using the standards currently in effect for the Part D eRx program, including certain National Council for Prescription Drug Programs' (NCPDP) standards. (To view the current eRx quality measure specifications, we refer readers to the "2011 eRx Measure Specifications, Release Notes, and Claims-Based Reporting Principles" download found on the E-Prescribing Measure page of the eRx Incentive Program section of the CMS Web site at: *http://www.cms.gov/ERxIncentive/06_E-Prescribing_Measure.asp#TopOfPage*.)

The technological requirements for eRx in the EHR Incentive Program are similar to the technological requirements for the eRx Incentive Program. Under the EHR Incentive Program, eligible professionals are required to adopt certified EHR technology, which must include the capability to perform certain eRx functions that are similar to those required for the eRx Incentive Program. Certified EHR technology must be tested and certified by a certification body authorized by the National Coordinator for Health Information Technology (at the present time, these bodies are Office of the National Coordinator for Health Information Technology (ONC)-Authorized Testing and Certification Bodies (ONC–ATCBs)). This means that eligible professionals participating in the EHR Incentive Program can rely on a third party certification body to ensure that the vendor's EHR technology includes certain technical capabilities. EHR technology is certified as a "Complete EHR" or an "EHR module," as those terms are defined at 45 CFR 170.102. A Complete EHR is EHR technology that has been developed to meet, at a minimum, all applicable certification criteria adopted by the Secretary. An EHR Module is any service, component, or combination thereof that can meet the requirements of at least one certification criterion adopted by the Secretary.

In contrast, the eRx Incentive Program does not require certification of the system used for eRx. Thus, eligible professionals or group practices are generally required to rely on information that they obtain from the vendors of the systems and demonstration of the functionalities of the system, to determine if the system meets the required standard. We believe that the eRx capabilities of certified EHR technology are sufficiently similar in nature (and in fact, would more than likely be capable of performing all of the required functionalities) and would be appropriate for purposes of the eRx Incentive Program. Among other requirements, certified EHR technology must be able to electronically generate and transmit prescriptions and prescription-related information in accordance with certain standards, some of which have been adopted for purposes of electronic prescribing under Part D. Similar to the required functionalities of a qualified eRx system, certified EHR technology also must be able to check for drug-drug interactions and check whether drugs are in a formulary or a preferred drug list, although the certification criteria do not specify any standards for the performance of those functions. We believe that it is acceptable that not all of the Part D eRx standards are required for certified EHR technology in light of our desire to better align the requirements of the eRx and the Medicare EHR Incentive Program and potentially reduce unnecessary investment in multiple technologies for purposes of meeting the requirements for each program. Furthermore, to the extent that an eligible professional uses certified EHR technology to electronically prescribe under Part D, he or she would still be required to comply with the Part D standards to do so.

In addition, we believe it is important to provide more certainty to eligible professionals (including those in group practices) that may be participating in both the EHR Incentive Program and the eRx Incentive Program with regard to purchasing systems for use under these programs, and to encourage adoption of certified EHR technology. Accordingly, we are proposing changes to the eRx measure reported in 2011 for purposes of reporting for the 2011 eRx incentive and the 2013 eRx payment adjustment (the "2011 eRx quality measure") in accordance with section 1848(k)(2)(C) of the Act. This section of the Act requires the eRx measure to be endorsed by the entity with a contract with the Secretary under section 1890(a) of the Act (currently, that entity is the National Quality Forum (NQF)) except for in the case of a specified area or medical topic determined appropriate by the Secretary for which a feasible and practical measure has not been endorsed by the NQF. While the electronic prescribing measure, as originally implemented in the 2009 eRx Incentive Program is an NQF-endorsed measure, subsequent modifications made to the measure for implementation purposes (for example, to reduce eligible professionals' reporting burden and to increase applicability of the measure to a broader range of eligible professionals) have not yet been reviewed by the NQF. In light of this, we are not aware of any other NQF-endorsed measure related to electronic prescribing by eligible professionals that would be appropriate for use in the eRx Incentive Program. Therefore, we believe that the use of this eRx measure falls within the exception under section 1848(k)(2)(C)(ii) of the Act.

Specifically, we are proposing to revise the description statement for the 2011 eRx measure that we adopted for reporting in 2011 for purposes of the 2011 eRx incentive and the 2013 eRx payment adjustment. Currently, the description statement indicates that the measure documents whether an eligible professional or group practice has adopted a "qualified" eRx system that performs the four functionalities discussed above. We propose to revise this description statement to indicate that the measure documents whether an eligible professional or group practice has adopted a "qualified" eRx system that performs the four functionalities previously discussed *or* is certified EHR technology as defined at 42 CFR 495.4 and 45 CFR 170.102. We believe that this proposed change merely expands on the definition of a "qualified" eRx system without altering the original intent of the measure, which was to evaluate the extent to which eligible professionals generate and transmit prescriptions and prescription-related information electronically. Both eRx systems that perform the four

functionalities previously discussed and certified EHR technology are able to generate and transmit prescriptions and prescription-related information electronically. An eligible professional or group practice that has already purchased an eRx system that meets the definition of a "qualified" eRx system would be able to continue using that system (that is, even with the proposed changes to the measure, systems that meet the four functionalities would continue to constitute "qualified" eRx systems). In accordance with section 1848(m)(3)(B)(v) of the Act, which requires the Secretary, to the extent practicable, to ensure that eligible professionals utilize electronic prescribing systems in compliance with standards established for such systems pursuant to the Part D eRx Program under section 1860D–4(e) of the Act, we also propose that for purposes of the 2011 eRx measure certified EHR technology must comply with the Part D standards for the electronic transmission of prescriptions at 42 CFR 423.160(b)(2)(ii). This proposed requirement is consistent with the ONC certification requirements at 45 CFR 170.304(b) and 170.205(b)(1) and (2). With this proposed change to the 2011 eRx measure, eligible professionals (including those in group practices) that are participating in the eRx Incentive Program would have the option of adopting either a qualified eRx system that performs the four functionalities previously discussed or certified EHR technology as defined at 42 CFR 495.4 and 45 CFR 170.102. Thus, under this proposal, certified EHR technology would be recognized as a qualified system under the revised eRx quality measure regardless of whether the certified EHR technology has all four of the functionalities previously described. Because the proposed change to the 2011 eRx measure, if finalized, would not be effective until the effective date of a subsequent final rule, this change would only be effective for the remainder of the reporting periods in CY 2011 for the 2011 eRx incentive and the 2013 eRx payment adjustment. The proposed change to the 2011 eRx quality measure, if finalized, would not apply retrospectively to any part of the CY 2011 reporting periods for the 2011 eRx incentive or the 2013 eRx payment adjustments that occurred prior to the effective date of a subsequent final rule. The proposed change to the eRx measure does not change any of the regulations for the eRx Incentive Program payment adjustment, which are codified at 42 CFR 414.92(c)(2). In addition, because this proposed change would not be finalized prior to the end of the 2012 eRx payment adjustment reporting period (that is, June 30, 2011), such a change would not apply for purposes of reporting the eRx measure for the 2012 eRx payment adjustment. However, as we noted previously, we believe that most certified EHR technology meet the requirements for "qualified" eRx systems under the current 2011 eRx quality measure. Therefore, for purposes of reporting the current eRx quality measure during 2011 (including reporting for purposes of the 2012 eRx payment adjustment), nothing precludes eligible professionals (or a group practice) that already have certified EHR technology that meet the four functionalities from using the certified EHR technology for purposes of the eRx Incentive Program (that is, the technology would constitute a "qualified" system under the current 2011 eRx quality measure because such system meets the four specified functionalities). For future program years, we anticipate using the revised eRx quality measure, which we would adopt through future notice and comment rulemaking. We invite public comment on the proposed modification to the 2011 eRx quality measure.

B. Significant Hardship Exemption Categories for the 2012 Payment Adjustment

1. Overview of the 2012 Payment Adjustment

As required by section 1848(a)(5) of the Act, and in accordance with our regulations at 42 CFR 414.92(c)(2), eligible professionals or group practices who are not successful electronic prescribers (as specified by CMS for purposes of the payment adjustment) are subject to the eRx payment adjustment in 2012. In the CY 2011 PFS final rule with comment period (75 FR 73560 through 73565), we finalized the program requirements for the 2012 eRx payment adjustment. Specifically, the 2012 eRx payment adjustment does not apply to the following: (1) An eligible professional who is not a physician (includes doctors of medicine, doctors of osteopathy, and podiatrists), nurse practitioner, or physician assistant as of June 30, 2011; (2) an eligible professional who does not have at least 100 cases (that is, claims for patient services) containing an encounter code that falls within the denominator of the eRx measure for dates of service between January 1, 2011 and June 30, 2011; or (3) an eligible professional who is a successful electronic prescriber for the January 1, 2011 through June 30, 2011 reporting period (that is, reports the eRx measure 10 times via claims between January 1, 2011 and June 30, 2011).

We also finalized the requirement that the 2012 eRx payment adjustment does not apply to an individual eligible professional or group practice if less than 10 percent of an eligible professional's or group practice's estimated total allowed charges for the January 1, 2011 through June 30, 2011 reporting period are comprised of services that appear in the denominator of the 2011 eRx measure. Information and other details about the eRx Incentive Program, including the requirements for group practices participating in the eRx GPRO in 2011 with regard to the 2012 eRx payment adjustment can be found on the eRx Incentive Program section of the CMS Web site at: *http://www.cms.gov/erxincentive*.

2. Current Significant Hardship Exemptions for the 2012 eRx Payment Adjustment

In addition to the requirements for the 2012 eRx payment adjustment, 42 CFR 414.92(c)(2)(ii) provides that we may, on a case-by-case basis, exempt an eligible professional (or group practice) from the application of the payment adjustment, if we determine, subject to annual renewal, that compliance with the requirement for being a successful electronic prescriber would result in a significant hardship. In the CY 2011 PFS final rule with comment period (75 FR 73564 through 75 FR 73565), we finalized two circumstances under which an eligible professional or group practice can request consideration for a significant hardship exemption for the 2012 eRx payment adjustment—

- The eligible professional or group practice practices in a rural area with limited high speed Internet access; or
- The eligible professional or group practice practices in an area with limited available pharmacies for eRx.

In order for eligible professionals and group practices to identify these categories for purposes of requesting a hardship exemption, we created a G-code for each of the above situations. Thus, to request consideration for a significant hardship exemption for the 2012 eRx payment adjustment, individual eligible professionals must report the appropriate G-code at least once on claims for services rendered between January 1, 2011 and June 30, 2011. Group practices that wished to participate in the 2011 eRx GPRO and be considered for exemption under one of the significant hardship categories were required to request a hardship exemption at the time they self-

nominated to participate in the 2011 eRx GPRO earlier this year.

3. Proposed Additional Significant Hardship Exemption Categories for the 2012 eRx Payment Adjustment

Since publication of the CY 2011 PFS final rule with comment period, we have received numerous requests to expand the categories under the significant hardship exemption for the 2012 eRx payment adjustment. Some stakeholders have recommended specific circumstances of significant hardship for our consideration (for example, eligible professionals who have prescribing privileges but do not prescribe under their NPI, eligible professionals who prescribe a high volume of narcotics, and eligible professionals who electronically prescribe but typically do not do so for any of the services included in the eRx measure's denominator), while others strongly suggested we consider increasing the number of specific hardship exemption categories. We believe that many of the circumstances raised by stakeholders may pose a significant hardship and limit eligible professionals and group practices in their ability to meet the requirements for being successful electronic prescribers either because of the nature of their practice or because of the limitations of the eRx measure itself, and as a result, such professionals might be unfairly penalized. Therefore, we are proposing to revise the significant hardship regulation at 42 CFR 414.92(c)(2)(ii) to add paragraphs that—(1) codify the two hardship exemption categories for the 2012 eRx payment adjustment that we finalized in the CY 2011 PFS final rule; and (2) codify the additional significant hardship categories for the 2012 eRx payment adjustment that we are proposing in this proposed rule. We also are proposing to allow some additional time for submitting significant hardship exemption requests to CMS.

Specifically, we are proposing the following additional significant hardship exemption categories for the 2012 eRx payment adjustment with regard to the reporting period of January 1, 2011 through June 30, 2011:

a. Eligible Professionals Who Register To Participate in the Medicare or Medicaid EHR Incentive Programs and Adopt Certified EHR Technology

We are proposing this exemption category at proposed 42 CFR 414.92(c)(2)(ii)(C) because eligible professionals (including those in group practices) that intended to participate in the EHR Incentive Program may have delayed adopting eRx technology for purposes of the eRx Incentive Program until the list of certified EHR technology became available so that the same technology could be used to satisfy both programs' requirements. The ONC final rule establishing a temporary certification program for health information technology (75 FR 36158) was not published in the **Federal Register** until June 24, 2010. The certification and listing of EHR technologies (certified Complete EHRs and certified EHR Modules) on the ONC Certified HIT Products List (CHPL) did not begin until September 2010. Until then, eligible professionals and group practices had no way of knowing which EHR technologies would be certified. At the same time, we did not propose to use the first half of 2011 as the reporting period for the 2012 eRx payment adjustment until the CY 2011 PFS proposed rule went on public display at the Office of the Federal Register on June 25, 2010. As such, we believe it may be a significant hardship for eligible professionals in this situation to have both adopted certified EHR technology and fully integrated the technology into their practice's clinical workflows and processes so that they would be able to successfully report the eRx measure prior to June 30, 2011, especially given that an eligible professional under the Medicare EHR Incentive Program has until October 1, 2011, to begin a 90-day EHR reporting period for the 2011 payment year. Similarly, this extended time period provides Medicare eligible professionals under the eRx Incentive Program but who are eligible for incentives under the Medicaid EHR Incentive Program with a majority of 2011 to adopt, implement, or upgrade to certified EHR technology. We believe this hardship exemption category is necessary and appropriate in order to fully support and encourage eligible professionals to actively take steps to become meaningful users of certified EHR technology. Also, in the absence of this significant hardship exemption category, eligible professionals may potentially have to adopt two systems (for example, a standalone eRx system for purposes of participation in the eRx Incentive Program, followed by certified EHR technology), which could potentially be financially burdensome. To be considered for a significant hardship exemption under this category, we are proposing that the eligible professional, at a minimum, must: (1) Have registered for either the Medicare or Medicaid EHR Incentive Program (for instructions on how to register for one of the EHR Incentive Programs, we refer readers to the Registration and Attestation page of the EHR Incentive Programs section of the CMS Web site at *http://www.cms.gov/EHRIncentivePrograms/20_RegistrationandAttestation.asp#TopOfPage*); and (2) provide identifying information as to the certified EHR technology (as defined at 45 CFR 170.102) that has been adopted for use no later than October 1, 2011, for a hardship exemption to be submitted, which then would be reviewed on a case-by-case basis. We propose that for purposes of this proposed significant hardship exemption category, the identifying information would consist of the certification number that is assigned to the EHR technology for purposes of ONC's CHPL. In addition, we are considering requiring eligible professionals to provide a serial number for their specific product but have concerns about whether such information would be readily accessible by eligible professionals. We invite comments on the feasibility of requiring eligible professionals to provide a serial number in addition to the certification number for the certified EHR technology, or other information identifying and verifying the specific product. In requesting a significant hardship exemption under this proposed category, an eligible professional would be attesting that he or she either has purchased the specified certified EHR technology (as identified by the certification number and/or serial number) or has the specified certified EHR technology available for immediate use and that the professional intends to use that technology to qualify for a Medicare or Medicaid EHR incentive for payment year 2011.

b. Inability To Electronically Prescribe Due to Local, State, or Federal Law or Regulation

We are proposing at 42 CFR 414.92(c)(2)(ii)(D) that, to the extent that local, State, or Federal law or regulation limits or prevents an eligible professional or group practice that otherwise has general prescribing authority from electronically prescribing (for example, eligible professionals who prescribe a large volume of narcotics, which may not be electronically prescribed in some states, or eligible professionals who practice in a State that prohibits or limits the transmission of electronic prescriptions via a third party network such as Surescripts), the eligible professional or group practice would be able to request consideration for an exemption from application of the 2012 eRx payment adjustment, which would be reviewed on a case-by-case

basis. We believe eligible professionals in this situation face a significant hardship with regard to the requirements for being successful electronic prescribers because while they may meet the 10-percent threshold for applicability of the payment adjustment, they may not have sufficient opportunities to meet the requirements for being a successful electronic prescriber because Federal, State, or local law or regulation may limit the number of opportunities that an eligible professional or group practice has to electronically prescribe (that is, having at least 100 denominator-eligible visits prior to June 30, 2011, but being unable to electronically prescribe for at least 10 of these denominator-eligible visits due to Federal, State, or local law or regulation).

c. Limited Prescribing Activity

We are proposing at 42 CFR 414.92(c)(2)(ii)(E) that an eligible professional who has prescribing privileges but does not prescribe or very infrequently prescribes in his or her practice (for example, a nurse practitioner who may not write prescriptions under his or her own NPI, a physician who decides to let his Drug Enforcement Administration registration expire during the reporting period without renewing it, or an eligible professional who prescribed fewer than 10 prescriptions between January 1, 2011 and June 30, 2011 regardless of whether the prescriptions were electronically prescribed or not), yet still meets the 10-percent threshold for applicability of the payment adjustment, would be able to request consideration for a significant hardship exemption from application of the 2012 eRx payment adjustment, which would be reviewed on a case-by-case basis. We believe that it is a significant hardship for eligible professionals who have prescribing privileges, but infrequently prescribe, to become successful electronic prescribers because the nature of their practice may limit the number of opportunities an eligible professional or group practice to prescribe, much less electronically prescribe.

d. Insufficient Opportunities To Report the Electronic Prescribing Measure Due to Limitations of the Measure's Denominator

To the extent an eligible professional or group practice has an eRx system, electronically prescribes, and has denominator-eligible visits, but does not normally write prescriptions associated with any of the types of visits included in the eRx measure's denominator (for example, certain types of physicians such as surgeons), we are proposing at 42 CFR 414.92(c)(2)(ii)(F) that the eligible professional or group practice would be able to request consideration for a significant hardship exemption from application of the 2012 eRx payment adjustment, which would be reviewed on a case-by-case basis. Similar to the proposed hardship category for lack of prescribing activity, we believe it would be a significant hardship for eligible professionals who do not have a sufficient opportunity to report the eRx measure because of the limitations of the eRx measure's denominator to meet the criteria for being a successful electronic prescriber. While such eligible professionals may meet the 10-percent threshold for applicability of the payment adjustment and have at least 100 denominator-eligible visits prior to June 30, 2011, they may not be able to report their eRx activity at least 10 times because the bulk of their prescribing activity occurs in other circumstances that are not accounted for by the measure's denominator.

We invite public comments on the additional hardship exemption categories proposed in this proposed rule. In addition, we also invite input on other categories of significant hardship that were not specifically proposed so that we may consider them for purposes of the 2013 or 2014 eRx payment adjustment.

To request a hardship exemption for any of the categories proposed and previously described, we are proposing that an eligible professional or group practice participating in the 2011 eRx GPRO provide to us by the date specified below, the following:

- Identifying information such as the TIN, NPI, name, mailing address, and e-mail address of all affected eligible professionals.
- The significant hardship exemption category(ies) above that apply.
- A justification statement describing how compliance with the requirement for being a successful electronic prescriber for the 2012 eRx payment adjustment during the reporting period would result in a significant hardship to the eligible professional or group practice.
- An attestation of the accuracy of the information provided.

The justification statement should be specific to the category under which the eligible professional or group practice is submitting its request and must explain how the exemption applies to the professional or group practice. For example, if the eligible professional is requesting a significant hardship exemption due to Federal, State, or local law or regulation, he or she must cite the applicable law and how the law restricts the eligible professional's ability to electronically prescribe. Similarly, if the eligible professional is requesting a significant hardship due to lack of prescribing activity, the eligible professional must provide the number of prescriptions generated during the 2012 eRx payment adjustment reporting period. We would review the information submitted by each eligible professional and group practice on a case-by-case basis. In addition, we are proposing that an eligible professional or group practice must, upon request, provide additional supporting documentation if there is insufficient information (such as, but not limited to, a TIN or NPI that we cannot match to the Medicare claims, a certification number for the certified EHR technology that does not appear on the list of certified EHR technology, or an incomplete justification for the significant hardship exemption request) to justify the request or make the determination of whether a significant hardship exists.

We also are proposing that eligible professionals or group practices would be able to submit significant hardship exemption requests using a Web-based tool or interface. However, our ability to receive the significant hardship requests in this manner would be dependent on the development of such a Web site being completed prior to the publication of the final rule. In the event that such a Web site is not available, an eligible professional or group practice would be required to send us an application for a hardship exemption with such information by mail. We are not proposing to allow an eligible professional or group practice to submit significant hardship exemption requests via e-mail or fax because additional security precautions would need to be put into place. In some cases, a TIN may consist of an eligible professional's social security number, which is considered to be personally identifiable information.

We are proposing that the eligible professional or group practice must submit the hardship request by no later than October 1, 2011, which, if submitted by mail, means postmarked no later than October 1, 2011. We also propose to extend the deadline for submitting requests for consideration for the two significant hardship exemption categories (that is, eligible professional or group practice practices in rural areas with limited high speed Internet access and eligible professional or group

practice practices in an area with limited available pharmacies for eRx) for the 2012 eRx payment adjustment that were finalized in the CY 2011 PFS final rule (75 FR 73564 through 73565) to October 1, 2011. Since this rule is not expected to be finalized prior to the current deadline of June 30, 2011, for submitting the G-codes that were created for these two significant hardship exemption categories via claims (or, for group practices, at the time group practices self-nominate), we propose that the Web-based tool or interface, if available, would be used to submit all significant hardship exemption requests (including those for the current significant hardship exemption categories). Eligible professionals who wish to request a significant hardship exemption for one of the current significant hardship exemption categories via claims-based submission of a G-code would still have to do so prior to the current deadline of June 30, 2011. If the Web-based tool is not developed prior to the publication of the final rule, then we would default to mail submission of all significant hardship exemption requests (including those for the current hardship exemption categories).

We are proposing October 1, 2011, because we seek to complete our review of the requests in time to instruct the carriers/MACs as to those eligible professionals or group practices that are not subject to the 2012 eRx payment adjustments based on the proposed additional significant hardship exemption categories. We would like to be able to process all such requests before we begin making the claims processing systems changes later this year to adjust eligible professionals' or group practices' payments starting on January 1, 2012. However, we anticipate that, in some cases, we may not be able to complete our review of the requests before the claims processing systems updates are made to begin reducing eligible professionals' and group practices' PFS amounts in 2012. In such cases, if we ultimately approve the eligible professional's or group practice's request for a significant hardship exemption, we would need to reprocess all claims for services furnished up to that point in 2012 that were paid at the reduced PFS amount. We also believe that this date allows sufficient time for eligible professionals (including those in group practices) that intend to use certified EHR technology and to qualify for the 2011 EHR Incentive Program in 2011 to have adopted the technology.

While we considered providing eligible professionals and group practices with additional time to submit requests for a significant hardship exemption under the proposed additional categories, we believe that doing so might result in the need to reprocess claims for 2012 services for eligible professionals. We invite public comment on the proposed process for submitting these requests for significant hardship exemptions to us (including comments on the type of information we are proposing eligible professionals and group practices must submit, the proposed options for how the information could be submitted, and the proposed timeframes for submission). We also invite comment on our proposal to extend the timeframe for submitting hardship exemption requests for the two categories we finalized in the CY 2011 PFS final rule and the proposed process for submitting these requests under the extended timeframe.

To the extent the final rule is not effective by October 1, 2011, then we propose that the eligible professional or group practice must submit the hardship request by no later than 5 business days after the effective date of the final rule. Eligible professionals and group practices may begin submitting significant hardship exemption requests at any time after the final rule is made available for public inspection by the Office of the Federal Register. In the event that the final rule is not made available for public inspection by the Office of the Federal Register by October 1, 2011, we seek comment on whether 5 business days after the effective date of the final rule would be an adequate amount of time for eligible professionals and group practices to submit a significant hardship exemption request.

We also are proposing that once we have completed our review of the eligible professional's or group practice's request and made a decision, we will notify the eligible professional or group practice of our decision and all such decisions would be final. Eligible professionals and group practices would not have the opportunity to request reconsiderations of their requests for significant hardship exemption.

III. Collection of Information Requirements

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

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

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

A. ICRs Related to Proposed Changes to the 2011 Electronic Prescribing Measure

We do not believe there is any burden associated with the proposed changes to the 2011 eRx measure as the changes solely clarify whether we consider certified EHR technology to meet the technological requirements of the eRx measure and do not change the reporting requirements for purposes of reporting the eRx quality measure for the 2011 eRx incentive and 2013 eRx payment adjustment.

B. ICRs Regarding Proposed Additional Significant Hardship Exemption Categories for the 2012 eRx Payment Adjustment

We believe that any burden associated with submitting the hardship exemption requests for the additional categories we are proposing would be minimal and would be limited to the time and effort associated with gathering the requested information and submitting the information to CMS in the specified form and manner. Whether the application can be submitted online or through other means, we do not anticipate it taking more than a 2 hours per eligible professional to review the hardship exemption codes available, determine which code(s) applies to their particular situation, gather the information needed for the justification, and then complete and submit the information to CMS.

To provide an estimate of the burden associated with submitting a hardship exemption request, we need to determine the approximate number of physicians and eligible professionals that could be subject to the eRx payment adjustment in 2012 as well as the number of eligible professionals that could submit a hardship exemption request. Based on Medicare Part B claims data, it is estimated that approximately 209,000 eligible professionals could potentially be

subject to the 2012 payment adjustment unless they become a successful electronic prescriber (that is, report the electronic prescribing measure at least 10 times during the 6-month reporting period) or request a significant hardship exemption. Thus, the maximum total number of eligible professionals that could potentially need to request a significant hardship exemption is believed to be approximately 209,000. However based on participation numbers from previous eRx Incentive Program years, we predict that the number of eligible professionals impacted will in fact be lower. In 2009, 92,132 eligible professionals participated in the eRx program and preliminary data for 2010 indicates that 100,444 professionals have participated in the eRx Incentive Program. Based on this data, we have determined that it is more accurate to estimate that approximately 109,000 eligible professionals could potentially submit a significant hardship exemption request as over 100,000 eligible professionals are already participating in the program. While we do not have a precise estimate of how many of the eligible professionals that are not able to be successful electronic prescribers will request a significant hardship, we do know that since the proposed hardship exemption categories will not apply to all eligible professionals since they represent specific circumstances. Therefore, for purposes of this burden estimate, we will assume that, at a minimum, approximately 10 percent of the 109,000 eligible professionals that could potentially request a significant hardship exemption will do so. This brings our minimum estimated number of eligible professionals impacted to approximately 10,900. Based on our estimate that the time needed to collect and report the information requested will be 2 hours, we believe that the total burden associated with requesting a significant hardship exemption will range from approximately 21,800 hours (10,900 eligible professionals × 2 hours per eligible professional) to 418,000 hours (209,000 eligible professionals × 2 hours per eligible professional). Based on an average group practice labor cost of $58 per hour, we predict the annual burden cost to be between approximately $1,264,400 ($58 per hour × 21,800 hours) and $24,244,000 ($58 per hour × 418,000 hours). We welcome comments on the above estimates.

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

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

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* CMS Desk Officer, CMS–3248–P. *Fax:* (202) 395–7245; or *E-mail: OIRA_submission@omb.eop.gov.*

IV. Response to Comments

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

V. Regulatory Impact Statement

This proposed rule includes changes to the eRx Incentive Program. The first proposed change involves modifying the eRx quality measure used for certain reporting periods in CY 2011 to address uncertainties related to the technological requirements of the Medicare eRx Incentive Program. The eRx measure would be revised to indicate whether an eligible professional has adopted a qualified electronic prescribing system or certified EHR technology as defined at 45 CFR 170.102. The second proposed change involves proposing additions to the significant hardship exemption categories for the 2012 eRx payment adjustment. The proposed additional exemption categories for the 2012 e Rx payment adjustment include—(1) Eligible professionals who register to participate in the Medicare or Medicaid EHR Incentive Program and Adopt Certified EHR Technology; (2) the inability to electronically prescribe due to local, State, or Federal law; (3) limited prescribing activity; and (4) insufficient opportunities to report the electronic prescribing measure due to limitations of the measure's denominator. Finally, this rule proposes an extension of the deadline for the 2012 eRx payment adjustment, thereby allowing eligible professionals and group practices to submit the existing two significant hardship codes established in the 2011 PFS final rule with comment period. These hardship exemption categories are: (1) The eligible professional practices in a rural area without sufficient high speed Internet access; and (2) the eligible professional practices in an area without sufficient available pharmacies for electronic prescribing.

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We estimate that the impact of the proposed changes would be $30 million for fiscal year (FY) 2012, net of premium offset based on the FY 2012 President's budget baseline and $20 million for FY 2013. Therefore, this proposed rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small entities if a rule has a significant economic impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity. A majority of the physicians and other eligible professionals affected by this proposed rule are small entities either by being nonprofit organizations or by meeting the Small Business Administration size thresholds for a small healthcare business (having revenues of less than $7.0 million to $34.5 million in any 1 year). While we do not have precise estimates, we believe this proposed rule would affect a substantial number of small entities (that is, several thousand or more). We welcome detailed information on the number of physicians and other professionals who would be affected by these proposals (that is, the number of physicians and other professionals who currently believe they are not able to meet the requirements for the 2012 eRx payment adjustment on the grounds that it would pose a significant hardship and for whom one or more of the proposed

significant hardship exemption categories could apply).

We interpret the requirement for preparation of an Initial Regulatory Flexibility Analysis as applying to proposed rules that impose significant economic burden. The Office of the Chief Council for Advocacy within the Small Business Administration believes that the requirement applies whether the economic impact is positive or negative. Regardless, we normally prepare a voluntary analysis when proposed rules would have a significant positive impact. In this case, the proposed change to the eRx measure under the eRx Incentive Program for purpose of reporting for the 2011 eRx incentive and the 2013 eRx payment adjustment and the proposed additional significant hardship exemption categories, if applicable, for purposes of the 2012 eRx payment adjustment would reduce burden for eligible professionals. The proposed modification to the eRx measure would eliminate any uncertainty as to whether eligible professionals who are participating in both the eRx Incentive Program and the EHR Incentive Program can use the certified EHR technology that they adopted for the EHR Incentive Program to electronically prescribe under the eRx Incentive Program. Therefore, there would no longer be any ambiguity as to whether eligible professionals can use the same technology for both programs and less time and effort spent by eligible professionals to determine whether the certified EHR technology they have adopted for purposes of the EHR Incentive Program could be used to meet the eRx quality measure under the eRx Incentive Program. It is difficult to estimate the precise economic impacts of these changes on the affected entities.

We believe that the proposed additional significant hardship exemption categories for the 2012 eRx payment adjustment would reduce the number of eligible professionals that would otherwise be subject to a 1.0 percent adjustment in the PFS amount for covered professional services furnished in 2012. Also, the proposed changes would continue to encourage adoption of electronic prescribing in the interest of improving the medication prescription process while acknowledging circumstances that may prevent physicians and other professionals from successfully participating in the eRx Incentive Program. Based on 2010 Medicare Part B claims data, we believe approximately 209,000 eligible professionals would need to either be a successful electronic prescriber or request a hardship exemption to avoid the 2012 payment adjustment. However, we are unable to provide a precise estimate as to the number of eligible professionals, out of the total 209,000, that would potentially request a significant hardship exemption for one of the proposed hardship exemption categories. While we are aware, from public comments received in response to the 2011 PFS proposed and final rules with comment period, correspondence, inquiries received by our help desk, and comments made by eligible professionals on our national provider calls, open door forums, and a February 9, 2011 Town Hall Meeting, that there are eligible professionals who have expressed their inability to meet the successful electronic prescriber requirements for the 2012 eRx payment adjustment for one or more of the circumstances addressed by the proposed additional significant hardship exemption categories, we are not able to quantify in detail how many eligible professionals these proposed additional significant hardship exemptions could apply to since each eligible professional's individual circumstances are unique. We believe that any cost associated with requesting the significant hardship exemptions would be minimal since it would be limited to the time and effort associated with submitting a significant hardship exemption from the 2012 eRx payment adjustment either via the proposed Web tool or by mail. We believe that any cost associated with requesting a significant hardship exemption would, if applicable to the eligible professional, be offset by the eligible professional avoiding the payment adjustment in 2012.

Overall, we estimate that the impact of the proposed changes would be $30 million for FY 2012, net of premium offset based on the FY 2012 President's budget baseline and $20 million for FY 2013. We also welcome comments and information on the likely magnitudes of savings, and the likely numbers of affected physicians and other professionals who would achieve savings of various sizes, under the specific alternatives we propose. We note that each of the regulatory relief options discussed previously in this preamble constitutes a distinct alternative that we have considered. We welcome comments on whether there are any additional alternatives that are both reasonable and achievable under the time constraints imposed by the existing rule.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals. The eRx Incentive Program does not apply to small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2011, that threshold is approximately $136 million. This rule would have no consequential effect on State, local, or Tribal governments or on the private sector.

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

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

List of Subjects in 42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping.

For the reasons set forth in the preamble of this proposed rule, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR part 414 as set forth below:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(l) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(l)).

Subpart B—Physicians and Other Practitioners

2. Section 414.92 is amended by revising paragraph (c)(2)(ii) to read as follows:

§ 414.92 Electronic Prescribing Incentive Program.

* * * * *

(c) * * *

(2) * * *

(ii) *Significant hardship exception.* CMS may, on a case-by-case basis, exempt an eligible professional (or in the case of a group practice under paragraph (e) of this section, a group practice) from the application of the payment adjustment under paragraph (c)(2) of this section if, CMS determines, subject to annual renewal, that compliance with the requirement for being a successful electronic prescriber would result in a significant hardship. Eligible professionals (or, in the case of a group practice under paragraph (e) of this section, a group practice) may request consideration for a significant hardship exemption from the 2012 eRx payment adjustment if one of the following circumstances apply:

(A) The practice is located in a rural area without high speed Internet access.

(B) The practice is located in an area without sufficient available pharmacies for electronic prescribing.

(C) Registration to participate in the Medicare or Medicaid EHR Incentive Program and adoption of certified EHR technology.

(D) Inability to electronically prescribe due to local, State or Federal law or regulation.

(E) Limited prescribing activity.

(F) Insufficient opportunities to report the electronic prescribing measure due to limitation's of the measure's denominator.

* * * * *

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

Dated: April 28, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Approved: May 4, 2011.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2011–13463 Filed 5–26–11; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 100903415–1286–02]

RIN 0648–XW96

Endangered and Threatened Wildlife and Plants; Endangered Species Act Listing Determination for Atlantic Bluefin Tuna

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

ACTION: Notice of a listing determination and availability of a status review document.

SUMMARY: After we, NMFS, received a petition to list Atlantic bluefin tuna (*Thunnus thynnus*) as threatened or endangered under the Endangered Species Act (ESA), we established a status review team (SRT) to conduct a review of the status of Atlantic bluefin tuna. We have reviewed the SRT's status review report (SRR) and other available scientific and commercial information and have determined that listing Atlantic bluefin tuna as threatened or endangered under the ESA is not warranted at this time. We also announce the availability of the SRR.

DATES: This finding is made as of May 27, 2011.

ADDRESSES: The Atlantic bluefin tuna status review report and list of references are available by submitting a request to the Assistant Regional Administrator, Protected Resources Division, Northeast Region, NMFS, 55 Great Republic Way, Gloucester, MA 01930. The status review report and other reference materials regarding this determination can also be obtained via the Internet at: *http://www.nero.noaa.gov/prot_res/CandidateSpeciesProgram/cs.htm.*

FOR FURTHER INFORMATION CONTACT: Kim Damon-Randall, NMFS Northeast Regional Office, (978) 282–8485; or Marta Nammack, NMFS, Office of Protected Resources (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On May 24, 2010, the National Marine Fisheries Service (NMFS) received a petition from the Center for Biological Diversity (CBD) (hereafter referred to as the Petitioner), requesting that we list the entire species of Atlantic bluefin tuna (*Thunnus thynnus*) or in the alternative, an Atlantic bluefin tuna distinct population segment (DPS) consisting of one or more subpopulations in United States waters, as endangered or threatened under the ESA, and designate critical habitat for the species. The petition contains information on the species, including the taxonomy; historical and current distribution; physical and biological characteristics of its habitat and ecosystem relationships; population status and trends; and factors contributing to the species' decline. The Petitioners also included information regarding possible DPSs of Atlantic bluefin tuna. The petition addresses the five factors identified in section 4(a)(1) of the ESA as they pertain to Atlantic bluefin tuna: (A) Current or threatened habitat destruction or modification or curtailment of habitat or range; (B) overutilization for commercial purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; and (E) other natural or man-made factors affecting the species' continued existence.

On September 21, 2010, we determined that the petition presented substantial information indicating that the petitioned action may be warranted and published a positive 90-day finding in the **Federal Register** (FR) (75 FR 57431). Following our positive 90-day finding, we convened an Atlantic bluefin tuna status review team (SRT) to review the status of the species.

In order to conduct a comprehensive review, we asked the SRT to assess the species' status and degree of threat to the species with regard to the factors provided in Section 4(a)(1) of the ESA without making a recommendation regarding listing. The SRT was provided a copy of the petition and all information submitted in response to the data request in the FR notice announcing the 90-day finding. In order to provide the SRT with all available information, we invited several Atlantic bluefin tuna experts to present information on the life history, genetics, and habitat used by Atlantic bluefin tuna to the SRT.

We also hosted five listening sessions with Atlantic bluefin tuna fishermen. These sessions were held in Maine, Massachusetts, New Jersey, North Carolina, and Mississippi. Those with information relevant to the discussion topics for the sessions were also encouraged to submit information via mail or electronic mail. The SRT reviewed all this information during its consideration and analysis of potential threats to the species. The SRR is a summary of the information assembled by the SRT and incorporates the best scientific and commercial data available

(*e.g.,* fisheries data that are available to assist in assessing the status of the species). In addition, the SRT summarized current conservation and research efforts that may yield protection, and drew scientific conclusions about the status of Atlantic bluefin tuna throughout its range.

The SRT completed a draft SRR in March 2011. As part of the full evaluation of the status of Atlantic bluefin tuna under the ESA, we requested that the Center for Independent Experts (CIE) select three independent experts to peer review the SRR. The reviewers were asked to provide written summaries of their comments to ensure that the content of the SRR is factually supported and based on the best available data, and the methodology and conclusions are scientifically valid. Prior to finalizing the SRR, the SRT considered and incorporated, as appropriate, the peer reviewers' comments. The final SRR was submitted to us on May 20, 2011.

Range

Atlantic bluefin tuna are highly migratory pelagic fish that range across most of the North Atlantic and its adjacent seas, particularly the Mediterranean Sea. They are the only large pelagic fish living permanently in temperate Atlantic waters (Bard *et al.,* 1998, as cited in Fromentin and Fonteneau, 2001). In the Atlantic Ocean and adjacent seas, they can range from Newfoundland south to Brazil in the western Atlantic, and in the eastern Atlantic from Norway south to western Africa (Wilson *et al.,* 2005).

Habitat and Migration

Atlantic bluefin tuna are epipelagic and typically oceanic; however, they do come close to shore seasonally (Collette and Nauen, 1983). They often occur over the continental shelf and in embayments, especially during the summer months when they feed actively on herring, mackerel, and squids in the North Atlantic. Larger individuals move into higher latitudes than smaller fish. Surface temperatures where large Atlantic bluefin tuna have been found offshore in the northwest Atlantic range between 6.4 and 28.8 °C, whereas smaller Atlantic bluefin tuna are generally found in warmer surface water ranging from 15 to 17 °C (Collette and Klein-MacPhee, 2002). In general, Atlantic bluefin tuna occupy surface waters around 24 °C in the Western Atlantic (Block *et al.,* 2005; Teo *et al.,* 2007) and in the Eastern Atlantic/Mediterranean, generally around 20.5 to 21.5 °C (Royer *et al.,* 2004) and above 24 °C for spawning (Mather *et al.,* 1995; Schaefer, 2001; Garcia *et al.,* 2005).

Archival tagging and tracking information have confirmed that Atlantic bluefin tuna are endothermic (*i.e.,* able to endure cold as well as warm temperatures while maintaining a stable internal body temperature). It was once thought that Atlantic bluefin tuna preferentially occupy surface and subsurface waters of the coastal and open-sea areas; however, data from archival tagging and ultrasonic telemetry indicate that they frequently dive to depths of 500 m to 1,000 m (Lutcavage *et al.,* 2000). While they do dive frequently to deeper depths, they generally spend most of their time in waters less than 500 m, and often much shallower.

As stated previously, Atlantic bluefin tuna are highly migratory; however, they do display homing behavior and spawning site fidelity in both the Gulf of Mexico and the Mediterranean Sea, and these two areas constitute the two primary spawning areas identified to date. Larvae have, however, been documented outside of the Gulf of Mexico in the western Atlantic, and the possibility of additional spawning areas cannot be discounted (McGowan and Richards, 1989).

It appears that larvae are generally retained in the Gulf of Mexico until June, and schools of young-of-the-year (YOY) begin migrating to juvenile habitats (McGowan and Richards, 1989) thought to be located over the continental shelf around 34°N and 41°W in the summer, and further offshore in the winter. They have also been identified from the Dry Tortugas area in June and July (McGowan and Richards, 1989; ICCAT, 1997). Juveniles migrate to nursery areas located between Cape Hatteras, North Carolina and Cape Cod, Massachusetts (Mather *et al.,* 1995).

Atlantic bluefin tuna have not been observed spawning (Richards, 1991); however, recent work has identified putative breeding behaviors by Atlantic bluefin tuna while in the Gulf of Mexico (Teo *et al.,* 2007). Presumed Atlantic bluefin tuna breeding behaviors were associated with bathymetry (continental slope waters), sea surface temperature (moderate), eddy kinetic energy (moderate), surface chlorophyll (low concentrations), and surface wind speed (moderate) (Teo *et al.,* 2007).

Western Atlantic

Essential fish habitat (EFH) is defined under the Magnuson-Stevens Act as waters, aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; and the substrate, sediment, hard bottom, structures underlying the waters, and associated biological communities that are necessary to fish for spawning, breeding, feeding, or growth to maturity, representing the species full life cycle.

For western Atlantic bluefin tuna, EFH was defined in the Final Amendment 1 to the Consolidated Highly Migratory Species Fishery Management Plan (NMFS Amendment 1, 2009). Atlantic bluefin tuna EFH for spawning, eggs, and larvae was defined as following the 100 m depth contour in the Gulf of Mexico to the Exclusive Economic Zone (EEZ), and continuing to the mid-east coast of Florida. For juveniles sized less than 231 cm fork length (FL), EFH was defined as waters off North Carolina, south of Cape Hatteras to Cape Cod. For adult sizes equal to or greater than 231 cm FL, it was defined as pelagic waters of the central Gulf of Mexico and the mid-east coast of Florida, North Carolina from Cape Lookout to Cape Hatteras, and New England from Connecticut to the mid-coast of Maine.

It is believed that there are certain features of the Atlantic bluefin tuna larval habitat in the Gulf of Mexico which determine growth and survival rates and that these features show variability from year to year, perhaps accounting for a significant portion of the fluctuation in yearly recruitment success (McGowan and Richards, 1989). The habitat requirements for larval success are not known, but larvae are collected within narrow ranges of temperature and salinity; approximately 26 °C and salinities of 36 parts per thousand (ppt). Along the coast of the southeastern United States, onshore meanders of the Gulf Stream can produce upwelling of nutrient rich water along the shelf edge. In addition, compression of the isotherms on the edge of the Gulf Stream can form a stable region which, together with upwelling nutrients, provides an area favorable to maximum growth and retention of food for the larvae (McGowan and Richards, 1989).

Additionally, NMFS Amendment 1 designated a Habitat Area of Particular Concern (HAPC) for bluefin tuna. The bluefin tuna HAPC is located west of 86 ° W and seaward of the 100 m isobath, extending from the 100 m isobath to the EEZ. The area includes a majority of the locations where Atlantic bluefin tuna larval collections have been documented, overlaps with adult and larval Atlantic bluefin tuna EFH, and incorporates portions of an area identified as a primary spawning

location by Teo *et al.* (2007). The Gulf of Mexico is believed to be the primary spawning area for western Atlantic bluefin tuna, and the HAPC designation highlights the importance of the area for Atlantic bluefin tuna spawning. It may also provide added conservation benefits if steps are taken to reduce impacts from development activities through the consultation process.

Eastern Atlantic

The best known spawning areas for the eastern Atlantic bluefin tuna are southwest of the Balearic Sea, the central and southern Tyrrhenian Sea, the central Mediterranean Sea southwest of Malta, and the eastern Mediterranean Sea in the south Aegean to the area north of Cyprus, particularly the area between Anamur and Mersin in the Levantine Sea. Important spatial changes in some of the most relevant spawning areas have been noticed in the last 10 years, particularly in the south Tyrrhenian and central Mediterranean. Most of the available information reports a major presence of bluefin tuna along the coasts of Croatia, south Adriatic Sea, western Ionian Sea, Tyrrhenian Sea, all the northwestern Mediterranean coast, in some areas of Morocco and Tunisia, in a few Aegean areas, and in the Levantine Sea (between Anamur and Mersin).

Areas where juveniles concentrate have been noticed to change from year to year. Juveniles are mostly present in feeding aggregations or schools during fall, from September to December. Mature specimens have been reported from most of the Mediterranean areas, with the only exceptions being the Gulf of Lions and the northern Adriatic Sea. Larvae have also been found in most of the Mediterranean surface waters, with a major concentration in areas where gyres and fronts are present, particularly in the second part of summer.

Young-of-the-year (YOY) Atlantic bluefin tuna have been found mostly in coastal areas over the continental shelf, whenever preferred prey is present. Tagging data showed that Atlantic bluefin tuna movement within the Mediterranean Sea is often limited, particularly for individuals tagged in the eastern regions of the basin. Movements of Atlantic bluefin tuna tagged in the central and western Mediterranean Sea were more pronounced than those tagged in the eastern portion. Seasonal prey abundance drives the concentration of both young and adult specimens in those Mediterranean Sea areas not used for reproduction (*e.g.* Ligurian Sea, north-central Adriatic Sea). Many larger individuals (> 150 kg) move out of the Mediterranean, and their movement patterns and displacement distance seem to be related to size and the exploitation of feeding grounds outside the Mediterranean Sea (Wurtz, 2010), while some are resident year round.

Consideration as a Species Under the ESA

According to Section 3 of the ESA, the term "species" includes "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature." Congress included the term "distinct population segment" in the 1978 amendments to the ESA. On February 7, 1996, the U.S. Fish and Wildlife Service and NMFS (jointly referred to as the Services) adopted a policy to clarify their interpretation of the phrase "distinct population segment" for the purpose of listing, delisting, and reclassifying species (61 FR 4721). The policy described two criteria a population segment must meet in order to be considered a DPS (61 FR 4721):

1. It must be discrete in relation to the remainder of the species to which it belongs; and
2. It must be significant to the species to which it belongs.

Determining if a population is discrete requires either one of the following conditions:

1. It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation; or
2. It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA.

If a population is deemed discrete, then the population segment is evaluated in terms of significance, which may include, but is not limited to, the following:

1. Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon.
2. Evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon.
3. Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or
4. Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

If a population segment is deemed discrete and significant, then it qualifies as a DPS.

Discreteness

Rooker *et al.* (2008) analyzed the chemical composition of otoliths (*e.g.,* fish ear bones) from Atlantic bluefin tuna that were 12 to 18 months of age and that were caught between 1999 and 2004 in both the eastern (Mediterranean Sea/eastern Atlantic Ocean) and western (Gulf of Mexico/eastern coast of the United States) nurseries. These authors found that otolith composition was distinct between yearlings from the two different nursery areas, and that the chemical signature was significantly different for yearlings from the eastern nursery in five of the years (all except 2001) (Rooker *et al.,* 2008).

Dickhut *et al.* (2009) used organochlorine and polychlorinated biphenyl (PCB) tracers from Atlantic bluefin tuna foraging grounds to determine the rate of mixing of different size classes between the eastern and western stocks. Their results indicated that mixing of juvenile Atlantic bluefin tuna from the eastern to the western foraging grounds could be as high as 80 percent for certain age classes and that juveniles from the Mediterranean Sea may migrate to western Atlantic foraging grounds as early as age 1 (Dickhut *et al.,* 2009). However, this study also indicated that medium to giant sized Atlantic bluefin tuna entering the Gulf of Mexico breeding grounds showed PCB ratios similar to that of the western Atlantic young-of-the-year (YOY), which suggests little or no mixing on the spawning grounds in the Gulf of Mexico, as these fish have been foraging in the western Atlantic rather than foraging grounds used by Mediterranean bluefin tuna (Dickhut *et al.,* 2009).

Carlsson *et al.* (2006) conducted analyses of 320 YOY Atlantic bluefin tuna to evaluate the hypothesis that 2 separate spawning grounds exist for the western and eastern stocks—Gulf of Mexico and Mediterranean Sea, respectively. In this study, Carlsson *et al.* (2006) conducted a microsatellite analysis of 8 loci and examined the mitochondrial DNA control region and found significant genetic differentiation among YOY fish captured in the Gulf of Mexico spawning grounds versus those captured in the Mediterranean spawning area. Their results support a high degree of spawning site fidelity, and thus, they noted that the recognition of genetically distinct populations requires independent

management of the stocks of this species (Carlsson *et al.,* 2006).

Riccioni *et al.* (2010) indicated that genetic analyses and microchemical signatures from otoliths strongly support the existence of two distinct primary spawning areas for Atlantic bluefin tuna (the Mediterranean and Gulf of Mexico). These authors noted that significant genetic divergence was found between these two spawning stocks using microsatellite (Carlsson *et al.,* 2007) and mitochondrial DNA analyses (Boustany *et al.,* 2008), and they also indicated that there are high rates of spawning site fidelity of 95.8 percent and 99.3 percent for the Mediterranean Sea and Gulf of Mexico, respectively (Rooker *et al.,* 2008; Block *et al.,* 2005).

The best available information indicates that fish from the Mediterranean stock, while making some trans-Atlantic migrations, return to the Mediterranean to spawn while fish from the Gulf of Mexico stock return to the Gulf of Mexico to spawn. This separation between the stocks is supported by the aforementioned genetic analyses which indicate significant genetic differentiation between the two stocks as described above. In addition, the results of the otolith microchemistry analyses indicate that natal homing or spawning site fidelity does occur, and the study by Dickhut *et al.* (2009) using organochlorine and PCB tracers also indicate that there is little to no mixing on the spawning grounds. Furthermore, according to Rooker *et al.* (2008), the rates of spawning site fidelity are 95.8 percent and 99.3 percent for the Mediterranean Sea and Gulf of Mexico, respectively. Thus, the two populations in the North Atlantic are discrete.

The available data further suggest that the eastern Atlantic stock exhibits genetic differentiation, spatial separation during spawning as a result of spawning site fidelity/natal homing, and differences in behavior (*e.g.,* some resident fish in the eastern Mediterranean versus non-resident/migratory fish in the western Mediterranean) with different spawning areas in the western and eastern Mediterranean. According to Reeb (2010), the eastern and western basins of the Mediterranean exhibit differences in temperature, circulation patterns, and salinity, and the basins are considered oceanographically to be separated by the straits of Sicily and Messina. Thus, even though Atlantic bluefin tuna are highly migratory, the areas that they home to in order to spawn may possess unique characteristics. All of this evidence combined with the recent evidence suggesting a separate spawning area in the eastern Mediterranean and genetic analyses which demonstrate significant genetic differences between western and eastern Mediterranean fish and between the Mediterranean and Gulf of Mexico spawning areas led Fromentin (2009) to hypothesize that Atlantic bluefin tuna are comprised of at least three sub-populations: (1) A highly migratory stock over all of the North Atlantic that spawns in western and central Mediterranean areas; (2) a more resident stock in the Mediterranean which spawns in the central and eastern Mediterranean; and (3) a more resident stock in the West Atlantic which spawns in the Gulf of Mexico. As such, two discrete populations may exist within the larger eastern Mediterranean population. While there is some evidence which indicates that there may be other, discrete spawning areas outside of the Gulf of Mexico, the locations of these areas have not been confirmed or fully described at this time.

Using the best available information, the SRT concluded that the western Atlantic and the eastern Atlantic populations are discrete from each other. Within the eastern Atlantic, the available information suggests that there may be two discrete populations of Atlantic bluefin tuna; however, the data are inconclusive regarding the Mediterranean at this time.

Significance

If a population is deemed discrete, then the population segment is evaluated in terms of significance. The western Atlantic population has been determined to be a discrete population from the two possible Mediterranean populations as described above. Consequently, it is necessary to assess the biological and ecological significance of each discrete population as described in the Services' DPS policy.

Several studies have documented that Atlantic bluefin tuna in the Mediterranean appear to prefer sea surface temperatures above 24 °C for spawning (Mather *et al.,* 1995; Schaefer, 2001; Garcia *et al.,* 2005), and in the Gulf of Mexico, Teo *et al.* (2007) noted that they prefer areas with surface temperatures between 24 and 27 °C. Since adult Atlantic bluefin tuna are present in the Gulf of Mexico as early as winter but are not usually in spawning condition until mid-April (Block *et al.,* 2001), an environmental cue such as temperature or photoperiod may trigger spawning (Muhling *et al.,* 2010).

Muhling *et al.* (2010) also indicated that Atlantic bluefin tuna larvae are generally absent from continental shelf areas with low surface temperatures and salinities at the beginning of the spawning period. They theorized that Atlantic bluefin tuna may avoid spawning in these areas as they are typically high in chlorophyll concentrations and, therefore, contain dense phytoplankton blooms which support high concentrations of zooplankton. While the high concentrations of zooplankton provide a source of larval prey, they attract other planktonic predators (Bakun, 2006). According to Muhling *et al.* (2010), larval tuna have specialized diets, often feeding on pelagic tunicates found in oligotrophic open ocean areas (Sommer and Stibor, 2002, as cited in Muhling *et al.,* 2010). Thus, these authors concluded that larval tuna in the Gulf of Mexico may be adapted to survive in nutrient poor waters. Muhling *et al.* (2010) concluded that favorable habitat for Atlantic bluefin tuna larvae in the Gulf of Mexico consists of areas of moderately warm water temperatures outside of the loop current, loop current eddies, and outside of continental shelf waters that contain cooler water with higher chlorophyll concentrations (Muhling *et al.,* 2010).

Oray and Karakulak (2005) described the spawning area surveyed in the northern Levantine Sea as containing waters with sea surface temperatures between 21.8 to 29.3 °C, salinity from 34.9 to 38.8 ppt, and depths between 63 to 2,448 m. Oray and Karakulak (2005) indicate that larval Atlantic bluefin tuna were found in areas with physical oceanographic features such as cyclonic eddies, which may indicate that the main larval populations are within these cyclonic eddies and that the tuna spawning site is within close proximity to the area in which the larvae were observed. According to Oray and Karakulak (2005), the optimal seawater temperatures in the Atlantic bluefin tuna spawning area in the northern Levantine Sea are between 23 to 25 °C, which generally occur early in June, whereas optimum temperatures for spawning in the western Mediterranean generally occur later, toward the end of June.

Garcia *et al.* (2005) characterized the Atlantic bluefin tuna spawning habitat off the Balearic Archipelago. These authors noted that Atlantic bluefin tuna larval abundance is associated with surface water temperatures between 24 and 25 °C in areas of inflowing Atlantic waters or transitional areas with Atlantic waters mixing with Mediterranean waters and that generally possess hydrographic features such as fronts and gyres (Garcia *et al.,* 2005).

According to Garcia *et al.* (2005), significant concentrations of Atlantic bluefin tuna larvae were found off the Mallorca channel in an area with frontal formations and south of Minorca where an anticyclonic gyre was observed. Garcia *et al.* (2005) note that these frontal structures and gyres may play an important role in providing concentrated prey resources for larval fish, which may in turn constitute an important part of the diet of larval Atlantic bluefin tuna. Low and isolated larval concentrations were observed in Mediterranean water masses north of the islands (Garcia *et al.,* 2005). The strong eastward current that flows from Ibiza towards Minorca may act as a transport mechanism for larvae (Garcia *et al.,* 2005). The area near Mallorca and the Ibiza channels is generally characterized by low concentrations of chlorophyll *a,* which is primarily due to the major influence of the nutrient poor water masses originating from the Atlantic (Garcia *et al.,* 2005).

While spawning areas for Atlantic bluefin tuna may at times be stressful environments, Atlantic bluefin tuna migrate long distances to reach the particular areas in which they spawn (Block *et al.,* 2001), and homing fidelity to these sites is high. Muhling *et al.* (2010) concluded that adults are targeting specific areas and oceanographic features in order to maximize larval survival. Consequently, the spawning areas in the Gulf of Mexico and Mediterranean are unique ecologically and possess the features (*e.g.,* appropriate water conditions such as temperatures, depths, salinities, and chlorophyll concentrations, hydrography) that are necessary for maximizing bluefin tuna spawning success for each population.

As noted previously, Atlantic bluefin tuna exhibit strong natal homing or spawning site fidelity. Therefore, it is unlikely individuals from the Mediterranean would spawn in the Gulf of Mexico, or that individuals from the Gulf of Mexico population would spawn in the Mediterranean. Thus, if one of the discrete populations was to be extirpated, it would represent a significant gap in the range of the taxon, in that either the Gulf of Mexico or the Mediterranean Sea would no longer support Atlantic bluefin tuna.

As presented above and as noted in the discreteness discussion, Atlantic bluefin tuna that spawn in the Gulf of Mexico and in the Mediterranean utilize unique ecological areas for spawning. There is information presented above that indicates that these areas possess unique features or characteristics to which larval tuna may be adapted. Also, some authors indicated that natal homing may be the result of behavior learned from older fish in the population and thus, the loss of a spawning group or of the mature fish could result in the permanent loss of a spawning area, and this area would most likely not be re-colonized by fish from another spawning group. This would represent a significant gap in the range of the taxon.

There is some evidence suggesting that there may be two discrete populations within the Mediterranean, but the SRT is unable to determine the significance of these populations to the species as a whole. While the two Mediterranean populations may be discrete, the SRT does not have enough information to conclude that they are significant, by themselves, to Atlantic bluefin tuna.

Based on the best available information, the SRT concluded that the western Atlantic and eastern Atlantic/Mediterranean populations represent two DPSs of Atlantic bluefin tuna. We agree with the SRT's DPS delineation, and refer to these DPSs as the western Atlantic DPS and eastern Atlantic/Mediterranean DPS of Atlantic bluefin tuna. The information presented in the remainder of this finding, therefore, pertains to the status of the western Atlantic and eastern Atlantic/Mediterranean DPSs of Atlantic bluefin tuna.

ICCAT Stock Assessment Summary for Atlantic Bluefin Tuna

Atlantic bluefin tuna are managed domestically by NMFS' Highly Migratory Species (HMS) Management Division and internationally by the International Commission for the Conservation of Atlantic Tunas (ICCAT). ICCAT manages the western Atlantic and eastern Atlantic/Mediterranean DPSs as two separate stocks (eastern and western stocks), separated by the 45 ° W meridian. In recent years, stock assessments for Atlantic bluefin tuna have been conducted approximately every 2 years by the Standing Committee on Research and Statistics (SCRS). The most recent ICCAT stock assessment was conducted by SCRS in 2010. Models and methodologies employed by ICCAT during the stock assessments were used by the SRT to develop an extinction risk analysis; therefore, a description of the models, methods, and results is provided in the SRR, and significant conclusions are summarized below.

Abundance of the Western Atlantic DPS of Atlantic Bluefin Tuna

According to the ICCAT SCRS stock assessment in 2010, the total catch for the western Atlantic peaked at 18,671 t (16,938.05 mt) in 1964, with catches dropping sharply thereafter with the collapse of the Atlantic bluefin tuna longline fishery off Brazil in 1967 and the decline in purse seine catches. Catch increased again to average over 5,000 t (4,535.92 mt) in the 1970s due to the expansion of the Japanese longline fleet into the northwest Atlantic and Gulf of Mexico, and an increase in purse seine effort targeting larger fish for the sashimi market.

Since 1982, the total catch for the western Atlantic including discards has generally been relatively stable due to the imposition of quotas by ICCAT. However, following a total catch level of 3,319 t (3,010.95 mt) in 2002 (the highest since 1981), total catch in the western Atlantic declined steadily to a level of 1,638 t (1,485.97 mt) in 2007 (the lowest level since 1982), before rising to 1,935 t (1,755.4 mt) in 2009, which was near the total allowable catch (TAC). The decline prior to 2007 was primarily due to considerable reductions in catch levels for U.S. fisheries. The major harvesters of western Atlantic bluefin tuna are Canada, Japan, and the United States.

Safina and Klinger (2008) summarized ICCAT management regulations and catch history for the western Atlantic stock; however, it was not a quantitative assessment of the stock. Due to the timing of publication, the authors were only able to consider catch data through 2006, and there have been changes to the western Atlantic bluefin tuna fishery since then. MacKenzie *et al.* (2009) projected a similar collapse; however due to timing of publication, they were also only considering catch data through 2006. The 2006 U.S. catches of Atlantic bluefin tuna were the lowest in recent history; however, since then, the U.S. fishery has seen increasing catches, and the U.S. base quota was fully realized in 2009 and 2010. MacKenzie *et al.* (2009) projected that by 2011, the adult population of Atlantic bluefin tuna would be 75 percent lower than the population in 2005. Furthermore, Safina and Klinger (2008) stated that "these trends [in U.S. catches] suggest U.S. bluefin may approach widespread commercial unavailability as early as 2008"; however, the results of the ICCAT 2010 bluefin tuna stock assessment (as described in more detail below) and the catch statistics submitted to ICCAT clearly refute these assertions.

The base case assessment is consistent with previous analyses in that spawning stock biomass (SSB) declined dramatically between the early 1970s and early 1990s. Since then, SSB was estimated to have fluctuated between 21 and 29 percent of the 1970 level, but with a gradual increase in recent years from the low of 21 percent in 2003 to 29 percent in 2009. Thus, the stock has undergone substantial declines since historic highs were reported in the 1970s. The stock has experienced different levels of fishing mortality over time, depending on the size of fish targeted by various fleets. Fishing mortality on spawners (ages 9 and older) declined markedly after 2003. The estimates of recruitment (age 1) are very high for the early 1970s, but are much lower for the years since, with the exception of a strong year-class documented in 2003.

There are two alternative spawner-recruit hypotheses for the western stock: the two-line (low recruitment potential scenario) and the Beverton and Holt spawner-recruit formulation (high recruitment potential scenario). Under the low recruitment scenario, average levels of observed recruitment are based on levels from 1976–2006 (85,000 recruits) while in the high recruitment scenario, recruitment levels increase as the stock rebuilds (MSY level of 270,000 recruits). SCRS has indicated that it does not have strong evidence to favor either scenario over the other and notes that both are reasonable (but not extreme) lower and upper bounds on rebuilding potential. Both of these models take into account multiple variables affecting abundance, including fishing mortality, recruitment and vulnerabilities, and terminal ages. During the 2010 stock assessment, the SCRS re-examined the two alternative spawner-recruit hypotheses explored in several prior assessments. Stock status was determined under both scenarios for the base model from 1970 to 2009. The results under the two-line (low recruitment potential) scenario suggested that the stock has not been overfished since 1970, and that overfishing has not occurred since 1983. The results under the Beverton-Holt (high recruitment potential) scenario suggested that the stock has been overfished since 1970, and the fishing mortality rates (F) have been above fishing at maximum sustainable yield (F_{MSY}), except for the years 1985, 1986, and 2007 to 2009. The low recruitment scenario is the more optimistic scenario because the result is that the stock biomass is above the rebuilding goal. Under the high recruitment scenario, rebuilding cannot be met by the end of ICCAT's 20-year rebuilding period. However, it is important to note that this change in the perception of current stock status (to not overfished, no overfishing occurring) under the low recruitment scenario is largely the result of applying a new growth curve rather than the result of management measures under the rebuilding plan.

ICCAT estimated the status of the western Atlantic stock in 2009 as well as status trajectories for the two recruitment levels. Using MSY-related benchmarks, ICCAT determined that the western Atlantic stock is not overfished and is not undergoing overfishing under the low recruitment potential scenario. However, under the Beverton-Holt recruitment hypothesis (high recruitment potential scenario), the stock remains overfished and overfishing is occurring. It was noted, however, that the assessment did not capture the full degree of uncertainty in the assessments and projections. Based on earlier work, the estimates of stock status can be expected to vary considerably depending on the type of data used to estimate mixing (conventional tagging or isotope signature samples) and modeling assumptions made. Improved knowledge of maturity at age will also affect the perception of changes in stock size. Finally, the lack of representative samples of otoliths requires determining the catch at age from length samples, which is imprecise for larger Atlantic bluefin tuna.

The results of the 2010 stock assessment for western Atlantic bluefin tuna were strongly influenced by a new growth curve (Restrepo *et al.,* 2010). The new growth curve assigns older ages to fish larger than 120 cm. As a result, the age structure of the catch included a higher proportion of older fish, which implied that the stock was subjected to a lower fishing mortality than previously estimated. Under the low recruitment potential scenario, therefore, SSB was now estimated to have greater than a 60 percent chance of being above the level that will support MSY, and overfishing is not occurring. SSB remained low relative to the level at MSY under the high recruitment potential scenario. The fishing mortality rate under the high recruitment potential scenario indicated overfishing was still occurring.

Under both scenarios, the SSB trend shows an increase in the last few years of the time series considered. The SCRS also noted the strength of the 2003 year class, the largest since 1974, although it also acknowledged that the recruitment estimated by the model for subsequent year classes appears to be the lowest on record and, therefore, these subsequent year classes may be a cause of concern. However, anecdotal information from U.S. recreational and commercial fishermen pointed to a perceived high abundance of small Atlantic bluefin tuna in U.S. waters in 2010.

The SCRS noted that the productivity of both the western Atlantic bluefin tuna and western Atlantic bluefin tuna fisheries is linked to the eastern Atlantic/Mediterranean stock. There is very strong evidence that eastern DPS fish contribute to the catches that occur along the eastern seaboard of North America, particularly in the Mid-Atlantic Bight. Consequently, improvements to the stock status in the eastern DPS, which result in increases to the number of eastern fish in the Mid-Atlantic Bight fishery, could reduce the proportion of the TAC that comes from western DPS fish. Therefore, management actions taken in the eastern Atlantic and Mediterranean are likely to influence the recovery in the western Atlantic, because even small rates of mixing from the eastern Atlantic/Mediterranean to the western Atlantic can have significant effects on the western Atlantic due to the fact that the eastern Atlantic/Mediterranean resource is much larger than that of the western Atlantic (*i.e.,* approximately 10 times the size).

Abundance of the Eastern Atlantic/Mediterranean DPS of Atlantic Bluefin Tuna

Reported catches in the eastern Atlantic/Mediterranean peaked at over 50,000 t (45,359.24 mt) in 1996 and then decreased substantially, stabilizing around TAC levels established by ICCAT. Both the increase and the subsequent decrease in declared production occurred mainly for the Mediterranean. Available information showed that catches of Atlantic bluefin tuna from the eastern Atlantic/Mediterranean were seriously under-reported from 1998 to 2007. In addition, farming activities in the Mediterranean since 1997 significantly changed the fishing strategy of purse seiners and resulted in a deterioration of Atlantic bluefin tuna catch at size (CAS) data reported to ICCAT. This is because Atlantic bluefin tuna size samples were obtained only at the time of harvest from the farms and not at the time of capture. The 2008 and 2009 reported catch was reviewed by the SCRS during the Atlantic bluefin tuna data preparatory meeting. The SCRS indicated that the reporting of catches significantly improved in those 2 years. However, the SCRS also indicated that

some misreporting could still have been taking place. The assessment for the eastern stock used data for the period 1950–2009. Historically, illegal, unreported and unregulated fishing resulted in catch levels far exceeding the TAC levels mandated by ICCAT in the east. The United States has been looking closely at eastern bluefin tuna compliance and IUU issues over the years. Indications over the last two years are that progress has been made to address non-compliance and IUU issues, and catches over the last two years appear to be in line with agreed limits based on the monthly catch reports and SCRS information. Recruitment at the start of the time series varied between 2 and 3 million fish, dropped to around 1 million fish during the 1960s, followed by a steady increase toward maximum values in the 1990s and early 2000s while recruits dropped steeply in the last years. However, the recent levels are known to be less reliable because of the lack of data to estimate them. SCRS also notes that the potential decline in the recruitment in the most recent years is not in agreement with scientific information from aerial surveys carried out in the Mediterranean Sea (Bonhommeau *et al.,* 2009).

Final SSB estimates differed slightly between the model runs that were used. The SSB peaked over 300,000 t (272,155.42 mt) in the late 1950s and early 1970s, followed by a decline. One model run indicated that the SSB continued to decline slightly to about 150,000 t (136,077.71 mt), while the other indicated that biomass increased slightly during the late 2000s to about 200,000 t (181,436.95 mt). Considering both runs, the analyses indicated that recent (2007–2009) SSB is about 57 percent of the highest estimated SSB levels (1957–1959).

Significant Portion of Its Range and Foreseeable Future

The ESA defines an "endangered species" as "any species which is in danger of extinction throughout all or a significant portion of its range," while a "threatened species" is defined as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." The phrase "throughout all or a significant portion of its range" is neither defined nor explained in the ESA, and a final policy on how to interpret this language has not been developed by NMFS.

As previously noted, Atlantic bluefin tuna are highly migratory pelagic fish that range across most of the North Atlantic and its adjacent seas, particularly the Mediterranean Sea. Although the Atlantic bluefin tuna DPSs are described or defined by the location of their spawning grounds, they use the Atlantic Ocean and adjacent seas for various life stages and migrations for foraging, nursery grounds, and spawning. If a DPS was threatened or endangered in a spawning area, it would be threatened or endangered throughout its range (and not only in the spawning area) because a species cannot survive if individuals cannot spawn. Therefore, any determination we would make on the status of the DPSs would be based on the status of the DPSs throughout their ranges.

During a meeting to discuss the SRR, the SRT also considered the foreseeable future for Atlantic bluefin tuna and estimated the mean generation time for both the eastern Atlantic/Mediterranean DPS and western Atlantic DPS. For the purpose of the SRR, the mean generation time was determined to be 17 years for the western Atlantic DPS and 19 years for the eastern Atlantic/Mediterranean DPS. Mean generation time was computed as the fecundity-weighted average age of the spawning population at equilibrium in the absence of fishing, where the values for the age at maturity and natural mortality rate associated with the eastern and western DPSs were set to those used by the SCRS (and average weight was used as a proxy for fecundity). The mean generation time was similar for the two stocks because the younger age of maturity assumed for the eastern stock (which would imply a younger generation time) is mitigated by the lower natural mortality rate assumed for spawning age fish (which implies an older generation time). The SRT also reasoned that it will take a generation time to fully realize the impacts of various management measures, and thus, determined that approximately 17 to 19 years is a reasonable timeframe to define the foreseeable future for Atlantic bluefin tuna. Further support for this timeframe is provided in the 1998 rebuilding plan, as this was based on a mean generation time of 20 years (K. Blankenbeker, 2010, Pers. comm.). Additionally, projections through ICCAT have been estimated for 20 years for the western Atlantic. Because of ICCAT negotiations that can result in changes to annual quotas, we cannot estimate abundance beyond 20 years with any degree of confidence.

As described above, section 4(a)(1) of the ESA and NMFS implementing regulations (50 CFR 424) state that we must determine whether a species is endangered or threatened because of any one or a combination of the following factors: (A) Current or threatened habitat destruction or modification or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; and (E) other natural or man-made factors affecting the species' continued existence. This section briefly summarizes the findings regarding these factors. Additional details can be found in the SRR.

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

The Gulf of Mexico is believed to possess certain features for Atlantic bluefin tuna larval habitat which determine growth and survival rates of Atlantic bluefin tuna and can be variable from year to year (McGowan and Richards, 1989). The Gulf Stream can produce upwelling of nutrient rich waters along the shelf edge, which may provide an area favorable to maximum growth and retention of food for the larvae (McGowan and Richards, 1989).

The Mediterranean Sea is a basin with unique characteristics, being a semi-enclosed sea connected to the Atlantic Ocean through the narrow Strait of Gibraltar, to the Red Sea by the man-made Suez Canal and to the smaller enclosed Black Sea via the narrow Bosphorus Strait. The Mediterranean Sea exchanges water, salt, heat, and other properties with the North Atlantic Ocean, and is thus an important factor affecting global water formation processes and variability, and subsequently, the stability of the global thermohaline state of equilibrium (Wurtz, 2010).

There are a variety of past, present, and reasonably foreseeable future actions that have the potential to affect Atlantic bluefin tuna habitat. They range, among other things, from coastal development and associated coastal runoff and non-point source pollution in coastal areas to outer continental shelf (OCS) oil and gas development, and global climate change. Since most Atlantic bluefin tuna habitat is comprised of open ocean environments occurring over broad geographic ranges, large-scale impacts such as global climate change that affect ocean temperatures, currents, and potentially food chain dynamics, likely pose the greatest threat to Atlantic bluefin tuna habitat. Anecdotal information suggests that such changes may be occurring and influencing the distribution and habitat usage patterns of Atlantic bluefin tuna as well as other highly migratory species (HMS) and non-HMS fish stocks. Ocean

temperature changes of a few degrees can disrupt upwelling currents that reduce or eliminate the nutrients necessary for phytoplankton and thereby, could have potential repercussions throughout the food chain. As a result, changes in migratory patterns may be the first indication that large scale shifts in oceanic habitats may be occurring. Some have pointed to the shift in availability of Atlantic bluefin tuna from fishing grounds off North Carolina to waters off Canada during the winter months as evidence of changes in oceanographic conditions that may be affecting historical distribution patterns. Although the evidence is still lacking, causative factors in the shift include preferences for cooler water temperatures and prey availability. A recent report by the Conservation Law Foundation indicated that low food availability had reduced growth rates in larval cod and haddock and that rising sea surface temperatures had the potential to further reduce productivity for these and other fish stocks off the New England coast (Bandura and Vucson, 2006).

Wetland loss is a cumulative impact that results from activities related to coastal development: Residential and industrial construction, dredging and dredge spoil placement, port development, marinas and recreational boating, sewage treatment and disposal, industrial wastewater and solid waste disposal, ocean disposal, marine mining, and aquaculture. In the late 1970s and early 1980s, the United States was losing wetlands at an estimated rate of 300,000 acres (1,214 sq km) per year. The Clean Water Act and state wetland protection programs helped decrease wetland losses to 117,000 acres (473 sq km) per year between 1985 and 1995. Estimates of wetlands loss vary according to the different agencies. The U.S. Department of Agriculture attributes 57 percent of wetland loss to development, 20 percent to agriculture, 13 percent to deepwater habitat, and 10 percent to forest land, rangeland, and other uses. Of the wetlands lost to uplands between 1985 and 1995, the FWS estimates that 79 percent of wetlands were lost to upland agriculture. Urban development and other types of land use activities were responsible for 6 percent and 15 percent of wetland loss, respectively.

Nutrient enrichment has become a major cumulative problem for many coastal waters. Nutrient loading results from the individual activities of coastal development, non-point source pollution, marinas and recreational boating, sewage treatment and disposal, industrial wastewater and solid waste disposal, ocean disposal, agriculture, and aquaculture. Excess nutrients from land based activities accumulate in the soil, pollute the atmosphere, pollute ground water, or move into streams and coastal waters. Nutrient inputs are known to have a direct effect on water quality. For example, in extreme conditions, excess nutrients can stimulate excessive algal blooms or dinoflagellate growth that can lead to increased turbidity, decreased dissolved oxygen, and changes in community structure, a condition known as eutrophication.

In addition to the direct cumulative effects incurred by development activities, inshore and coastal habitats are also jeopardized by persistent increases in certain chemical discharges. The combination of incremental losses of wetland habitat, changes in hydrology, and nutrient and chemical inputs produced over time can be extremely harmful to marine and estuarine biota, resulting in diseases and declines in the abundance and quality of the affected resources.

One of the major activities with the potential to impact Atlantic bluefin tuna habitat is oil and gas development on the OCS. Anecdotal information suggests that some recreational fishermen may target various fish species, including HMS, in the vicinity of oil platforms due to increased abundance and availability near platforms. The apparent increase in abundance of several species may be due to increased prey availability resulting from various fish and invertebrate communities that are attracted or attach directly to the structures and submerged pilings. While the apparent increase in abundance of fish near oil platforms may appear to be beneficial, little is known about the long-term environmental impacts of changes caused by these structures to fish communities, including potential changes to migratory patterns, spawning behavior, and development of early life stages. Currently, there is debate about whether the positive effects of the structures in attracting fish communities would be reduced by removal of the platforms when they are decommissioned.

As of 2009, there were approximately 4,000 oil and gas platforms in the Gulf of Mexico and fewer than 100 in the Atlantic. Most of the platforms were in waters shallower than 1,000 feet (305 m); however, there are ongoing efforts to expand oil drilling to deeper areas of the Gulf. Approximately 72 percent of the Gulf of Mexico's oil production comes from wells drilled in 1,000 feet (305 m) of water or greater (MMS, 2008(b)). Eight new deepwater discoveries were announced by oil and gas operators in 2007, with the deepest in 7,400 ft (2,256 m) of water (MMS, 2008(a)). Many of the shallower sites and most of the deepwater sites fall within habitats used by HMS, particularly by Atlantic bluefin tuna. Many of the deeper sites are also located within the HAPC for Atlantic bluefin tuna.

In the Atlantic, ten oil and gas lease sales were held between 1976 and 1983. Fifty-one wells were drilled in the Atlantic OCS; five Continental Offshore Stratigraphic Test wells between 1975 and 1979, and 46 industry wells between 1977 and 1984. Five wells off New Jersey had successful drillstem tests of natural gas and/or condensate. These five wells were abandoned as non-commercial.

In addition to the oil and gas wells, several liquefied natural gas (LNG) facilities have been proposed in the Gulf of Mexico. For LNG facilities, a major environmental concern is the saltwater intake system used to heat LNG and regasify it before piping it to shore. LNG facilities sometimes have open loop, once through heating systems known as open rack vaporizers, which require large amounts of sea water to heat LNG. As described in a draft environmental impact statement (DEIS) for an LNG project in the Gulf of Mexico, the use of the sea water intake system would subject early life stages of marine species to entrainment, impingement, thermal shock, and water chemistry changes, potentially causing the annual mortality of hundreds of billions of zooplankton, including fish and shellfish eggs and larvae. Depending on the location of the facility, this could have an adverse effect on habitat for Atlantic bluefin tuna or other HMS species. Closed loop systems are currently being used in the United States to regasify LNG and are proposed for multiple onshore and offshore LNG terminals throughout the nation, with the notable exception of the offshore waters of the Gulf of Mexico. These systems, which do not rely on an external saltwater intake source, and thus, do not require large amounts of seawater, have considerably lower impacts on fish eggs, larvae, and zooplankton than open loop systems.

For oil platforms, there are direct and indirect impacts to the environment such as disturbance created by the activity of drilling, associated pollution from drilling activities, discharge of wastes associated with offshore exploration and development, operational wastes from drilling muds and cuttings, potential for oil spills, and potential for catastrophic spills caused

by accidents, such as the Deepwater Horizon (DWH) oil spill in 2010 (described below), or hurricanes and alteration of food webs created by the submerged portions of the oil platform, which attract various invertebrate and fish communities.

The potential effect of the DWH oil spill on the future abundance of western Atlantic bluefin tuna was evaluated by comparing the projections made by the SCRS (SCRS, 2010) to similar projections that assume the number of yearlings (1-year-old-fish) in 2011 will be reduced by 20 percent. The 20 percent value was based on the recent report by the European Space Agency that suggested 20% of the surface was oiled. However, this value does not reflect subsurface oil investigations and are ongoing on its potential distribution and impacts.

The SRT noted that another study (SEFSC, 2011, pers. comm.) suggested that considerably less than 20 percent of the spawning habitat for the western Atlantic DPS was affected by the spill. Moreover, if some larvae survived their encounter with oil and associated toxicants, or if density dependent processes are involved in the mortality of Atlantic bluefin tuna after the larval phase, then a 20 percent loss of spawning habitat might result in something less than a 20 percent reduction in the expected number of yearlings. However, factors such as the distribution of oil below the surface and the advection of larvae into the spill area after spawning are not well known. Accordingly, the SRT regarded 20 percent as a reasonable upper bound for the mortality rate of Atlantic bluefin tuna larvae owing to the spill event.

The effect of the DWH spill on bluefin tuna is an area of focus of NOAA's Natural Resources Damage Assessment (NRDA) team. That team is conducting targeted analyses on the effects of the spill on tuna, but most of those analyses are not yet available. The SRT coordinated with the NRDA team, and we have incorporated its information into the decision making process. The NRDA scientists provided plots of the paths of 12 satellite-tagged bluefin tuna that entered the Gulf of Mexico between 2008 and 2010. The NRDA scientists also reported on the progress of other work (*e.g.,* physiological effect of toxicants), but the work was not yet at a stage that could be considered by the SRT.

In summary, independent projections with two different types of models show that a 20 percent reduction in the 2010 year-class will likely result in less than a 4 percent reduction in future spawning biomass. However, if a significant fraction of adult Atlantic bluefin tuna were killed or rendered impotent by the spill, then subsequent year-classes might also be reduced, leading to greater reductions in SSB than estimated above. For example, if 20 percent of the adults were also killed in 2010, then the SSB would be immediately reduced by 20 percent, which might lead to additional reductions in the 2011 and subsequent year-classes (relative to what they would have been in the absence of the spill). The reduction in the 2010, 2011, and subsequent year classes would, in turn, lead to reductions in future SSB levels (9 years later as they begin to mature). To date, however, there is no evidence to suggest that any portion of adults were immediately affected although studies are ongoing that may give more information on possible long term impacts. The results from several electronic tagging studies confirm that some Atlantic bluefin tuna have historically spent at least a portion of their time in the waters in the vicinity of the spill area, but the exact fraction is difficult to quantify because of the uncertainties associated with inferring tracks and the rather low number of samples. All of the electronically-tagged bluefin tuna that were known to have spent time in the Gulf of Mexico during the actual spill event (8 fish) survived long after leaving the Gulf of Mexico.

Given that it is not possible to determine the level of impact on adults from the DWH oil spill at this time, scientists at the SEFSC re-ran the extinction risk models assuming spill-induced mortality rates of 20 percent for larvae and from 5 to 50 percent for adults. The short-term (10 year) risk of extinction was negligible for all levels of mortality examined. The long-term risk (*e.g.,* projected to 2100) did not exceed 5 percent except under the high recruitment scenario when adult mortality rates exceeded 15 percent. Using the latest information, including the 2010 larval survey, SEFSC scientists developed a worst-case scenario for larval mortality of 15 percent (their best estimate was about 7 percent). Accordingly, adult mortality rates of 15 percent also represent a worst-case scenario because it implies the same proportion of adults encountered oil as the larvae and that all of those "oiled" adults subsequently died. Thus, it appears that adult mortality rates would have to be extremely high in order to incur a substantial risk of extinction.

Because the information on larval and adult mortality from the DWH oil spill is not certain, NOAA used the best available science to model "worst case scenarios." From these model projections, we were able to determine that although it is not possible to accurately determine the level of effect at this time, even if the oil spill had the highest level of effect currently viewed as scientifically plausible, the species would not warrant listing at this time. While we cannot wait for the targeted analyses being conducted in the NRDA process, we intend to revisit this decision no later than 2013 once the NRDA analyses have been concluded to determine whether the DWH oil spill altered the condition of the species. Additionally, new stock assessments will be conducted for bluefin tuna in 2012 and will be available in the fall, and new compliance reports will be available from ICCAT. Thus, this information will be considered as well.

Summary and Evaluation of Factor A

Currently, there are numerous potential coastal habitat threats as identified above (*e.g.,* dredging, mining, navigation); however, the ones of most significance for Atlantic bluefin tuna are offshore (*e.g.,* petroleum, LNG). While these could represent potential future threats to the species, at this time, these activities are not negatively affecting Atlantic bluefin tuna, and the SRT concluded, and we concur that they do not represent a substantial risk to the long-term persistence of the species. In the future, should offshore effects such as petroleum and LNG be proposed, the EFH and HAPC process would provide a mechanism by which those impacts could be addressed.

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

Fishing for Atlantic bluefin tuna has occurred in the Mediterranean since the 7th millennium BC (Desse and Desse-Berset, 1994, in Fromentin and Powers, 2005). According to Fromentin and Ravier (2005) and Porch (2005), the development of the sushi-sashimi market during the 1980s made fishing for Atlantic bluefin tuna significantly more profitable than it was in earlier times, and this resulted in a considerable increase in the efficiency and capacity of fisheries during this time. The increased profitability associated with these new technologies resulted in the rapid development of new and powerful fleets in the Mediterranean countries, and the expansion of effort which exploited fish in the Mediterranean and North Atlantic Japanese longline fisheries also expanded in the Central North Atlantic, adding pressure on Atlantic bluefin tuna stocks (Fromentin and Powers, 2005).

The development and redistribution of all the fisheries resulted in rapid increases in yields since the 1980s, especially in the Mediterranean Sea. Eastern Atlantic and Mediterranean catches reached an historical peak of over 50,000 mt during the mid-1990s. Catches in the West Atlantic, including discards, have been relatively stable since the imposition of quotas in 1982. However, total western Atlantic catch declined steadily from the high of 2002 until 2007, primarily due to considerable reductions in catches by U.S. fisheries. Two plausible explanations for this situation were considered by the SCRS: (1) Availability of fish to the U.S. fishery was abnormally low, and/or (2) the overall size of the population in the western Atlantic declined substantially from the levels of recent years. SCRS noted in its 2010 stock assessment report that there is no overwhelming evidence to favor one explanation over the other but that the base case assessment implicitly favors the idea of changes in regional availability by virtue of the estimated increase in SSB. The decrease indicated by the U.S. catch rate of large fish was matched by the increase in several other large fish indices. In 2009, the United States harvested its national base quota.

In U.S. fisheries, bluefin tuna are caught with purse seines, handgear (rod and reel, handline, and harpoon), and pelagic longlines. As of October 2010, there were over 32,000 permitted vessels that may participate in the Atlantic tuna fisheries (NMFS, 2010). All owners/operators of vessels (commercial, charter/headboat, or recreational) fishing for regulated Atlantic tunas (Atlantic bluefin, bigeye, albacore, yellowfin and skipjack tunas) in the management area must obtain an Atlantic tunas permit or an Atlantic HMS vessel permit. Commercial categories are monitored by a census of landing cards, whereas the recreational catch is monitored primarily by a survey, although the states of Maryland and North Carolina have implemented recreational census bluefin tuna tagging programs as well. Commercial fisheries are focused on 'large medium' (73 in (185 cm) to less than 81 in (206 cm) curved fork length (CFL)) and 'giant' (81 in (206 cm) CFL or greater) Atlantic bluefin tuna, while recreational fisheries are focused on 'large school/small medium' Atlantic bluefin tuna (47 in (119 cm) to less than 73 in (185 cm) CFL), with allowances for 'school' (27 in (68 cm) to less than 47 in (119 cm) CFL), 'large medium', and 'giant' Atlantic bluefin tuna. Recreational fisheries are carried out by private vessels fishing in the Angling category, and vessels for hire fishing under the Charter/Headboat category.

There are numerous scientific studies on Atlantic bluefin tuna, the largest of which is being coordinated by ICCAT's SCRS—the Atlantic wide Grande Bluefin Tuna Year Program (GBYP). It has multiple objectives, including improving the understanding of key biological and ecological processes, basic data collection (including information from farms, observers, and VMS), provision of scientific advice on stock status through improved modeling of key biological processes (including growth and stock-recruitment and mixing between various areas), and developing and using biologically realistic operating models for more rigorous management option testing. Research undertaken to date through the ICCAT program, or in coordination with it by scientists from ICCAT's membership, has been either non-lethal (*i.e.,* aerial surveys) or has been intended to be non-lethal (*i.e.,* tagging programs), although mortalities, while minimal, do sometimes occur after a tagging event.

Other types of research (*i.e.,* microconstituent analysis, organochlorine tracer analysis, genetic analysis) primarily rely on samples taken from fish harvested in commercial fishing operations or from historical collections. Larval surveys, such as those conducted by the United States, and activities to monitor YOY do harvest Atlantic bluefin tuna specifically for research purposes, but the mortality caused by these activities is low. With respect to collections for education, this activity is minor and relies largely on products obtained from other activities, such as commercial fishing. Where it does cause Atlantic bluefin tuna mortalities directly, such as the collection of YOY, it is minor. Furthermore, there was no information to suggest that a substantial live aquarium trade in Atlantic bluefin tuna exists.

Summary and Evaluation of Factor B

Current impacts from commercial, recreational, scientific or educational purposes do not represent a substantial risk to the long-term persistence of the species. Atlantic bluefin tuna fisheries are closely managed by various regulatory mechanisms, and current TAC levels are projected to result in increased population levels of the DPSs as long as there is a high degree of compliance. In addition, scientific collections or collections for educational purposes described above do not seem to be significantly affecting the status of Atlantic bluefin tuna, and are not likely to significantly affect the long-term persistence of Atlantic bluefin tuna now or into the future.

C. Predation and Disease

As large apex predators, Atlantic bluefin tuna are not heavily preyed upon. However, predators such as killer whales (*Orcinus orca*) and pilot whales (*Globicephala* spp.), and several shark species such as white sharks (*Carcharodon carcharias*), shortfin mako (*Isurus oxyrinchus*), and longfin mako (*Isurus paucus*) (Nortarbartolo di Sciara, 1987; Collette and Klein-MacPhee, 2002; de Stephanis, 2004; Fromentin and Powers, 2005) may prey on Atlantic bluefin tuna. Juvenile Atlantic bluefin tuna may also be preyed upon by bluefish (*Pomatomus saltatrix*) and seabirds (Fishwatch, NMFS, 2010).

Little information exists on diseases in Atlantic bluefin tuna. Most of the available disease information for this species, Pacific bluefin tuna (*Thunnus orientalis*), and southern bluefin tuna (*Thunnus maccoyii*) comes from studies on fish reared in net pens prior to harvesting for the market (Munday *et al.,* 2003; Bullard *et al.,* 2004; Oraic and Zrncic, 2005; Mladineo *et al.,* 2006; Hayward *et al.,* 2007).

Peric (2002) reported lesions consistent with pasteurellosis (*Photobacterium damsel piscicida*) after examining carcasses of 25 harvested Atlantic bluefin tuna. Lesions were similar to those seen in sparids with chronic pasteurellosis. As the causative organism, pasteurellosis does not survive for long outside the host, and prevalence is reported to be very low in Atlantic bluefin tuna (Munday *et al.,* 2003). However, high mortalities of Atlantic bluefin tuna reared in Adriatic Sea cages occurred during winter 2003 and spring 2004. Based on the results of bacteriological, serological, and histological analysis, Mladineo *et al.* (2006) concluded that pasteurellosis was the causative agent of the mortalities, which was the first outbreak of this kind in reared tuna. Putative tuberculosis was reported in a single specimen of Atlantic bluefin tuna (Biavati and Manera, 1991, as reported by Munday *et al.,* 2003), but the cause is unknown.

Summary and Evaluation for Factor C

Adult Atlantic bluefin tuna are not likely affected to any large degree by predation by large whales and other large predators, nor are they likely to be affected to any large degree by diseases caused by viruses, bacteria, protozoans, metazoans, or microalgae. Most of the

information on diseases in tunas comes from studies on cultured tuna, and the culture environment introduces stresses to the fish; therefore, even if studies indicated that cultured Atlantic bluefin tuna were highly susceptible to diseases and suffered high mortality rates, it is not possible to infer from these data that wild Atlantic bluefin tuna experience the same diseases and mortality rates. The best available scientific and commercial information indicates that threats to Atlantic bluefin tuna from predation and disease do not significantly affect the long-term persistence of Atlantic bluefin tuna now or into the future.

D. Existing Regulatory Authorities, Laws and Policies

Since 1982, Atlantic bluefin tuna have been separated into two management units or stocks (western Atlantic and eastern Atlantic/Mediterranean), which coincide with the two DPSs identified in the SRR. ICCAT has established various conservation and management measures for both stocks over the years, most often in those years where new stock assessments have been completed by SCRS, as these inform management decisions. ICCAT, however, is free to adopt or alter conservation and management measures even in years where no new stock assessment has been conducted, and it has occasionally done so. In addition to the stock assessment meetings (which have been held recently about every 2 years), the SCRS reports on fishery trends each year. These metrics can include catch, effort and size trends, as well as updated abundance indices (such as standardized catch rate trends by age category and larval survey results), and trends can provide information on threats to the stock even during non-assessment years.

In light of the connection between the two stocks and fisheries, SCRS has advised that robust management is needed for both stocks to ensure effective conservation. Recognizing that management could potentially benefit from an improved understanding of bluefin tuna stock structure and mixing, ICCAT and its members have taken a number of steps to improve information in this area. Pending the outcome of ongoing research on stock structure and mixing, ICCAT has actively looked at management strategies that can take better account of mixing. In that regard, ICCAT has had a measure in place intended to limit catches in the central North Atlantic, an area with high mixing rates, since 2003. Catches from this area are now significantly reduced from previous levels. In addition, ICCAT has adopted the requirement that parties cannot shift effort across the 45 degree management boundary separating the two stocks of bluefin tuna.

The western Atlantic bluefin tuna fishery in the United States is managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). ATCA authorizes the Secretary of Commerce to implement the binding recommendations of ICCAT. As the United States implements legislation for ICCAT, ATCA also requires that the United States implement binding recommendations adopted by that organization, as necessary and appropriate; stipulates that the United States may not promulgate a regulation that has the effect of increasing or decreasing any allocation or quota of fish or fishing mortality allocated by ICCAT; and establishes a number of procedural requirements.

At the 2010 ICCAT meeting, a measure was adopted for the western Atlantic stock that, among other things, reduced the TAC from 1,800 t (1,632.93 mt) to 1,750 t (1,587.57 mt) for both the 2011 and 2012 fishing seasons—a 2.8-percent reduction overall. Under the low recruitment potential scenario, the new TAC has a 99-percent probability of maintaining the fishing mortality of western Atlantic bluefin tuna below the fishing mortality associated with MSY and a 95-percent probability of maintaining the stock above the biomass that will support MSY through the end of the rebuilding period. Combining the results of the high and low recruitment potential scenarios, the TAC has a 54-percent probability of ending overfishing within 2 years and a 48-percent probability of rebuilding the stock to the B_{msy} level by the end of the rebuilding period. Under the high recruitment potential scenario, the TAC has an 8-percent probability of ending overfishing within 2 years and a zero-percent chance of rebuilding the stock to the B_{msy} level by the end of the rebuilding period. It is important to note that, under any scenario, the agreed TAC is expected to support continued stock growth if compliance with agreed rules remains strong. For the western Atlantic bluefin tuna fishery, compliance with ICCAT measures has typically been high.

In addition to a new TAC, the measure includes an emergency clause similar to the one added in 2009 to the eastern Atlantic/Mediterranean bluefin tuna recommendation. It specified that if SCRS detects a serious threat of stock collapse, ICCAT shall suspend all Atlantic bluefin tuna fisheries in the western Atlantic for the following year. The recommendation further calls on ICCAT members to contribute to ICCAT's Atlantic-wide Bluefin Tuna Research Program, including the enhancement of biological sampling. Consistent with past practice, the provisions contained in previous conservation and management recommendations were retained, including the prohibition on directed fishing for Atlantic bluefin tuna in the Gulf of Mexico and minimum size requirements.

Finally, the measure includes a request to SCRS to provide additional information in the future that might be helpful to management—including with respect to spawning grounds and the size selectivity of the fishery. The next western Atlantic bluefin tuna stock assessment is scheduled for 2012, and management measures will be reconsidered at that time, taking into consideration the scientific advice provided by SCRS.

During its 2010 annual meeting, ICCAT adopted a new recommendation for eastern and Mediterranean Atlantic bluefin tuna. The TAC for 2011 and beyond (until changed) was set at 12,900 t (11,702.68 mt), 4.4-percent reduction from the 2010 level of 13,500 t (12,246.99 mt). This reduction is in addition to existing quota paybacks for previous overharvests by the European Union and Tunisia. Thus, the adjusted allowable catch for 2011 and 2012 is approximately 11,500 t (10,432.62 mt). Before taking into account these required reductions, the new TAC has at least a 95-percent probability that the condition of the stock will improve in the coming years and a 67-percent probability of rebuilding the stock by 2023, the end of the rebuilding period.

Summary and Evaluation for Factor D

Western Atlantic bluefin tuna are highly regulated with TAC limits generally set within the range recommended by SCRS. Greater reductions in TAC for the eastern stock were discussed to account more fully for the assessment uncertainties and to increase the probability and rate of stock growth and recovery. For both eastern and western bluefin tuna DPSs, catch levels agreed to in 2010 are expected to support continued growth and recovery of the stocks if compliance with agreed rules continues. Given the mixing between the stocks, improved stock conservation in the east can be expected to benefit the western stock as well. Based on the information above, the SRT concluded that the existing

regulatory mechanisms if adequately enforced are sufficiently protective of Atlantic bluefin tuna now and into the future, and we concur with this conclusion.

E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

The SRT examined other natural or manmade factors affecting the continued existence of Atlantic bluefin tuna. Spatial distribution and movement of Atlantic bluefin tuna were previously hypothesized to be controlled by preferential ranges of temperature (ICCAT, 2006–2009); but more recently, scientists hypothesized that juveniles and adults are associated with ocean fronts, likely for purposes of foraging for prey (Humston *et al.,* 2001; ICCAT, 2006–2009). However, the complexity of Atlantic bluefin tuna distribution and behavior is unlikely to be explained by association with these fronts alone (Shick *et al.,* 2004; Royer *et al.,* 2004). Because of the relationship of Atlantic bluefin tuna to sea surface temperature, the SRT considered the impact of climate change to Atlantic bluefin tuna.

Research studies have shown that migration and movement patterns vary considerably between individuals, years, and areas (Lutcavage *et al.,* 1999; Block *et al.,* 2001; De Metrio *et al.,* 2004; ICCAT, 2006–2009). The appearance and disappearance of past fisheries (*e.g.,* Brazil during the 1960s) could be a result of changes in spatial distribution and/or migration (Fromentin and Powers, 2005; Fromentin, 2009). Rijnsdorp *et al.* (2009) hypothesized a shift in distribution in response to increased temperature associated with climate change, and similar distribution shifts for other species have also been observed (Nye *et al.,* 2009). However, without a better understanding of the processes that determine Atlantic bluefin tuna distribution, it is difficult to project a response of the species to climate change.

Rijnsdorp *et al.* (2009) further hypothesized that if the habitat for a certain life-history stage is spatially restricted (*e.g.,* spawning), the species may be more sensitive to climate change. We designated an HAPC for bluefin tuna spawning in the Gulf of Mexico in Amendment 1 to the U.S. Consolidated HMS Fishery Management Plan (NMFS, 2009). This area is the primary spawning habitat for the western stock of Atlantic bluefin tuna, although the potential for other spawning locations has also been suggested (Galuardi *et al.,* 2010). Climate-induced temperature increases could increase stress for Atlantic bluefin tuna during spawning in the Gulf of Mexico. Average ambient temperatures measured during bluefin spawning activity ranged from 23.5 to 27.3 °C (Teo *et al.,* 2007). Atlantic bluefin tuna have been found to withstand temperatures ranging from 3 to 30 °C (Block *et al.,* 2001).

Although Atlantic bluefin tuna are believed to use deep diving to thermoregulate, spawning behavior may preclude thermoregulation behavior (Teo *et al.,* 2007). Block *et al.* (2005) indicated that thermal stress appeared to be contributing to mortality of pelagic longline-caught Atlantic bluefin tuna on the Gulf of Mexico spawning grounds. If increases in ocean temperature will mirror those forecasted for air temperature by the Intergovernmental Panel on Climate Change (IPCC) (2007) (*i.e.,* + 0.20 °C per decade), and add ten decade's worth of temperature increase (*i.e.,* a total of 2.0 °C) to the temperatures reported by Teo *et al.* (2007), then Gulf of Mexico temperatures during Atlantic bluefin tuna spawning season could be estimated to reach 25.5 to 29.3 °C by the turn of the century. Muhling *et al.* (2011) modeled a variety of climate change simulations in the Gulf of Mexico to quantify potential effects of warming on the suitability of the Gulf of Mexico as a spawning ground for Atlantic bluefin tuna. Model results showed that Atlantic bluefin tuna were indeed vulnerable to climate change impacts, with increasing water temperature affecting both spawning times and locations, as well as larval growth, feeding and survival (Muhling *et al.,* 2011). Furthermore, if ambient values of abiotic factors such as salinity or pH exceed the tolerance limits for planktonic Atlantic bluefin tuna eggs and larvae, these life stages could be negatively affected physiologically.

Fabry *et al.* (2008) reviewed the potential impacts of ocean acidification on marine fauna and ecosystem processes. The information reviewed indicated that marine fish were physiologically highly tolerant of carbon dioxide. Ishimatsu *et al.* (2004) found that hatchling stages of some species appeared fairly sensitive to pH decreases on the order of 0.5 or more, but high carbon dioxide tolerance developed within a few days of hatching.

Indirect trophic level dynamics may have some impact to Atlantic bluefin tuna as a result of climate change and ocean acidification. Acidification could lead to dissolution of shallow-water carbonate sediments and could affect marine calcifying organisms, including pteropods, an important component of the plankton in many marine ecosystems (Orr *et al.,* 2005). In their review article, Walther *et al.* (2002) stated that indirect impacts on marine systems appear to be the most widespread effects of climate change. For example, the persistence of a positive vector for the North Atlantic Oscillation (NAO) modifies marine primary and secondary production (Fromentin and Planque, 1996), which could in turn affect the availability of planktonic food for fish larvae and recruitment success (Cushing, 1990). However, ICCAT scientists analyzed the association of the NAO with eastern Atlantic bluefin tuna recruitment and found no relationship (ICCAT, 2002).

Availability of nutrients could also be affected by changes in carbon dioxide, which could affect primary production, changes in species composition, and higher trophic levels (Fabry *et al.,* 2008). Kimura (2010) modeled a combination of environmental factors when considering the impact to the recruitment of juvenile Pacific bluefin tuna. For example, an increase in ocean temperature would speed the transport of larvae in the Kuroshio current, causing the larvae to arrive too quickly to cold coastal waters. When coupled with high temperatures exceeding the optimal range on the spawning grounds, larval recruitment was predicted in 2010 to decline to 36 percent of present recruitment levels (Kimura *et al.,* 2010). In addition, a long-lived species such as Atlantic bluefin tuna could have less evolutionary ability to adapt to climate change than shorter-lived species.

Chase (2002) identified squid as one of several important food sources for Atlantic bluefin tuna caught off New England. Epipelagic squid (*e.g., Illex* and *Loligo* sp.) have been found to be highly sensitive to carbon dioxide because of their unique physiology (Portner *et al.,* 2004; Seibel, 2007). Yamada and Ikeda (1999) found increased mortality for certain arthropod plankton (krill and certain copepods) with increasing exposure time and decreasing pH. Larval *Thunnus* sp. have been found to feed primarily on copepods (Catalan *et al.,* 2007; Llopiz and Cowen, 2009). As pelagic predators, Atlantic bluefin tuna are considered opportunistic, and loss of one food source may not have negative consequences. However, in the Florida straits, larval *Thunnus* sp. appeared to exhibit selective feeding behavior (Llopiz and Cowen, 2009) and thus, larvae may not be as opportunistic in feeding as adult Atlantic bluefin tuna are.

Offshore aquaculture was identified as a potential threat to Atlantic bluefin

tuna by the SRT. Potential impacts resulting from offshore aquaculture could include increased nutrient loading, habitat degradation, fish escapement, competition with wild stocks, entanglement of endangered or threatened species and migratory birds, spread of pathogens, user conflicts, economic and social impacts on domestic fisheries, and navigational hazards (GMFMC, 2009); however, there is no information to indicate that offshore aquaculture is impacting Atlantic bluefin tuna.

The most recent available information indicated that there are no finfish offshore aquaculture operations in U.S. Federal waters. According to the Gulf of Mexico Fishery Management Council (GMFMC) FMP for offshore aquaculture in the Gulf of Mexico, marine aquaculture would be prohibited in Gulf of Mexico EEZ HAPCs, marine reserves, marine protected areas, Special Management Zones, permitted artificial reef areas, and coral reef areas as defined and specified in 50 CFR 622 (GMFMC, 2009). In addition, areas where marine aquaculture is prohibited in the Gulf of Mexico overlap with the spawning areas of the western Atlantic DPS, and thus, the SRT did not expect any impacts to the spawning habitat of the DPS from offshore aquaculture. The SRT was not aware of specific information pertaining to the effects of offshore aquaculture on the habitat in the eastern Atlantic/Mediterranean; however, impacts to the DPS may be similar to the potential impact resulting from offshore aquaculture as noted above.

Summary and Evaluation of Factor E

The SRT considered all other natural or manmade factors that may affect the DPSs, including climate change impacts, ocean acidification, and aquaculture/enhancement. The SRT identified several potential natural or manmade threats to Atlantic bluefin tuna, and while these could represent potential future threats to the species, at this time, the SRT determined that current and future impacts are not likely and do not represent a substantial risk to the long-term persistence of either DPS. We concur with this conclusion.

Current and Future Protective Efforts

In February 2011, a special meeting of ICCAT's Compliance Committee (COC) was held. The purpose was to reinforce the commitment of all parties to implement the eastern Atlantic bluefin tuna recommendation from the start of the 2011 season and, toward that end, to review the implementation plans (which included fishery management, inspection, and capacity reduction aspects) of eastern Atlantic bluefin tuna harvesters with a view to endorsing those plans in advance of the season.

In addition to taking action on the implementation plans, the COC adopted an allocation table specifying the allowable harvest limits by ICCAT members, which included all adjustments, and a fleet capacity table reflecting required reductions for 2011. Given input from those present at the COC intersessional, the adjusted TAC of 11,502.89 t (10,435.25 mt) should be the upper bound of realized catches. Factoring in that a few countries have indicated they will not be fishing and their combined quota level is 364.33 t (330.51 mt), actual catches may be more on the order of 11,138.56 t (10,104.73 mt)—notwithstanding any action by ICCAT to suspend one or more fisheries in 2011 due to lack of implementation plan endorsement. Any additional reductions in catch will increase the probability of rebuilding the stock by 2023.

In addition, the 2010 eastern Atlantic bluefin tuna recommendation also strengthened the monitoring and control scheme, including enhanced monitoring of farming operations, further restrictions on joint fishing operations (*e.g.,* generally prohibiting joint operations between contracting parties and clarifying that each party is responsible and accountable for catches made under such operations), and requiring fishing capacity issues to be fully addressed by 2013.

Western Atlantic bluefin tuna harvesters are expected to fully implement Recommendation 10–03 by mid-June 2011. This will involve reduced quotas for the United States, Canada, and Japan for 2011 and 2012. In addition, NMFS has published a proposed rule to implement the ICCAT recommended U.S. base quota, distributing the quota among domestic quota categories consistent with the 2006 Consolidated HMS Fishery Management Plan, and to adjust the 2011 U.S. quota and subquotas to account for Atlantic bluefin tuna dead discards and unharvested 2010 quota allowed by ICCAT to be carried forward to 2011 (76 FR 13583). Furthermore, NMFS monitors the Atlantic bluefin tuna fishery and has the authority to take in-season actions such as fishery closures and retention limit adjustments to ensure available quotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Effective May 5, 2011, NMFS requires the use of "weak hooks" by pelagic longline vessels fishing in the Gulf of Mexico. A weak hook is a circle hook that meets NMFS' current size and offset restrictions but is constructed of round wire stock that is thinner-gauge (*i.e.,* no larger than 3.65 mm in diameter) than the 16/0 circle hooks currently used in the Gulf of Mexico pelagic longline fishery. The purpose of the proposed action is to reduce pelagic longline incidental catch of bluefin tuna in the Gulf of Mexico, which is the known spawning area for the western Atlantic DPS of bluefin tuna (as described above). The action is intended to increase Atlantic bluefin tuna spawning potential and subsequent recruitment into the fishery, and could also potentially reduce negative ecological and fishing impacts on non-target or protected species.

Listing Determination

Long-term (2010–2100) projections of abundance of the two Atlantic bluefin tuna DPSs (western Atlantic and eastern Atlantic/Mediterranean) were conducted by the SRT using the protocols adopted by the ICCAT SCRS (SCRS, 2010). We have determined that a 5-percent probability of extinction in 20 years is a reasonable threshold for endangered status. The probability of extinction was projected by the SRT to be near zero for both DPSs over the 5 to 10-year horizon normally examined by the SCRS, even for catch quotas that are much larger than allowed under the current ICCAT management regulations. Even after 20 years, the probability of extinction does not exceed 5 percent unless the level of sustained catch after 2010 is 3,000 mt or more for the western Atlantic DPS, and 40,000 mt or more for the eastern Atlantic/Mediterranean DPS (the 2011 TACs for the western Atlantic and eastern Atlantic/Mediterranean DPSs are 1,750 t (1,587.57 mt) and 12,900 t (11,702.68 mt) respectively, with the adjusted quota for the eastern fishery being below 11,599 t (10,522.44 mt) in 2011 and 2012.

Several authors have suggested that populations with fewer than 500 individuals are doomed to eventual extinction due to the loss of genetic diversity (Franklin, 1980; Soule, 1980). Matsuda *et al.* (1998) used 500 mature animals as the threshold for their extinction risk assessment of southern bluefin tuna. In order to address the potential for quasi-extinction, the SRT performed a second set of analyses with the extinction threshold set at 500 spawners, rather than 2 spawners (see Tables 1 and 2 below for the results with 500 spawners and section 9.1.3 of the status review report for the tables with the results for 2 spawners).

TABLE 1—FORECASTED PROBABILITY THAT FEWER THAN 500 ADULT BLUEFIN TUNA WILL SURVIVE IN THE EAST ATLANTIC AND MEDITERRANEAN SEA BY YEAR AND CATCH LEVEL (ALL 24 SCENARIOS COMBINED). CURRENT MANAGEMENT RECOMMENDATIONS UNDER ICCAT SPECIFY A TOTAL ALLOWABLE CATCH OF 12,900 MT

[In percent]

Catch (mt)	2010	2011	2020	2030	2040	2050	2060	2100
0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
5,000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
10,000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
12,900	0.0	0.0	0.0	0.0	0.1	0.1	0.2	0.2
17,000	0.0	0.0	0.0	0.2	0.7	1.2	1.4	1.5
20,000	0.0	0.0	0.0	0.6	2.6	3.5	3.9	4.2
25,000	0.0	0.0	0.0	3.4	8.7	11.2	12.3	13.2
30,000	0.0	0.0	0.0	8.5	19.0	25.1	28.8	34.8
40,000	0.0	0.0	0.2	25.9	45.9	51.5	54.0	57.6
50,000	0.0	0.0	0.9	46.1	63.0	66.4	67.2	67.8
60,000	0.0	0.0	2.1	59.9	70.6	72.0	72.5	72.8
70,000	0.0	0.0	3.7	67.9	77.7	81.5	83.1	85.2

TABLE 2—FORECASTED PROBABILITY THAT FEWER THAN 500 ADULT BLUEFIN TUNA WILL SURVIVE IN THE WEST ATLANTIC BY YEAR AND CATCH LEVEL (ASSUMING THE HIGH AND LOW RECRUITMENT SCENARIOS ARE EQUALLY PLAUSIBLE). CURRENT MANAGEMENT RECOMMENDATIONS UNDER ICCAT SPECIFY A TOTAL ALLOWABLE CATCH OF 1,750 MT

[In Percent]

Catch (mt)	2010	2011	2020	2030	2040	2050	2060	2100
0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
1,000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1,250	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.1
1,500	0.0	0.0	0.0	0.0	0.2	0.5	0.6	0.7
1,750	0.0	0.0	0.0	0.3	0.8	1.5	1.9	2.3
2,000	0.0	0.0	0.0	1.0	3.1	3.9	5.0	5.4
2,250	0.0	0.0	0.0	2.9	7.4	10.5	12.8	14.9
2,500	0.0	0.0	0.3	5.9	16.7	23.0	26.2	29.8
2,750	0.0	0.0	0.5	11.8	30.3	39.4	45.2	55.1
3,000	0.0	0.0	1.1	21.9	46.2	58.9	67.4	79.3
3,500	0.0	0.0	3.1	49.8	78.6	88.8	93.4	95.4
4,000	0.0	0.0	8.7	76.7	95.9	97.6	98.6	98.9
5,000	0.0	0.0	35.4	97.7	99.7	99.9	99.9	99.9

The SRT determined that the probability of extinction increases substantially over the long term, due to inherent uncertainties in the assumptions made for long-term projections; however, even with these uncertainties, the risk still remains quite low for the catch levels permitted under current management even when projected out to 2100 (about 2-percent probability for the western DPS and less than 1 percent for the eastern DPS). The level of extinction risk was found to be only slightly higher when the threshold for extinction was set to 500 spawners rather than 2 spawners and projected out to 2100 (2.3-percent probability for the western DPS, and 0.2-percent probability for the eastern DPS). However, given the high inherent uncertainties in long-term projections, projections made out to 2100 cannot reliably estimate a probable risk of extinction.

One important source of uncertainty not considered in the above projections was the nature of intermixing between the eastern and western DPSs. Two-stock virtual population analyses used by SCRS (2008) to estimate the level of mixing from stock composition (otolith microcontituent) data produced estimates of spawning biomass that were similar to the levels estimated without mixing. However, similar models that estimated mixing from tagging data produced estimates of spawning biomass that were generally higher than the models without mixing, particularly for recent years. If spawning biomass is higher than estimated by the base (no-mixing) models, then the short-term extinction risk may be lower than suggested in the analyses above by virtue of the fact that any given catch level will amount to a lower percentage of the adult population. This is especially true for the western DPS where the effect of estimating mixing is most profound as discussed above. The long-term implications for extinction risk are less clear as they would involve changes in the estimated productivity of the two stocks, which have not yet been evaluated. It should be noted, however, that ICCAT (2008) considered their analyses of mixing as not reliable enough to be used as the basis for management advice because both the tagging and stock composition data were regarded as incomplete in the sense that they did not represent random samples of the overall Atlantic bluefin tuna population.

Another important source of uncertainty not addressed in the extinction risk analysis is the possible effect of adult mortality from the DWH oil spill. As noted previously, there is no evidence of adult mortality; however, it is still possible some adult mortality or impact to reproductive capacity occurred. Because the information on larval and adult mortality from the

DWH oil spill is not certain, NOAA used the best available science to model "worst case scenarios." From these model projections, it was possible to determine that if the oil spill had the highest level of effect currently viewed as scientifically plausible (*e.g.,* 15 percent mortality), the species would not warrant listing at this time.

In summary, the projections presented in the SRR suggest that the probability of extinction of either DPS is negligible within the generation time of both DPSs (generation time is equivalent to 17 to 19 years) unless the catches were nearly doubled over those allowed by current regulations. The long-term projections out to 2100 indicate that if rigorously enforced, current regulations are sufficient to avoid a significant probability of extinction (greater than 5 percent), but suggest a risk of extinction if management were to abandon the existing rebuilding plans in favor of substantially higher catches or if compliance is insufficient.

As mentioned above, the ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, that are being made to protect such species. As stated previously, we have concluded that there are two DPSs of Atlantic bluefin tuna. We have considered the available information on the abundance of Atlantic bluefin tuna from both DPSs, and whether any one or a combination of the five ESA section 4(a)(1) factors significantly affect the long-term persistence of Atlantic bluefin tuna now or into the foreseeable future. We have reviewed the SRR, the high and low recruitment potential projections, the CIE reviewers' comments, and other available literature, and consulted with scientists, fishermen, and fishery resource managers familiar with Atlantic bluefin tuna and related research areas. After reviewing this information, we have determined that listing the eastern Atlantic/Mediterranean and western Atlantic bluefin tuna DPSs as either endangered or threatened throughout all or a significant portion of its range is not warranted at this time. Because of the remaining uncertainties regarding the effects of the DWH oil spill, we will add the bluefin tuna to our Species of Concern list (*http://www.nmfs.noaa.gov/pr/species/concern/#list*; See 69 FR 19975, April 15, 2004 for description of program). This will serve to (1) increase public awareness about the species; (2) further identify data deficiencies and uncertainties in the species' status and the threats it faces; (3) and stimulate cooperative research efforts to obtain the information necessary to evaluate the species' status and threats.

As stated previously, we also intend to revisit this decision no later than 2013 once the NRDA analyses have been concluded to determine whether the DWH oil spill altered the condition of the species.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: May 26, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2011–13627 Filed 5–27–11; 11:15 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 76, No. 105

Wednesday, June 1, 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.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

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 or 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) 720–8958.

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.

Food and Nutrition Service

Title: Healthy Incentives Pilot Evaluation.

OMB Control Number: 0584–NEW.

Summary of Collection: The Food, Conservation, and Energy Act of 2008, also known as the 2008 Farm Bill (Pub. L. 110–246), Section 4141 (K) (3) (E) authorizes funds for pilot projects to evaluate health and nutrition promotion in the Supplemental Nutrition Assistance Program (SNAP) to determine if nutrition education and incentives provided to SNAP recipients at the point-of-sale increase the consumption of fruits, vegetables, or other healthful foods. The legislation also provided for an evaluation of the funded pilot project. On the bases of this legislative authority, the Food and Nutrition Service (FNS) designed the Healthy Incentives Pilot (HIP) and its evaluation.

Need and Use of the Information: FNS will use the collected information from the pilot to determine if SNAP recipients participating in HIP have higher fruit and vegetable consumption than recipients who did not receive the incentive. The data will also permit analysis of how impacts vary by recipients characteristics. The data collection is also essential for allowing FNS to determine the potential implications of a nationwide HIP-like program.

Description of Respondents: Individuals or household; State, Local or Tribal Government; Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 4,383.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 4,831.

Food and Nutrition Service

Title: Child Nutrition Database.

OMB Control Number: 0584–0494.

Summary of Collection: The Child Nutrition (CN) Database is a necessary component in implementation of USDA's Food and Nutrition Service (FNS) National School Lunch Program (NSLP) and School Breakfast (SBP): School Meals Initiative for Healthy Children final rule published in the June 13, 1995 **Federal Register,** Volume 60, No. 113. The regulations (7 CFR 210.10) require school food authorities (SFAs) following the Nutrient Standard Menu Planning option to conduct a nutrient analysis which require nutrient data contained in a wide range of foods. The CN Database provides the SFAs with the necessary nutrient information for this purpose.

Need and Use of the Information: FNS will collect information on (1) USDA commodities; (2) USDA Nutrient Database for Standard Reference food items which are used in the SBP and NSLP; (3) quantity recipes for school food service developed by USDA; and (4) brand name commercially processed foods. Implementation of Nutrient Standard Menu Planning is dependent upon the school or school food authority's ability to analyze the nutrient content of foods. The information gathered for the CN Database is required to be used in software programs approved by USDA for use in meeting the nutrient standards and nutrition goals of the Child Nutrition Programs. Both the State agencies and program operators use the information for auditing and menu planning purposes. If the information is not collected or updated regularly for the CN Database, the nutrient data will become less useful to program operators, causing them to rely on their vendor for required nutritional information.

Description of Respondents: Business or other for-profit.

Number of Respondents: 32.

Frequency of Responses: Report: Other (as needed).

Total Burden Hours: 2,240.

Dated: May 26, 2011.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–13506 Filed 5–31–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document Number AMS–TM–11–0008; TM–11–01]

Notice of Funds Availability (NOFA) Inviting Applications for the 2011 Farmers' Market Promotion Program (FMPP)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) announces the availability of approximately $10 million in competitive grant funds for fiscal year (FY) 2011 to increase domestic consumption of agricultural commodities by expanding direct producer-to-consumer market opportunities. Examples of direct producer-to-consumer market opportunities include new farmers markets, roadside stands, community-supported agriculture (CSA) programs, agri-tourism activities, and other direct producer-to-consumer infrastructure. AMS hereby requests proposals from eligible entities within the following categories: agricultural cooperatives, producer networks, producer associations, local governments, nonprofit corporations, public benefit corporations, economic development corporations, regional farmers market authorities, and Tribal governments. The minimum award per grant is $5,000 and the maximum award per grant is $100,000. No matching funds are required.

DATES: Applications should be received at the address below and must be delivered not later than July 1, 2011. Applications received after the deadline will not be considered.

ADDRESSES: Submit proposals and other required materials to the 2011 Farmers' Market Promotion Program (FMPP) Grant Program, Agricultural Marketing Service, USDA, Room 4004–South Building, 1400 Independence Avenue, SW., Washington, DC, 20250–0269, phone 202–720–8317.

For hard-copy (paper) submissions, all forms, narratives, letters of support, and other required materials must be forwarded in one application package. AMS will not accept application packages by e-mail; electronic applications will be accepted only if submitted via *http://www.Grants.gov.* AMS strongly recommends that each applicant visit the AMS Web site at *http://www.ams.usda.gov/FMPP* to review a copy of the 2011 FMPP Guidelines and application instructions to assist in preparing the proposal narrative and application.

FOR FURTHER INFORMATION CONTACT: Ms. Carmen Humphrey, Branch Chief, Marketing Grants and Technical Services Branch, Marketing Services Division, Transportation and Marketing Programs, AMS, USDA, on 202–720–8317, or via facsimile on 202–690–0031. State that your request for information refers to Document No. AMS–TM–11–0008.

SUPPLEMENTARY INFORMATION: This solicitation is issued pursuant to Section 6 of the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3001–3006) as amended by Section 10605 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) authorizing the establishment of the Farmers' Market Promotion Program (7 U.S.C. 3005) (FMPP) and as amended by section 10106 of the Food, Conservation and Energy Act of 2008 (Pub. L. 110–246). The amended act states that the purposes of the FMPP are "(A) to increase domestic consumption of agricultural commodities by improving and expanding, or assisting in the improvement and expansion of domestic farmers markets, roadside stands, community-supported agriculture programs, agri-tourism activities and other direct producer-to-consumer market opportunities; and (B) to develop, or aid in the development of new farmers markets, roadside stands, community-supported agriculture programs, agri-tourism activities, and other direct producer-to-consumer marketing opportunities."

Detailed program guidelines may be obtained at *http://www.ams.usda.gov/FMPP* or from the contact listed above. In accordance with the Secretary's Statement of Policy (36 FR 13804), it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public's interest to engage in further public participation under 5 U.S.C 553 because the applications for the FMPP need to be made available as soon as possible as the program season approaches.

Background

AMS will grant awards for projects that continue developing, promoting, and expanding direct marketing of agricultural commodities from farmers to consumers. Eligible FMPP proposals should support marketing entities where agricultural farmers or vendors sell their own products directly to consumers, and the sales of these farm products should represent the core business of the entity.

All eligible entities shall be domestic entities; *i.e.,* those owned, operated, and located within one or more of the 50 United States and the District of Columbia only. Entities located within U.S. territories are not eligible.

Additionally, under this program eligible entities must apply for FMPP funds on behalf of direct marketing operators that include two or more agricultural farmers/vendors that produce and sell their own products through a common distribution channel. Individual agricultural producers and sole proprietors, including farmers and farmers market vendors, roadside stand operators, community-supported agriculture participants, and other individual direct marketers are not eligible for FMPP funds.

FMPP grant funds must be applied to the specific programs and objectives identified in the application. Proprietary projects and projects that benefit one agricultural producer or individual will not be considered.

In a coordinated effort to eliminate food deserts in urban and rural areas in the United States with limited access to affordable, nutritious, and healthy food, AMS in coordination with other USDA, Treasury, and Health and Human Services grantors will give funding priority to the development of healthy food retail outlets in food deserts (areas with limited access to affordable and nutritious food, particularly areas composed of predominantly lower-income neighborhoods and communities). USDA, Treasury and Health and Human Services seek to increase access to "healthy foods" which include whole foods such as fruits, vegetables, whole grains, fat free or low-fat dairy, and lean meats that are perishable (fresh, refrigerated, or frozen) or canned as well as nutrient-dense foods and beverages encouraged by the 2010 Dietary Guidelines for Americans.

Under FMPP, healthy food retail outlets will include producer-to-consumer marketing outlets that sell healthy foods including, but not limited to, farmers markets, CSAs, and road-side stands. A healthy food retail outlet might also be an existing producer-to-consumer market that upgrades to offer a full range of healthy food choices, particularly fresh fruits and vegetables in underserved areas.

AMS will give FMPP funding priority to measurable, outcome-based, and output-based projects that focus on developing healthy food direct-marketing outlets in food deserts. These projects must improve food access by developing new marketing outlets that sell healthy foods in food desert communities; or improving infrastructure and distribution (transportation, processing, storage, and other equipment) for healthy foods in food desert communities.

These projects will receive additional points under FMPP if in addition to meeting all the other established criteria for FMPP projects, the project is located in one of the USDA-identified food desert census tracts or a low-income area (with at least a 20 percent poverty rate). For additional information, see the 2011 FMPP Guidelines at *http://www.ams.usda.gov/FMPP.*

Not less than 10 percent of the total available funds will be used to support

the use of new electronic benefits transfer (EBT) for Federal nutrition programs at farmers markets. To be considered within the 10 percent allotment of funds for EBT, the application narrative must clearly designate the applicant's intent to compete for FMPP funds as a new EBT project. FMPP funds shall be provided to successful proposals that demonstrate a plan to continue to provide EBT card access at one or more farmers markets following the receipt of the grant.

When an applicant has multiple project ideas, AMS requires that similar proposals be submitted in the application package. Due to the legislative mandate, the Agency differentiates projects as EBT-related or non EBT-related submissions. As such, all non-EBT project ideas must be submitted in one application and all new or existing EBT-related projects submitted in a second, distinctly separate application. Failure to comply with this requirement will result in the rejection of the application. See the 2011 FMPP Guidelines at *http://www.ams.usda.gov/FMPP* for instructions for multiple application submissions.

While there is no limit to the number of applications that may be submitted, AMS will only award an organization one grant in a funding year. Awardees from the FY 2010 grant program will not be considered for FMPP funding in FY 2011.

FMPP reserves the right to reject an application that is incomplete or does not follow the application requirements; i.e., hand-written or in excess of the required page limitation. Application packages without required information will not be considered. FMPP's award decisions are final.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the FMPP information collection was previously approved by OMB and was assigned OMB control number 0581–0235.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA) that requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

How To Submit Proposals and Applications

Each applicant must follow the application preparation and submission instructions provided within the 2011 FMPP Guidelines at *http://www.ams.usda.gov/FMPP.* Electronic forms, proposals, letters of support, or any other application materials e-mailed directly to AMS–FMPP or USDA–AMS staff will not be accepted.

Following are the options available for submitting proposals and applications to AMS:

Paper Submissions—An original and one copy of the proposal, required forms, narrative, letters of support, and all required materials must be submitted in one package, preferably via express mail.

Electronic Submissions via Grants.gov—Applicants may apply electronically for grants through Grants.gov at *http://www.Grants.gov* (insert 10.168 in grant search field) and are strongly encouraged to initiate the electronic submission process at least two weeks prior to the application deadline. Grants.gov applicants who submit their FMPP proposals via this Federal grants web site are not required to submit any paper documents to FMPP.

FMPP is listed in the "Catalog of Federal Domestic Assistance" under number 10.168. Subject agencies, including FMPP, must adhere to Title VI of the Civil Rights Act of 1964, which bars discrimination in all federally assisted programs.

Dated: May 24, 2011.

Rayne Pegg,

Administrator.

[FR Doc. 2011–13483 Filed 5–31–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[AMS–CN–11–0036; CN–11–003]

Cotton Research and Promotion Program: Request for Comments To Be Used in a Review of 1990 Amendments to the Cotton Research and Promotion Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: As provided for by the Cotton Research and Promotion Act Amendments of 1990, the Agricultural Marketing Service (AMS) is announcing its intention to conduct a review to ascertain whether a referendum is needed to determine whether producers and importers favor continuation of amendments to the Cotton Research and Promotion Order. This notice invites all interested parties to submit written comments to the Department of Agriculture (USDA). USDA will consider these comments in determining whether a referendum is warranted. USDA should announce review results sometime during the latter part of 2011.

DATES: Comments must be received on or before August 1, 2011.

ADDRESSES: Interested persons are invited to submit written comments on the Internet at *http://www.regulations.gov* or to Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Room 2635–S, Washington, DC 20250–0224; fax: (202) 690–1718. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours or can be viewed at *http://www.regulations.gov.* All comments submitted in response to this notice 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 comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Room 2635–S, Washington, DC 20250–0224, telephone (540) 361–2726, facsimile (202) 690–1718, or e-mail at *Shethir.Riva@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: The Cotton Research and Promotion Act of 1966 (7 U.S.C. 2101–2118) authorized a national Cotton Research and Promotion Program which is industry operated and funded, with oversight by USDA. The program's objective is to enable cotton growers and importers to establish, finance, and carry out a coordinated program of research and promotion to improve the competitive position of, and to expand markets for cotton.

The program became effective on December 31, 1966, when the Cotton Research and Promotion Order (7 CFR part 1205) was issued. Assessments began with the 1967 cotton crop. The Order was amended and a supplemental assessment initiated, not to exceed one percent of the value of each bale, effective January 26, 1977.

The program is currently financed through assessments levied on domestic and imported cotton and cotton-containing products. Assessments under this program are used to fund promotional campaigns and to conduct

research in the areas of U.S. marketing, international marketing, cotton production and processing, and textile research and implementation.

The program is administered by the Cotton Board, which has 41 members, 41 alternate members and one consumer advisor. The Cotton Board is composed of representatives of cotton producers and cotton importers, each of whom has an alternate selected by the Secretary of Agriculture from nominations submitted by eligible producer and importer organizations. All members and their alternates serve terms of 3 years. The Cotton Board's responsibility is to administer the provisions of the Cotton Research and Promotion Order issued pursuant to the Act. These responsibilities include collecting, holding and safeguarding funds; making refunds when refunds are a provision of the Order; contracting with an organization for the development and implementation of programs of research and promotion; reviewing and making recommendations to the Secretary of Agriculture on proposed programs and budgets; and making funds available for such programs when approved. The objective of the Cotton Research and Promotion Program is to strengthen cotton's competitive position and to maintain and expand domestic and foreign markets and uses for cotton. The Cotton Board is prohibited from participating in any matters influencing governmental policies or action except recommendations for amendments to the Order.

Amendments to the Act were enacted under subtitle G of title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624, 104 stat. 3909, November 28, 1990). These amendments provided for: (1) Importer representation on the Cotton Board; (2) the assessment of imported cotton and cotton products; (3) increasing the amount the Secretary of Agriculture can be reimbursed for conduct of a referendum from $200,000 to $300,000; (4) reimbursing government agencies who assist in administering the collection of assessments on imported cotton and cotton products; and (5) terminating the right of a producer to demand a refund of assessments. The Act Amendments of 1990 were approved by a majority (60 percent) of importers and producers of cotton voting in a referendum conducted July 17–26, 1991, as required by the Act. Results of this referendum were announced in a nationally distributed press release dated August 2, 1991.

The Cotton Research and Promotion Act Amendment of 1990, Section 8(c) provides that once every 5 years after the July 1991 referendum, the Secretary of Agriculture is to conduct a review to ascertain whether a referendum is needed. In such a referendum, producers and importers would determine whether they favor continuation of the amendments to the Order provided for in the Cotton Research and Promotion Act Amendments of 1990. These amendments to the Order were promulgated in final rules published in the **Federal Register** on December 10, 1991 (56 FR 64470), corrected at (56 FR 66670).

The results of the most recent review report of the Cotton Research and Promotion Program were issued on March 6, 2007. USDA announced its view (72 FR 9918) not to conduct a referendum regarding the 1991 amendments to the Order. In accordance with Section 8(c)(2) of the Act, USDA provided an opportunity for all eligible persons to request a continuance referendum on the 1991 amendments by making such a request during a sign-up period. During the period of September 3–November 30, 2007, the Department conducted a sign-up period for all eligible persons to request a continuance referendum on the 1990 Act amendments. The results of the sign-up period did not meet the criteria established for a continuance referendum by the Cotton Research and Promotion Act and therefore, a referendum was not conducted.

In 2011, in accordance with the provisions of the Act, the Secretary of Agriculture will conduct its review of the Cotton Research and Promotion Program Act amendments to ascertain whether a referendum is needed to determine whether producers and importers support continuation of the amendments to the Order, as provided for by the 1990 Act amendments. The Secretary of Agriculture should make a public announcement of the results of the review on September 24, 2011 (60 days after each fifth anniversary date of the referendum). If the Secretary of Agriculture determines that a referendum is needed, the Secretary of Agriculture should conduct the referendum by September 24, 2012 (within 12 months after a public announcement of the determination to conduct the referendum).

If the Secretary determines that a referendum is not warranted, a sign-up period to request such a referendum will be made available to cotton producers and importers. A referendum will be held if requested by 10 percent or more of those voting in the most recent referendum as long as not more than 20 percent are from any one State or importers of cotton. This sign-up period would be announced in the **Federal Register**. A 60-day comment period is provided for interested persons to provide comments to be used by USDA in its review. All interested persons are invited to submit written comments.

Authority: 7 U.S.C. 2101–2118.

Dated: May 24, 2011.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2011–13500 Filed 5–31–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–FV–11–0044; FV11–996–1]

Peanut Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; request for nominations.

SUMMARY: The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) requires the Secretary of Agriculture to establish a Peanut Standards Board (Board) for the purpose of advising the Secretary on quality and handling standards for domestically produced and imported peanuts. The initial Board was appointed by the Secretary and announced on December 5, 2002. USDA seeks nominations for individuals to be considered for selection as Board members for terms of office ending June 30, 2014. Selected nominees would replace three producer and two industry representatives who currently serve on the Board and have terms of office that end June 30, 2011. Also, one individual would fill a currently vacant industry position. The Board consists of 18 members representing producers and the industry.

DATES: Written nominations must be received on or before June 13, 2011.

ADDRESSES: Nominations should be sent to Dawana J. Clark, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737: Telephone: (301) 734–5247; Fax: (301) 734–5275; E-mail: *Dawana.Clark@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Section 1308 of the 2002 Farm Bill requires the Secretary of Agriculture to establish and consult with the Board for the purpose of advising the Secretary regarding the establishment of quality and handling standards for all domestic and imported peanuts marketed in the United States.

The 2002 Farm Bill provides that the Board's makeup will include three producers and three peanut industry representatives from States specified in each of the following producing regions: Southeast (Alabama, Georgia, and Florida); Southwest (Texas, Oklahoma, and New Mexico); and Virginia/Carolina (Virginia and North Carolina).

The term "peanut industry representatives" includes, but is not limited to, representatives of shellers, manufacturers, buying points, and marketing associations and marketing cooperatives. The 2002 Farm Bill exempted the appointment of the Board from the requirements of the Federal Advisory Committee Act.

USDA invites individuals, organizations, and groups affiliated with the categories listed above to nominate individuals for membership on the Board. Nominees sought by this action would fill two positions in the Southeast region; two positions in the Southwest region; and two positions in the Virginia/North Carolina region, one of which is currently vacant.

Nominees should complete a Peanut Standards Board Background Information form and submit it to Mrs. Clark at the address provided in the "Addresses" section above. Copies of this form may be obtained at the Internet site *http://www.ams.usda.gov/PeanutStandardsBoard,* or from Mrs. Clark. USDA seeks a diverse group of members representing the peanut industry.

Equal opportunity practices will be followed in all appointments to the Board in accordance with USDA policies. To ensure that the recommendations of the Board have taken into account the needs of the diverse groups within the peanut industry, membership shall include, to the extent practicable, individuals with demonstrated abilities to represent minorities, women, persons with disabilities, and limited resource agriculture producers.

Authority: 7 U.S.C. 7958.

Dated: May 24, 2011.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2011–13499 Filed 5–31–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document Number AMS: AMS–FV–08–0076]

United States Standards for Grades of Frozen Onions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is soliciting comments on its proposal to create new United States Standards for Grades of Frozen Onions. USDA has received additional industry comments from several discussion drafts. The grade standards would provide a common language for trade, a means of measuring value in the marketing of frozen onions, and provide guidance in the effective utilization of frozen onions.

DATES: Comments must be submitted on or before August 1, 2011.

ADDRESSES: Written comments may be submitted to: Myron Betts, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250; or by fax (202) 690–1527; or via Internet at *http://www.regulations.gov.* Comments should reference the date and page of this issue of the **Federal Register**.

Please be advised that the identity of the individual or entities submitting the comments will be made public on the Internet via http://www.regulations.gov or *http://www.ams.usda.gov/processedinspection.* Any comments received, regarding these proposed standards also will be posted on these sites.

FOR FURTHER INFORMATION CONTACT: Contact Myron Betts, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 0709, So. Building; STOP 0247, Washington, DC 20250. Phone (202) 720–5021; Fax: (202) 690–1527. Copies of the proposed U.S. Standards for Grades of Frozen Onions are available on the Internet at *http://www.ams.usda.gov/processedinspection* or *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices."

AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. Those United States standards for grades of processed fruits and vegetables no longer appear in the Code of Federal Regulations but are maintained by USDA/AMS/Fruit and Vegetable Programs at *http://www.ams.usda.gov/processedinspection.*

AMS is proposing to establish the U.S. Standards for Grades of Frozen Onions using the procedures that appear in part 36, Title 7 of the Code of Federal Regulations (7 CFR part 36).

Background

AMS received a petition from American Frozen Food Institute (AFFI), requesting the development of new standards for frozen onions. The petitioners represent almost all of the processors of frozen onions in the United States. The petition provided information on style, sample size, and product description to develop the standards.

AMS developed the grade standards for frozen onions to incorporate comments from AFFI members, published notices on the proposed grade standards in order to receive comments from interested parties (see 66 FR 21116, 68 FR 11801, 68 FR 27010) as appropriate and circulated several discussion drafts between April 2007 and June 2010. AMS received and evaluated samples of various styles of frozen onions to collect information on how to ascertain the grade of frozen onions. Comments from the trade association's members were used to further develop the proposed standards. The comments referenced the style of whole onions and questioned the specific size ranges for whole peeled onions and the total allowance for peel in whole onions. Also the comments suggested that stem material, sprout material, and root material be included as major defects in the "core material" defect category.

In addition, AMS met with members of AFFI at their annual meeting in February 2007 to discuss the comments. AFFI suggested that dark green units with dark green stripes across 50 percent or more of the onion units would be considered a defect and under the style of whole onion units greater than ⅜ inch (10mm) or less than ¾

inch (20mm) be addressed. AFFI requested a change in the style designations for minced style, and a correction to the text. The members agreed with the proposed section concerning requirements for Styles, Type I, Whole onions and Type II, Pearl onions. The members did not agree with the proposed descriptions in requirements for whole onions and pearl onions for Styles: Type I, whole onions of ¾ inch to 1–7/8 inches in diameter and Type II, pearl onions of ¼ inch to ⅞ inch in diameter. Also, the members did not agree with the proposed section concerning Acceptable Quality Levels (AQLs) for quality defects and submitted examples of specifications from buyers. The members expressed concern because defects were defined by weight, not by count. Larger units would be allowed a smaller number of defects and smaller units would be allowed a large number of defects. The members stated that the definitions of "good appearance" and "reasonably good appearance" were too similar.

AFFI recommended that the product description include a heat treatment and suggested that AMS consider a requirement that onions be blanched.

AFFI members requested that the product description be limited to individually quick frozen onions. There were also concerns that microbiological requirements, storage temperatures, shelf life requirements, and limits for chemical and pesticide residues were not addressed in the proposed frozen onion grade standards.

AMS incorporated these comments to make further changes to the proposed grade standards in the discussion draft. However, in June 2010 AMS received additional feedback from AFFI members. These AFFI members indicated that this and other frozen vegetable grade standards did not include requirements for shelf-life, storage temperature, microbiological, or chemical pesticide residue.

Nonetheless, commodities covered by U.S. grade standards must comply with all of the regulatory food safety requirements of the Food and Drug Administration, the Environmental Protection Agency, and applicable state and local regulations.

The proposed standards for frozen onions would continue to use the standard format for U.S. standards for grades using "individual attributes." Specifically, the standards would provide for the "individual attribute" procedure for product grading with sample sizes, tolerances, and acceptance numbers of allowable defects with single letter grade designation. Also, the standards would define the term "frozen onions" and establish "strips," "diced," "whole," "chopped," and "other" as the style designations. The proposal also would define quality factors, AQLs, and tolerances for defects that affect frozen onions and determine sample unit sizes for this commodity. These grade standards would establish the grade levels "A," "B," and "Substandard." The AQLs, tolerances, and acceptance numbers for each quality factor as defined for each grade level would also be established.

The grade of a sample unit of frozen onions would be ascertained considering the factors of varietal characteristics, flavor and odor, appearance, color, defects, absence of grit or dirt, and character.

These grade standards would provide a common language for trade, a means of measuring value in the marketing of frozen onions, and provide guidance in the effective utilization of frozen onions.

The official grade of a lot of frozen onions covered by these standards would be determined by the procedures set forth in the Regulations Governing Inspection and Certification of Processed Products Thereof, and Certain Other Processed Foods Products (§ 52.1 to 52.83).

AMS is publishing this notice with a sixty-day comment period that will provide a sufficient amount of time for interested persons to comments on the proposed new standards for frozen onions.

Authority: 7 U.S.C. 1621–1627.

Dated: May 24, 2011.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2011–13501 Filed 5–31–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0035]

Notice of Request for Extension of Approval of an Information Collection; Importation of Clementines From Spain

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of clementines from Spain.

DATES: We will consider all comments that we receive on or before August 1, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2011-0035* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2011–0035, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2011–0035.

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

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

FOR FURTHER INFORMATION CONTACT: For information on regulations for the importation of clementines from Spain, contact Mr. William Wesela, Staff Officer, Preclearance, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–5718. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION: *Title:* Importation of Clementines From Spain.

OMB Number: 0579–0203.

Type of Request: Extension of an approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests, including fruit flies, into the United States or their dissemination within the United States.

Regulations authorized by the PPA concerning the importation of fruits and vegetables into the United States from certain parts of the world are contained in "Subpart-Fruits and Vegetables" (7 CFR 319.56–1 through 319.5650).

Under these regulations, clementines from Spain are subject to certain conditions before entering the United States to ensure that exotic plant pests, such as the Mediterranean fruit fly, are not introduced into the United States. The regulations require the use of information collection activities including a trust fund agreement, grower registration and agreement, a Mediterranean fruit fly management program, fruit fly trapping and control activities, recordkeeping, a phytosanitary certificate, and box labeling.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.0032364 hours per response.

Respondents: National plant health officials of Spain and growers and shippers of clementines.

Estimated annual number of respondents: 4,509.

Estimated annual number of responses per respondent: 434.54281.

Estimated annual number of responses: 1,958,919.

Estimated total annual burden on respondents: 6,340 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 25th day of May 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–13502 Filed 5–31–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0039]

Notice of Availability of a Pest Risk Analysis for the Importation of Fresh Apricot, Sweet Cherry, and Plumcot Fruit From South Africa Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have prepared a pest risk analysis that evaluates the risks associated with the importation into the continental United States of fresh apricot, sweet cherry, and plumcot fruit from South Africa. Based on our analysis, we have concluded that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests via the importation of those commodities from South Africa. We are making the pest risk analysis available to the public for review and comment. Based on the results of our analysis, we also determined that it is necessary to revise a treatment schedule in the Plant Protection and Quarantine Treatment Manual.

DATES: We will consider all comments that we receive on or before August 1, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2011-0039* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2011–0039, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2011–0039.

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

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

FOR FURTHER INFORMATION CONTACT: Ms. Dorothy C. Wayson, Senior Regulatory Coordination Specialist, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road, Unit 141, Riverdale, MD 20737; (301) 734–0772.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56–1 through 319.56–50, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section.

APHIS received a request from the Government of South Africa to allow the importation of fresh apricot (*Prunus armeniaca* L.), sweet cherry (*Prunus avium* (L.) L., and plumcot (*Prunus domestica* × *Prunus armeniaca*) fruit from South Africa into the continental United States. APHIS completed a risk assessment to identify pests of quarantine significance that could follow the pathway of importation of those stone fruits. Based on that risk assessment, APHIS completed a risk management document identifying phytosanitary measures that could be applied to mitigate the possible pest risks. We have concluded that fresh apricot, sweet cherry, and plumcot fruit can be imported safely into the continental United States from South

Africa using one or more of the five designated phytosanitary measures listed in § 319.56–4(b). The specific measures that we would require for apricot, sweet cherry, and plumcot fruit imported from South Africa are as follows:

- The fruit must be imported as a commercial consignment, as defined in § 319.56–2.
- Each consignment of fruit must be accompanied by a phytosanitary certificate issued by the national plant protection organization of South Africa. For apricots and plumcots only, the phytosanitary certificate must include an additional declaration stating that the fruit was inspected and found free of cinch bug (*Macchiademus diplopterus*).
- Apricots and plumcots must be cold treated for fruit flies (*Ceratitis* spp.) and false codling moth (*Thaumatotibia leucotreta*) in accordance with 7 CFR part 305.
- Sweet cherries must be cold treated for the Mediterranean fruit fly (*Ceratitis capitata*) in accordance with 7 CFR part 305.
- Each consignment of fruit is subject to inspection upon arrival in the United States.

Therefore, in accordance with § 319.56–4(c), we are announcing the availability of our pest risk analysis for public review and comment.

Based on the findings detailed in our risk management document, we are also updating the Plant Protection and Quarantine (PPQ) Treatment Manual.[1] As noted above, apricots, sweet cherries, and plumcots imported into the continental United States from South Africa would be required to undergo cold treatment in accordance with 7 CFR part 305. In § 305.2, paragraph (b) states that approved treatment schedules are set out in the PPQ Treatment Manual. Section 305.3 sets out a process for adding, revising, or removing treatment schedules in the PPQ Treatment Manual. In that section, paragraph (a) sets out the process for adding, revising, or removing treatment schedules when there is no immediate need to make a change. The circumstances in which an immediate need exists are described in § 305.3(b)(1).

In accordance with § 305.3(a)(1), we are providing notice that we have determined that it is necessary to revise treatment schedule T107–e, which provides a cold treatment schedule intended to prevent the spread of false codling moth and Natal fruit fly (*Ceratitis rosa*) via the interstate movement or importation of apricot, grape, nectarine, peach, and plum fruit. Our risk management document states that apricots and plumcots must be treated for false codling moth and Natal fruit fly, as well as the Mediterranean fruit fly and the Bezzi fruit fly (*Ceratitis quinaria*), using treatment schedule T107–e. The risk management document further states that although T107–e is not specifically approved for the Mediterranean or the Bezzi fruit fly, APHIS considers it to be an adequate treatment for both because it is more stringent than any other cold treatment approved for fruit flies. Moreover, although the hybrid plumcot is not listed among commodities that this treatment is approved for, its parent fruits, plum and apricot, are. APHIS has concluded, therefore, that plumcots can be effectively treated in accordance with T107–e to protect against the spread of false codling moth and of other species of fruit fly in addition to Natal fruit fly. Therefore, we have determined that treatment schedule T107–e can include plumcots among the commodities to which the treatment may be applied and the Mediterranean and the Bezzi fruit fly among the pests it is intended to eliminate.

The pest risk analysis may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the pest risk analysis by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the pest risk analysis you wish to review when requesting copies.

After reviewing any comments we receive, we will announce our decision regarding the import status of fresh apricot, sweet cherry, and plumcot fruit from South Africa and the change to the PPQ Treatment Manual. If the overall conclusions of the analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will authorize the importation of fresh apricot, sweet cherry, and plumcot fruit from South Africa into the continental United States, subject to the requirements specified in the risk management document. We will also issue a new version of the PPQ Treatment Manual incorporating the changes to treatment schedule T107–e discussed above.

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

Done in Washington, DC, this 25th day of May 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–13503 Filed 5–31–11; 8:45 am]

BILLING CODE 3410–34–P

[1] The Treatment Manual is available on the Internet at *http://www.aphis.usda.gov/import_export/plants/manuals/index.shtml* or by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Manuals Unit, 92 Thomas Johnson Drive, Suite 200, Frederick, MD 21702.

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiou Resource Advisory Committee will meet in Smith River, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend projects submitted for funding under Title II of The Secure Rural Schools and Cummunity and Self-Determination Act of 2000. Existing projects will be reviewed also.

DATES: The meeting will be held June 30, 2011, 830 a.m.

ADDRESSES: The meeting will be held at Howonquet Hall Community Center, 101 Indian Court, Smith River, CA. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Medford Interagency Office, 3040 Biddle Road, Medford, OR 97504. Please call ahead to 541–618–2113 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Virginia Gibbons, Public Affairs Officer, Rogue River-Siskiyou National Forest, 541–618–2113.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern

Standard Time, Monday through Friday. Requests for reasonable accomodation for access to the facility or procedings may be made by contacting the person listed **FOR FURTHER INFORMATION**.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Review status of FY2009, FY2010, and FY2011 projects selected by the Siskiyou, OR Resource Advisory committee for Josephine, Coos and Curry Counties; review and recommend FY2012 projects to the Designated Federal Official. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less.

May 25, 2011.

Fred Wahl,

Acting Forest Supervisor.

[FR Doc. 2011–13543 Filed 5–31–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Gallatin County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Gallatin National Forest's Gallatin County Resource Advisory Committee will meet in Bozeman, Montana. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to review the status of project proposals, discuss fourth year funding and public comments.

DATES: The meeting will be held on June 13, 2011, and will begin at 10 a.m.

ADDRESSES: The meeting will be held at the Bozeman Ranger District, 3710 Fallen St., Suite C, Bozeman, MT, then moving to one of the project areas near Bozeman (weather and roads permitting). Written comments should be sent to Babete Anderson, Custer National Forest, 1310 Main Street, Billings, MT 59105. Comments may also be sent via e-mail to *branderson@fs.fed.us,* or via facsimile to 406–657–6222.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Custer National Forest, 1310 Main Street, Billings, MT 59105. Visitors are encouraged to call ahead to 406–657–6205 ext. 239.

FOR FURTHER INFORMATION CONTACT: Babete Anderson, RAC coordinator, USDA, Custer National Forest, 1310 Main Street, Billings, MT 59105; (406) 657–6205 ext. 239; E-mail *branderson@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Mountain Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: Review the status of project proposals, Discuss fourth year of funding and Public Comments. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and indiviuals who made written request by June 9, 2011, will have the opportunity to address the Committee at those sessions.

Dated: May 25, 2011.

Mary C. Erickson,

Acting Forest Supervisor.

[FR Doc. 2011–13632 Filed 5–31–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the State of Georgia and State of Montana Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: GIPSA is announcing the designation of the Georgia Department of Agriculture (Georgia) and the Montana Department of Agriculture (Montana) to provide official services under the United States Grain Standards Act, as amended (USGSA).

DATES: *Effective Date:* July 1, 2011.

ADDRESSES: William A. Ashley, Acting Branch Chief, Quality Assurance and Designation Branch, Compliance Division, GIPSA, USDA, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: William A. Ashley, 202–720–8262 or *William.A.Ashley@usda.gov.*

Read Applications: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

SUPPLEMENTARY INFORMATION: In the January 4, 2011, **Federal Register** (76 FR 317), GIPSA requested applications for designation to provide official services in the geographic areas presently serviced by the Georgia Department of Agriculture (Georgia) and the Montana Department of Agriculture (Montana). Applications were due by February 3, 2011.

Georgia and Montana were the sole applicants for designation to provide official services in these areas. As a result, GIPSA did not ask for additional comments.

GIPSA evaluated all available information regarding the designation criteria in section 7(f)(l) of the USGSA (7 U.S.C. 79(f)) and determined that Georgia and Montana are qualified to provide official services in the geographic area specified in the January 4, 2011, **Federal Register** for which they applied. This designation action to provide official services in these specified areas is effective July 1, 2011 and terminates on June 30, 2014.

Interested persons may obtain official services by contacting this agency at the following telephone numbers:

Official agency	Headquarters location and telephone	Designation start	Designation end
Georgia	Atlanta, GA (229) 386–3141 Additional Location: Tifton, GA	7/1/2011	6/30/2014.
Montana	Helena, MT (406) 761–2141 Additional Locations: Great Falls and Plentywood, MT	7/1/2011	6/30/2014.

Section 7(f)(1) of the USGSA authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79 (f)(1)).

Under section 7(g)(1) of the USGSA, designations of official agencies are effective for no longer than 3 years unless terminated by the Secretary; however, designations may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

Authority: 7 U.S.C. 71–87k.

J. Dudley Butler,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2011–13453 Filed 5–31–11; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the State of Alabama; Saginaw, TX; Essex, IL; Springfield, IL; Savage, MN; and State of Washington Areas; Request for Comments on the Official Agencies Servicing These Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end on December 31, 2011. We are asking persons or governmental agencies interested in providing official services in the areas presently served by these agencies to submit an application for designation. In addition, we are asking for comments on the quality of services provided by the following designated agencies: Alabama Department of Agriculture and Industries (Alabama); Gulf Country Grain Inspection Service, Inc. (Gulf Country); Kankakee Grain Inspection, Inc. (Kankakee); Springfield Grain Inspection, Inc. (Springfield); State Grain Inspection, Inc. (State Grain); and Washington Department of Agriculture (Washington).

DATES: Applications and comments must be received by July 1, 2011.

ADDRESSES: Submit applications and comments concerning this notice using any of the following methods:

- *Applying for Designation on the Internet:* Use FGISonline (*https://fgis.gipsa.usda.gov/default_home_FGIS.aspx*) and then click on the Delegations/Designations and Export Registrations (DDR) link. You will need to obtain an FGISonline customer number and USDA eAuthentication username and password prior to applying.
- *Submit Comments Using the Internet:* Go to Regulations.gov (*http://www.regulations.gov*). Instructions for submitting and reading comments are detailed on the site.
- *Hand Delivery/Courier Address:* William A. Ashley, Acting Quality Assurance and Designation Branch Chief, Quality Assurance and Compliance Division, GIPSA, USDA, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250.
- *Mail:* William A. Ashley, Acting Quality Assurance and Designation Branch Chief, Quality Assurance and Compliance Division, GIPSA, USDA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250–3604.
- *Fax:* William A. Ashley, 202–690–2755.
- *E-mail: William.A.Ashley@usda.gov.*

Read Applications and Comments: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

FOR FURTHER INFORMATION CONTACT: William A. Ashley, 202–720–8262 or *William.A.Ashley@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 7(f)(1) of the United States Grain Standards Act (USGSA) (7 U.S.C. 71–87k) authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. Under section 7(g)(1) of the USGSA, designations of official agencies are effective for 3 years unless terminated by the Secretary, but may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

Areas Open for Designation

Alabama

- Pursuant to Section 7(f)(2) of the Act, the following geographic area, the entire State of Alabama, except those export port locations within the State, is assigned to this official agency.

Gulf Country

Pursuant to Section 7(f)(2) of the Act, the following geographic area in the State of Texas is assigned to this agency:

- Bounded on the North by the northern Young, Jack, Montague, Cooke, Grayson, Fannin, Lamar, Red River, Morris, and Marion County lines east to the Texas State line;
- Bounded on the East by the eastern Texas State line south to the southern Shelby County line;
- Bounded on the South by the southern Shelby, Rusk, Smith, Henderson, Navarro, Hill, Bosque, Hamilton, and Mills County lines west to the western Mills County line; and
- Bounded on the West by the western Mills, Comanche, Eastland, Stephens, and Young County lines north to the northern Young County line.

Kankakee

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Illinois, is assigned to this official agency:

- Bounded on the North by the northern Bureau County line; the northern LaSalle and Grundy County lines; the northern Will County line east-southeast to Interstate 57;
- Bounded on the East by Interstate 57 south to U.S. Route 52; U.S. Route 52 south to the Kankakee County line;
- Bounded on the South by the southern Kankakee and Grundy County lines; the southern LaSalle County line west to State Route 17; State Route 17 west to U.S. Route 51; U.S. Route 51 north to State Route 18; State Route 18 west to State Route 26; State Route 26 south to State Route 116; State Route 116 south to Interstate 74; Interstate 74 west to the western Peoria County line; and
- Bounded on the West by the western Peoria and Stark County lines; the northern Stark County line east to State Route 40; State Route 40 north to the Bureau County line.

Springfield

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Illinois, is assigned to this official agency:

- Bounded on the North by the northern Schuyler, Cass, and Menard County lines; the western Logan County line north to State Route 10; State Route 10 east to the west side of Beason;
- Bounded on the East by a straight line from the west side of Beason southwest to Elkhart on Interstate 55; a straight line from Elkhart southeast to Stonington on State Route 48; a straight line from Stonington southwest to Irving on State Route 16;
- Bounded on the South by State Route 16 west to the eastern Macoupin County line; the eastern, southern, and western Macoupin County lines; the southern and western Greene County lines; the southern Pike County line; and

• Bounded on the West by the western Pike County line west to U.S. route 54; U.S. Route 54 northeast to State Route 107; State Route 107 northeast to State Route 104; State Route 104 east to the western Morgan County line. The western Morgan, Cass, and Schuyler County lines.

The following grain elevator, located outside of the above contiguous geographic area, is part of this geographic area assignment: East Lincoln Farmers Grain Co., Lincoln, Logan County (located inside Central Illinois Grain Inspection, Inc.'s, area).

State Grain

Pursuant to Section 7(f)(2) of the Act, the following geographic area, the State of Minnesota, is assigned to this official agency:

• Hennepin, Ramsey, Washington, Carver, Scott, Dakota, Brown, Nicollet, Le Sueur, Rice, Goodhue, Watonwan, Blue Earth, Waseca, Steele, Dodge, McLeod, and Sibley Counties.

Washington

Pursuant to Section 7(f)(2) of the Act, the following geographic areas, in the States of Idaho, Oregon, and Washington, are assigned to this official agency:

• The northern half of the State of Idaho down to the northern boundaries of Adams, Valley, and Lemhi Counties.

• The entire States of Oregon and Washington, except those export port locations within the States that are serviced by GIPSA or assigned to this Official Agency.

Opportunity for Designation

Interested persons or governmental agencies may apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the USGSA and 7 CFR 800.196(d). Designation in the specified geographic areas is for the period beginning January 1, 2012, and ending December 31, 2014. To apply for designation or for more information, contact William A. Ashley at the address listed above or visit GIPSA's Web site at *http://www.gipsa.usda.gov.*

Request for Comments

We are publishing this notice to provide interested persons the opportunity to comment on the quality of services provided by the Alabama, Gulf Country, Kankakee, Springfield, State Grain, and Washington official agencies. In the designation process, we are particularly interested in receiving comments citing reasons and pertinent data supporting or objecting to the designation of the applicants. Submit all comments to William A. Ashley at the above address or at *http://www.regulations.gov.*

We consider applications, comments, and other available information when determining which applicants will be designated.

Authority: 7 U.S.C. 71–87k.

J. Dudley Butler,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2011–13452 Filed 5–31–11; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2012 Economic Census Covering Utilities; Transportation and Warehousing; Finance and Insurance; and Real Estate and Rental and Leasing Sectors.

OMB Control Number: 0607–0931.

Form Number(s): The 36 report forms covered by this request are too numerous to list here.

Type of Request: Reinstatement, with change, of an expired collection.

Burden Hours: 811,142.

Number of Respondents: 623,955.

Average Hours per Response: 1.3 hours.

Needs and Uses: The 2012 Economic Census covering the Utilities; Transportation and Warehousing; Finance and Insurance; and Real Estate and Rental and Leasing sectors will use a mail canvass, supplemented by data from Federal administrative records, to measure the economic activity of more than 1,039,000 establishments in these sectors of the economy as classified in the North American Industry Classification System (NAICS).

The Utilities sector comprises establishments primarily engaged in the provision of utility services through a permanent infrastructure. The Transportation sector comprises establishments primarily engaged in transporting people and goods. The Warehousing sector comprises establishments primarily engaged in the warehousing and storage of goods. The Finance and Insurance sector comprises two types of establishments: Those engaged in financial transactions, that is, transactions involving the creation, liquidation, or change in ownership of financial assets, or in facilitating financial transactions; and those engaged in the intermediating as the consequence of pooling risks and facilitating such intermediation. The Real Estate subsector comprises establishments primarily engaged in leasing real estate to others, as well as real estate managers, agents, and brokers. The Rental and Leasing subsector comprises establishments primarily engaged in acquiring, owning, and making available a wide variety of tangible goods such as machinery, equipment, computers, and consumer goods to businesses or individuals, in return for a periodic rental or lease payment. The economic census will produce basic statistics by kind of business on number of establishments, revenue, payroll, and employment. It also will yield a variety of subject statistics, including revenue by product line, and other industry-specific measures, such as insurance benefits paid to policyholders, exported services, purchased transportation, and exported energy. Basic statistics will be summarized for the United States, states, metropolitan areas and, in some cases, for counties and places. Tabulations of subject statistics also will present data for the United States and, in some cases, for states.

The economic census is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business, and the general public. The Federal Government uses information from the economic census as an important part of the framework for the national income and product accounts, input-output tables, economic indices, and other composite measures that serve as the factual basis for economic policy-making, planning, and program administration. Further, the census provides sampling frames and benchmarks for current surveys of business which track short-term economic trends, serve as economic indicators, and contribute critical source data for current estimates of gross domestic product. State and local governments rely on the economic census as a unique source of comprehensive economic statistics for small geographic areas for use in policy-making, planning, and program administration. Finally, industry,

business, academia, and the general public use information from the economic census for evaluating markets, preparing business plans, making business decisions, developing economic models and forecasts, conducting economic research, and establishing benchmarks for their own sample surveys.

Affected Public: Business or other for-profit: Not-for-profit institutions.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 131 & 224.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: May 25, 2011.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–13410 Filed 5–31–11; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2012 Economic Census Covering the Retail Trade and Accommodation and Food Services Sectors.

OMB Control Number: 0607–0927.

Form Number(s): The 40 report forms covered by this request are too numerous to list here.

Type of Request: Reinstatement, with change, of an expired collection.

Burden Hours: 1,002,396.

Number of Respondents: 1,110,069.

Average Hours per Response: .9 hours.

Needs and Uses: The 2012 Economic Census Covering the Retail Trade and Accommodation and Food Services Sectors will use a mail canvass, supplemented by data from Federal administrative records, to measure the economic activity of 1.7 million employer establishments classified in the North American Industry Classification System (NAICS).

The retail trade sector comprises establishments primarily engaged in selling merchandise, generally without transformation, and rendering services incidental to the sale of merchandise. The accommodation and food services sector comprises establishments providing customers with lodging and/or preparing meals, snacks, and beverages for immediate consumption. The information collected will produce basic statistics by kind of business on number of establishments, sales, payroll, and employment. It will also yield a variety of subject statistics, including sales by product line, sales by class of customer, and other industry-specific measures, such as number of guestrooms provided by hotels and sales per square foot for supermarkets, department stores, warehouse clubs, and supercenters. Basic statistics will be summarized for the United States, states, metropolitan areas, counties, places, and ZIP code areas. Tabulations of subject statistics also will present data for the United States and, in some cases, for states.

The economic census is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business, and the general public. The Federal Government uses information from the economic census as an important part of the framework for the national income and product accounts, input-output tables, economic indexes, and other composite measures that serve as the factual basis for economic policy-making, planning, and program administration. Further, the census provides sampling frames and benchmarks for current surveys of business which track short-term economic trends, serve as economic indicators, and contribute critical source data for current estimates of gross domestic product. State and local governments rely on the economic census as a unique source of comprehensive economic statistics for small geographic areas for use in policy-making, planning, and program administration. Finally, industry, business, academe, and the general public use information from the economic census for evaluating markets, preparing business plans, making business decisions, developing economic models and forecasts, conducting economic research, and establishing benchmarks for their own sample surveys.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, local or Tribal governments.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 131 & 224.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: May 26, 2011.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–13492 Filed 5–31–11; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

The National Advisory Council on Innovation and Entrepreneurship; Meeting of the National Advisory Council on Innovation and Entrepreneurship

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The National Advisory Council on Innovation and Entrepreneurship will hold a meeting on Tuesday, June 14, 2011. The open meeting will be conducted from 10 a.m. to 12:15 p.m. A limited number of seats are available to members of the public who would like to attend the meeting in person. The public can also dial in to the meeting via a listen-only *conference number:* 800–369–3377, passcode 9687020. Chartered on November 10, 2009, the Council advises the Secretary of Commerce on matters relating to

innovation and entrepreneurship in the United States.

DATES: June 14, 2011.

Time: 10 a.m.–12:15 p.m. (EDT).

ADDRESSES: The meeting will be held in the Howard University School of Business auditorium at 2600 6th Street NW., Washington, DC 20059. For information on public participation, please visit *http://www.eda.gov/NACIE.* For in person or audio only participation, please specify any requests for reasonable accommodation of auxiliary aids at least five business days in advance of the meeting. Last minute requests will be accepted, but may be impossible to fill.

SUPPLEMENTARY INFORMATION: The preliminary agenda includes: sub-committee updates and open discussion by members regarding access to capital, the growth of businesses, and collaborative efforts to spur commercialization and regional innovation; remarks by Secretary Locke; and a question and answer session with the audience. Any member of the public may submit pertinent written comments concerning the Council's affairs at any time before and after the meeting. Comments may be submitted to Bilal Mahmood via the contact information listed below. Copies of meeting minutes will be available within 90 days of the meeting at *http://www.eda.gov/NACIE.*

FOR FURTHER INFORMATION CONTACT: Bilal Mahmood, Office of Innovation and Entrepreneurship, Room 7019, 1401 Constitution Avenue, NW., Washington, DC, 20230; *Telephone*: 202–482–3688; *E-mail: bmahmood@eda.doc.gov.* Please reference "NACIE June 14, 2011" in the subject line of your e-mail.

Dated: May 25, 2011.

Paul J. Corson,

Office of Innovation and Entrepreneurship, U.S. Department of Commerce.

[FR Doc. 2011–13411 Filed 5–31–11; 8:45 am]

BILLING CODE 3510–03–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1764]

Reorganization and Expansion of Foreign-Trade Zone 203 Under Alternative Site Framework, Moses Lake, WA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (74 FR 1170, 01/12/2009; correction 74 FR 3987, 01/22/2009; 75 FR 71069–71070, 11/22/2010) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Port of Moses Lake Public Corporation, grantee of Foreign-Trade Zone 203, submitted an application to the Board (FTZ Docket 56–2010, filed 09/23/2010) for authority to reorganize and expand under the ASF with a service area of Benton, Chelan, Columbia, Douglas, Franklin, Grant, Kittitas, Lincoln and Walla Walla Counties and portions of Okanogan and Yakima Counties, Washington, within and adjacent to the Moses Lake, Washington U.S. Customs and Border Protection port of entry, FTZ 203's existing Site 1 would be categorized as a magnet site, and the grantee proposes two initial usage-driven sites (Sites 2 and 3);

Whereas, notice inviting public comment was given in the **Federal Register** (75 FR 59688–59689, 09/28/2010) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, The Board Hereby Orders:

The application to reorganize and expand FTZ 203 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Sites 2 and 3 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by May 31, 2014.

Signed at Washington, DC, this 20th day of May 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–13572 Filed 5–31–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1763]

Reorganization of Foreign-Trade Zone 152, (Expansion of Service Area) Under Alternative Site Framework, Burns Harbor, IN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09; 75 FR 71069–71070, 11/22/10) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Ports of Indiana, grantee of Foreign-Trade Zone 152, submitted an application to the Board (FTZ Docket 2–2011, filed 1/3/2011) for authority to expand the service area of the zone to include Pulaski and Fulton Counties, as described in the application, adjacent to the Chicago Customs and Border Protection port of entry;

Whereas, notice inviting public comment was given in the **Federal Register** (76 FR 1133, 1/7/2011) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to reorganize FTZ 152 to expand the service area under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project.

Signed at Washington, DC, this 20th day of May 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–13573 Filed 5–31–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1765]

Reorganization of Foreign-Trade Zone 86 Under Alternative Site Framework Tacoma, Washington

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (74 FR 1170, 01/12/2009; correction 74 FR 3987, 01/22/2009; 75 FR 71069–71070, 11/22/2010) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Port of Tacoma, grantee of Foreign-Trade Zone 86, submitted an application to the Board (FTZ Docket 68–2010, filed 12/03/2010) for authority to reorganize under the ASF with a service area of Pierce County, Washington, within and adjacent to the Tacoma, Washington U.S. Customs and Border Protection port of entry, and FTZ 244's existing Site 1 would be categorized as a magnet site;

Whereas, notice inviting public comment was given in the **Federal Register** (75 FR 76951–76952, 12/10/2010) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, The Board Hereby Orders:

The application to reorganize FTZ 86 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 2–7, 10–12 and 14 if not activated by May 31, 2016.

Signed at Washington, DC, this 20th day of May 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–13569 Filed 5–31–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

President's Export Council Subcommittee on Export Administration, Notice of Open Meeting; Correction: Meeting Time and Agenda

The President's Export Council Subcommittee on Export Administration (PECSEA) will meet on June 9, 2011, 10 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The PECSEA provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Agenda

1. Opening remarks by the Chairman and Vice Chairman.
2. Opening remarks by the Bureau of Industry and Security.
3. Presentation of papers or comments by the public.
4. Working group reports.
5. Working group sessions.
6. Action items for subsequent meetings for consideration by the PECSEA.

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than June 2, 2011.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the PECSEA. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to PECSEA members, the PECSEA suggests that public presentation materials or comments be forwarded before the meeting to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov*

For more information, contact Yvette Springer on 202–482–2813.

Dated: May 25, 2011.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2011–13582 Filed 5–31–11; 8:45 am]

BILLING CODE XXXX–XX–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Extension of Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results of the administrative review of certain new pneumatic off-the-road tires from the People's Republic of China ("PRC"). This review covers the period September 1, 2009, through August 31, 2010.

DATES: *Effective Date:* June 1, 2011.

FOR FURTHER INFORMATION CONTACT: Erin Begnal or Raquel Silva, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1442 or (202) 482–6475, respectively.

Background

On October 28, 2010, the Department published in the **Federal Register** a notice of initiation of the second administrative review of the antidumping duty order on certain new pneumatic off-the-road tires from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 75 FR 66349 (October 28, 2010). The preliminary results of this review are currently due no later than June 2, 2011.

Statutory Time Limits

In antidumping duty administrative reviews, section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the

Act"), requires the Department to issue its preliminary results within 245 days after the last day of the anniversary month of an order for which a review is requested and to issue its final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month.

Extension of Time Limit for Preliminary Results of Review

The Department has determined that it is not practicable to complete the instant administrative review within the original time limits established by section 751(a)(3)(A) of the Act because we require additional time to analyze questionnaire and supplemental questionnaire responses, to issue additional supplemental questionnaires if necessary, and to evaluate the most appropriate surrogate values on the administrative record to use in this segment of the proceeding. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completing the preliminary results of the instant administrative review until September 30, 2011, which is 365 days after the last day of the anniversary month of the date of publication of the order. The deadline for the final results of this review continues to be 120 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: May 25, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–13560 Filed 5–31–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Forged Stainless Steel Flanges From India: Notice of Rescission of Antidumping Duty Administrative Review

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

SUMMARY: In response to a request from an interested party, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on forged stainless steel flanges from India. The period of review is February 1, 2010, through January 22, 2011. Based on the withdrawal of request for review submitted by Pradeep Metals Limited, the sole respondent in this proceeding, we are now rescinding this administrative review.

DATES: *Effective Date:* June 1, 2011.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian or Robert James, 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) 482–1131 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2011, the Department published a notice announcing an opportunity for interested parties to request an administrative review of the antidumping duty order on forged stainless steel flanges from India. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 76 FR 5559 (February 1, 2011). Pradeep Metals Limited requested an administrative review of entries of its subject merchandise and, based on that request, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on forged stainless steel flanges from India covering the period February 1, 2010, through January 22, 2011. *See Initiation of Antidumping Duty Administrative Reviews, Requests for Revocation in Part, and Deferral of Administrative Review,* 76 FR 17825 (March 31, 2011). On May 10, 2011, the Department received a letter from Pradeep Metals Limited, withdrawing its request for an administrative review.

Rescission of Review

19 CFR 351.213(d)(1) of the Department's regulations provides that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the publication of the notice of initiation of the requested review, or withdraws at a later date if the Department determines it is reasonable to extend the time limit for withdrawing the request. Pradeep Metals Limited withdrew its request within 90 days of the publication of the notice of initiation. Therefore, the Department is rescinding this review.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For Pradeep Metals Limited, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notifications

This notice serves as a final reminder to importers for whom this review is being rescinded of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/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.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: May 25, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–13566 Filed 5–31–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

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

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended ("the Act"), may request, in accordance with section 351.213 of the Department of Commerce ("the Department") regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order ("APO") to all parties having an APO within seven days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

Opportunity to Request a Review: Not later than the last day of June 2011,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in June for the following periods:

	Period of review
Antidumping Duty Proceedings	
Japan:	
Carbon and Alloy Seamless Standard, Line Pressure, A–588–850, Pipe (Over 4½ Inches)	6/1/10–5/31/11
Carbon and Alloy Seamless Standard, Line Pressure, A–588–851, Pipe (Under 4½ Inches)	6/1/10–5/31/11
Hot-Rolled Carbon Steel Flat Products, A–588–846	6/1/10–5/31/11
South Korea: Polyethylene Terephthalate (PET) Film, A–580–807	6/1/10–5/31/11
Spain: Chlorinated Isocyanurates, A–469–814	6/1/10–5/31/11
Taiwan:	
Helical Spring Lock Washers, A–583–820	6/1/10–5/31/11
Certain Stainless Steel Butt-Weld Pipe Fittings, A–583–816	6/1/10–10/19/10
The People's Republic of China:	
Apple Juice Concentrate, Non-Frozen, A–570–855	6/1/10–11/1/10
Artist Canvas, A–570–899	6/1/10–5/31/11
Chlorinated Isocyanurates, A–570 –898	6/1/10–5/31/11
Folding Metal Tables and Chairs, A–570–877	6/1/10–5/31/11
Furfuryl Alcohol, A–570–835	6/1/10–5/31/11
Polyester Staple Fiber, A–570–905	6/1/10–5/31/11
Prestressed Concrete Steel Wire Strand, A–570–945	12/23/09–5/31/11
Silicon Metal, A–570–806	6/1/10–5/31/11
Sparklers, A–570–804	6/1/10–5/31/11
Tapered Roller Bearings, A–570–601	6/1/10–5/31/11

Countervailing Duty Proceedings

None.

Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to

[1] Or the next business day, if the deadline falls on a weekend, Federal holiday or any other day when the Department is closed.

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Import Administration Web site at *http://ia.ita.doc.gov.*

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3508 of the main Commerce Building. Further, in accordance with 19 CFR 351.303(f)(3)(ii), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of June 2011. If the Department does not receive, by the last day of June 2011, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period, of the order, if such a gap period is applicable to the POR.

This notice is not required by statute but is published as a service to the international trading community.

Dated: May 23, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–13553 Filed 5–31–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

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

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for July 2011

The following Sunset Reviews are scheduled for initiation in July 2011 and will appear in that month's Notice of Initiation of Five-Year Sunset Reviews.

	Department contact
Antidumping Duty Proceedings	
Light-Walled Rectangular Welded Carbon Steel Pipe & Tube from Taiwan (A–583–803) (3rd Review)	Dana Mermelstein, (202) 482–1391.
Stainless Steel Wire Rod from India (A–533–808) (3rd Review)	Dana Mermelstein, (202) 482–1391.
Welded Carbon Steel Pipe & Tube from India (A–533–502) (3rd Review)	Dana Mermelstein, (202) 482–1391.
Circular Welded Non-Alloy Steel Pipe from Brazil (A–351–809) (3rd Review)	Dana Mermelstein, (202) 482–1391.
Welded Astm A–312 Stainless Steel Pipe from South Korea (A–580–810) (3rd Review)	Dana Mermelstein, (202) 482–1391.
Welded Astm A–312 Stainless Steel Pipe from Taiwan (A–583–815) (3rd Review)	Dana Mermelstein, (202) 482–1391.
Welded Carbon Steel Pipe & Tube from Thailand (A–549–502) (3rd Review)	Dana Mermelstein, (202) 482–1391.
Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan (A–583–008) (3rd Review)	Dana Mermelstein, (202) 482–1391.
Circular Welded Non-Alloy Steel Pipe from Mexico (A–201–805) (3rd Review)	Dana Mermelstein, (202) 482–1391.
Circular Welded Non-Alloy Steel Pipe from Taiwan (A–583–814) (3rd Review)	Dana Mermelstein, (202) 482–1391.
Circular Welded Non-Alloy Steel Pipe from South Korea (A–580–809) (3rd Review)	David Goldberger, (202) 482–4136.
Welded Carbon Steel Pipe & Tube from Turkey (A–489–501) (3rd Review)	David Goldberger, (202) 482–4136.
Countervailing Duty Proceedings	
Welded Carbon Steel Pipe & Tube from Turkey (C–489–502) (3rd Review)	David Goldberger, (202) 482–4136.
Suspended Investigations	
Uranium from Russia (A–821–802) (3rd Review)	Sally Gannon, (202) 482–0162.

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998). The Notice of Initiation of Five-Year ("Sunset") Reviews provides further information regarding what is required

of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: May 23, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–13558 Filed 5–31–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–423–809]

Stainless Steel Plate in Coils From Belgium: Rescission of Countervailing Duty Administrative Review

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

DATES: *Effective Date:* June 1, 2011.

FOR FURTHER INFORMATION CONTACT: Patricia Tran or Mary Kolberg, at (202) 482–1503 or (202) 482–1785, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Background

On May 3, 2010, the Department of Commerce ("the Department") published a notice announcing the opportunity to request an administrative review of the countervailing duty ("CVD") order on stainless steel plate in coils from Belgium. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 23236 (May 3, 2010). On May 28, 2010, we received a request for revocation of this order from the Government of Belgium ("GOB") via administrative review. The request was filed in accordance with 19 CFR 351.222(e)(2). In accordance with 19 CFR 351.221(c)(1)(i), the Department published a notice initiating an administrative review of the CVD order on stainless steel plate in coils from Belgium covering the period January 1, 2009, through December 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 37759 (June 30, 2010).

Rescission of Review

Pursuant to 19 CFR 351.213(d)(l), the Secretary will rescind an administrative review, in whole or in part, if the party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. On May 2, 2011, the GOB withdrew its request for the 2009 administrative review and for revocation of the CVD order on stainless steel plate in coils from Belgium, past the 90-day deadline. Pursuant to 19 CFR 351.213(d)(1), the Secretary may extend the 90-day time limit if it is reasonable to do so.

The Department determines it is reasonable to extend the 90-day deadline in this case. On May 5, 2011, the Department revoked this order effective July 18, 2010, in the second five-year (sunset) review of this order.[1] We revoked the order because we found all subsidy programs had been terminated and, thus, there was no likelihood of continuation or recurrence of countervailable subsidies. Although an administrative review of the 2009 period could be conducted for assessment purposes, a revocation proceeding is not warranted because any revocation of the order as the result of such a proceeding would occur with the publication of the final results, which would be after the July 18, 2010, effective date of the revocation pursuant to the sunset review.[2] In addition, as noted above, the GOB was the only party to request this review and included a request for revocation. Therefore, because the GOB sought revocation as part of its administrative review request, the order has already been revoked, and the Department has not dedicated extensive resources to this review, the Department finds that it is reasonable to rescind this administrative review even though the request was received after the 90-day period for withdrawals.

Assessment

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess countervailing duties at the cash deposit rate in effect on the date of entry, for entries during the period January 1, 2009, through December 31, 2009. The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice of rescission of administrative review. In addition, pursuant to an injunction issued in *ArcelorMittal Stainless Belgium N.V.* v. *United States,* CIT No. 08–00434, on January 16, 2009, modified on August 16, 2010, the Department must continue to suspend liquidation of certain entries pending a conclusive court decision in that action.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protection order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/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 sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(l) and 777(i)(l) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: May 25, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–13574 Filed 5–31–11; 8:45 am]

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[1] *See Stainless Steel Plate in Coils from Belgium: Final Results of Full Sunset Review and Revocation of the Countervailing Duty Order,* 76 FR 25666 (May 5, 2011).

[2] The Department revoked this order effective July 18, 2010 as this was the fifth anniversary of the date of publication in the **Federal Register** of the most recent notice of continuation of this order in the first sunset review. *See id.*

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year ("Sunset") Review

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

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating a five-year review ("Sunset Review") of the antidumping duty orders listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

DATES: *Effective Date:* June 1, 2011.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3 —*Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin,* 63 FR 18871 (April 16, 1998).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping duty orders:

DOC case no.	ITC case no.	Country	Product	Department contact
A–588–854	731–TA–860	Japan	Tin Mill Products (2nd Review)	Dana Mermelstein (202) 482–1391.
A–570–832	731–TA–696	PRC	Pure Magnesium (Ingot) (3rd Review)	Julia Hancock (202) 482–1394.
A–570–822	731–TA–624	PRC	Helical Spring Lock Washers (3rd Review)	David Goldberger (202) 482–4136.
A–583–820	731–TA–625	Taiwan	Helical Spring Lock Washers (3rd Review)	David Goldberger (202) 482–4136.

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statue and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: "*http://ia.ita.doc.gov/sunset/*." All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules can be found at 19 CFR 351.303.

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all AD/CVD investigations or proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (*Interim Final Rule*) amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions in investigations/proceedings initiated on or after March 14, 2011 if the submitting party does not comply with the revised certification requirements.

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

Dated: May 23, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–13556 Filed 5–31–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RIN 0648–XA464]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice; research permit applications.

SUMMARY: Notice is hereby given that NMFS has received four scientific research and enhancement permit application requests relating to salmonids listed under the Endangered Species Act (ESA). The proposed research programs are intended to increase knowledge of the species and to help guide management and conservation efforts.

DATES: Written comments on the permit applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on July 1, 2011.

ADDRESSES: Written comments on either application should be submitted to the Protected Resources Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404. Comments may also be submitted via fax to (707) 578–3435 or by email to *FRNpermits.SR@noaa.gov.* The applications and related documents may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm.* These documents are also available upon written request or by appointment by contacting NMFS by phone (707) 575–6097 or fax (707) 578–3435.

FOR FURTHER INFORMATION CONTACT: Jeffrey Jahn, Santa Rosa, CA (ph.: 707–575–6097, e-mail: *Jeffrey.Jahn@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

This notice is relevant to federally threatened Central California Coast steelhead (*Oncorhynchus mykiss*), threatened Southern-Central California Coast steelhead (*O. mykiss*), endangered Central California Coast coho salmon (*O. kisutch*), and threatened California Coastal Chinook salmon (*O. tshawytscha*).

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA of 1973 (16 U.S.C. 1531–1543) and regulations governing listed fish and wildlife permits (50 CFR parts 222–226). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on the applications listed in this notice should set out the specific reasons why a hearing on the application(s) would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 15730

Salmon Protection and Watershed Network (SPAWN) is requesting a 5-year scientific research and enhancement permit to take juvenile Central California Coast (CCC) steelhead, juvenile CCC coho salmon, and juvenile California Coastal (CC) Chinook salmon (ESA-listed salmonids) and adult carcasses of each species associated with a research project in the Lagunitas Creek and San Geronimo Creek watersheds in Marin County, California. In the study described below, researchers do not expect to kill any listed fish but a small number may die as an unintended result of the research activities.

This project is part of an ongoing effort to monitor population status and trends of juvenile and adult ESA-listed salmonids and to document baseline habitat conditions. This data will aid future research, restoration, and conservation efforts for ESA-listed salmonids. The objectives are to: (1) Continue ongoing juvenile rescue and relocation efforts, (2) survey adult salmonid spawning activities and juvenile smolt outmigration, and (3) determine salmonid habitat utilization. In these projects, ESA-listed salmonids will be captured (by dip-net, pipe-trap, funnel trap, fyke-net trap, or seine), anesthetized, handled (identified, measured, weighed), sampled (fin clips or scales), marked [fin clips or Passive Integrated Transponder (PIT) tags], and released. All data and information will be shared with county, state, and federal entities for use in conservation and restoration planning efforts related to ESA-listed salmonids.

Study 1 is a salmonid spawner abundance monitoring study in the San Geronimo Creek watershed. Surveys will be conducted on ten or fewer sites in tributaries to San Geronimo Creek. Researchers will survey stream reaches from October through April and observe the number, species, sex, size, condition, location, and behavior of spawning adult ESA-listed salmonids. Redds will be located, marked, and mapped.

Carcasses of ESA-listed salmonids that are encountered during spawner surveys will be identified, measured, evaluated for spawning condition, marked to avoid double counting, and returned to the location where they were found.

Study 2 is a juvenile salmonid summer habitat and rescue/relocation study in the San Geronimo Creek watershed. Juvenile salmonid habitat monitoring will be conducted annually from June through October. San Geronimo Creek and its tributaries will be visually surveyed to determine presence and absence of salmonids and monitored to determine water flow, pool depth, and temperature in pools. If stream flow ceases and pools become disconnected and begin to dry, juvenile CCC coho salmon and CCC steelhead will be removed and relocated. Fish will be captured by dip-net and transported to a perennial flow section downstream on their natal tributary or to San Geronimo Creek. Relocated fish will be measured and identified and stream conditions will be recorded. A subset of relocated CCC steelhead will be anesthetized and tagged with PIT tags to quantify relocation success by outmigration efficiency. A disjunct area of San Geronimo Creek called Roy's Pools, will be drained and electrofished to rescue stranded fish. Rescued fish will be anesthetized, measured, then released into a pool immediately downstream of Roy's Pools.

Study 3 is a juvenile salmonid movement monitoring study in the San Geronimo Creek watershed. Coho salmon and steelhead smolt production in Lagunitas and San Geronimo creeks will be monitored annually from March–June. Pipe-traps and funnel traps will be used to capture juvenile ESA-listed salmonids. Juvenile CC Chinook will be captured, handled, and released. Smolts and young of the year (YOY) CCC coho salmon and CCC steelhead will be captured in the traps, anesthetized, and analyzed to determine

species, length, weight, and the degree of smoltification. Salmon fry observed in the trap will be observed, counted and estimated for length. Scale samples will also be collected from up to ten CCC coho and ten CCC steelhead smolts each sampling day throughout the study period. The mark-recapture monitoring study used to generate population estimates will consist of marking up to ten CCC coho and ten CCC steelhead smolts with a fin clip followed by upstream relocation and release.

Permit 16110

Marin Municipal Water District (MMWD) is requesting a 5-year scientific research permit to take juvenile and adult CCC steelhead, juvenile and adult (spawned carcasses) of CCC coho salmon, and juvenile and adult (spawned carcasses) of Chinook salmon associated with a research project in the Lagunitas Creek watershed in Marin County, California. In the studies described below, researchers do not expect to kill any listed fish but a small number may die as an unintended result of the research activities.

MMWD is currently monitoring coho salmon and steelhead populations in Lagunitas Creek (including two tributaries, San Geronimo Creek and Devil's Gulch) and Walker Creek. Current monitoring consists of juvenile salmonid surveys in fall, spawner surveys in winter and smolt outmigration monitoring in spring. The purpose of the proposed scientific research is to determine the trends in ESA-listed salmonid abundance at multiple life stages, to determine whether there is a relationship between population trends and MMWD management efforts, and to determine what salmonid life stages suffer the lowest survival and should be a focus of future management practices.

Study 1 is a summer/fall juvenile salmonid population abundance and salmonid habitat monitoring study in Lagunitas Creek. Sampling will occur at 13 established reaches from August through October. Backpack electrofishing will be used to capture juvenile CCC coho salmon and CCC steelhead. Captured fish will be anesthetized, handled (identified to species, measured and weighed), scale sampled, implanted with PIT tags and released back into the habitat from which they were taken. Habitat type and quality will be assessed at each survey site.

Study 2 is a juvenile salmonid presence/absence and population genetics study in Walker Creek. Sampling will occur from August through October. Backpack electrofishing will be used to capture juvenile CCC coho salmon and CCC steelhead juveniles. Captured fish will be anesthetized, handled (identified to species, measured and weighed), sampled (by collection of fin clips, scales or opercle), and released back into the habitat unit from which they were taken.

Study 3 is a salmonid spawner abundance and population genetics study in the Lagunitas Creek watershed (including tributaries Devil's Gulch, San Geronimo Creek, and Woodacre Creek) and Walker Creek. Teams will survey stream reaches from October through March and observe the number, species, location, and behavior of spawning adult ESA-listed salmonids. Redds will be located and measured. Carcasses of ESA-listed salmonids that are encountered during spawner surveys will be identified, measured, evaluated for spawning condition, tissue sampled, marked to avoid double counting, and returned to the location where they were found.

Study 4 is a salmonid smolt outmigration monitoring study in Lagunitas Creek. One or two rotary screw traps will be operated annually from March into June. Smolts and YOY of CCC coho, CC Chinook salmon, and CCC steelhead will be captured in the rotary screw trap, anesthetized and handled to determine species, length and weight. The majority of captured juvenile salmonids will be released downstream of the trap. A small number of captured juvenile ESA-listed salmonids, will be marked using fin clips or PIT tags, released upstream of the rotary screw trap, and may be subsequently recaptured. A second trap may be employed at an upstream location to quantify the proportion of smolts originating between the two traps.

Study 5 will determine juvenile CCC coho use of off-channel habitat enhancement areas on Lagunitas Creek. Fish will be captured using a combination of backpack electrofishing and seining. Sampling will occur from January and February, prior to the smolt outmigration period. Fish will be PIT tagged to compare growth rates of fish in off-channel versus in-stream areas. The movement of PIT tagged fish will be monitored from January through June by hand-held and stationary PIT tag readers.

Study 6 will estimate winter survival of juvenile salmonids by marking fish in the fall and recapturing them during smolt monitoring in the spring. The proportion of recaptured fish, combined with a smolt emigration estimate, will provide a back-calculated estimate of fall juvenile salmonid abundance that will help validate the estimate developed in Study 1. Fish will be captured by electrofisher and a limited amount of CCC coho salmon and CCC steelhead will be PIT tagged and released back into the habitat from which they were collected.

Permit 15824

The County of Santa Cruz, Environmental Health Services is requesting a 5-year scientific research permit to take juvenile CCC steelhead, juvenile South-Central California Coast (S–CCC) steelhead, and juvenile CCC coho salmon associated with a research project in four watersheds in Santa Cruz County, California. This is an ongoing fish monitoring program that has been included in the annual California Department of Fish and Game research program under the ESA 4(d) rule for threatened salmonids. The 4(d) rule exempts qualifying research programs from the prohibitions of section 9(a)(1) of the ESA. Because the County of Santa Cruz has expanded monitoring to include endangered CCC coho salmon, a section 10(a)(1)(A) permit is required. In the study described below, researchers do not expect to kill any listed fish but a small number may die as an unintended result of the research activities.

The purpose of the project is to document habitat conditions and site densities of juvenile salmonids in the San Lorenzo River, Soquel Creek, Aptos Creek, and Corralitos Creek in Santa Cruz County. The information will be used to track salmonid spawning and rearing conditions, prioritize restoration and conservation efforts, and inform land and water use decisions.

Sampling will occur annually, for 5 to 6 days per week within a 5-week period between September and October. Fish will be collected by backpack electrofisher. Captured fish will be placed in a live car and kept in flowing water. All juvenile ESA-listed salmonids will be measured, checked for PIT tags and then released into the habitat where they were collected. Deep pools within the mainstem San Lorenzo River will be snorkeled by two divers following electrofishing. Researchers will use a beach seine to capture a limited amount of CCC steelhead in the Aptos Creek lagoon for a total of two sampling days per year. A subset of seine captured fish will have scales removed for analysis and will be marked by fin-clipping.

Permit 16318

Hagar Environmental Science is requesting a 5-year scientific research permit to take juvenile CCC steelhead, juvenile S–CCC steelhead, and juvenile CCC coho salmon associated with a research project in selected watersheds in Santa Cruz, Monterey, and San Luis Obispo counties, California. In the study described below, researchers do not expect to kill any listed fish but a small number may die as an unintended result of the research activities.

The proposed research includes three studies consisting of lagoon surveys and stream surveys in Santa Cruz, Monterey, and San Luis Obispo counties. The purpose of the lagoon surveys is to provide estimates of abundance of juvenile steelhead rearing in the lagoons during the summer rearing period through mark-recapture protocol using PIT tag technology. A secondary goal of the lagoon research is to investigate the relationship between population abundance estimates and catch per unit effort that has been used in past surveys. The purpose of the stream surveys is to enumerate rearing juvenile steelhead and other fish species. The data from lagoon and stream surveys will be used to track salmonid spawning and rearing conditions, prioritize restoration and conservation efforts, and inform land and water use decisions.

In study 1, juvenile salmonid distribution and population abundance and habitat assessment will be determined in the San Lorenzo River, Liddell Creek, Laguna Creek, and Majors Creek. Sampling will occur at multiple survey sites twice annually in lagoons from April through November and once annually in streams from August through November. Juvenile CCC coho salmon and juvenile CCC steelhead may be captured by backpack electrofishing or seine. Captured fish will be anesthetized, handled (identified, measured and weighed), and released. Juveniles captured in lagoons will be PIT tagged and some will have scales removed for analysis.

Study 2 will take place in the Salinas River, Arroyo Seco, Nacimento River, San Antonio River in Monterey and San Luis Obispo counties, California. Sampling will occur at multiple survey sites three times annually in lagoons from April through November and once annually in streams from August through November. Juvenile S–CCC steelhead will be captured (by backpack electrofishing or seine), anesthetized (optional), handled (identified, measured, weighed), and released. A subsample of captured S–CCC steelhead will be sampled for scales.

Study 3 is a juvenile salmonid distribution, population abundance, and habitat assessment study in the lower watershed and lagoon of Arroyo Grande including Tar Spring Creek and Los Berros Creek in San Luis Obispo County, California. Sampling will occur at multiple survey sites twice annually in lagoons from April through November and once annually in streams from August through November. Juvenile S–CCC steelhead will be captured (by backpack electrofishing or seine), anesthetized, handled (identified, measured, weighed) and released. A subset of captured fish will be sampled for scales.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final actions in the **Federal Register**.

Dated: May 25, 2011.

Therese Conant,

Acting Division Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 110516284–1286–01]

RIN 0648–XA097

Endangered and Threatened Wildlife; Notice of 90-Day Finding on a Petition To List Goliath Grouper as Threatened or Endangered Under the Endangered Species Act

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

ACTION: Notice of 90-day petition finding.

SUMMARY: We (NMFS) announce a 90-day finding on a petition to list goliath grouper (*Epinephelus itajara*) as threatened or endangered under the Endangered Species Act (ESA). We find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted. Accordingly, we will not initiate a status review of the species at this time.

ADDRESSES: Copies of the petition and related materials are available upon request from the Chief, Protected Resources Division, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

FOR FURTHER INFORMATION CONTACT: Michael Barnette, NMFS Southeast Region, 727–551–5794, or Lisa Manning, NMFS Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 2010, we received a petition from the WildEarth Guardians to list goliath grouper (*Epinephelus itajara*), Nassau grouper (*Epinephelus striatus*), and speckled hind (*Epinephelus drummondhayi*) as threatened or endangered under the ESA and to designate critical habitat for these species. Copies of this petition are available from us (see **ADDRESSES,** above). Due to the scope of the WildEarth Guardians' petition, as well as the breadth and extent of the required evaluation and response, we are providing species-specific findings on this petition. This finding addresses WildEarth Guardians' petition to list goliath grouper.

On June 11, 1991, we identified goliath grouper (previously known as jewfish) as a candidate species under the ESA (56 FR 26797). On April 15, 2004, we announced the establishment of a species of concern list, a description of the factors that it will consider when identifying species of concern, and revision of the ESA candidate species list (69 FR 19976). We transferred 25 candidate species, including goliath grouper, to this species of concern list.

In January 2006, we completed a status report for goliath grouper in the continental U.S. (North Carolina to the Gulf of Mexico), which we determined met the criteria for designation as a distinct population segment (DPS) under the ESA (NOAA, 2006). The purpose of the 2006 status report was to investigate the status of goliath grouper in the United States relative to the criteria for including a species on the species of concern list and in light of updated information about the status of and threats to the continental U.S. DPS of the goliath grouper. After evaluating the most current data, we concluded that the continental U.S. DPS of goliath grouper had undergone significant increases in abundance since its identification in 1991 as a candidate species under the ESA and had become re-established throughout its historical

range. Due to management actions implemented via the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), extraction of goliath grouper by commercial and recreational fisheries was deemed to not be a current threat to the species. While the report noted concern about the rate of habitat loss and modification, in particular the loss of mangrove habitat, we determined that the current habitat loss was not a factor affecting the species' status within the continental United States at that time. Therefore, we concluded goliath grouper no longer met the definition of a species of concern (NOAA, 2006). As a result, goliath grouper (*i.e.,* the continental U.S. DPS) was removed from the NMFS' species of concern list in 2006 (71 FR 61022).

ESA Statutory and Regulatory Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When it is found that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted (a "positive 90-day finding"), we are required to promptly commence a review of the status of the species concerned during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, we shall conclude the review with a finding as to whether, in fact, the petitioned action is warranted within 12 months of receipt of the petition. Because the finding at the 12-month stage is based on a more thorough review of the available information, as compared to the narrow scope of review at the 90-day stage, a "may be warranted" finding does not prejudge the outcome of the status review.

Under the ESA, a listing determination may address a "species," which is defined to also include subspecies and, for any vertebrate species, any distinct population segment (DPS) that interbreeds when mature (16 U.S.C. 1532(16)). A joint NOAA-U.S. Fish and Wildlife Service (USFWS) policy clarifies the agencies' interpretation of the phrase "distinct population segment" for the purposes of listing, delisting, and reclassifying a species under the ESA (61 FR 4722; February 7, 1996). A species, subspecies, or DPS is "endangered" if it is in danger of extinction throughout all or a significant portion of its range, and "threatened" if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively; 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, we determine whether species are threatened or endangered as a result of any one or a combination of the following five section 4(a)(1) factors: (1) The present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and (5) any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

ESA-implementing regulations issued jointly by NMFS and USFWS (50 CFR 424.14(b)) define "substantial information" in the context of reviewing a petition to list, delist, or reclassify a species as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating whether substantial information is contained in a petition, the Secretary must consider whether the petition: (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

Court decisions have clarified the appropriate scope and limitations of the Services' review of petitions at the 90-day finding stage, in making a determination that a petitioned action "may be" warranted. As a general matter, these decisions hold that a petition need not establish a "strong likelihood" or a "high probability" that a species is either threatened or endangered to support a positive 90-day finding.

We evaluate the petitioner's request based upon the information in the petition including its references, and the information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioner's sources and characterizations of the information presented, if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude that it supports the petitioner's assertions. In other words, conclusive information indicating that the species may meet the ESA's requirements for listing is not required to make a positive 90-day finding. We will not conclude that a lack of specific information alone negates a positive 90-day finding, if a reasonable person would conclude that the unknown information itself suggests an extinction risk of concern for the species at issue.

To make a 90-day finding on a petition to list a species, we evaluate whether the petition presents substantial scientific or commercial information indicating the subject species may be either threatened or endangered, as defined by the ESA. First we evaluate whether the information presented in the petition, along with the information readily available in our files, indicates that the petitioned entity constitutes a "species" eligible for listing under the ESA. Next, we evaluate whether the information indicates that the species at issue faces extinction risk that is cause for concern; this may be indicated in information expressly discussing the species' status and trends, or in information describing impacts and threats to the species. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species at issue (*e.g.,* population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate the potential links between these demographic risks and the causative

impacts and threats identified in section 4(a)(1).

Information presented on impacts or threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act or have acted on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information that listing may be warranted. We look for information indicating that not only is the particular species exposed to a factor, but that the species may be responding in a negative fashion; then we assess the potential significance of that negative response.

Many petitions identify risk classifications made by other organizations or agencies, such as the International Union on the Conservation of Nature (IUCN), the American Fisheries Society (AFS), or NatureServe, as evidence of extinction risk for a species. Risk classifications by other organizations or made under other federal or state statutes may be informative, but such classifications alone may not provide the sole rationale for a positive 90-day finding under the ESA. For example, as explained by NatureServe, their assessments of a species' conservation status do "not constitute a recommendation by NatureServe for listing under the U.S. Endangered Species Act" because NatureServe assessments "have different criteria, evidence requirements, purposes and taxonomic coverage than government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide" (*http://www.natureserve.org/prodServices/statusAssessment.jsp*). Thus, when a petition cites such classifications, we will evaluate the source information that the classification is based upon, in light of the standards on extinction risk and impacts or threats discussed above.

Goliath Grouper Species Description

The goliath grouper constitutes a "species" eligible for listing under the ESA. The goliath grouper is a large member of the sea bass or serranid family found in both the Atlantic and Pacific Oceans. In the western Atlantic, the species is distributed from Bermuda and the Carolinas, south into the Gulf of Mexico and Caribbean Sea through the coast of Brazil (NOAA, 2006). In the eastern Atlantic Ocean, goliath grouper is found rarely from Senegal to Congo and the Canary Islands. They have also been found off the coast of Mexico in the eastern Pacific, including the Gulf of California to Peru (Smith, 1971; Heemstra and Randall, 1993).

Mangrove habitat is thought to be the primary habitat for juvenile goliath grouper (up to 1 m total length (TL)). Secondary and tertiary juvenile goliath grouper habitat areas include seagrass beds and oyster reefs. Adult goliath grouper occur either as solitary individuals or in groups of up to 100 fish. Resident goliath grouper are often found in significant numbers on high-relief hardbottom habitat (*e.g.,* sinkholes), artificial reefs, overhangs, bridges, piers, and shipwrecks (Heemstra and Randall, 1993). Adult goliath grouper may be found on low-relief coral reef and hardbottom habitat; however, they typically are not found there in great numbers (Heemstra and Randall, 1993).

Goliath grouper are a shallow-water species, typically found in less than 50 m of water (Heemstra and Randall, 1993); however, solitary specimens have been observed as deep as 80 m in the Gulf of Mexico and in the Atlantic Ocean off Florida (NOAA, 2006). Juveniles appear to prefer shallow estuarine waters 0 to 3 m in depth (Bullock and Smith, 1991). Larvae are pelagic, but their exact depth distribution is unknown.

The goliath grouper is a long-lived and late-maturing species that grows to an unusually large size. Bullock and Smith (1991) determined goliath grouper longevity of more than 35 years, and Smith (1971) determined their maximum weight could exceed 318 kg. Reproductive maturity is reached late (~5–6 years) and at a large size (~1 m TL; Bullock *et al.,* 1992). Goliath grouper are thought to spawn between June and October; however, spawning likely varies with geographic location. Goliath grouper are opportunistic, slow-moving predators with general diets.

Analysis of the Petition

First we evaluated whether the petition presented the information required by 50 CFR 424.14(b)(2). The petition clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; provides information regarding the status of the species over all or a significant portion of its range; and is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps.

The petition asserts that the goliath grouper warrants listing throughout its range, and as an alternative, that the continental U.S. population warrants listing under the ESA. The petitioner asserts that the continental U.S. population, ranging from North Carolina to the Gulf of Mexico, is most at risk of extinction as a result of threats described in the petition.

The petition states that the goliath grouper is becoming increasingly rare and imperiled, and that overfishing has taken a devastating toll on the species. The petition asserts that the species' biological constraints increase its susceptibility to adverse impacts from fishing, and that current regulations are not safeguarding the species from extinction. Additionally, the petition states the 2010 Deepwater Horizon oil spill event had, and continues to have, a detrimental effect on the habitat and range of the species. Thus, the petition states that at least four of the five causal factors in section 4(a)(1) of the ESA are adversely affecting the continued existence of the goliath grouper: Present and threatened destruction, modification, and curtailment of habitat or range; overutilization for commercial and recreational purposes; inadequacy of existing regulatory mechanisms; and other natural or manmade factors, particularly the biological constraints of the species' life history.

Information on Extinction Risk and Species Status

The petition cites classifications made by the IUCN, AFS, and NatureServe to support its assertion that the goliath grouper is imperiled. The IUCN classified goliath grouper as critically endangered in 2006, a status assigned to species facing an extremely high risk of extinction in the wild, based on: "An observed, estimated, inferred or suspected population size reduction of ≥80% over the last 10 years or three generations, whichever is the longer, where the reduction or its causes may not have ceased or may not be understood or may not be reversible, based on actual or potential levels of exploitation," and "a population size reduction of ≥80%, projected or suspected to be met within the next 10 years or three generations, whichever is the longer (up to a maximum of 100 years), based on actual or potential levels of exploitation" (*http://www.iucnredlist.org/apps/redlist/details/7857/0*). The background to the IUCN assessment includes fisheries-independent and fisheries-dependent

data; however, the assessment concluded that information on the overall stock status and recovery was insufficient to downgrade the previously-assigned classification of "critically endangered." The 2006 assessment notes that, "Although the IUCN survey is for the whole range of the species, in the Gulf of Mexico it looks like the population is recovering nicely. The species is still at risk in the Gulf, however, from fishing (poaching during the moratorium) and juvenile habitat loss. But in the southeastern U.S. they are not Critically Endangered" (IUCN, 2006). This conclusion about the U.S. stock is consistent with other recent evaluations conducted on the species (*e.g.,* NOAA, 2006).

In 2000, the AFS identified the goliath grouper as being "conservation dependent," which is a category for species considered to be "reduced but stabilized or recovering under a continuing conservation plan" (Musick *et al.,* 2000). The information upon which this classification is based contains a list of generalized risk factors but lacks specific information on goliath grouper's population size or trends.

The 1998 NatureServe status review for goliath grouper concluded that the species was "imperiled" (NatureServe, 1998). NatureServe's imperiled classification is given to species that are "at high risk of extinction or elimination due to very restricted range, very few populations, steep declines, or other factors." The NatureServe classification provides estimates of goliath grouper's global abundance and global short-term trend, but these estimates are outdated and/or unsubstantiated. Further, this classification does not use currently available data on population status indicating the species has been steadily recovering over the past 20 years in the United States due largely to a prohibition on goliath grouper harvest (*e.g.,* NOAA, 2006).

In summary, the source information that the cited classifications are based upon either does not include specific information or does not include current information on the extinction risk or population trends for goliath grouper throughout all or a significant portion of its range to indicate that the petitioned actions may be warranted. Additionally, in contrast to the petitioner's assertion that the U.S. population is most at risk, the IUCN assessment indicates that the goliath grouper population in the United States is recovering.

Information on Threats to the Species

We next evaluated the information in the petition and information in our files concerning the extent and severity of threats corresponding to the factors listed in section 4(a)(1) of the ESA.

Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

The petition cites declines in coral reef ecosystems; increasing water pollution from coastal development and tourism; and effects from energy development, specifically, the 2010 Deepwater Horizon oil spill event, as threats to the species. However, the petition does not provide any supporting information to indicate these generalized concerns are actually negatively affecting goliath grouper. Nor does the petition provide any information on threats to goliath grouper habitat that is located outside the range of the continental U.S. population.

The modification and destruction of goliath grouper habitat, notably the elimination of juvenile mangrove habitat, may currently have some impact on the species' abundance. Mangroves are essential fish habitat for post-larval and juvenile goliath grouper (GMFMC, 2004). Over the past 100 years, there has been a reduction in the amount of mangrove habitat acreage in Florida. In some areas, in particular southeast Florida and the Florida Keys, coastal development has dramatically reduced the amount of available mangrove habitat. The reduction of mangrove habitat, coupled with degraded water quality, may potentially have a negative impact on goliath grouper. Mangroves are abundant near the current center of abundance (Ten Thousand Islands, Florida), but have significantly declined in other areas. The destruction or modification of mangrove habitat in these areas may limit the rate at which goliath grouper become reestablished throughout their historical range, because it offers less suitable habitat for juveniles to reside. Areas outside the center of abundance (*e.g.,* southeast Florida; northwest Florida) are therefore likely dependent on adults emigrating from southwest Florida.

Of the estimated 693,360 acres of mangroves in the United States, 96 percent occur in Florida (Mendelssohn and McKee, 2000). A recent study by Ueland (2005) determined there were an estimated 512,842 acres of mangrove in the 14 southernmost coastal counties of Florida in 2000. In one of the few studies that investigated long-term changes in mangrove systems, Ueland (2005) determined that the 2000 estimate represented a 9.0 percent total loss in mangrove habitat from his 1987 estimate of 563,388 acres. In terms of total acres amongst the 14 counties encompassed within the study, Monroe County lost the largest amount of mangrove area (37,031 acres; 12.2 percent decline), while Charlotte County showed an increase of 1,229 acres (5.9 percent increase) during the 13-year period.

Though natural events such as hurricanes can result in mangrove loss, over the past six decades, habitat modification and coastal development in Florida have been the primary forces behind dramatic reductions in mangrove habitat. The Everglades has lost approximately 22 percent of mangrove/marsh habitat since 1927, primarily due to habitat modification for agricultural purposes (Foster and Smith, 2001). On Florida's east coast, the Indian River Lagoon system from St. Lucie Inlet north to Satellite Beach has less than 8,000 acres of mangroves, but only 1,900 are available as fisheries habitat because of mosquito impoundments; a total of 86 percent of the mangrove areas have been lost to fisheries since the 1940s (FL DEP, 2003). Lake Worth Lagoon near West Palm Beach has experienced an 87 percent decrease of its mangrove acreage over the past 40 years (FL DEP, 2003). Mangroves appear to have been replaced by the Australian pine and/or urbanization (FL DEP, 2003).

While habitat destruction and modification may have some impact on the abundance of the goliath grouper, it is unlikely that it presents a significant impact that would threaten or endanger the species, unless extensive juvenile habitat loss occurs near the population's center of abundance. Despite extensive habitat modification in Florida, the species has been increasing in number over the past 20 years (NOAA, 2006). The construction of artificial reefs in both the Atlantic Ocean and Gulf of Mexico during the past 25 years may have had a beneficial impact on the species by presenting additional shelter and forage opportunities for adult goliath grouper. In summary, the petition and information in our files does not constitute substantial information indicating the present or threatened destruction, modification, or curtailment of habitat or range is an extinction risk of concern for goliath grouper either throughout its range or in a significant portion of its range.

Overutilization for Commercial and Recreational Purposes

The petition states that "the primary threat to these grouper species is overfishing, both commercially and recreationally." Further, it states "these species * * * are considered overfished

in the southeastern Atlantic, Caribbean, and Gulf of Mexico." Under the MSFCMA, an "overfished" species is one where the current biomass falls short of an identified stock threshold; thus, this classification reflects the history of exploitation, not necessarily current harvest rates. A species experiencing "overfishing" is one where the current fishing mortality exceeds an identified management target; thus, this classification is a current property of the fishery. Overfishing can lead to a stock becoming overfished. The most recent Report to Congress on the Status of U.S. Fisheries (NMFS, 2009) lists goliath grouper as being overfished, but not undergoing overfishing in the Caribbean. The report also states the species is not undergoing overfishing in the South Atlantic and Gulf of Mexico, but its overfished status in those regions is unknown.

Threatened or endangered status under the ESA and overfished status under MSFCMA are based on different criteria and, thus, do not necessarily coincide. In our 2007 status review for the Atlantic white marlin (73 FR 843, January 4, 2008; *http://sero.nmfs.noaa.gov/pr/endangered%20species/pdf/2007_Atlantic_white_marlin_status_%20review.pdf*), we developed a set of species-specific population dynamics criteria to evaluate extinction risk posed by exploitation of the species in commercial and recreational fisheries. In that status review we stated that overfished and overfishing classifications do not necessarily indicate that a species may warrant listing as a threatened or endangered species because they do not necessarily have any relationship to a species' extinction risk. To present extinction risk to a species, overutilization would typically mean that a species has been or is being harvested to population levels that cannot equilibrate in response to the harvest pressure. As the harvest of goliath grouper was prohibited in the early 1990s in both the Gulf of Mexico and South Atlantic EEZ, as well as Florida, and the species has demonstrated a significant increase in abundance since that time within the continental United States, we believe overutilization does not currently present an extinction risk to the continental U.S. population.

As noted above, goliath grouper is not listed as undergoing overfishing in the South Atlantic, Gulf of Mexico, or Caribbean. Additional information indicates that the species continues to rebound within the continental United States following population declines in the 1980s and into the 1990s (NOAA, 2006). Long-term visual survey indices document increased goliath grouper abundance throughout Florida starting in the late 1990s, following implementation of harvest and possession moratoriums (SEDAR, 2010).

Model results from Porch *et al.* (2003, 2006) further support the conclusion that the goliath grouper population in the southeastern United States is recovering following the prohibition of the species' harvest. Porch *et al.* (2003, 2006) utilized a catch-free assessment model to evaluate the status of goliath grouper in U.S. waters. This model is an age-structured production model and uses known biological information regarding a species, incorporates indices of abundance and effort (if known, or a proxy), and other auxiliary information from meta-analyses of stocks with similar life history characteristics allowing for informative priors on parameters such as fishing mortality and natural mortality rates, growth curve parameters, and vulnerabilities. The catch-free model has a flexible model structure, and provides management benchmarks relative to pre-exploitation levels and projections for future years. There is no dependence upon harvest estimates as inputs for the model. The results and benchmarks are derived from a reconstruction of a population based upon biological parameters and abundance indices and the results are relative to a population assumed to be at "near virgin" levels.

The 2003 assessment estimated there was a 50 percent chance of exceeding the current MSFCMA management benchmark for this species in the southeastern United States as early as 2006, and that there was a 95 percent chance that the population might recover by 2012 (Porch *et al.,* 2003). Under more conservative assumptions on the effectiveness of the moratorium on harvest that were incorporated into the 2006 assessment, recovery would not occur by 2017 (Porch *et al.,* 2006). Or, under more optimistic assumptions on the effects of fishing pressure on younger age classes of goliath grouper, the model indicated a 70–80 percent chance of recovery by 2017 (Porch *et al.,* 2006). These upward trends in the population indicate that overutilization for commercial or recreational purposes does not currently pose an extinction risk for the species in the southeastern United States.

The petition also expresses concern over potential bycatch mortality, and states "there is a high probability that they will suffer from barotrauma (*e.g.,* the bends and hemorrhaging) and perish." However, the petition does not provide any supporting information to indicate these generalized concerns are actually negatively affecting goliath grouper. The MSFCMA defines bycatch to mean fish harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards; it does not include fish released alive under a recreational catch and release fishery management program. While barotrauma and bycatch mortality may be a cause for concern for various deep-water species, goliath grouper are a shallow-water species, and it is unlikely that barotrauma is an extinction risk of concern for goliath grouper. In fact, tagging studies have noted specific goliath grouper have been repeatedly caught and released, demonstrating a low bycatch mortality rate for this species (Eklund and Schull, 2001).

In summary, the petition and information in our files do not present substantial information indicating that overutilization is resulting in an extinction risk of concern for goliath grouper either throughout or in a significant portion of its range.

Inadequacy of Existing Regulatory Mechanisms

The petition states that existing regulatory mechanisms are inadequate to prevent endangerment or extinction of goliath grouper. While the petition notes the two decade-long harvest ban on goliath grouper, it cites studies recommending further data be collected before lifting the fishing ban.

The goliath grouper fishery expanded quickly and dramatically through the 1980s, which required the introduction of conservation and management measures for the species. The South Atlantic Fishery Management Council (SAFMC) prohibited the spearing of goliath grouper in March 1983 (SAFMC, 1983). In 1985, the state of Florida implemented an 18-inch minimum size limit for goliath grouper to help prevent the harvest of juvenile fish. However, the rapid increase in fishing effort for goliath grouper followed by a subsequent decline in catches also led to regulatory measures by the Gulf of Mexico Fishery Management Council (GMFMC) for federal waters in the Gulf of Mexico. In 1989, the GMFMC implemented a 50-inch (1,270-mm) total length minimum size limit for goliath grouper (GMFMC, 1989). This measure was originally considered conservative enough to restore the stock. However, additional information revealed that the stock was more depleted than previously thought, so in March 1990, the GMFMC prohibited all harvest and possession of goliath grouper in federal waters of the Gulf of Mexico (GMFMC, 1990). Likewise, the SAFMC prohibited

the harvest and possession of goliath grouper from federal waters off North Carolina southward through Florida in November 1990 (SAFMC, 1990).

The state of Florida followed suit and prohibited the harvest and possession of goliath grouper from state waters in 1990. Eventually, all other coastal states from North Carolina to Texas implemented regulations to prohibit the harvest or possession of goliath grouper.

The petition states the IUCN defines the species as critically endangered throughout its entire range. The IUCN, however, qualifies its assessment by stating, "Information is needed from other locations within its range, including the eastern Atlantic and eastern Pacific" (IUCN, 2006). The IUCN also notes that "Global or regional abundance of adults is unknown" (Ibid).

The petition fails to provide substantial information indicating existing regulatory mechanisms are inadequate to prevent, or are contributing to, extinction risk for goliath grouper throughout its range, in a significant portion of the range, or in the continental United States. To the contrary, the petition notes the various harvest restrictions have "yielded some signs of recovery" in the Gulf of Mexico. Available information documents that there has been a history of effective regulatory action to conserve and protect goliath grouper, which has resulted in the species' ongoing recovery and rebuilding within the continental United States (NOAA, 2006). While Brazil implemented a harvest prohibition in 2002, IUCN (2006) details that "nothing is known yet about the response to management in Brazil and data are missing on the species from many other places in its range." The petition provides no information supporting the statements of generalized threats posed by the alleged inadequacy of global regulatory measures, and we have no information in our files suggesting that this is an extinction risk of concern.

Other Natural or Manmade Factors

The petition states that goliath grouper is more susceptible to extinction due to a number of biological constraints, including a "slow rate of maturation and growth, large size, and aggregation at specific times and sites for spawning, combined with their high commercial value and value as a trophy fish, make them particularly susceptible to depletion from fishers." However, neither the petition nor information in our files suggests that current fishing pressure (*i.e.,* directed catch-and-release or incidental bycatch), including fishing or diving pressure that may potentially disrupt spawning aggregations, poses an extinction risk of concern for this species throughout its range, in a significant portion of the range, or in the continental United States. In fact, available information indicates the U.S. population has increased over the past 20 years and become re-established throughout its historical range (NOAA, 2006).

The petition also lists potential small population size of adult goliath grouper and human population growth as other natural or manmade factors contributing to goliath grouper's vulnerability, but does not provide any supporting information to indicate these generalized concerns are actually negatively affecting goliath grouper.

Therefore, we conclude that the petition and information in our files do not present substantial information to suggest that other natural or manmade factors may be causing extinction risk of concern for goliath grouper either throughout or in a significant portion of its range. We further conclude the petition and information in our files do not present substantial information to suggest that any combination of the 4(a)(1) factors discussed above may pose an extinction risk for goliath grouper that is cause for concern.

Petition Finding

Goliath grouper are found in the western Atlantic Ocean from Bermuda southward through the Gulf of Mexico and Caribbean Sea to Brazil, in the eastern Atlantic off the African coast, and in the eastern Pacific Ocean from the Gulf of California south to Peru. As noted by the petitioners, the goliath grouper is widely ranging but is most likely to occur in U.S. waters (Chuen and Huntsman, 2006). The petitioner requests the species be listed throughout its range, or alternatively that the continental U.S. population be listed. The information presented in the petition focuses on the status of the species in the U.S. waters where the petitioner asserts "* * * it is most threatened by the risk of extinction * * *." However, evidence in the petition and in our files supports the conclusion that the species is recovering in U.S. waters. The petition also fails to either present specific information on how the cited threats are affecting goliath grouper or does not incorporate current data regarding the improved status of the species. After reviewing the information contained in the petition, as well as information readily available in our files, we conclude the petition fails to present substantial scientific or commercial information indicating the petitioned action may be warranted.

References Cited

A complete list of all references is available upon request from the Protected Resources Division of the NMFS Southeast Regional Office (see **ADDRESSES**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 25, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 2011–13549 Filed 5–31–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA452

Endangered Species; File No. 15614

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Tom Savoy, Connecticut Department of Environmental Protection, Marine Fisheries, PO Box 719, Old Lyme, CT 06731, has been issued a permit to take shortnose sturgeon for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

- Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and
- Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394.

FOR FURTHER INFORMATION CONTACT: Colette Cairns or Malcolm Mohead, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On December 17, 2010, notice was published in the **Federal Register** (75 FR 78974) that a request for a scientific research permit to take shortnose sturgeon had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations

governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant is authorized to conduct a five-year scientific study determining biological and life history information on shortnose sturgeon in Connecticut waters, including the Connecticut, Thames, and Housatonic Rivers. The permit authorizes non-lethal sampling with anchored gill nets and trawls, capturing up to 500 fish annually. Each fish will be captured, weighed, measured, passive integrated transponder tagged, and sampled for genetic tissue analysis. Of those 500 fish, 225 will also have a fin ray clipped for ageing analysis, and 100 will undergo gastric lavage. A sub-set of 25 fish will be acoustic tagged internally, released, and tracked, to determine seasonal movement and habitat selection.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 23, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–13547 Filed 5–31–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision for the Barry M. Goldwater Range East Range Enhancements Final Environmental Impact Statement

ACTION: Notice of Availability (NOA) of a Record of Decision (ROD).

SUMMARY: On May 20, 2011, the United States Air Force signed the ROD for the Barry M. Goldwater Range East Range Enhancements Final Environmental Impact Statement. The ROD states the Air Force decision to implement six of the 10 proposals analyzed in the Environmental Impact Statement. These six proposals include: Proposal 1, Developing a sensor training area; Proposal 4, developing a new target for live air to-to-ground missiles within the East tactical range; Proposal 6, Converting a portion of Manned Range 3 into a helicopter gunnery range; Proposal 8, constructing a new taxiway and air traffic control tower at Gila Bend Air Force Auxilary Field; and proposal 10, Excavating, stockpiling, and using sand and gravel resources on the BMGR East. While no decision has been made for the remaining four proposals at this time, the Air Force anticipates issuing one or more RODs for these independent proposals at a future date.

The decision was based on matters discussed in the Final Environmental Impact Statement (EIS), inputs from the public and regulatory agencies, and other relevant factors. The Final EIS was made available to the public on November, 26, 2010 through a NOA in the **Federal Register** (Volume 75, Number 227, Page 72824) with a wait period that ended on December 27, 2010. The ROD documents only the decision of the Air Force with respect to the proposed Air Force actions analyzed in the Final EIS. Authority: This NOA is published pursuant to the regulations (40 CFR part 1506.6) implementing the provisions of the NEPA of 1969 (42 USC. 4321, *et seq.*) and the Air Force's Environmental Impact Analysis Process (EIAP) (32 CFR Parts 989.21(b) and 989.24(b)(7)).

FOR FURTHER INFORMATION CONTACT: Lisa McCarrick, 56 RMO/ESMP 7224 N 139th Dr, Bldg 302, Luke AFB, AZ 85309, 623–856–9475.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2011–13459 Filed 5–31–11; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Printing and Publishing Activities, OMB Control Number 1910–0100. The proposed collection of this data is a Congressional Joint Committee on Printing requirement: The Department reports on information gathered and compiled from its facilities nation-wide on the usage of in-house printing and duplicating activities as well as all printing production from external Government Printing Office (GPO) and GPO vendors.

DATES: Comments regarding this collection must be received on or before July 1, 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, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503

and to:

Dallas Woodruff, U.S. Department of Energy, Lead Printing Specialist, MA–42, 1000 Independence Ave., SW., Washington, DC 20585, or by fax at (202) 586–5460 or by e-mail at *dallas.woodruff@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Dallas Woodruff at the address listed above.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1910–0100; (2) *Information Collection Request Title:* Department of Energy Printing and Printing and Publishing Activities; (3) *Type of Request:* Renewal; (4) *Purpose:* Collection of this data is a Congressional Joint Committee on Printing requirement: The Department reports on information gathered and compiled from its facilities nation-wide on the usage of in-house printing and duplicating activities as well as all printing production from external Government Printing Office (GPO) and GPO vendors; (5) *Annual Estimated Number of Respondents:* 160; (6) *Annual Estimated Number of Total Responses:* 800; (7) *Annual Estimated Number of Burden Hours:* 1,570; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* No costs associated with record keeping.

Statutory Authority: This information is reported to the congressional Joint Committee on Printing pursuant to its regulations. Joint Committee on Printing, Government Printing and Binding Regulations, Title IV, Rules 48–55 (Feb. 1990), in S. Pub. No. 109–21, 101st Cong., 2d Sess., at 27–29 (1990).

Issued in Washington, DC, on May 24, 2011.

Dallas Woodruff,

Team Lead Printing Specialist, Office of Administrative Management and Support, Printing Team.

[FR Doc. 2011–13508 Filed 5–31–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, June 23, 2011, 6 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Reinhard Knerr, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6825.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda.
- Deputy Designated Federal Officer's Comments.
- Federal Coordinator's Comments.
- Liaisons' Comments.
- Administrative Issues:
  - Review Work Plan,
  - Recognize Departing Board Members.
- Subcommittee Chairs' Comments.
- Public Comments.
- Final Comments.
- Adjourn.

Breaks Taken As Appropriate

Public Participation: The EM SSAB, Paducah, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Reinhard Knerr as soon as possible in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Reinhard Knerr at the telephone number listed above. Requests must be received as soon as possible prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Reinhard Knerr at the address and phone number listed above. Minutes will also be available at the following *Web site: http://www.pgdpcab.energy.gov/2011Meetings.html.*

Issued at Washington, DC on May 24, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–13509 Filed 5–31–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–481–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Application

On May 13, 2011, Southern Star Central Gas Pipeline, Inc. (Southern Star) filed with the Federal Energy Regulatory Commission (Commission) an application under section 7(c) of the Natural Gas Act and the Rules and Regulations of the Commission's Regulations for authority to expand the existing certificated boundary and buffer zone at Southern Star's existing Alden Gas Storage Field located in Rice County, Kansas. The expansion would further the integrity and protection of the gas storage field. The current operational parameters and capabilities and certificated service levels to customers will not be affected, as more fully detailed in the Application. Southern Star requests that the Commission issue all required authorizations by October 1, 2011.

Questions concerning this application may be directed to David N. Roberts, Manager, Regulatory Affairs, 4700 Highway 56, Owensboro, Kentucky 42301, by calling 270–852–4654 or by e-mailing *david.n.roberts@sscgp.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.fere.gov.* Persons unable to file electronically should submit an original and seven 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 June 14, 2011.

Dated: May 24, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–13474 Filed 5–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3418–001.
Applicants: Xoom Energy, LLC.
Description: Xoom Energy, LLC submits tariff filing per 35.17(b): Amended Xoom Energy, LLC Rate Schedule FERC No. 1 to be effective 5/23/2011.
Filed Date: 05/10/2011.
Accession Number: 20110510–5125.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 31, 2011.

Docket Numbers: ER11–3542–000.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas & Electric Company submits Annual filing of revised cost and accruals for post-employment benefits other than pensions.
Filed Date: 05/10/2011.
Accession Number: 20110510–0205.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 31, 2011.

Docket Numbers: ER11–3543–000.
Applicants: Allegheny Energy Supply Company, LLC.
Description: Allegheny Energy Supply Company, LLC submits tariff filing per 35: Allegheny Energy Supply Docket Nos. ER11–2479 *et al.* Compliance Filing to be effective 1/1/2011.
Filed Date: 05/10/2011.
Accession Number: 20110510–5120.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 31, 2011.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA11–1–000.
Applicants: Cabazon Wind Partners, LLC, Whitewater Hill Wind Partners, LLC.
Description: Cabazon Wind Partners, LLC, *et al.* Land Acquisition Report.
Filed Date: 05/10/2011.
Accession Number: 20110510–5139.
Comment Date: 5 p.m. Eastern Time on Tuesday, May 31, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(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.

Dated: May 11, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–13461 Filed 5–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER09–411–007.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc., Compliance Filing Proposing Revisions to the Open Access, Transmission Energy and Operating Reserve Markets Tariff.
File Date: 05/23/2011.
Accession Number: 20110523–5155.
Comment Date: 5 p.m. Eastern Time on Monday, June 13, 2011.

Docket Numbers: ER10–3125–002; ER10–3102–002; ER10–3100–002;ER10–3107–002; ER10–3109–002.
Applicants: Effingham County Power, LLC, Walton County Power, LLC, Washington County Power, LLC, AL Sandersville, LLC, MPC Generating LLC.
Description: Supplement to Notice of Non-Material Change in Status of AL Sandersville, LLC, *et al.*
File Date: 05/24/2011.
Accession Number: 20110524–5071.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 14, 2011.

Docket Numbers: ER11–3084–001.
Applicants: The Detroit Edison Company.
Description: The Detroit Edison Company submits tariff filing per 35: Affiliate Restrictions to be effective 5/23/2011.
File Date: 05/23/2011.
Accession Number: 20110523–5090.
Comment Date: 5 p.m. Eastern Time on Monday, June 13, 2011.

Docket Numbers: ER11–3097–001.
Applicants: DTE Energy Trading, Inc.
Description: DTE Energy Trading, Inc. submits tariff filing per 35: Affiliate restrictions to be effective 5/23/2011.
File Date: 05/23/2011.
Accession Number: 20110523–5094.
Comment Date: 5 p.m. Eastern Time on Monday, June 13, 2011.

Docket Numbers: ER11–3147–002.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.17(b): J143 GIA Amendment, to be effective 3/19/2011.
File Date: 05/23/2011.
Accession Number: 20110523–5069.
Comment Date: 5 p.m. Eastern Time on Monday, June 13, 2011.

Docket Numbers: ER11–3618–000.
Applicants: Florida Power & Light Company.
Description: Florida Power and Light submits Rate Schedule FERC 130, the Long-Term Agreement to Provide Capacity and Energy.
File Date: 05/20/2011.
Accession Number: 20110523–0201.
Comment Date: 5 p.m. Eastern Time on Friday, June 10, 2011.

Docket Numbers: ER11–3622–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 2208 Ensign Wind, LLC GIA to be effective 4/22/2011.
File Date: 05/23/2011.
Accession Number: 20110523–5132.
Comment Date: 5 p.m. Eastern Time on Monday, June 13, 2011.

Docket Numbers: ER11–3623–000.
Applicants: Stuyvesant Energy LLC.
Description: Stuyvesant Energy LLC submits tariff filing per 35.13(a)(2)(iii: Notice of Succession to be effective 8/1/2011.
File Date: 05/23/2011.
Accession Number: 20110523–5133.
Comment Date: 5 p.m. Eastern Time on Monday, June 13, 2011.

Docket Numbers: ER11–3624–000.
Applicants: Midwest Independent Transmission System Operator, Inc., MidAmerican Energy Company.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: MidAmerican-MEAN Denver SA 2338 WDS to be effective 6/1/2011.
File Date: 05/24/2011.
Accession Number: 20110524–5054.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 14, 2011.

Docket Numbers: ER11–3626–000.
Applicants: Golden Spread Electric Cooperative, Inc.
Description: Golden Spread Electric Cooperative, Inc. submits tariff filing per 35.13(a)(2)(iii: Revised Wholesale Power Contracts Filing to be effective 5/24/2011.
File Date: 05/24/2011.
Accession Number: 20110524–5058.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 14, 2011.

Docket Numbers: ER11–3627–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: Revisions to Attachment AE—Out of Merit Energy to be effective 7/24/2011.
File Date: 05/24/2011.
Accession Number: 20110524–5072.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 14, 2011.

Docket Numbers: ER11–3628–000.
Applicants: Nevada Power Company.
Description: Nevada Power Company Cancellation of FERC Electric Rate Schedule No. 32—Interconnection Agreement with Public Service of New Mexico.
File Date: 05/24/2011.
Accession Number: 20110524–5089.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 14, 2011.

Docket Numbers: ER11–3629–000.
Applicants: Nevada Power Company.
Description: Nevada Power Company Cancellation of FERC Electric Rate Schedule No. 73—Interconnection Agreement with California Department of Water Resources.
File Date: 05/24/2011.
Accession Number: 20110524–5090.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 14, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(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.

Dated: May 24, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–13465 Filed 5–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3635–000.
Applicants: Hatch Solar Energy Center I, LLC.
Description: Hatch Solar Energy Center I, LLC submits tariff filing per 35.12: Hatch Solar Energy Center I, LLC MBR Application to be effective 5/26/2011.
Filed Date: 05/25/2011.
Accession Number: 20110525–5028.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 15, 2011.

Docket Numbers: ER11–3636–000.
Applicants: Midwest Independent Transmission System Operator, Inc., MidAmerican Energy Company.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): MidAmerican-MEAN Sgt Bluff WDS SA 2339 to be effective 6/1/2011.
Filed Date: 05/24/2011.
Accession Number: 20110524–5149.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 14, 2011.

Docket Numbers: ER11–3637–000.
Applicants: Carolina Power & Light Company, PJM Interconnection, L.L.C.
Description: Carolina Power & Light Company submits tariff filing per 35.13(a)(2)(iii): Revisions to the PJM–Progress JOA Article 13 to be effective 6/1/2011.
Filed Date: 05/25/2011.
Accession Number: 20110525–5053.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 15, 2011.

Docket Numbers: ER11–3638–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits an informational filing of its Annual Update of transmission service rates pursuant to the APS Open Access Transmission Tariff.
Filed Date: 04/19/2011.
Accession Number: 20110419–5200.
Comment Date: 5 p.m. Eastern Time on Monday, June 6, 2011.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR11–2–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of the North American Electric Reliability Corporation for Approval of Compliance Monitoring and Enforcement Agreement Between Northeast Power Coordinating Council, Inc. and Western Electricity Coordinating Council and Related Amendments.
Filed Date: 05/25/2011.
Accession Number: 20110525–5063.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 15, 2011.

Docket Numbers: RR11–3–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of North American Electric Reliability Corporation for Approval of Amendments to Delegation Agreement with Northeast Power Coordinating Council, Inc.
Filed Date: 05/25/2011.
Accession Number: 20110525–5064.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 15, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 25, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–13466 Filed 5–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–2117–000.
Applicants: Questar Pipeline Company.
Description: Questar Pipeline Company submits tariff filing per 154.203: FERC Audit Recommended Filing: Off System Services to be effective 7/1/2011.
Filed Date: 05/20/2011.
Accession Number: 20110520–5052.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 01, 2011.

Docket Numbers: RP11–2118–000.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline LLC submits tariff filing per 154.203: REX Cost and Revenue Study to be effective N/A.

Filed Date: 05/20/2011.

Accession Number: 20110520–5082.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 01, 2011.

Docket Numbers: RP11–2119–000.

Applicants: Hardy Storage Company, LLC.

Description: Hardy Storage Company submits its Annual Penalty Revenue Crediting Report for the period April 1, 2010 through March 31, 2011.

Filed Date: 05/20/2011.

Accession Number: 20110520–5096.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 01, 2011.

Docket Numbers: RP11–2120–000.

Applicants: Transwestern Pipeline Company, LLC.

Description: Transwestern Pipeline Company, LLC submits tariff filing per 154.203: TW Baseline Tariff Compliance Filing—Maps to be effective 7/30/2010.

Filed Date: 05/20/2011.

Accession Number: 20110520–5107.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 01, 2011.

Docket Numbers: RP11–2121–000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits tariff filing per 154.204: 20110523 Aron Non-Conforming/Negotiated Rate PDD to be effective 6/23/2011.

Filed Date: 05/23/2011.

Accession Number: 20110523–5028.

Comment Date: 5 p.m. Eastern Time on Monday, June 06, 2011.

Docket Numbers: RP11–2122–000.

Applicants: Northern Natural Gas Company.

Description: Limited Waiver of Northern Natural Gas.

Filed Date: 05/23/2011.

Accession Number: 20110523–5038.

Comment Date: 5 p.m. Eastern Time on Monday, June 06, 2011.

Docket Numbers: RP11–2123–000.

Applicants: Cheyenne Plains Gas Pipeline Company, L.

Description: Cheyenne Plains Gas Pipeline Company, L.L.C. submits tariff filing per 154.204: TSA Update (Augustus Assignment) to be effective 4/1/2011.

Filed Date: 05/23/2011.

Accession Number: 20110523–5050.

Comment Date: 5 p.m. Eastern Time on Monday, June 06, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214) on or before 5 p.m. Eastern time on the specified Comment Date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(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.

Dated: May 24, 2011.

Nathaniel J. Davis, Sr.

Deputy Secretary.

[FR Doc. 2011–13462 Filed 5–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–3634–000]

KES Kingsburg, L.P.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of KES Kingsburg, L.P.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 14, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail

FERCOnlineSupport@ferc.gov. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 25, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–13467 Filed 5–31–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–3620–000]

Lyonsdale Biomass LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Lyonsdale Biomass LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 13, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email 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.

Dated: May 24, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–13464 Filed 5–31–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0473; FRL–9313–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Pesticide Program Public Sector Collections (FIFRA sections 18 & 24(c)); EPA ICR No. 2311.01, OMB Control No. 2070–New. This is a request to combine two currently approved collections to increase clarity and streamline review of the collection activities and related burdens. The ICR, which is abstracted below, describes the nature of the information collection activities and related estimated burden and cost.

DATES: Additional comments may be submitted on or before July 1, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OPP–2008–0473, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by *mail to:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by *mail to:* 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: Cameo G. Smoot, Field and External Affairs Division, Office of Pesticide Programs, 7506P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 703–305–5454; *fax number:* 703–305–5884; *e-mail address: smoot.cameo@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 November 5, 2008 (73 FR 65846), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no public 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 No. EPA–HQ–OPP–2008–0473 which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 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 OPP Regulatory Public Docket is (703) 305–5805.

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: Pesticide Program Public Sector Collections (FIFRA sections 18 & 24(c)).

ICR Numbers: EPA ICR No. 2311.01, OMB Control No. 2070–New.

ICR Status: This ICR reflects the combination of the following two currently approved ICRs: "Applications

and Summary Report for Emergency Exemption" (EPA ICR No. 0596.08, OMB Control No. 2070–0032), which is scheduled to expire July 31, 2012, and "Notice of Pesticide Registration by States to Meet a Special Local Need" (EPA ICR No.0595.08, OMB Control No. 2070–0055), which is scheduled to expire March 31, 2013.

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, are 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 for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR covers the paperwork burden associated with pesticide registration requests made by States, U.S. Territories, or Federal Agencies. Specifically, this ICR covers emergency requests for exemptions to allow for an unregistered use of a pesticide, and requests by States to register a pesticide to meet a special local need (SLN). Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to process and grant emergency exemptions to States and Federal agencies to allow an unregistered use of a pesticide for a limited time if EPA determines that emergency conditions exist including granting unregistered pesticide use exemptions for public health and quarantine reasons. Section 24(c) of FIFRA authorizes the States to register additional uses of federally registered pesticides for distribution and use within the State to meet a SLN.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 49,500 hours annually for State government "applicants" for the FIFRA Section 18 program and is estimated to average 36.036 hours annually for applicants under the FIFRA Section 24(c). The new ICR reflects a combined total of 85,536 burden hours annually. Burden is defined at 5 CFR 1320.3(b).

Estimated Number of Respondents: 1,193.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 85,536 hours.

Estimated Total Annual Cost: $4,874,015. This ICR does not involve any capital investment or maintenance and operational costs.

Changes in the Estimates: The combination of the currently approved ICRs is not expected to result in an overall decrease or increase of the 85,536 hours in the total estimated combined respondent burden that is currently approved by OMB.

Dated: May 24, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–13405 Filed 5–31–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R9–SFUND–2010–0506; FRL–9313–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Palos Verdes Shelf Seafood Consumption Survey (New)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Comments must be submitted on or before July 1, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–R9–SFUND–2010–0506, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by email to *white.carmen@epa.gov,* or by mail to: Palos Verdes Shelf Seafood Consumption Survey, U.S. Environmental Protection Agency, Mailcode: SFD–8–2, 75 Hawthorne St., San Francisco, CA 94105, and (2) OMB by mail to: 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: Carmen White, Region 9 Superfund Division, SFD–8–2, Environmental Protection Agency, 75 Hawthorne St., San Francisco, CA 94105; telephone number: 415–972–3010; fax number: 415–947–3526; email address: *white.carmen@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 August 10, 2010 (75 FR 48324), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received 1 comment during the comment period, which is addressed in the ICR. 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 No. EPA–R9–SFUND–2010–0506, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Superfund Records Circulation Desk, 95 Hawthorne St., Room 405, San Francisco, CA 94105. The Superfund Records Center Circulation Desk is open from 8 a.m. to 5 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Circulation Desk is 415–820–4700.

Use EPA's electronic docket and comment system at *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: Palos Verdes Shelf Seafood Consumption Survey (New).

ICR numbers: EPA ICR No. 2399.01, OMB Control No. 2009–NEW.

ICR Status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR

part 9, are 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 Palos Verdes Shelf Superfund site (PV Shelf) is a large sediment deposit off the coast of Los Angeles that contains approximately 110 tons of DDT and 10 tons of PCBs. The contaminants are in sediment too deep for direct human contact; however, fish in the PV Shelf area bioaccumulate the contaminants, exposing people who consume them to these hazardous substances. The objective of this information collection request (ICR) is to gather quantitative data that will provide estimates of angler seafood consumption in the PV Shelf area that can be used in EPA's outreach and education program and in human health risk assessments. The survey will (1) Determine the fish species that are being caught and consumed at the highest rates, (2) identify demographic and ethnic subgroups within the general fishing population of the PV Shelf area that may be consuming large quantities of contaminants through selection, quantity, and/or cooking method of fish species, (3) gather quantitative data that can be used to characterize exposures of the general fishing population of the PV Shelf area to DDTs and PCBs from consumption of fish and shellfish caught in the PV Shelf area, and (4) gather sufficient information to determine whether the existing human health risk assessment needs to be revised before its use in a final Record of Decision. Anglers will be asked to answer about a dozen questions regarding their fishing habits. Participation is voluntary and confidential. Demographic data will be collected; however, no personal identification information will be collected.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 15 minutes 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: Fisherman: Individual anglers found fishing in the survey area, defined as the coastal region from Santa Monica Pier to Seal Beach Pier.

Estimated Number of Respondents: 1,392.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 90.

Estimated Total Annual Cost: $0.

Changes in the Estimates: This is a new one-time survey, thus there is no currently approved burden.

Dated: May 25, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–13578 Filed 5–31–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0173; FRL–8875–8]

Cryolite Registration Review Docket; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of March 30, 2011 concerning the availability of multiple registration review dockets for public comment, including cryolite. This document extends the comment period for the cryolite registration review docket only, which was due to expire on May 31, 2011, until July 5, 2011.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPP–2011–0173, must be received on or before July 5, 2011.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of March 30, 2011.

FOR FURTHER INFORMATION CONTACT: Eric Miederhoff, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 347–8028; *e-mail address: miederhoff.eric@epa.gov.*

SUPPLEMENTARY INFORMATION: This document extends the public comment period established in the **Federal Register** of March 30, 2011 (76 FR 17646) (FRL–8868–9). In that document, the Agency announced the availability of multiple registration review dockets for public comment, including cryolite. EPA is hereby extending the comment period for the cryolite registration review docket only until July 5, 2011.

To submit comments, or access the docket, please follow the detailed instructions as provided under **ADDRESSES** in the March 30, 2011 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Cryolite, Pesticides and pests.

Dated: May 25, 2011.

Peter Caulkins,

Acting Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011–13584 Filed 5–26–11; 4:15 pm]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0306; FRL–8873–8]

Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 of Unit II., pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows an August 25, 2010 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II. to voluntarily cancel these product registrations. In the August 25, 2010 notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 180-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency received comments on the notice but these comments were exclusively on the public health mosquitocide uses. Consequently, the public health pesticide products

containing resmethrin have been removed from this final cancellation order and will be addressed separately from other resmethrin products. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective June 1, 2011.

FOR FURTHER INFORMATION CONTACT: Bonnie Adler, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 308–8523; *fax number:* (703) 308–8090; *e-mail address: adler.bonnie@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. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0306. 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 Office of Pesticide Programs (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.

II. What action is the agency taking?

This notice announces the cancellation, as requested by registrants, of 121 products registered under FIFRA section 3. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

Registration No.	Product name	Chemical
000004–00312	Houseplant Helper	Resmethrin.
000004–00337	Bonide Insect Fog	Resmethrin.
000004–00373	Bonide Flying and Crawling Insect Spray	Resmethrin, Piperonyl Butoxide, Pyrethrins.
000004–00418	Bonide Pressurized Spray Insecticide 0.25%	Resmethrin.
000239–02476	Othro Systemic Rose & Floral Spray	Resmethrin, Acephate, Triforine
000419–00178	Burgess Insect Fog Fogging Insecticide with Pyrethroid	Resmethrin.
000432–00555	SBP–1382 Insecticide 4.22 MF Solvent Dilutable Concentrate Formula I.	Resmethrin.
000432–00595	SBP–1382 Insecticide Concentrate, 40% Formula I	Resmethrin.
000432–00596	SBP–1382 Insecticide Concentrate, Dilutable Concentrate Formula I.	Resmethrin.
000432–00634	Respond with SBP–1382 Liquid Insecticide Spray 0.5% Formula III.	Resmethrin.
000432–00635	SBP–1382 3% Multipurpose Spray	Resmethrin.
000432–00719	SCOURGE Insecticide with SPB–1382/PBO 1.5 + 4.5% Formula II.	Resmethrin, Piperonyl Butoxide.
000432–01097	SYNTHRIN 40% Mosquito Formulation	Resmethrin.
000432–01100	PY–SY Concentrate	Resmethrin, Pyrethrins.
000432–01135	Synthrin .5% Liquid	Resmethrin.
000432–01140	Synthrin Plus Pyrenone 415 M.A.G.C	Resmethrin, Piperonyl Butoxide, Pyrethrins.
000432–01167	Turbicide Pest Control System with Synthrin Butacide	Resmethrin, Piperonyl Butoxide.
000432–01246	Aqua-SCOURGE	Resmethrin, Piperonyl Butoxide.
000498–00116	Chase-MM Flying Insect Killer Formula 2	Resmethrin, d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-one.
000498–00117	Chase-MM House and Garden Insect Killer Formula 3	Resmethrin, d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-one.
000498–00142	Spray PAK Flea and Tick Killer for Cats & Dogs with Deodorant.	Resmethrin.
000655–00778	PRENTOX Resmethrin 3%	Resmethrin.
000655–00779	PRENTOX Resmethrin 0.5% RTU	Resmethrin.
000655–00787	PRENTOX Resmenthin EC3	Resmethrin.
001543–00008	Absorbine Supershield II Fly Repellent	Resmethrin, Butoxypolypropylene glycol.
001543–00009	Absorbine Concentrated Fly Repellent	Resmethrin, Butoxypolypropylene glycol.
002724–00527	SPEER Home and Garden Pressurized Spray	Resmethrin, d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-one.
003862–00080	TERMINATOR	Resmethrin.
005481–00154	SBP–1382—2 E. C	Resmethrin.
007056–00180	CSA Aerosol Insecticide Formula Seven	Resmethrin.
008536–00031	Premium Grade Card-O-SectT #25	Resmethrin.
008536–00032	NE–1 Insecticide	Resmethrin.
008536–00034	Cardinal 3% ULV Insecticide	Resmethrin.
028293–00095	Unicorn Thermfog RTU	Resmethrin.
028293–00100	Unicorn Wasp & Hornet Killer	Resmethrin.

TABLE 1—PRODUCT CANCELLATIONS—Continued

Registration No.	Product name	Chemical
028293–00107	Unicorn Liquid Insect Killer No. 2	Resmethrin.
028293–00152	Unicorn Flea & Tick Spray IV	Resmethrin, d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-one.
040391–00004	Resmethrin Insect Spray	Resmethrin.
040391–00005	AUTO FOG–5	Resmethrin.
040391–00011	AUTO FOG–10	Resmethrin.
040391–00012	AUTO FOG–30	Resmethrin.
044446–00008	Duel Flying & Crawling Insect Killer	Resmethrin.
044446–00019	HAWK Thermfog	Resmethrin.
045385–00027	Fogging Insecticide	Resmethrin.
045385–00078	CENOL Mill Spray with SBP–1382	Resmethrin.
045385–00080	CENOL Kill Quick 2% Emulsifiable Concentrate	Resmethrin.
045385–00081	CENOL Liquid House Plant Insecticide	Resmethrin, Piperonyl Butoxide, Pyrethrins.
046579–00002	Resmethrin 5 Contact and Space Spray	Resmethrin.
046579–00009	Resmethrin 1 Contact and Space Spray	Resmethrin.
046579–00010	Resmethrin ULV 3–9 Multipurpose Spray	Resmethrin, Piperonyl Butoxide.
046579–00011	Resmethrin 5–1.5 Contact and Space Spray	Resmethrin, Piperonyl Butoxide.
046579–00012	Resmethrin ULV 3 Multipurpose Spray	Resmethrin.
046813–00061	Wasp & Hornet Killer II	Resmethrin.
047000–00079	Flyers Insecticide	Resmethrin, d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-one.
047000–00083	Freez-Kill	Resmethrin.
047000–00099	Flyer's Insecticide	Resmethrin, d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-one.
047000–00132	Wasp & Hornet Insect Bomb	Resmethrin.
048668–00004	PPP Flea and Tick Shampoo	Resmethrin.
048668–00005	PPP Flea & Tick Spray	Resmethrin.
053883–00147	Commercial Fogging Spray	Resmethrin.
067517–00013	Space Mist Insecticide	Resmethrin.
073049–00078	SBP–1382 Concentrate 40	Resmethrin.
073049–00079	SBP–1382 Insecticide Concentrate 15%	Resmethrin.
073049–00080	SBP–1382 Pressurized Wasp & Hornet Spray 0.15%	Resmethrin.
073049–00081	SBP–1382 Aqueous Pressurized Spray Insecticide 0.50%	Resmethrin.
073049–00082	SBP–1382 Insecticide Aqueous Pressurized Spray 0.25%	Resmethrin.
073049–00083	SBP–1382 Insecticide Aqueous Pressurized 0.35% for House & Garden.	Resmethrin.
073049–00084	Your Brand SBP–1382 Insecticide Spray 0.10	Resmethrin.
073049–00085	SBP–1382/Bioallethrin Aqueous Pressurized Spray	Resmethrin, d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-one.
073049–00087	SBP–1382 Bioallethrin Insecticide Conc. 10%–7.5% FORMULA I.	Resmethrin.
073049–00088	SBP–1382 Aqueous Press Spray Insect. 0.25/House & Garden.	Resmethrin.
073049–00089	SBP–1382 Yard and Patio Outdoor Fogger	Resmethrin.
073049–00090	SBP–1382 Oil Base Insecticide 0–20%	Resmethrin.
073049–00091	Bioresmethrin Liquid Insecticide Spray 0.25% Formula I	Resmethrin.
073049–00092	Your Brand SBP–1382/Bioallethrin (.20%+.125%) Aqueous Press. Spray for H&G.	Resmethrin, S-Bioallethrin.
073049–00095	SBP–1382/Bioallethrin Insecticide Concentrate 10%–6.25% Formula I.	Resmethrin, S-Bioallethrin
073049–00097	SBP–1382 0.35% Space and Residual Aqueous Pressurized Spray.	Resmethrin.
073049–00098	SBP–1382 Insecticide Concentrate 12% Formula I with Residual Activity.	Resmethrin.
073049–00100	SBP–1382 Insecticide Concentrate 12.5% Formula I	Resmethrin.
073049–00101	SBP–1382 T.E.C. 6%	Resmethrin.
073049–00102	SBP–1382/Bioallethrin Aqueous Pressurized Spray (PD 6.5)	Resmethrin, d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-one.
073049–00103	SBP–1382/Bioallethrin Insecticide Concentrate 8%–16% Formula I.	Resmethrin, S-Bioallethrin.
073049–00106	SBP–1382 Insecticide Transparent Emulsion Spray 0.35%	Resmethrin.
073049–00107	ULTRATEC Insecticide W/SPB–1382 Tran. Emul. Dil. Conc. 2%.	Resmethrin.
073049–00108	SBP–1382 Aqueous Pressurized Spray Insecticide 0.25%	Resmethrin.
073049–00109	SBP–1382 Residual Aqueous Presurized Ant and Roach Spray 0.35%.	Resmethrin.
073049–00110	SBP–1382 Insecticide Transparent Emulsion Spray 0.25%	Resmethrin.
073049–00111	SBP–1382 Liquid Spray 0.50%	Resmethrin.
073049–00112	SBP–1382 Liquid Insecticide Spray 0.5% Formula I	Resmethrin.
073049–00113	Vectrin Four-Plus-One	Resmethrin, Piperoyl Butoxide, Pyrethrins.
073049–00131	SBP–1382 Insecticide Emulsifiable Concentrate 26%	Resmethrin.

TABLE 1—PRODUCT CANCELLATIONS—Continued

Registration No.	Product name	Chemical
073049–00132 ..	SBP–1382 Insecticide Emulsfiable 26% Formula I For Re-packaging Use.	Resmethrin.
073049–00133 ..	SBP–1382 Concentrate 16% Formula III	Resmethrin.
073049–00134 ..	SBP–1382 Insecticide Concentrate, 40% Formula II	Resmethrin.
073049–00135 ..	SBP–1382/Esbioallethrin/P.B.O Insecticide Aq. Press Spray 0.20% + 0.10% +.	Resmethrin, Piperoyl Butoxide, d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-one.
073049–00140 ..	Crossfire Concentrate 1 W/SBP–1382/Esbioth./Pip.But. 8.34%-4.17%-16.67% For.I.	Resmethrin, Piperoyl Butoxide, d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-one.
073049–00142 ..	SBP–1382 Oil Base Insecticide 0.20% Formula III	Resmethrin.
073049–00143 ..	SBP–1382 Liquid Insecticide Spray 0.25% Formula III	Resmethrin.
073049–00144 ..	SBP–1382 Insecticide Press. Spray 0.25% Formula III for Wasps & Hornet.	Resmethrin.
073049–00148 ..	SBP–1382/Esbiothrin/P.B. Insecticide Conc. 3%–4.5%–18% Formula II.	Resmethrin, Piperoyl Butoxide, d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-one.
073049–00164 ..	Tetralate Butacide (15–7.5–15) W–B Concentrate	Resmethrin, Tetramethrin, Piperoyl Butoxide.
073049–00165 ..	Tetralate-Butacide Insect Killer WBA N109	Resmethrin, Tetramethrin, Piperoyl Butoxide.
073049–00190 ..	SBP–1382/PYR./P.B.O. Transparent Emuls. Spray 0.08 + 0.02 + 0.02%.	Resmethrin, Piperoyl Butoxide, Pyrethrins.
073049–00206 ..	Blanco 0.2 Liquid Insecticide Spray	Resmethrin.
073049–00207 ..	Ford's SBP–1382 Insecticide Transparent Emulsion Spray 0.25%.	Resmethrin.
073049–00208 ..	CSA House and Garden Spray	Resmethrin.
073049–00209 ..	Ford's Commercial Spray	Resmethrin.
073049–00230 ..	NIA 17370 Insecticide Spray 0.05	Resmethrin.
073049–00231 ..	Synthrin Aqueous Pressurized Spray Insecticide 0.50	Resmethrin.
073049–00232 ..	Synthrin House and Garden Insecticide Spray 0.25%	Resmethrin.
073049–00233 ..	Tetralate 25–10.6 WB	Resmethrin, Tetramethrin.
073049–00234 ..	Tetramethrin 2.5 FMC 17370 1.06 DWB Concentrate	Resmethrin, Tetramethrin.
073049–00255 ..	Tetralate Multipurpose Insect Killer	Resmethrin, Tetramethrin.
073049–00259 ..	Tetralate 2.0–0.44 WB	Resmethrin, Tetramethrin.
073049–00260 ..	Tetramethrin 26.64 NIA 17370 5.85 WB Concentrate	Resmethrin, Tetramethrin.
073049–00262 ..	Tetralate General Purpose 0.25%–0.25% Insect Killer	Resmethrin, Tetramethrin.
073049–00263 ..	Tetralate 2.5–2.5 WB	Resmethrin, Tetramethrin.
073049–00264 ..	Tetralate 16.670–7.0655	Resmethrin, Tetramethrin.
073049–00265 ..	Tetralate 20.84–20.84 W.B.	Resmethrin, Tetramethrin.
073049–00276 ..	Synthrin House and Garden Insecticide 0.25%	Resmethrin.
073049–00357 ..	SBP–1382 Micro-Min Insecticide Spray 0.5% with Mineral Oil	Resmethrin.
073049–00358 ..	SBP–1382 Insecticide Concentrate 3%	Resmethrin.
073049–00372 ..	Synthrin Technical with Antioxidant Insecticide	Resmethrin.
073049–00381 ..	Exterm-A–Vape	Resmethrin.
074621–00002 ..	Bug Stomper 4–3	Resmethrin, d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-one.
081038–00001 ..	Skeet-Daddle Fogging Insecticide	Resmethrin.
082277–00001 ..	RG Vaporizing Aerosol	Resmethrin.
FL910017	SBP–1382 Insecticide 40 MF Solvent Dil. Conc. Form. 1	Resmethrin.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 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 Table 1 of this unit.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS

EPA Company No.	Company name and address
000004	Bonide Products, Inc., Agent Registrations By Design, Inc., P.O. Box 1019, Salem, VA 24153–3805.
000239	The Scotts Company, 14111 Scottslawn Rd., Marysville, OH 43041.
000419	CTX Cenol, 7210 Red Rd., Suite 206A, Miami, FL 33143.
000432	Bayer Environmental Science, P.O. Box 12014, Research Triangle Park, NC 27709.
000498	Chase Products Co., P.O. Box 70, Maywood, IL 60153.
000655	Prentiss, Inc., 3600 Mansell Rd, Suite 350, Alpharetta, GA 30022.
001543	W.F. Young, Inc., 302 Benton Dr., East Longmeadow, MA 01028.
002724	Wellmark International, 1501 E. Woodfield Rd, Suite 200, West Schaumburg, IL 60173.
003862	ABC Compounding Co., Inc., P.O. Box 16247, Atlanta, GA 30321–0247.
005481	Amvac Chemical Corporation, 4695 MacArthur Ct., Suite 1250, Newport Beach, CA 92660.
007056	IQ Products Co., 16212 State Hwy 249, Houston, TX 77086–1014.
008536	Soils Corporation, P.O. Box 782, Hollister, CA 95024–0782.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS—Continued

EPA Company No.	Company name and address
028293	Phaeton Corporation, Agent Registrations By Design, Inc. P.O. Box 1019, Salem, VA 24153.
040391	Entech Systems Corporation, 509 Tower Valley Dr., Hillsboro, MO 63050.
044446	Quest Chemical Corporation, 12255 F.M. 529 Northwoods Industrial Park, Houston, TX 77041.
045385	CTX Cenol, 7210 Red Road, Suite 206A, Miami, FL 33143.
046579	Dickson Chemical Company, Inc., 2110 S Prairie St, Stuttgart, AR 72160.
046813	K–G Packaging Company, 316 Highland Ave, Hartford, WI 53027.
047000	Chem-Tech, LTD., 4515 Fleur Dr. 303, Des Moines, IA 50321.
048668	Professional Pet Products, 1873 N.W. 97th Ave., Miami, FL 33172.
053883	Control Solutions Inc., 427 Hide Away Circle, Cub Run, KY 42729.
067517	PM Resources, Inc., 13001 Saint Charles Rock Rd., Bridgeton, MO 63044.
073049	Valent BioSciences Corporation, 870 Technology Way, Libertyville, IL 60048.
074621	Bug Stomper II, LLC., P.O. Box 704, Springhill, LA 71075.
081038	ICR Labs., 1330 Dillon Heights Ave., Baltimore, MD 21228–1199.
082277	Earthfire Corp., P.O. Box 12398, Scottdsdale, AZ 85267.
FL910017	Lee County Mosquito Control District, P.O. Box 60005, Fort Myers, FL 33096.

III. Summary of Public Comments Received and Agency Response to Comments

The resmethrin docket was open for a 180–day comment period beginning on August 25, 2010. During that time, four comments were received on the Requests to Voluntarily Cancel Certain Pesticide Registrations. The comments were from two Florida counties, the IR–4 Project in New Jersey, and ADAPCO, a business that provides mosquito control products and equipment. The comments were exclusively on the public health uses of resmethrin and are summarized in this unit.

Comments on the Public Health Mosquitocide Use

1. *Comments From the IR–4 Project.* IR–4 commented that the number of pesticides available to control mosquitoes is limited, and that temephos is also being voluntarily cancelled at this time. They also commented that the Food Quality Protection Act created mechanisms to prevent public health pesticides from being driven off the market solely due to data needs. They point out that the proposed cancellation is voluntary, driven not by risk but rather by the small market and the high cost of data generation. Finally, IR–4 requests a 15–month moratorium on any regulatory action that would result in the loss of resmethrin or any other active ingredient defined as a public health pesticide by FQPA.

2. *EPA Response.* EPA is currently reviewing the data supporting resmethrin use as a public health pesticide. A separate **Federal Register** Notice (75 FR 28019, May 19, 2010) (FRL–8825–7), announced the receipt of requests to voluntarily cancel those resmethrin products registered for use in wide area mosquito abatement. A number of entities which commented on that notice are currently coordinating to develop a Pest Management Strategic Plan to support the continued registration of resmethrin for public health use. Consequently, certain public health pesticide products containing remethrin have been removed from this final cancellation order and will be addressed separately from other resmethrin products.

3. *Comments From County Mosquito Districts.* St. Lucie County and Manatee County both commented that the loss of mosquitocide vector control chemicals will result in increased public health risks due to mosquito-borne illnesses. Both pointed out that resmethrin is highly effective and has positive environmental attributes such as short-half life, no toxic metabolites, and minimal non-target impacts. St. Lucie County noted that resmethrin causes less allergic reaction in pesticide-sensitive individuals, and Manatee County maintained that resmethrin is one of few chemicals available for large scale Ultra Low Volume (ULV) adulticiding activities.

4. *EPA Response.* See previous response. EPA recognizes the importance of public health pesticides and is addressing resmethrin public health use products separately.

5. *Comments From ADAPCO.* ADAPCO commented on the danger of resistance development if more mosquitocide products are cancelled and operations are forced to depend on only a few options in chemistry. They noted that resmethrin can be used in environmentally sensitive areas against West Nile Virus, Eastern Equine Encephalitis, and other vector-borne diseases, most often when efficacy is not achieved with cheaper formulations.

6. *EPA Response.* See previous response. EPA recognizes the importance of public health pesticides and is addressing resmethrin public health use products separately. Several resmethrin products included in the August 25, 2010 (75 FR 52330) (FRL–8838–8) **Federal Register** Notice, specifically the public health uses, have been removed from this final cancellation order and will be addressed separately as noted in this Unit above. The remaining products will thus be cancelled per this notice.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of the registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II are canceled. The effective date of the cancellations that are subject of this notice is June 1, 2011. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

V. 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**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** of August 25, 2010. The comment period closed on February 22, 2011.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

The registrants may continue to sell and distribute existing stocks of products listed in Table 1 of Unit II. until December 31, 2012. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1, except for export in accordance with FIFRA section 17, or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1 of Unit II. until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 23, 2011.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011–13579 Filed 5–31–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2011–0401; FRL–9313–7]

Biennial Determination of the Waste Isolation Pilot Plant's Compliance with Applicable Federal Environmental Laws for the Period 2008 to 2010

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Based on documentation submitted by the U.S. Department of Energy (DOE) for the Waste Isolation Pilot Plant (WIPP), the U.S. Environmental Protection Agency (EPA or "we") determined that, between 2008 and 2010, DOE operated the WIPP facility in compliance with applicable Federal statutes, regulations, and permit requirements designated in Section 9(a)(1) of the WIPP Land Withdrawal Act, as amended. The Secretary of Energy was notified of the determination via a letter from EPA Administrator Lisa P. Jackson dated May 25, 2011.

FOR FURTHER INFORMATION CONTACT: Nick Stone; telephone number: (214) 665–7226; address: WIPP Project Officer, Mail Code 6PD–O, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, TX 75202.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies Of This Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2011–0401; FRL–9313–7]. 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 Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., 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 Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at *http://www.epa.gov/fedrgstr/.*

II. Background

EPA made this determination under the authority of Section 9 of the WIPP Land Withdrawal Act (WIPP LWA). (Pub. L. 102–579 and 104–201.) Section 9(a)(1) of the WIPP LWA requires that, as of the date of the enactment of the WIPP LWA, DOE shall comply with respect to WIPP with (1) Regulations for the management and storage of radioactive waste (40 CFR part 191, subpart A); (2) the Clean Air Act; (3) the Solid Waste Disposal Act; (4) the Safe Drinking Water Act; (5) the Toxic Substances Control Act; (6) the Comprehensive Environmental Response, Compensation, and Liability Act; and (7) all other applicable Federal laws pertaining to public health and safety or the environment. Section 9(a)(2) of the WIPP LWA requires DOE biennially to submit to EPA documentation of continued compliance with the laws, regulations, and permit requirements set forth in Section 9(a)(1). (DOE must also submit similar documentation of compliance with the Solid Waste Disposal Act to the State of New Mexico.) Section 9(a)(3) requires the Administrator of EPA to determine, on a biennial basis following the submittal of documentation of compliance by the Secretary of DOE, whether the WIPP is in compliance with the pertinent laws, regulations, and permit requirements, as set forth at Section 9(a)(1).

We determined that for the period 2008 to 2010, the DOE-submitted documentation showed continued compliance with 40 CFR part 191, subpart A, the Clean Air Act, the Safe Drinking Water Act, the Toxic Substances Control Act, and the Comprehensive Environmental Response, Compensation, and Liability Act. With respect to other applicable Federal laws pertaining to public health and safety or the environment, as required by Section 9(a)(1)(G), DOE's documentation indicates that DOE was in compliance with the Clean Water Act, the Federal Insecticide, Fungicide, and Rodenticide Act, and certain statutes under the jurisdiction of the Department of Interior.

This determination is not in any way related to, or a part of, our certification and recertification decisions regarding whether the WIPP complies with EPA's disposal regulations for transuranic radioactive waste at 40 CFR Part 191.

Dated: May 25, 2011.

Lisa P. Jackson,

Administrator.

[FR Doc. 2011–13570 Filed 5–31–11; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Wednesday, June 8, 2011, 9:30 a.m. Eastern Time.

PLACE: Commission Meeting Room on the First Floor of the EEOC Office Building, 131 M Street, NE., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes, and

2. Leave as a Reasonable Accommodation.

Note: In accordance with the Sunshine Act, the meeting will be open

to public observation of the Commission's deliberations and voting. Seating is limited and it is suggested that visitors arrive 30 minutes before the meeting in order to be processed through security and escorted to the meeting room. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register,** the Commission also provides information about Commission meetings on its Web site, *http://www.eeoc.gov,* and provides a recorded announcement a week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation and Communication Access Realtime Translation (CART) services at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above.

CONTACT PERSON FOR MORE INFORMATION: Stephen Llewellyn, Executive Officer on (202) 663–4070.

Dated: May 27, 2011.

Stephen Llewellyn,

Executive Officer, Executive Secretariat.

[FR Doc. 2011–13717 Filed 5–27–11; 4:15 pm]

BILLING CODE 6570–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 2011–12906) published on page 30361 of the issue for Wednesday, May 25, 2011.

Under the Federal Reserve Bank of Dallas heading, the entry for MTA Bancshares, Inc., Seagoville, Texas, is revised to read as follows:

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *MTA Bancshares, Inc.,* Seagoville, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of HomeBank @, Seagoville, Texas.

Comments on this application must be received by June 20, 2011.

Board of Governors of the Federal Reserve System, May 25, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–13392 Filed 5–31–11; 8:45 am]

BILLING CODE 6210–01–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 June 14, 2011.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Marci Johnson Shaw,* Fairfield, Montana; to gain control of Teton Bancshares, Inc., and thereby indirectly gain control of Teton Banks, both in Fairfield, Montana.

Board of Governors of the Federal Reserve System, May 25, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–13393 Filed 5–31–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0937–0191; 30-day notice]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project—Application packets for Real Property for Public Health Purposes—OMB No. 0937–0191—Extension—Office of Assistant Secretary for Administration—Program Support Center/Federal Property Assistance Program.

Abstract: These applications are completed and submitted to HHS by State and local governments and nonprofit institutions when applying for acquisition of excess/surplus, underutilized/unutilized, and/or off-site Federal real property. Submitted applications are used to determine if institutions/organizations are eligible to purchase, lease or use property under the provisions of the surplus real property program.

Estimated Annualized Burden Table

Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State, local, or tribal governments, nonprofits	20	Varies	200	4,000

Mary Forbes,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2011–13439 Filed 5–31–11; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–063B]

NIOSH Fire Fighter Fatality Investigation and Prevention Program (FFFIPP)

AGENCY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public comment period.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) requests stakeholder input on the progress and future directions of the NIOSH Fire Fighter Fatality Investigation and Prevention Program (FFFIPP). NIOSH is seeking stakeholder input on the FFFIPP to ensure that the program is meeting the needs and expectations of the U.S. fire service, and to identify ways in which the program can be improved to increase its impact on the safety and health of fire fighters across the United States. NIOSH will compile and consider all comments received through the NIOSH docket and use them in making decisions on how to proceed with the FFFIPP.

DATES: *Public Comment Period:* Written or electronic comments must be received on or before July 29, 2011.

ADDRESSES: Written comments on the FFFIPP program and suggestions for enhancing the impact of the program and future directions should be submitted, identified by docket number NIOSH–063B, by any of the following methods:

- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.
- *Facsimile:* (513) 533–8285.
- *E-mail: nioshdocket@cdc.gov,* or submitted using the on-line form available through the NIOSH docket at the following link: *http://www.cdc.gov/niosh/docket/review/docket063B/default.html.* E-mail attachments should be formatted in Microsoft Word.

Comments should be submitted to NIOSH no later than July 29, 2011 and should reference Docket Number NIOSH–063B.

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Cincinnati, Ohio 45226. A complete electronic docket containing all comments submitted will be available on the NIOSH Web page at *http://www.cdc.gov/niosh/docket,* and comments will be available in writing by request. NIOSH includes all comments received without change in the docket and the electronic docket, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Paul Moore, NIOSH, Division of Safety Research (DSR), 1095 Willowdale Road, MS–1808, Morgantown, West Virginia 26505, *PMoore@cdc.gov* or fax (304) 285–5474, telephone (304) 285–5991.

SUPPLEMENTARY INFORMATION: NIOSH convened stakeholders' meetings in 1998, March 2006 and November 2008 to seek input to help guide the FFFIPP. The input provided by stakeholders at those meetings was very valuable in providing insight into stakeholder needs and expectations. NIOSH is again seeking stakeholder input through a public docket. There are several resources that may be useful to individuals and groups who would like to comment on the FFFIPP:

- The NIOSH FFFIPP Progress Report and Proposed Future Directions—2011. This document includes specific topics for stakeholder input. *http://www.cdc.gov/niosh/fire/future2011.html*
- The Strategic Plan for the NIOSH FFFIPP that was finalized in 2009 after public input. *http://www.cdc.gov/niosh/fire/strategicplan2009.html*
- The FFFIPP Web site that includes an overview of the FFFIPP, fatality investigation reports and other publications. *http://www.cdc.gov/niosh/fire/*

Dated:May 21, 2011.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2011–13533 Filed 5–31–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10379]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Rate Increase Disclosure and Review Reporting Requirements (45 CFR Part 154). *Use:* Under the Section 1003 of the Affordable Care Act (Section 2794 of the Public Health Service Act), The Secretary, in conjunction with the States, is required to establish a process for the annual review, beginning with the 2010 plan year, of unreasonable increases in premiums for health insurance coverage. Section 2794 directs the Secretary to ensure the public disclosure of information of unreasonable rate increases and justification for those increases.

On December 23, 2010, CMS published a proposed rate review regulation in the Federal Register for public comment (Rate Increase Disclosure and Review Rule, 75 FR 81004). CMS revised the proposed rule based on the public comments and published the final rate review regulation in the **Federal Register** on May 19, 2011. The final rule defines the unreasonable rate review process and issuer reporting and disclosure requirements (Rate Increase Disclosure and Review Rule, 76 FR 29964). The

regulation establishes the following reporting requirements:

• The Preliminary Justification: This data collection is required of all health insurance issuers for all rate increases that exceed the "subject to review"' reporting threshold as defined in the rule. This information will be posted on an HHS Web site.

• Rate Review Final Determination: This data collection requires States with effective rate review programs and CMS to report their review findings and unreasonable rate increase determinations on all rate increases that are subject to review. This information will be posted on an HHS Web site.

• The Final Justification for An Unreasonable Rate Increase: This data collection is required of health insurance issuers that elect to implement a rate increase that is determined to be unreasonable based on State or CMS review. This information will be posted on the Health Insurance Issuer's Web site and on a CMS Web site.

2. Preliminary Justification

The Preliminary Justification consists of three parts, Part I: Rate Increase Summary, Part II: Written Explanation of the Rate Increase, and Part III: Rate Filing Documentation. Issuers must complete Parts I and II for all rate increases that exceed the reporting threshold as defined in the rule. As described in the preamble of the rule, this information would be collected to provide consumers with basic information on all rate increases that are subject to review under the rate review program.

Under the rule, "subject to review" rate increases would be reviewed by either States or CMS, depending on whether a State has an effective rate review program. Issuers would only be required to submit Part III of the Preliminary Justification when CMS is conducting the review of a rate increase that is "subject to review." Accordingly, Part III requires health insurance issuers to provide detailed rate data that would be used for the purposes of conducting thorough actuarial reviews and for making determinations about whether rate increases are unreasonable. This Notice contains the following information about the Preliminary Justification:

• Preliminary Justification Issuer Instructions: Health insurance issuer instructions for completing all three parts of the Preliminary Justification.

• Part I Worksheet: A standardized Excel worksheet that must be used to complete Part I of the Preliminary Justification.

• Sample Internet display of the Rate Review Consumer Disclosure: Information provided in the Preliminary Justification would be posted on an HHS Web site. This sample display shows how the information contained in the Part I Worksheet would be displayed to consumers.

3. Rate Review Final Determination

Under the rule, States and CMS would have to provide a Rate Review Final Determination at the close of their review of all "subject to review" rate increases. The Rate Review Final Determination must provide the State's or CMS' determination on whether a rate increase is 'unreasonable'. Section 154.301(a)(3) of the rule provides a list of actuarial review elements that must be taken into account as part of the rate review process. The Final Determination must provide a brief statement explaining how the review of elements set forth in § 154.301(a)(3) caused the State or CMS to arrive at its determination that the rate is unreasonable.

The Rate Review Final Determination will be entered into a data entry text box in the Rate Review Data Collection System. CMS is estimating that this statement would be approximately a paragraph in length. There is no specific form or set of instructions associated with this reporting requirement, apart from the reporting requirements provided in the rule. The information provided in the Rate Review Final Determination will be posted as part of the rate review consumer disclosure information on an HHS Web site.

4. Final Justification for An Unreasonable Rate Increase

The rule states that if a health insurance issuer implements a rate increase determined by CMS or a State to be unreasonable, the health insurance issuer must provide a Final Justification for an Unreasonable Rate Increase. In the Final Justification, issuers would have to provide a short statement about why they are electing to implement an unreasonable rate increase. This statement would be entered into a data entry text box in the Rate Review Data Collection System and would not need to be more than a paragraph or two in length. There is no form or instructions associated with this statement apart from the requirements provided in the regulation.

The Final Justification Statement will be posted on an HHS Web site in the same location as the Preliminary Justification and Rate Review Final Determination. Additionally, health insurance issuers implementing rate increases that were determined to be unreasonable, must post all of this information—the Preliminary Justification, the Rate Review Final Determination, and the Final Justification Statement on their Web sites for a period of 3 years. *Form Number:* CMS–10379; (OCN: 0938–NEW) *Frequency:* Annually; *Affected Public:* Private Sector and States; *Number of Respondents:* 452; *Number of Responses:* 3,571; *Total Annual Hours:* 11,902. (For policy questions regarding this collection, contact Sally McCarty at (301) 492–4489 or *RateReview@hhs.gov.* For all other issues call 410–786–1326.)

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *June 27, 2011.*

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, E-mail: *OIRA_submission@omb.eop.gov.*

Dated: May 26, 2011.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–13458 Filed 5–27–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: State Developmental Disabilities Council 5-Year State Plan.

OMB No.: 0980–0162.

Description: A Plan developed by the State Council on Developmental Disabilities is required by federal statute. Each State Council on Developmental Disabilities must develop the plan, provide for approval by the State Governor, and finally submit the plan on a five-year basis. On an annual basis, the Council must review the plan and make any amendments. The State Plan will be used (1) By the Council as a planning document; (2) by the citizenry of the State as a mechanism for commenting on the plans of the Council; and (3) by the Department as a stewardship tool, for ensuring compliance with the Developmental Disabilities Assistance and Bill of Rights Act, as one basis for providing technical assistance (*e.g.,*

during site visits), and as a support for management decision making.

Respondents: 55 State Developmental Disabilities Councils.

Annual Burden Estimates

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Developmental Disabilities Council 5-Year State Plan	55	1	367	20,185

Estimated Total Annual Burden Hours: 20,185

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.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–13416 Filed 5–31–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0305]

Draft Guidance for Industry and FDA Staff: Commercially Distributed In Vitro Diagnostic Products Labeled for Research Use Only or Investigational Use Only: Frequently Asked Questions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Commercially Distributed In Vitro Diagnostic Products Labeled for Research Use Only or Investigational Use Only: Frequently Asked Questions." This draft guidance document is intended for manufacturers and distributors of research use only (RUO) and investigational use only (IUO) in vitro diagnostic (IVD) products and any other entities who label IVD products.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115 (g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by August 30, 2011.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled "Commercially Distributed in Vitro Diagnostic Products Labeled for Research Use Only or Investigational Use Only: Frequently Asked Questions" to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993 or Office of Communication, Outreach and Development (HFM–40), 1401 Rockville Pike, suite 200N, Rockville, MD 20852. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to CDRH at 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov.* Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Tonya Wilbon, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg 66, rm. 5663, Silver Spring, MD 20993–0002, 301–796–6224.

FOR QUESTIONS RELATING TO DEVICES REGULATED BY CBER, CONTACT: Stephen Ripley (HFM–17), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

RUO and IUO IVD products are distinctive in that they are devices that may themselves be used in research or investigations on human samples that may eventually lead to their clearance or approval for clinical diagnostic use, and they also may be marketed for and used in the research and investigation of other FDA-regulated products. Thus, the manufacturer of an IUO IVD product is not necessarily the sponsor of a clinical investigation that uses such an IVD product in a study. The manufacturer of such an IUO IVD product may legally distribute the product commercially without FDA premarket review, as long as the marketing is only for investigational use.

The marketing of unapproved and uncleared IVD products for purposes other than research or investigation (for example, for clinical diagnostic use) has led in some cases to diagnostic use of laboratory tests with unproven performance characteristics and manufacturing controls that are inadequate to ensure consistent manufacturing of the finished product. Use of such tests for clinical diagnostic purposes may mislead healthcare providers and cause serious adverse health consequences to patients who are not aware that they are being diagnosed with research or investigational products. FDA is therefore issuing this guidance to remind manufacturers of the requirements applicable to RUO and IUO IVDs.

This guidance will clarify the regulatory requirements applicable to IVD products intended for research use only or investigational use only and will provide the responses of CDRH and CBER to some frequently asked questions about how products should and should not be marketed.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance

practices regulation (21 CFR 10.115). The draft guidance, when finalized will represent the Agency's current thinking on " Commercially Distributed In Vitro Diagnostic Products Labeled for Research Use Only or Investigational Use Only: Frequently Asked Questions." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at http://www.regulations.gov or from the CBER Internet site at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm.* To receive " Commercially Distributed In Vitro Diagnostic Products Labeled for Research Use Only or Investigational Use Only: Frequently Asked Questions," you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1723 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations and guidance documents. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 809.10 have been approved under OMB control number 0910–0485; the collections in 21 CFR part 812 have been approved under OMB control number 0910–0078; and the collections of information regarding importer entry notice have been approved under OMB control number 0910–0046.

V. 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.

Dated: May 18, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–13390 Filed 5–31–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: Public Health Service, National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Thrombolytic Temperature-Sensitive Liposomes

Description of Technology: The subject technology discloses a novel method for inducing targeted thrombolysis in blood vessels. In this technology, a thrombolytic agent is encapsulated within temperature-sensitive liposomes. This composition is administered into the patient's blood circulation. Certain clots and vulnerable atherosclerotic processes elicit an endogenous heat that facilitates local thrombolytic drug release. The thermosensitive liposome can also be exogenously heated to at least its phase transition temperature to induce the release the thrombolytic agent from the liposome at the thrombus for targeted thrombolysis. The temperature for activated release can be varied, depending on the specific composition of the liposome.

Applications: Thrombolysis of blood clots formed in blood vessels, primarily in thromboemblic diseases such as myocardial infarction and stroke, venous thromboemblic diseases such as deep vein thrombosis (DVT), and pulmonary embolism (PE).

Advantages:

• Due to the protection of the thrombolytic agent within the liposome structure until the time that release is induced, this technology provides for better stability and longer half-life of the agent.

—Enhanced efficacy compared to the currently used thrombolytic treatments.

—Decreased side effects compared to the currently used thrombolytic treatments.

—Potentially decreased immunogenicity.

• Lower treatment dose may be required compared to current methods using free thrombolytic agent.

—Increases safety profile and reduces the risk of dose-related intracranial hemorrhage in treated patients.

Development Status: Proof of principle has been demonstrated in vitro.

Inventors: Bradford Wood, Matt Dreher, *et al.* (NIHCC).

Patent Status: U.S. Provisional Application No. 61/473,665 filed 08 Apr 2011 (HHS Reference No. E–090–2011/0–US–01).

Relevant Publications:

1. Collen D. Staphylokinase: A potent, uniquely fibrin-selective thrombolytic agent. Nat Med. 1998 Mar;4(3):279–284. [PMID: 9500599]

2. Elbayoumi TA, Torchilin VP. Liposomes for targeted delivery of antithrombotic drugs. Expert Opin Drug Deliv. 2008 Nov;5(11):1185–1198. [PMID: 18976130]

3. Heeremans JL, Prevost R, Bekkers ME, *et al.* Thrombolytic treatment with tissue-type plasminogen activator (t-PA) containing liposomes in rabbits: A comparison with free t-PA. Thromb Haemost. 1995;73(3):488–494. [PMID: 7667833]

4. Tiukinhoy-Laing SD, Huang S, Klegerman M, Holland CK, McPherson DD. Ultrasound-facilitated thrombolysis using tissue-plasminogen activator-loaded echogenic liposomes. Thromb Res. 2007;119(6):777–784. [PMID: 16887172]

5. Needham D, Dewhirst MW. The development and testing of a new temperature sensitive drug delivery

system for the treatment of solid tumors. Adv Drug Deliv Rev. 2001 Dec 31;53(3):285–305. [PMID: 11744173]

6. Frenkel V, Oberoi J, Stone MJ, *et al.* Pulsed-high intensity focused ultrasound enhances thrombolysis in an in vitro model. Radiology 2006 Apr;239(1);86–93. [PMID: 16493016]

Licensing Status: Available for licensing.

Licensing Contacts:

• Uri Reichman, PhD, MBA; 301–435–4616; *UR7a@nih.gov.*

• Michael Shmilovich, Esq.; 301–435–5019; *shmilovm@mail.nih.gov.*

Collaborative Research Opportunity: The NIH Clinical Center, Interventional Radiology Section & Center for Interventional Oncology is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this novel approach to thrombolysis. Please contact Ken Rose, PhD at 301–435–3132 or *rosek@mail.nih.gov* for more information.

Methods and Devices for Transcatheter Cerclage Annuloplasty

Description of Technology: The invention relates to techniques and devices for cardiovascular valve repair, particularly annuloplasty techniques and devices in which tensioning elements are positioned to treat regurgitation of the mitral valve or tricuspid valve. More specifically, the technology pertains to a new device for myocardial septal traversal ("cerclage reentry") that also serves to capture (ensnare) and externalize the traversing guidewire. The focus of the invention is to avoid a phenomenon in cardiac surgery known as "trabecular entrapment." The device features an expandable and collapsible mesh deployed in the right ventricle to simplify capture of a reentering guidewire during transcatheter cerclage annuloplasty. The wire mesh exerts pressure against trabecular-papillary elements of the tricuspid valve to displace them against the right ventricular septal wall. By abutting the right ventricular reentry site of the cercalge guidewire, trabecular entrapment is avoided. The device comprises a shaft having a distal loop which provides a target in the interventrical myocardial septum through which a catheter-delivered tensioning system is guided. The loop ensnares the catheter-delivered tensioning system as it reenters the right ventricle or right atrium. The expandable and collapsible mesh is disposed within the right ventricle such that the catheter-delivered tensioning system is directed from the ventricular septum into the right ventricular cavity through only a suitable opening in the mesh and such that the catheter delivered tensioning system is captured or ensnared within the mesh opening.

Applications: Cardiovascular valve repair surgeries.

Features and Advantages:

• The device avoids trabecular entrapment of the cerclage guidewire during septal-perforator-to-right-ventricular myocardial guidewire traversal

• The device allows ensnarement of reentering guidewire.

• The device provides an X-ray target for guidewire reentry from the septal perforator veins.

• Collapsible transcatheter device that can be introduced from a cephalad (typically transjugular or transaxillary) or caudad (typically transfemoral) approach.

• The device is intended to allow straightforward removal from the same vascular sheath as the cerclage retrograde traversal guidewire, to allow both free ends of the guidewire to be externalized through the same sheath.

Development Status:

• Practical usefulness of the technology has been demonstrated.

• Preclinical testing of extant prototype is planned.

• Clinical development is planned.

Inventors: Robert J. Lederman and Ozgur Kocaturk (NHLBI).

Relevant Publication: Kim JH, *et al.* Mitral cerelage annuloplasty, a novel transcatheter treatment for secondary mitral valve regurgitation: initial results in swine. J Am Coll Cardiol. 2009 Aug 11;54(7):638–651. [PMID: 19660696].

Patent Status: U.S. Provisional Application No. 61/383,061 filed 15 Sep 2010 (HHS Reference No. E–108–2010/0–US–01).

Licensing Status: Available for licensing.

Licensing Contacts:

• Uri Reichman, PhD, MBA; 301–435–4616; *UR7a@nih.gov.*

• Michael Shmilovich, Esq.; 301–435–5019; *shmilovm@mail.nih.gov.*

Collaborative Research Opportunity: The National Heart, Lung, and Blood Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Peg Koelble at *koelblep@nhlbi.nih.gov* for more information.

Dated: May 25, 2011

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–13521 Filed 5–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Utilization of a Human Lung Tissue Resource for Vascular Research.

Date: June 23, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Susan Wohler Sunnarborg, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7185, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13523 Filed 5–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Polycystic Kidney Disease.

Date: June 23, 2011.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *ls38z@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13546 Filed 5–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed 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: Allergy, Immunology, and Transplantation Research Committee.

Date: June 21, 2011.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Hotel—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Zhuqing Li, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–9523, *zhuqing.li@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, "NIAID Peer Review Meeting."

Date: June 22, 2011.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Maja Maric, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health, NIAID, Rm. 3266, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–2550, *maja.maric@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13544 Filed 5–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Minority Health and Health Disparities.

The meeting will be open to the public as indicated below, 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.

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/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Minority Health and Health Disparities.

Date: June 14, 2011.

Closed: 8 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Hyatt Regency Bethesda, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Open: 9:30 a.m. to 5 p.m.

Agenda: The agenda will include opening remarks, administrative matters, Director's Report, NIH Health Disparities update, and other business of the Council.

Place: Hyatt Regency Bethesda, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Donna Brooks, Executive Officer, National Institute on Minority Health and Heath Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 435–2135.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Dated: May 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13542 Filed 5–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Subcommittee I—Career Development, June 28, 2011, 8 a.m. to June 29, 2011, 6 p.m., Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314 which was published in the **Federal Register** on May 16, 2011, 76 FR 28238.

This notice is amending the meeting from two days to one day. The meeting dates have been changed from June 28–29, 2011 to June 28, 2011 from 8 a.m. to 6 p.m. The meeting is closed to the public.

Dated: May 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13540 Filed 5–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel; SBIR Phase IIB Bridge Awards.

Date: June 29–30, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Hotel—Washington DC North DC/Gaithersburg, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Savvas C Makrides, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm 8053, Bethesda, MD 20892, 301–496–7421, *makridessc@mail.nih.gov,*

Name of Committee: National Cancer Institute Special Emphasis Panel; Development of Anticancer Agents.

Date: June 29, 2011.

Time: 1 to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 706, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Timothy C. Meeker, M.D., PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8103, Bethesda, MD 20892, (301) 594–1279, *meekert@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13539 Filed 5–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Advisory Board, June 27, 2011, 6 p.m. to June 29, 2011, 12 p.m., National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892 which was published in the **Federal Register** on May 10, 2011, 76 FR 27069.

This notice is amending the National Cancer Advisory Board meeting scheduled for June 28–29, 2011 from 9 a.m. to 12 noon to June 28, 2011 from 9 a.m. to 5 p.m. The Ad hoc Subcommittee on Facilitation of Industry Interactions will convene on June 27, 2011 from 1 p.m. to 5 p.m. and the Ad hoc Subcommittee on Clinical Investigations will convene on June 27, 2011 from 6 p.m. to 7:30 p.m.

Dated: 5/24/2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13537 Filed 5–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Cancellation of Meeting

Notice is hereby given of the cancellation of the Center for Scientific Review Special Emphasis Panel, June 9, 2011, 8 p.m. to June 10, 2011, 5 p.m., The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611 which was published in the **Federal Register** on May 3, 2011, 76 FR 24894–24896.

The meeting is cancelled due to the application being withdrawn.

Dated: May 24, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13535 Filed 5–31–11; 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, Molecular Genetics Applications.

Date: June 20, 2011.

Time: 12:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Barbara J Thomas, Ph.D, Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2218, MSC 7890, Bethesda, MD 20892, 301–435–0603, *bthomas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Autism, Schizophrenia and Addiction.

Date: June 22, 2011,

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Julius Cinque, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252, *cinquej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Topics in Bacterial Pathogenesis.

Date: June 23–24, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Rolf Menzel, Ph.D, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7808, Bethesda, MD 20892, 301–435–0952, *menzelro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Basic Oncology Continuous Submission Applications.

Date: June 23–24, 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: Cathleen L Cooper, Ph.D, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, 301–443–4512, *cooperc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Biomaterials, Delivery Systems, and Nanotechnology.

Date: June 28, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: David R Filpula, Ph.D, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, 301–435–2902, *filpuladr@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Gastrointestinal Physiology and Pathophysiology.

Date: June 28, 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, (Telephone Conference Call).

Contact Person: Patricia Greenwel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Molecular, Cellular and Developmental Neurobiology.

Date: June 30, 2011.

Time: 11 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Hotel Washington, DC, 999 Ninth Street, NW., Capitol Room, Washington, DC 20001.

Contact Person: Paek-Gyu Lee, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4201, MSC 7812, Bethesda, MD 20892, (301) 613–2064, *leepg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, RFA DC–12–001: Improving Access to Hearing Healthcare.

Date: July 1, 2011.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Washington DC, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: George Ann McKie, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, 301–996–0993, *mckiegeo@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

May 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13534 Filed 5–31–11; 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 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 Environmental Health Sciences Special Emphasis Panel, Research on Ethics and Integrity of Human and or Animal Subjects.

Date: June 23, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton, 7807 Leonardo Drive, Durham, NC 27713.

Contact Person: Teresa Nesbitt, PhD, DVM, Chief, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–7571, *nesbittt@mail.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Virtual Consortium For Translational/Transdisciplinary Environment Research.

Date: June 27, 2011.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, 530 Davis Drive, Keystone Building, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Janice B. Allen, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, (919) 541–7556.

(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: May 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13529 Filed 5–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 Nursing Research Initial Review Group.

Date: June 23–24, 2011.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Weiqun Li, MD, Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Ste. 710, Bethesda, MD 20892, (301) 594–5966, *wli@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: May 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13527 Filed 5–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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 USC, as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, 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 Library of Medicine Special Emphasis Panel, Scholarly Works (G13).

Date: July 7–8, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Zoe H. Huang, MD, Scientific Review Officer, Extramural Programs, National Library of Medicine, NIH, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–594–4937, *huangz@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: May 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13525 Filed 5–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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 USC, as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, 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 Library of Medicine Special Emphasis Panel, T15 Review.

Date: July 14–15, 2011.

Time: July 14, 2011, 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel at the Chevy Chase Pavilion, 4300 Military Road Northwest, Washington, DC 20015.

Time: July 15, 2011, 9 a.m. to 12 p.m.

Place: Embassy Suites Hotel at the Chevy Chase Pavilion, 4300 Military Road Northwest, Washington, DC 20015.

Contact Person: Arthur A. Petrosian, PhD, Scientific Review Administrator, Division of Extramural Programs, National Library of Medicine, National Institutes of Health, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–496–4253, *petrosia@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: May 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13524 Filed 5–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 Nursing Research Special Emphasis Panel, End of Life Review Meeting.

Date: June 21, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Tamizchelvi Thyagarajan, Ph.D., Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–0343, *tamizchelvi.thyagarajan@nih.gov.*

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, Personalized Genomics for Symptom Management.

Date: June 28, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Mario Rinaudo, MD, Scientific Review Officer, Office of Review, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd (DEM 1), Suite 710,

Bethesda, MD 20892, 301–594–5973, *mrinaudo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: May 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–13522 Filed 5–31–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1980–DR; Docket ID FEMA–2011–0001]

Missouri; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–1980–DR), dated May 9, 2011, and related determinations.

DATES: *Effective Date:* May 23, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 9, 2011.

Jasper and Newton Counties for Individual Assistance and debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–13513 Filed 5–27–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2011–0001; Internal Agency Docket No. FEMA–1970–DR]

Oklahoma; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–1970–DR), dated April 22, 2011, and related determinations.

DATES: *Effective Date:* May 18, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 22, 2011.

Pushmataha County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–13515 Filed 5–31–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1976–DR; Docket ID FEMA–2011–0001]

Kentucky; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–1976–DR), dated May 4, 2011, and related determinations.

DATES: *Effective Date:* May 19, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 4, 2011.

Hardin, Jefferson, Marshall, and Webster Counties for Individual Assistance.

Boyd, Graves, and Union Counties for Individual Assistance (already designated for Public Assistance, including direct Federal Assistance).

Crittenden, Hickman, Livingston, and McCracken Counties for Individual Assistance (already designated for emergency protective measures [Category B], limited to direct Federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–13512 Filed 5–31–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1958–DR; Docket ID FEMA–2011–0001]

Connecticut; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Connecticut (FEMA–1958–DR), dated March 3, 2011, and related determinations.

DATES: *Effective Date:* May 18, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Craig A. Gilbert, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Albert Lewis as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–13518 Filed 5–31–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–48]

Notice of Submission of Proposed Information Collection to OMB Fellowship Placement Pilot Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The purpose of this notice is to inform potential applicants that the Office of Policy Development and Research (PD&R) of the Department of Housing and Urban Development (HUD) is interested in receiving preliminary applications for a grant to support the Fellowship Placement Pilot Program.

DATES: *Comments Due Date: July 1, 2011.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–Pending) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *oira-submission@omb.eop.gov,* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Fellowship Placement Pilot Program.

OMB Approval Number: 2528–Pending.

Form Numbers: N/A, SF–424 supplement, SF–LLL, SF–424, N/A, N/A.

Description of the Need for the Information and its Proposed Use:

The purpose of this notice is to inform potential applicants that the Office of Policy Development and Research (PD&R) of the Department of Housing and Urban Development (HUD) is interested in receiving preliminary applications for a grant to support the Fellowship Placement Pilot Program.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	25	1.08		17.333		468

Total Estimated Burden Hours: 468.

Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 25, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–13593 Filed 5–31–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5483–N–01]

Notice of Proposed Information Collection: Comment Request; Ginnie Mae Mortgage-Backed Securities Guide 5500.3, Revision 1; (Forms and Electronic Data Submissions)

AGENCY: Office of the President of Government National Mortgage Association (Ginnie Mae), HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* August 1, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Q, Administrator Support Specialist, Department of Housing and Urban Development, 451 7th Street, SW., Room 4160, Washington, DC 20410; e-mail *Colette.Pollard@hud.gov;* telephone (202) 708–0306, ext. 3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

FOR FURTHER INFORMATION CONTACT: Debra Murphy, Ginnie Mae, 451 7th Street, SW, Room B–133, Washington, DC 20410; e-mail—*Debra.L.Murphy@hud.gov;* telephone—(202) 475–4923; fax—(202) 485–0225 (this is not a toll-free number); Victoria Vargas, Ginnie Mae, 451 7th Street, SW., Room B–133, Washington, DC 20410; e-mail—*Victoria.Vargas@hud.gov;* telephone—(202) 475–6752; fax—(202) 485–0225 (this is not a toll-free number); or the Ginnie Mae Web site at *http://www.ginniemae.gov* for other available information.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden hours of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Ginnie Mae Mortgage-Backed Securities Guide 5500.3, Revision 1 (Forms and Electronic Data Submissions).

OMB Control Number, if applicable: 2503–0033.

Description of the need for the information and proposed use:

Ginnie Mae's Mortgage-Backed Securities Guide 5500.3, Revision 1 ("Guide") provides instructions and guidance to participants in the Ginnie Mae Mortgage-Backed Securities ("MBS") programs ("Ginnie Mae I and Ginnie Mae II"). Under the Ginnie Mae I program, securities are backed by single-family or multifamily loans. Under the Ginnie Mae II program securities are only backed by single-family loans. Both the Ginnie Mae I and II MBS are modified pass-through securities. The Ginnie Mae II multiple Issuer MBS is structured so that small issuers, who do not meet the minimum number of loans and dollar amount requirements of the Ginnie Mae I MBS, can participate in the secondary mortgage market. In addition, the Ginnie Mae II MBS permits the securitization of adjustable rate mortgages ("ARMs").

In order to provide more relevant disclosure information on outstanding Ginnie Mae securities, Ginnie Mae will be collecting additional information on the loans backing securities at issuance.

Included in the Guide are the appendices, forms, and documents necessary for Ginnie Mae to properly administer its MBS programs.

Agency form numbers, if applicable: 11700, 11701, 11702, 11704, 11705, 11706, 11707, 11708, 11709, 11709–A, 11710A, 1710–B, 1710–C, 11710D, 11710E, 11711–A, 11711–B, 11714, 11714–SN, 11720, 11715, 11732, 11785.

While most of the calculations are based on number of respondents multiplied by the frequency of response, there are several items whose calculations are based on volume.

Form	Appendix No.	Title	Number of respondents	Frequency of responses per year	Total annual responses	Hours per response	Total annual hours
11700	II–1	Letter of Transmittal	210	4	840	0.033	27.7
11701	I–1	Application for Approval Ginnie Mae Mortgage-Backed Securities Issuer.	100	1	100	1	100.0
11702	I–2	Resolution of Board of Directors and Certificate of Authorized Signatures.	210	1	210	0.08	16.8
11704	II–2	Commitment to Guaranty Mortgage-Backed Securities.	210	4	840	0.033	27.7
11707	III–1	Master Servicing Agreement	210	1	210	0.016	3.4
11709	III–2	Master Agreement for Servicer's Principal and Interest Custodial Account.	210	1	210	0.033	6.9
11715	III–4	Master Custodial Agreement	210	1	210	0.033	6.9
11720	III–3	Master Agreement for Servicer's Escrow Custodial Account.	210	1	210	0.033	6.9
11732	III–22	Custodian's Certification for Construction Securities.	144	1	144	0.016	2.3

Form	Appendix No.	Title	Number of respondents	Frequency of responses per year	Total annual responses	Hours per response	Total annual hours
	IX–1	Financial Statements and Audit Reports.	210	1	210	1	210.0
		Mortgage Bankers Financial Reporting Form.	350	4	1400	0.5	700.0
11709–A	I–6	ACH Debit Authorization	210	1	210	0.033	6.9
11710 D	VI–5	Issuer's Monthly Summary Reports.	210	12	2520	0.033	83.2
11710A, 1710B, 1710C &11710E.	VI–12	Issuer's Monthly Accounting Report and Liquidation Schedule.	110	1	110	0.5	55.0
		Data Verification Form	210	2	420	0.05	21.0
	III–13	Electronic Data Interchange System Agreement.	40	1	40	0.166	6.6
	III–14	Enrollment Administrator Signatories for Issuers and Document Custodians.	54	1	54	2	108.0
	I–4	Cross Default Agreement	10	1	10	0.05	0.5
	VI–18	WHFIT Reporting	210	4	840	0.25	210.0
	VI–19	Monthly Pool and Loan Level Report (RFS).	210	12	2520	4.3	10836.0
The burden for the items listed below is based on volume and/or number of requests.							
11705	III–6	Schedule of Subscribers and Ginnie Mae Guaranty Agreement.	210	12	24800	0.0075	186.0
11706	III–7	Schedule of Pooled Mortgages.	210	12	24800	0.0075	186.0
11708	V–5	Document Release Request	210	1	374	0.05	18.7
	XI–6, XI–8, XI–9	Soldiers' and Sailors' Quarterly Reimbursement Request and SSCRA Loan Eligibility Information.	32	4	8000	0.033	1056.0
11711A and 11711B.	III–5	Release of Security Interest and Certification and Agreement.	210	1	24800	0.005	124.0
11714 and 11714SN.	VI–10, VI–11	Issuer's Monthly Remittance Advice and Issuer's Monthly Serial Note Remittance Advice.	210	12	56500	0.016	10848.0
	VI–2	Letter for Loan Repurchase	210	12	420	0.033	13.9
	VII–1	Collection of Remaining Principal Balances.	210	12	344000	0.0125	51600.0
	III–21	Certification Requirements for the Pooling of Multifamily Mature Loan Program.	11	1	11	0.05	0.6
	VI–9	Request for Reimbursement of Mortgage Insurance Claim Costs for Multifamily Loans.	56	1	56	0.25	14.0
	VIII–3	Assignment Agreements	63	1	63	0.13	8.2
	III–9	Authorization to Accept Facsimile Signed Correction Request Forms.	210	12	128	0.016	2.0
Total				Varies	495,260	Varies	76,493

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 25, 2011.

Mary K. Kinney,

Executive Vice President, Government National Mortgage Association.

[FR Doc. 2011–13595 Filed 5–31–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–MB–2011–N113; 91100–3740–GRNT 7C]

Meeting Announcement; North American Wetlands Conservation Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The North American Wetlands Conservation Council (Council) will meet to select North American Wetlands Conservation Act (NAWCA) grant proposals for recommendation to the Migratory Bird Conservation Commission (Commission). This meeting is open to the public, and interested persons may present oral or written statements.

DATES: *Council Meeting:* July 6, 2011, 8:30 a.m. to 4 p.m. If you are interested in presenting information at this public meeting, contact the Council Coordinator no later than June 22, 2011.

ADDRESSES: The Council meeting will be held at The Snow King Hotel, 400 E. Snow King Ave, Jackson Hole, WY 83001.

FOR FURTHER INFORMATION CONTACT: Michael J. Johnson, Council Coordinator, by phone at (703) 358–1784; by e-mail at *dbhc@fws.gov;* or by U.S. mail at U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Mail Stop MBSP 4075, Arlington, VA 22203.

SUPPLEMENTARY INFORMATION: In accordance with NAWCA (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the State-private-Federal Council meets to consider wetland acquisition, restoration, enhancement, and management projects for recommendation to, and final funding approval by, the Commission. Project proposal due dates, application instructions, and eligibility requirements are available on the NAWCA Web site at *http://www.fws.gov/birdhabitat/Grants/NAWCA/Standard/US/Overview.shtm.*

Proposals require a minimum of 50 percent non-Federal matching funds. The Council will consider U.S. standard grant proposals at the meeting. The Commission will consider the Council's recommendation at its meeting tentatively scheduled for September 14, 2011.

If you are interested in presenting information at this public meeting, contact the Council Coordinator no later than the date under **DATES**.

Dated: May 24, 2011.

Matt Hogan,

Acting Assistant Director, Migratory Birds.

[FR Doc. 2011–13551 Filed 5–31–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY922000–L13200000–EL0000, WYW180006]

Notice of Invitation To Participate; Coal Exploration License Application WYW180006, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the Mineral Leasing Act of 1920, as amended by the Federal Coal Leasing Amendments Act of 1976, and to Bureau of Land Management (BLM) regulations, all interested parties are hereby invited to participate with Peabody Caballo Mining, LLC, on a pro rata cost-sharing basis, in its program for the exploration of coal deposits owned by the United States in Campbell County, Wyoming.

DATES: This notice of invitation will be published in the *Gillette News-Record* once each week for 2 consecutive weeks beginning the week of June 1, 2011, and in the **Federal Register.** Any party electing to participate in this exploration program must send written notice to both the BLM and Peabody Caballo Mining, LLC, as provided in the **ADDRESSES** section below, no later than 30 days after publication of this invitation in the **Federal Register**.

ADDRESSES: Copies of the exploration plan are available for review during normal business hours in the following offices (case file number WYW180006): BLM, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003; and, BLM, High Plains District Office, 2987 Prospector Circle, Casper, Wyoming 82604. The written notice should be sent to the following *addresses:* Peabody Caballo Mining, LLC, *Attn:* James G. Barbour, Caller Box 3034, Gillette, Wyoming 82717, and the BLM, Wyoming State Office, Branch of Solid Minerals, *Attn:* Joyce Gulliver, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Joyce Gulliver, Land Law Examiner, at 307–775–6208. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Peabody Caballo Mining, LLC, has applied to the BLM for a coal exploration license on public land adjacent to its Rawhide Coal Mine. The purpose of the exploration program is to obtain structural and quality information about the coal. The BLM regulations at 43 CFR 3410 require the publication of an invitation to participate in the coal exploration in the **Federal Register**. The Federal coal resources included in the exploration license application are located in the following described lands in Wyoming:

6th Principal Meridian

T. 51 N., R. 72 W.,
Sec. 7, lots 5 through 20 inclusive;
Sec. 8, lots 2 through 6 inclusive;
T. 51 N., R. 73 W.,
Sec. 12, lots 1, 2, 6 through 8 inclusive, 13, 14, and SE¼NE¼

Containing 1,368.63 acres, more or less, in Campbell County.

The proposed exploration program is fully described in, and will be conducted pursuant to, an exploration plan to be approved by the BLM.

Authority: 43 CFR 3410.2–1(c)(1).

Donald A. Simpson,

State Director.

[FR Doc. 2011–13471 Filed 5–31–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ910000.L12100000.XP0000LXSS150A00006100.241A]

Notice of Arizona Recreation Resource Advisory Council Workgroup Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976, the Federal Advisory Committee Act of 1972, and the Federal Lands Recreation Enhancement Act of 2004, the U.S. Department of the Interior, Bureau of Land Management (BLM), Arizona Recreation Resource Advisory Council (RRAC) Work Group will meet in Sedona, Arizona, as indicated below.

DATES: June 29, 2011. The RRAC Work Group meeting will be held on June 29 (8 a.m.–5:30 p.m.).

ADDRESSES: The meeting will begin and conclude at the Red Rock Visitor Center, 8375 SR 179, Sedona, Arizona 86351.

FOR FURTHER INFORMATION CONTACT: Connie Birkland, Red Rock Ranger District Public Affairs Specialist, P.O. Box 20429, Sedona, Arizona 86341; phone 928–203–7505, or Dorothea Boothe, BLM RAC Coordinator, One North Central Avenue, Suite 800, Phoenix, Arizona 85004; phone 602–417–9504. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339 to contact the above individuals during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

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 Arizona. In conformance with the Federal Lands Recreation Enhancement Act (Title 16 of the United States Code, Part 6801 *et seq.*), the U.S. Forest Service (FS) will present a proposal for a change to the Red Rock Pass Program. The RRAC Work Group will review the fee proposal and provide feedback on the information and analysis provided and/or proposal modifications. The FS plans to bring the proposal to the full Arizona RAC at their next meeting in August. The RRAC Work Group's role is to hear the FS fee proposal and public comments and determine if the proposal is ready for consideration by the full RRAC or if additional work is needed. The meeting will begin with a welcome and introduction of the BLM RRAC Work Group and participating FS attendees. A field trip to the Red Rock Pass Program area will follow, and the day will conclude with a presentation and discussion of the Red Rock Pass fee proposal at the Red Rock Visitor Center.

Members of the public are welcome to attend the meeting and field trip. However, the participating public must provide personal transportation for the field trip which is expected to run from 8:45 a.m.–1:45 p.m. The meeting is expected to run from 2–5:30 p.m. A public comment period is scheduled from 3:30–4:15 p.m. for any interested members of the public who wish to address the RRAC Working Group on the Red Rock Pass fee proposal. Written comments may be sent to the RRAC Work Group at the BLM address listed above or by e-mail at *ASOWEB_AZ@blm.gov* for use at the RRAC Work Group meeting. All comments addressing this meeting will be shared with the BLM Arizona RAC. A final meeting agenda will be available two weeks prior to the meeting and posted on the BLM RAC *Web site at: http://www.blm.gov/az/st/en/res/rac.html.* Individuals who need special assistance such as sign language interpretation or other reasonable accommodations should contact the BLM RAC Coordinator listed above no later than two weeks before the start of the meeting.

Under the Federal Lands Recreation Enhancement Act, the RAC has been designated as the RRAC, and has the authority to review all BLM and FS recreation fee proposals in Arizona.

James G. Kenna,

State Director.

[FR Doc. 2011–13538 Filed 5–31–11; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA930000.L58790000.EU0000; CACA 050512]

Notice of Realty Action: Competitive Sale of Public Lands in Lake County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) Ukiah Field Office proposes to sell an 80-acre parcel of public land in Lake County, California. The sale will be conducted as a competitive bid auction in which interested bidders must submit written sealed bids equal to, or greater than, the appraised fair market value of the land.

DATES: Comments regarding the proposed sale must be received by the BLM on or before July 11, 2011. Sealed bids must be received no later than 3 p.m., Pacific Standard Time (PST), on August 29, 2011, at the address specified below. Other deadline dates for payments are specified in the Supplementary Information section below. Sealed bids will be opened on August 30, 2011, which will be the sale date.

ADDRESSES: Written comments concerning the proposed sale should be sent to the Field Manager, BLM Ukiah Field Office, 2550 North State Street, Ukiah, CA 95482. Sealed bids must also be submitted to this address. More detailed information regarding the proposed sale and the land involved, including maps and current appraisal may be reviewed during normal business hours between 8 a.m. and 4 p.m. at the Ukiah Field Office.

FOR FURTHER INFORMATION CONTACT: Alice Vigil, Realty Specialist (707) 468–4082 or via e-mail at *alice_vigil@ca.blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The following public land is proposed for competitive sale in accordance with Sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1713 and 1719):

Mount Diablo Meridian

T. 12 N., R. 6 W.,

Sec. 15, SW¼NW¼, NW¼SW¼.

The area described contains 80 acres, more or less, in Lake County.

This land has been identified as suitable for disposal in the BLM's September 2006 Ukiah Resource Management Plan (RMP), as amended, and is not needed for any Federal purpose. The purpose of the sale is to dispose of land which is difficult and uneconomic to manage. Although the land is adjacent to other public land that has been identified for retention in the RMP, the lands proposed for sale are considered to be difficult and uneconomic to manage because ongoing public use of an access road has contributed to trespass on adjacent private land. Disposal of this land would be in the public interest.

The BLM has completed a mineral potential report which concluded that, with the exception of oil, gas and geothermal resources, there are no known mineral values in the land. The BLM proposes to reserve oil, gas and geothermal mineral interests to the United States and convey all other Federal mineral interests with the sale of the land. On June 1, 2011, the above described land will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the FLPMA. Until completion of the sale or termination of the segregation, the BLM will no longer accept land use applications affecting the public land, except applications for the amendment of previously filed right-of-way (ROW) applications or existing authorizations to increase the term of

the grants in accordance with 43 CFR 2807.15. The segregation will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation on June 1, 2013, unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date. Proceeds from the sale will be deposited into the Federal Land Disposal Account, pursuant to the Federal Land Transaction Facilitation Act of July 25, 2000. The land would not be sold until at least July 26, 2011. Any patent issued would contain the following terms, conditions, and reservations:

1. A reservation of a right-of-way to the United States for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

2. A reservation of all oil, gas and geothermal mineral resources to the United States together with the right to prospect for, mine and remove such mineral resources under applicable law and any regulations as the Secretary of the Interior may prescribe, along with all necessary access and exit rights.

3. Subject to the following existing rights of way (ROW); a ROW for a fiber optic cable issued under serial number CACA 19384, a ROW for an access road issued under serial number CACA 40026, a ROW for a well and windmill issued under serial number CACA 47133, a ROW for a 115-kV power line issued under serial number CACA 14669, and a ROW for a county road issued under serial number CACA 14470.

4. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use and occupancy of the patented lands.

5. Additional terms and conditions that the authorized officer deems appropriate.

The ROWs listed in 3 above may be replaced by permanent easements prior to conveyance. The parcel may be subject to applications for ROWs received prior to publication of this Notice if processing the application would not adversely affect the marketability or appraised value of the land. Case files containing details on the existing ROWs are available for review at the Ukiah Field Office.

Interested bidders are advised to obtain an Invitation For Bids (IFB) from the BLM Ukiah Field Office at the address above or by calling (707) 468–4082. Bidders must follow the instructions in the IFB to participate in the bidding process. Sealed bids must be for not less than the Federally approved fair market value. Each sealed bid must include a certified check, money order, bank draft, or cashier's check made payable in U.S. dollars to the order of the Bureau of Land Management, for 10 percent of the amount of the bid. The highest qualifying bidder among the qualified bids received for the sale will be declared the high bid and the high bidder will receive written notice. Bidders submitting matching high bid amounts will be provided an opportunity to submit supplemental bids. The Ukiah Field Manager will determine the method of supplemental bidding, which may be by oral auction or additional sealed bids. The successful bidder must submit the remainder of the full bid price in the form of a certified check, money order, bank draft, or cashier's check made payable in U.S. dollars to the Bureau of Land Management prior to the expiration of 180 days from the date of the sale. Personal checks will not be accepted. Failure to submit the full bid price prior to, but not including, the 180th day following the day of the sale will result in the forfeiture of the 10 percent bid deposit to the BLM in accordance with 43 CFR 2711.3–1(d). No exceptions will be made. The BLM will return checks submitted by unsuccessful bidders by U.S. mail. The BLM may accept or reject any or all offers, or withdraw any parcel of land or interest therein from sale, if, in the opinion of the BLM authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable law or is determined to not be in the public interest. Under Federal law, public lands may only be conveyed to U.S. citizens 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property, or an entity legally capable of conveying and holding lands under the laws of the State of California. Certification of qualifications, including citizenship or corporation or partnership, must accompany the sealed bid. A bid to purchase the land will constitute an application for conveyance of the mineral interests of no known value, and in conjunction with the final payment, the high bidder will be required to pay a $50 non-refundable filing fee and any applicable administrative costs for processing the conveyance of the mineral interests.

If not sold, the land described in this Notice may be identified for sale later without further legal notice and may be offered for sale by sealed bid, Internet auction, or oral auction. In order to determine the value, through appraisal, of the land proposed to be sold, certain extraordinary assumptions may have been made of the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this Notice, the BLM gives notice that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable local government policies, laws, and regulations that would affect the lands, including any required dedication of lands for public uses. It is also the buyer's responsibility to be aware of existing or projected uses of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals will be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Detailed information concerning the proposed land sale including the reservations, sale procedures and conditions, appraisal, planning and environmental documents, and a mineral report are available for review at the location identified in **ADDRESSES** above.

Public Comments regarding the proposed sale may be submitted in writing to the attention of the BLM Ukiah Field Manager (see **ADDRESSES** above) on or before July 18, 2011. Comments received in electronic form, such as e-mail or facsimile, will not be considered. Any adverse comments regarding the proposed sale will be reviewed by the BLM State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2711.1–2(a) and (c).

Tom Pogacnik,

Deputy State Director, Natural Resources.

[FR Doc. 2011–13299 Filed 5–31–11; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–624 and 625 (Third Review)]

Helical Spring Lock Washers From China and Taiwan; Institution of Five-Year Reviews Concerning the Antidumping Duty Orders on Helical Spring Lock Washers From China and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on helical spring lock washers from China and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is July 1, 2011. Comments on the adequacy of responses may be filed with the Commission by August 15, 2011. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* June 1, 2011.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On June 28, 1993, the Department of Commerce ("Commerce") issued an antidumping duty order on imports of helical spring lock washers from Taiwan (58 FR 34567). On October 19, 1993, Commerce issued an antidumping duty order on imports of helical spring lock washers from China (58 FR 53914). Following first five-year reviews by Commerce and the Commission, effective February 23, 2001, Commerce issued a continuation of the antidumping duty orders on imports of helical spring lock washers from China and Taiwan (66 FR 11255). Following second five-year reviews by Commerce and the Commission, effective July 3, 2006, Commerce issued a continuation of the antidumping duty orders on imports of helical spring lock washers from China and Taiwan (71 FR 37904). The Commission is now conducting third reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are China and Taiwan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, its full first five-year review determinations, and its expedited second five-year review determinations, the Commission defined the Domestic Like Product as helical spring lock washers of all sizes and metals.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, its full first five-year review determinations, and its expedited second five-year review determinations, the Commission defined the Domestic Industry as all domestic producers of helical spring lock washers.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b)(19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter,

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 11–5–246, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 1, 2011. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is August 15, 2011. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to be Provided In Response to This Notice Of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country.As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. ' 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in each Subject Country that currently export or have exported Subject Merchandise to the United States or other countries after 2005.

(7) A list of 3–5 leading purchasers in the U.S. market for the Domestic Like Product and the Subject Merchandise (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the Domestic Like Product or the Subject Merchandise in the U.S. or other markets.

(9) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2010, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the Domestic Like Product (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the Domestic Like Product produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country(ies), provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from each Subject Country accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of Subject Merchandise imported from each Subject Country; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from each Subject Country.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country(ies), provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in each Subject Country accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the Subject Merchandise in each Subject Country (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from each Subject Country accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country(ies) after 2005, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country(ies), and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: May 25, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–13445 Filed 5–31–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–457–A–D Third Review]

Heavy Forged Hand Tools From China; Scheduling of Expedited Five-Year Reviews Concerning the Antidumping Duty Orders on Heavy Forged Hand Tools From China.

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty orders on heavy forged hand tools from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* April 8, 2011.

FOR FURTHER INFORMATION CONTACT: Christopher Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On April 8, 2011, the Commission determined that the domestic interested party group response to its notice of institution (76 FR 168, January 3, 2011) of the subject five-year reviews was adequate and that

the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on July 7, 2011, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before July 13, 2011 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by July 13, 2011. However, should the Department of Commerce extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 Fed. Reg. 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.
Issued: May 25, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–13450 Filed 5–31–11; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by Ames True Temper and Council Tool Co., Inc. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Protective Cases and Components thereof,* DN 2809; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on Otter Products LLC on May 25, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain protective cases and components thereof. The complaint names as respondents A.G. Findings and Mfg. Co., Inc. of Sunrise, FL; AFC Trident Inc. of Chino, CA; Alibaba.com Hong Kong Ltd. of Hangzhou, China; Anbess Electronics Co. Ltd. of Shenzhen, China; Cellairis Franchise, Inc. of Alpharetta, GA; Cellet Products of Santa Fe Springs, CA; DHgate.com of Beijing, China; Griffin Technology, Inc. of Nashville, TN; Guangzhou Evotech Industry Co., Ltd., of Guangdong, China; Hardcandy Cases LLC, of Sacramento, CA; Hoffco Brands Inc. of Wheat Ridge, CO; Hong Kong Better Technology Group Ltd. of Shenzhen, China; Hong Kong HJJ Co., Ltd. of Shenzhen, China; Hypercel Corporation of Valencia, CA; InMotion Entertainment of Jacksonville, FL; Mega Watts Computers LLC of Tulsa, OK; National Cellular of Brooklyn, NY; OEMBargain.com of Wantagh, NY; One Step Up Ltd. of New York, NY; Papaya Holdings Ltd. of Central, Hong Kong; Quanyun Electronics Co., Ltd. of Shenzhen, China; ShenZhen Star & Way Trade Co., Ltd. of Guangzhou City, China; Sinatech Industrial Co., Ltd. of Guangzhou, China; Smilecase of Windsor Mill, MD; Suntel Global Investment Ltd. of Guangzhou, China; TheCaseInPoint.com of Titusville, FL; TheCaseSpace of Fort Collins, CO; Topter Technology Co. Ltd. of Shenzhen China and Trait Technology (Shenzhen) Co., Ltd. of Shenzhen, China

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number ("Docket No. 2809") in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

By order of the Commission.

Issued: May 26, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–13451 Filed 5–31–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–860 (Second Review)]

Tin- and Chromium-Coated Steel Sheet from Japan; Institution of a Five-Year Review Concerning the Antidumping Duty Order on Tin- and Chromium-Coated Steel Sheet from Japan

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on tin- and chromium-coated steel sheet from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is July 1, 2011. Comments on the adequacy of responses may be filed with the Commission by August 15, 2011. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* June 1, 2011.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On August 28, 2000, the Department of Commerce issued an antidumping duty order on imports of tin- and chromium-coated steel sheet from Japan (65 FR 52067). Following five-year reviews by Commerce and the Commission, effective July 21, 2006, Commerce issued a continuation of the antidumping duty order on imports of tin- and chromium-coated steel sheet from Japan (71 FR 41422). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Japan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its full first five-year review determination, the Commission defined the *Domestic Like Product* as tin- and chromium-coated steel sheet corresponding to Commerce's definition of the scope of the investigation.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 11–5–248, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

product. In its original determination and its full first five-year review determination, the Commission defined the *Domestic Industry* as all domestic producers of tin- and chromium-coated steel sheet.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b)(19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 1, 2011. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is August 15, 2011. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to this Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have

exported *Subject Merchandise* to the United States or other countries after 2005.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2010, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2005, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: May 25, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–13446 Filed 5–31–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–696 (Third Review)]

Pure Magnesium From China; Institution of a Five-Year Review Concerning the Antidumping Duty Order on Pure Magnesium From China.

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on pure magnesium from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section

751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is July 1, 2011. Comments on the adequacy of responses may be filed with the Commission by August 15, 2011. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* June 1, 2011.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On May 12, 1995, the Department of Commerce issued an antidumping duty order on imports of pure magnesium from China (60 FR 25691). Following first five-year reviews by Commerce and the Commission, effective October 27, 2000, Commerce issued a continuation of the antidumping duty order on imports of pure magnesium from China (65 FR 64422). Following second five-year reviews by Commerce and the Commission, effective July 10, 2006, Commerce issued a continuation of the antidumping duty order on imports of pure magnesium from China (71 FR 38860). The Commission is now conducting a third review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In the last five-year review of this order, different Commissioners at the Commission defined the *Domestic Like Product* in different ways. Therefore, for purposes of responding to the items in this notice, please provide the requested information separately for the following two *Domestic Like Product* definitions: (1) All pure magnesium ingot, including off-spec pure magnesium[1] and (2) pure and alloy magnesium, including primary and secondary magnesium, and magnesium in ingot and granular form.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In the last five-year review of this order, different Commissioners at the Commission defined the *Domestic Industry* in different ways. Therefore, for purposes of responding to the items in this notice, please provide the requested information separately for the following two *Domestic Industry* definitions: (1) All producers of pure magnesium ingot, including off-spec pure magnesium and (2) all producers of pure and alloy magnesium, including primary and secondary magnesium, and magnesium in ingot and granular form.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 11–5–247, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

[1] Off-spec pure magnesium is magnesium containing between 50 percent and 99.8 percent primary magnesium, by weight, that does not conform to ASTM specifications for alloy magnesium. Off-spec pure magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium, or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8 percent by weight. It generally does not contain, individually or in combination, 1.5 percent or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium, and rare earths.

applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 1, 2011. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is August 15, 2011. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be Provided In Response to This Notice of Institution: Please provide the requested information *separately* for each of the following *Domestic Like Product* definitions: (1) all pure magnesium ingot, including off-spec pure magnesium and (2) pure and alloy magnesium, including primary and secondary magnesium, and magnesium in ingot and granular form. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2005.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2010, except as noted (report quantity data in metric tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) The value of (i) Net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently

completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in metric tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in metric tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2005, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: May 25, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–13448 Filed 5–31–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Global Climate and Energy Project

Notice is hereby given that, on April 8, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Global Climate and Energy Project ("GCEP") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership and its nature and objectives. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Toyota Motor Corporation, Aichi, Japan, has withdrawn as a party to this venture. The change in its nature and objectives is that the members of GCEP have amended the agreement between them to extend the termination of GCEP, which currently will terminate August 31, 2013.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and GCEP intends to file additional written notifications disclosing all changes in membership.

On March 12, 2003, GCEP filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 4, 2003 (68 FR 16552).

The last notification was filed with the Department on February 26, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act April 3, 2009 (74 FR 15303).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2011–13306 Filed 5–31–11; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 15, 2011, Wildlife Laboratories Inc., 1401 Duff Drive, Suite 400, Fort Collins, Colorado 80524, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Carfentanil (9743), a basic class of controlled substance listed in schedule II.

The company plans to manufacture the above listed controlled substance for sale to veterinary pharmacies, zoos, and for other animal and wildlife applications.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substance, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than August 1, 2011.

Dated: May 25, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–13487 Filed 5–31–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Notice of the Availability of the Finding of No Significant Impact Concerning a Proposal To Award a Contract to House Federal, Low-Security, Criminal Aliens in a Contractor-Owned/Contractor-Operated Correctional Facility

AGENCY: U.S. Department of Justice, Federal Bureau of Prisons.

ACTION: Finding of No Significant Impact.

SUMMARY: The U.S. Department of Justice, Federal Bureau of Prisons (BOP) announces the availability of the Finding of No Significant Impact (FONSI) concerning the Environmental Assessment (EA) for the proposal to award one or more contracts to house 900 to approximately 3,000 federal, low-security, adult male, non-U.S. citizen, criminal aliens within one or more existing contractor-owned and operated correctional facilities.

Background Information

Pursuant to Section 102, 42 U.S.C. 4332, of the National Environmental Policy Act (NEPA) of 1969, as amended and the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the BOP published an EA concerning a proposal to award one or more contracts to house 900 to approximately 3,000 Federal, low-security, adult male, non-U.S. citizen, criminal aliens within one or more existing contractor-owned and operated correctional facilities.

The 30-day public comment period began on January 28, 2011 and was extended by 10 days at the request of a member of the public in order to submit comments to the BOP concerning the EA. By March 9, 2011, the BOP received comment letters from several government agencies and a member of the public which raised technical and non-technical issues and questions.

Following a thorough review of all public comments and environmental documentation amassed in support of the proposed action, the BOP determined that it was appropriate and in the best interests of the public to prepare a new EA. The new EA incorporated additional information prepared in response to public comments. The new EA also provided the most current information available regarding the alternative facilities as well as the BOP's Preferred Alternative.

Project Information

Under the proposed action, the contractor(s) selected to house the approximately 3,000 Federal, low-security, adult male, criminal aliens would be responsible for ensuring that the correctional facility(s) is operated in a manner consistent with the mission of the BOP and state and federal laws and regulations. It is anticipated that the BOP will predominantly assign Federal, low-security, adult male, criminal aliens (comprised primarily of persons with a year or less remaining to serve) to the selected facility. However, the BOP may designate any inmate within its custody utilizing the same designation criteria as used at other BOP facilities. All inmate services and programs would be developed and implemented to comply with the BOP's contract requirements and all applicable federal, state and local laws and regulations.

Following publication of the solicitation for the Short Term Sentences procurement, the BOP received responses from contractors representing nine alternative facilities. Of the nine alternative locations, six were either withdrawn by contractor(s) or eliminated from consideration by the BOP on the basis of non-environmental criteria. Three existing correctional facilities, located in Oklahoma and Texas, were considered worthy of further consideration. Possible use of each of three existing facilities, in addition to the No Action alternative, were evaluated in an EA prepared by the BOP. The BOP would select one or more contractors for contract award from among the three offerors:

—Diamondback Correctional Center, Watonga, Oklahoma.
—Great Plains Correctional Facility, Hinton, Oklahoma.
—Willacy County Processing Center, Raymondville, Texas.

No other facilities were under consideration by the BOP. The BOP reserves the right to make multiple awards. In the event it is in the Government's best interest, the BOP may make up to two (based on proposals received) contract awards as long as the total quantity is within the scope of approximately 3,000 beds.

The BOP issued the EA on May 2, 2011, with publication of the Notice of Availability (NOA) in newspapers serving the area surrounding each of the alternative locations. The NOA included information concerning the 30-day public comment period which began on May 2, 2011, and ended on May 31, 2011. The BOP also distributed copies of the EA to federal agencies, state and local governments, elected officials, interested organizations, public libraries and individuals.

Availability of Finding of No Significant Impact

The FONSI is available upon request. To request a copy of the FONSI, *please contact:* Richard A. Cohn, Chief, or Issac J. Gaston, Site Selection Specialist, Capacity Planning and Site Selection Branch, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534 *Tel:* 202–514–6470/*Fax:* 202–616–6024/*E-mail: racohn@bop.gov* or *IGaston@bop.gov*

FOR FURTHER INFORMATION CONTACT: Richard A. Cohn, or Issac J. Gaston, Federal Bureau of Prisons.

Dated: May 24, 2011,

Richard A. Cohn,

Chief, Capacity Planning and Site Selection Branch.

[FR Doc. 2011–13486 Filed 5–31–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Comment Request for Information Collection for Enhanced Transitional Jobs Demonstration, New Collection

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly

understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the collection of data to support the Enhanced Transitional Jobs Demonstration project (ETJD).

A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before August 1, 2011.

ADDRESSES: Submit written comments to the Employment and Training Administration, 200 Constitution Avenue, NW., Suite N–4511, Washington, DC 20210, Attention: Jenn Smith, Telephone number: (202) 693–3597 (this is not a toll-free number). Fax: (202) 693–3113. E-mail: *smith.jenn@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In applying for the Enhanced Transitional Jobs Demonstration grants, grantees agree to submit participant data and quarterly aggregate reports for individuals who receive services through ETJD programs and their partnerships with One-Stop Career Centers, local workforce investment boards, employment providers, the criminal justice system, and child support enforcement agencies, among others. The reports include aggregate data on demographic characteristics, types of services received, placements, outcomes, and follow-up status. Specifically, they summarize data on participants who received subsidized employment and training, placement services, child support assistance and family reunification services, mentoring, and other services essential to successful unsubsidized employment of ex-offender and non-custodial parent participants through ETJD programs.

This requests an approval for a new information collection to meet the reporting and recordkeeping requirements of the Enhanced Transitional Jobs Demonstration through an ETA-provided, Web-based Management Information System (MIS). In addition to reporting participant information and performance-related outcomes, ETJD grantees will be part of an extensive random assignment evaluation to test the effectiveness of a transitional jobs "bump-up" model that provides an enhanced approach to the traditional transitional jobs model, in order to demonstrate the effectiveness of transitional jobs in serving specific hard-to-employ populations.

Five outcome measures are used to measure success in the ETJD grants: Entered employment rate, employment retention rate, average six-month post-program earnings, recidivism rate, and rate of child support order modifications. Several of these conform to the common performance measures implemented across Federal job training programs as of July 1, 2005. By standardizing the reporting and performance requirements of different programs, the common measures give ETA the ability to compare across programs the core goals of the workforce system—how many people entered jobs; how many stayed employed; and how many successfully completed an educational program. Although the common measures are an integral part of ETA's performance accountability system, these measures provide only part of the information necessary to effectively oversee the workforce investment system. ETA also collects data from ETJD grantees on program activities, participants, and outcomes that are necessary for program management and the random assignment evaluation process and for conveying full and accurate information on the performance of ETJD programs to policymakers and stakeholders.

This information collection maintains a reporting and record-keeping system for a minimum level of information collection that is necessary to comply with Equal Opportunity requirements, to hold ETJD grantees appropriately accountable for the Federal funds they receive, including common performance measures, and to allow the Department to fulfill its oversight and management responsibilities.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
* Enhance the quality, utility, and clarity of the information to be collected; and
* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

Type of Review: New collection.

Agency: Employment and Training Administration.

Title: Enhanced Transitional Jobs Demonstration Reporting System.

OMB Number: 1205–0NEW.

Affected Public: Local workforce investment board, non-profit, or faith-based organization grantees.

Total Respondents: 12 grantees.

Frequency: Quarterly.

ESTIMATED TOTAL BURDEN HOURS

Form/activity	Total respondents	Frequency	Total annual response	Average time per response (hours)	Total annual burden hours	Total annual burden cost
Participant Data Collection	12	Continual	3000	2.5	7,500	$107,775
Quarterly narrative progress report	12	Quarterly	48	10	480	6,898
Quarterly performance report	12	Quarterly	48	20	960	13,795
Totals	12		1,296	32.5	8,940	128,468

Comments submitted in response to this comment request will be summarized in the request for Office of Management and Budget approval of the information collection request and will become a matter of public record.

Dated: May 11, 2011.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2011–13454 Filed 5–31–11; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Labor Advisory Committee for Trade Negotiations and Trade Policy

ACTION: Meeting notice.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiation and Trade Policy.

DATE, TIME, PLACE: June 28, 2011; 3 p.m.–4:30 p.m.; U.S. Department of Labor, Secretary's Conference Room, 200 Constitution Ave., NW., Washington, DC.

PURPOSE: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to 19 U.S.C. 2155(f) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Gregory Schoepfle, Director, Office of Trade and Labor Affairs; Phone: (202) 693–4887.

Signed at Washington, DC the 25th day of May 2011.

Sandra Polaski,

Deputy Undersecretary, International Affairs.

[FR Doc. 2011–13490 Filed 5–31–11; 8:45 am]

BILLING CODE 4510–28–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 11–050]

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: Wednesday, June 22, 2011, 11:30 a.m. to 4 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 888–324–7575, pass code PSS, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/,* meeting number 990 482 047, and password PSS@June22.

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:

—Review of the Planetary Science Division Response to the Decadal Survey.

—Discussion/Review of the Planetary Science Division Fiscal Year 2011 Government Performance and Results Act Draft Report.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

May 25, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–13548 Filed 5–31–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before July 1, 2011 to be assured of consideration.

ADDRESSES: Send comments to Mr. Nicholas A. Fraser, Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5167; or electronically mailed to *Nicholas_A._Fraser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on March 16, 2011 (76 FR 14433 and 14434). No comments were received. NARA has submitted the described information collections to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (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 the use of information technology; and (e) whether small businesses are affected by these collections. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* Presidential Library Facilities.

OMB Number: 3095–0036.

Agency Form Number: None.

Type of Review: Regular.

Affected Public: Presidential library foundations or other entities proposing to transfer a Presidential library facility to NARA.

Estimated Number of Respondents: 1.

Estimated Time per Response: 31 hours.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 31 hours.

Abstract: The information collection is required for NARA to meet its obligations under 44 U.S.C. 2112(a)(3) to submit a report to Congress before accepting a new Presidential library facility. The report contains information that can be furnished only by the foundation or other entity responsible for building the facility and establishing the library endowment.

2. *Title:* Forms Relating to Military Service Records.

OMB Number: 3095–0039.

Agency Form Number: NA Forms 13036, 13042, 13055, and 13075.

Type of Review: Regular.

Affected Public: Veterans, their authorized representatives, state and local governments, and businesses.

Estimated Number of Respondents: 79,800.

Estimated Time per Response: 5 minutes.

Frequency of Response: On occasion (when respondent wishes to request information from a military personnel, military medical, and dependent medical record).

Estimated Total Annual Burden Hours: 6,650 hours.

Abstract: The information collection is prescribed by 36 CFR 1228.162. In accordance with rules issued by the Department of Defense (DoD) and the Department of Transportation (DoT, U.S. Coast Guard), the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers military personnel and medical records of veterans after discharge, retirement, and death. In addition, NPRC administers the medical records of dependents of service personnel. When veterans, dependents, and other authorized individuals request information from or copies of documents in military personnel, military medical, and dependent medical records, they must provide on forms or in letters certain information about the veteran and the nature of the request. A major fire at the NPRC on July 12, 1973, destroyed numerous military records. If individuals' requests involve records or information from records that may have been lost in the fire, requesters may be asked to complete NA Form 13075, Questionnaire about Military Service, or NA Form 13055, Request for Information Needed to Reconstruct Medical Data, so that NPRC staff can search alternative sources to reconstruct the requested information. Requesters who ask for medical records of dependents of service personnel and hospitalization records of military personnel are asked to complete NA Form 13042, Request for Information Needed to Locate Medical Records, so that NPRC staff can locate the desired records. Certain types of information contained in military personnel and medical records are restricted from disclosure unless the veteran provides a more specific release authorization than is normally required. Veterans are asked to complete NA Form 13036, Authorization for Release of Military Medical Patient Records, to authorize release to a third party of a restricted type of information found in the desired record.

3. *Title:* NARA Visitors Study.

OMB Number: 3095–0067.

Agency Form Number: N/A.

Type of Review: Regular.

Affected Public: Individuals who visit the National Archives Experience in Washington, DC.

Estimated Number of Respondents: 200.

Estimated Time per Response: 12 minutes.

Frequency of Response: On occasion (when an individual visits the National Archives Experience in Washington, DC).

Estimated Total Annual Burden Hours: 40 hours.

Abstract: The general purpose of this voluntary data collection is to benchmark the performance of the NAE in relation to other history museums. Information collected from visitors assesses the overall impact, expectations, presentation, logistics, motivation, demographic profile and learning experience. Once analysis is done, this collected information assists NARA in determining the NAE's success in achieving its goals.

Dated: May 25, 2011.

Michael L. Wash,

Assistant Archivist for Information Services/CIO.

[FR Doc. 2011–13557 Filed 5–31–11; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (1173).

Dates/Time: June 13, 2011, 9 a.m.–4:30 p.m. June 14, 2011, 9 a.m.–2 p.m.

Places: June 13, 2011, The White House Conference Center, 726 Jackson Place, NW., Washington, DC 20006.

June 14, 2011, National Science Foundation (NSF), 4201 Wilson Boulevard, Arlington, VA 22230.

To help facilitate your entry into the buildings, contact the individual listed below. Your request to attend this meeting must be received by e-mail on or prior to June 6, 2011.

Type of Meeting: Open.

Contact Person: Dr. Margaret E.M. Tolbert, Senior Advisor and CEOSE Executive Liaison, Office of Integrative Activities, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 *Telephone Numbers:* (703) 292–4216, 703–292–8040; *mtolbert@nsf.gov.*

Minutes: Meeting minutes and other information may be obtained from the Executive Liaison at the above address or the Web site at: *http://www.nsf.gov/od/oia/activities/ceose/index.jsp.*

Purpose of Meeting: To study data, programs, policies, and other information pertinent to the National Science Foundation and to provide advice and recommendations concerning broadening participation in science and engineering.

Agenda

Monday, June 13, 2011

Opening Statement by the CEOSE Chair

Presentations and Discussions:

- Concurrence on the CEOSE Minutes of the February 8–9, 2011 Meeting.
- Presentation of Key Points from the Meeting among the National Science Foundation Director and CEOSE officers.
- Discussion of Plans for Meeting with OSTP and NSF Officials and Representatives of Other Federal Agencies.
- Discussion of CEOSE Membership.
- Presentation on "Setting the Stage for Joining Forces on Broadening Participation in STEM".
- An OSTP and NSF sponsored CEOSE Discussion on "Inter-Agency Collaborations to Broaden Participation in STEM" with Members of the NSTC Committee on Science.

Tuesday, June 14, 2011

Opening Statement by the CEOSE Chair

Presentations, Discussions, and Reports:

- Briefing on the June 13th CEOSE Meeting Session.
- Presentation "Walking in Beauty on an Ever-changing Path—A Native Woman Engineer's Perspective" by the CEOSE First Vice Chair and Recognition for Service to CEOSE, 2005 to 2011.
- Presentation "The Science and Engineering Equal Opportunities Act: A Progress Report" by Senior Analyst (Retired), NCSES/SBE/NSF, and Recognition for Service to CEOSE.
- Reports on NSF Advisory Committee Meetings by CEOSE Liaisons.
- Completion of Unfinished Business.

Dated: May 25, 2011.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2011–13399 Filed 5–31–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0006]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of May 30, June 6, 13, 20, 27, July 4, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of May 30, 2011

Thursday, June 2, 2011

9:30 a.m. Briefing on Human Capital and Equal Employment Opportunity (EEO) (Public Meeting) (*Contact:* Susan Salter, 301–492–2206).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of June 6, 2011—Tentative

Monday, June 6, 2011

10:00 a.m. Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (*Contact:* Tanny Santos, 301–415–7270).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of June 13, 2011—Tentative

Wednesday, June 15, 2011

9:30 a.m. Briefing on the Progress of the Task Force Review of NRC Processes and Regulations Following Events in Japan (Public Meeting) (*Contact:* Nathan Sanfilippo, 301–415–3951).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of June 20, 2011—Tentative

There are no meetings scheduled for the week of June 20, 2011.

Week of June 27, 2011—Tentative

There are no meetings scheduled for the week of June 27, 2011.

Week of July 4, 2011—Tentative

There are no meetings scheduled for the week of July 4, 2011.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by e-mail at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

May 26, 2011.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2011–13655 Filed 5–27–11; 4:15 pm]

BILLING CODE 7590–01–P

PEACE CORPS

Submission for OMB Emergency Review: Request for Comments

AGENCY: Peace Corps.

ACTION: Notice of information collection—OMB emergency review and request for comments requested.

SUMMARY: The Peace Corps has submitted the following information collection request, utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 and 5 CFR 1320.13. OMB approval has been requested by June 8, 2011. The Office of Management and Budget is particularly interested in comments that: 1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; 2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; 3. Enhance the quality, utility, and clarity of the information to be collected; and 4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

DATES: Comments on this proposal for emergency review should be received by June 3, 2011. We are requesting OMB to take action within 5 calendar days from the close of this **Federal Register** Notice on the request for emergency review. This process is conducted in accordance with 5 CFR 1320.13.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, *Attention:* Desk Officer for the Peace Corps or sent via e-mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–3086.

FOR FURTHER INFORMATION CONTACT: Denora Miller, FOIA Officer, Peace Corps, 1111 20th Street, NW., Washington, DC 20526, (202) 692–1236, or e-mail at *pcfr@mailto:ddunevant@peacecorps.govpeacecorps.gov.*

SUPPLEMENTARY INFORMATION: The Office of Volunteer Recruitment and Selection at the Peace Corps utilizes the NAC form as authorization from the candidate to conduct a formal background check through the Office of Personnel Management, which has access to pertinent records pertaining to applicants' legal activities and suitability for Peace Corps volunteer service. The Peace Corps Act requires the Director of the Peace Corps to ensure that the assignment of volunteers is consistent with the national interest in accordance with the standards and procedures established by the President of the United States. 22 U.S.C. 2519. We are seeking an emergency clearance to allow us to continue our eligibility and selection process. 22 CFR 305.3 and 305.4.

OMB Control Number: 0420–0001.

Title: National Agency Check (NAC) Questionnaire for Peace Corps Volunteer Background Investigation.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Affected Public: Potential and current volunteers.

Respondents' Obligation to Reply: Voluntary.

Burden to the Public:

a. *Number of Average Applicants:* 13,500.

b. *Number of Applicants Who Submit NAC Form:* 13,500.

c. *Frequency of Response:* One time.

d. *Completion Time:* 15 minutes.
e. *Annual Burden Hours:* 3,375.

This notice issued in Washington, DC, on May 23, 2011.

Earl W. Yates,

Associate Director, Management.

[FR Doc. 2011–13351 Filed 5–31–11; 8:45 am]

BILLING CODE 6051–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 213.103.

FOR FURTHER INFORMATION CONTACT: Roland Edwards, Senior Executive Resource Services, Executive Resources and Employee Development, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between March 1, 2011, and March 31, 2011. These notices are published monthly in the **Federal Register** at *http://www.federalregister.gov/.* A consolidated listing of all authorities as of June 30 is also published each year. The following Schedules are *not* codified in the Code of Federal Regulations. These are agency-specific exceptions.

Schedule A

No Schedule A authorities to report during March 2011.

Schedule B

No Schedule B authorities to report during March 2011.

Schedule C

The following Schedule C appointments were approved during March 2011.

Agency name	Organization name	Position title	Authorization No.	Effective date
Department of Agriculture	Office of the Assistant Secretary for Congressional Relations.	Special Assistant	DA110029	3/8/2011
	Office of the Secretary	Advisor for Special Projects	DA110037	3/24/2011
	Farm Service Agency	Special Assistant	DA110042	3/24/2011
Department of Commerce	Office of the Chief of Staff	Protocol Officer	DC110040	3/3/2011
	National Oceanic and Atmospheric Administration.	Director, Strategic Initiatives and Partnerships.	DC110052	3/3/2011
	Office of the Assistant Secretary for Economic Development.	Senior Advisor	DC110043	3/8/2011
Council on Environmental Quality	Council on Environmental Quality	Associate Director for Communications.	EQ110004	3/25/2011
Department of Defense	Office of the Assistant Secretary of Defense (Asian and Pacific Security Affairs).	Director, Pakistan	DD110052	3/9/2011
	Washington Headquarters Services	Defense Fellow	DD110047	3/9/2011
	Office of Assistant Secretary of Defense (Legislative Affairs).	Special Assistant	DD110049	3/9/2011
	Office of the Secretary	Special Assistant	DD110050	3/9/2011
	Washington Headquarters Services	Defense Fellow	DD110048	3/10/2011
	Office of the Under Secretary of Defense (Policy).	Special Assistant	DD110054	3/22/2011
Department of the Air Force	Office of Assistant Secretary Air Force, Installations, Environment, and Logistics.	Special Assistant	DF110014	3/21/2011
	Office of the Secretary	Executive Speechwriter	DF110016	3/23/2011
Department of Education	Office of the Secretary	Confidential Assistant	DB110040	3/18/2011
	Office of Communications and Outreach.	Confidential Assistant	DB110042	3/18/2011
	Office of Communications and Outreach.	Confidential Assistant	DB110043	3/18/2011
	Office of Safe and Drug-Free Schools.	Confidential Assistant	DB110046	3/18/2011
	Office of Innovation and Improvement.	Confidential Assistant	DB110049	3/28/2011
Department of Energy	Office of the Secretary	Special Assistant	DE110055	3/3/2011
	Office of the Chief Financial Officer	Special Assistant	DE110059	3/14/2011
	Office of the Deputy Secretary	Special Assistant	DE110063	3/21/2011
Environmental Protection Agency	Office of the Associate Administrator for External Affairs and Environmental Education.	Special Assistant	EP110019	3/25/2011
Export-Import Bank	Office of Communications	Senior Advisor	EB110007	3/10/2011
General Services Administration	Office of Communications and Marketing.	Director of Public Engagement	GS110031	3/9/2011
	Office of Communications and Marketing.	Deputy Press Secretary	GS110030	3/9/2011
	Office of Communications and Marketing.	Press Secretary	GS110029	3/11/2011
	Office of the Administrator	White House Liaison	GS110033	3/22/2011
Department of Health and Human Services.	Office of the Assistant Secretary for Public Affairs.	Special Assistant for Public Affairs	DH110004	3/11/2011
Department of Homeland Security	Office of the General Counsel	Special Advisor	DM110095	3/11/2011

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the Assistant Secretary for Policy.	Policy Analyst	DM110097	3/14/2011
	Office of the Assistant Secretary for Policy.	Senior Advisor	DM110112	3/16/2011
	Office of the Chief of Staff	Liaison for Community Partnership and Strategic Engagement.	DM110110	3/17/2011
	Office of the Under Secretary for National Protection and Programs Directorate.	Senior Cybersecurity Strategist	DM110091	3/22/2011
	Office of Counternarcotics Enforcement.	Counselor	DM110118	3/23/2011
	Office of the Under Secretary for Intelligence and Analysis.	Liaison	DM110115	3/25/2011
	Office of the General Counsel	Special Assistant and Attorney Advisor.	DM110120	3/28/2011
Department of the Interior	Bureau of Ocean Energy Management, Regulation and Enforcement.	Senior Advisor	DI110041	3/8/2011
Department of Justice	Office of Intergovernmental and Public Liaison.	Special Assistant	DJ100182	3/31/2011
	Office of Intergovernmental and Public Liaison.	Associate Director	DJ110043	3/31/2011
Department of Labor	Office of the Secretary	Special Assistant	DL110017	3/18/2011
	Office of the Secretary	Lead Scheduler	DL110019	3/23/2011
	Office of the Secretary	Assistant	DL110021	3/30/2011
Occupational Safety and Health Review Commission.	Office of Commissioners	Counsel	SH110001	3/10/2011
Office of National Drug Control Policy.	Office of Public Affairs	Public Affairs Specialist (Deputy Press Secretary).	QQ110004	3/22/2011
Small Business Administration	Office of Congressional and Legislative Affairs.	Congressional and Legislative Affairs Assistant.	SB100046	3/24/2011
Department of State	Bureau of International Narcotics and Law Enforcement Affairs.	Special Assistant	DS110059	3/18/2011
	Office To Monitor and Combat Trafficking In Persons.	Staff Assistant	DS110048	3/21/2011
	Bureau of Economic, Energy and Business Affairs.	Special Assistant	DS110053	3/23/2011
	Bureau of Public Affairs	Staff Assistant	DS110056	3/24/2011
	Bureau of Near Eastern Affairs	Legislative Liaison Specialist	DS110052	3/30/2011
Department of Transportation	Associate Administrator for Public Affairs.	Director of Public Affairs	DT110021	3/24/2011

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–13460 Filed 5–31–11; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Hispanic Council on Federal Employment

AGENCY: Office of Personnel Management.

ACTION: Scheduling of council meeting.

SUMMARY: The Hispanic Council on Federal Employment will hold its third meeting on Friday, June 17th, 2011 at the time and location shown below. The Council is an advisory committee composed of representatives from Hispanic organizations and senior government officials. Along with its other responsibilities, the Council shall advise the Director of the Office of Personnel Management on matters involving the recruitment, hiring, and advancement of Hispanics in the Federal workforce. The Council is co-chaired by the Chief of Staff of the Office of Personnel Management and the Assistant Secretary for Human Resources and Administration at the Department of Veterans Affairs.

The meeting is open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to present material to the Council at the meeting. The manner and time prescribed for presentations may be limited, depending upon the number of parties that express interest in presenting information.

DATES: June 17th, 2011 from 2–4 p.m.

LOCATION: U.S. Department of Veteran Affairs, Room 230, 810 Vermont Avenue NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Veronica E. Villalobos, Director for the Office of Diversity and Inclusion, Office of Personnel Management, 1900 E. St., NW., Suite 5305, Washington, DC 20415. Phone (202) 606–2984 FAX (202) 606–2183 or e-mail at *Edgar.Gonzalez@opm.gov.*

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–13469 Filed 5–31–11; 8:45 am]

BILLING CODE 6325–46–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–18; Order No. 737]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Valley Falls Station has been filed. It identifies preliminary steps and

provides a procedural schedule. Publication of this document will allow the Postal Service, petitioner, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* June 7, 2011; *deadline for notices to intervene:* June 20, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on May 23, 2011, the Commission received a petition for review of the Postal Service's determination to close the Valley Falls Station in Cumberland, Rhode Island. The petition was filed online by Derrick Watson on behalf of the Concerned Citizens of Valley Falls—Save Our Post Office (Petitioner). The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–18 to consider Petitioner's appeal. If Petitioner would like to further explain its position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than June 27, 2011.

Categories of issues apparently raised. Petitioner raises several issues regarding the closing. The categories of issues raised include: Failure to follow the post office closure requirements (*see* 39 U.S.C. 404(d)(1)); and failure to consider effect on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the administrative record with the Commission is June 7, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is June 7, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents also are available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Those, other than the Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before June 20, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the administrative record regarding this appeal no later than June 7, 2011.

2. Any responsive pleading by the Postal Service to this Notice is due no later than June 7, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Richard A. Oliver is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

PROCEDURAL SCHEDULE

May 23, 2011.	Filing of Appeal.
June 7, 2011.	Deadline for the Postal Service to file the administrative record in this appeal.
June 7, 2011.	Deadline for the Postal Service to file any responsive pleading.
June 20, 2011.	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
June 27, 2011.	Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
July 18, 2011.	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
August 2, 2011.	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
August 9, 2011.	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
September 20, 2011.	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–13477 Filed 5–31–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64547; File No. 4–631]

Joint Industry Plan; Notice of Filing of a National Market System Plan to Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y–Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE Amex LLC, and NYSE Arca, Inc.

May 25, 2011.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act") [1] and Rule 608 thereunder [2], notice is hereby given that, on April 5, 2011, NYSE Euronext, on behalf of New York Stock Exchange LLC ("NYSE"), NYSE Amex LLC ("NYSE Amex"), and NYSE Arca, Inc. ("NYSE Arca"), and the following parties to the proposed National Market System Plan: BATS Exchange, Inc., BATS Y–Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, and National Stock Exchange, Inc. (collectively with NYSE, NYSE Amex, and NYSE Arca, the "Participants"), filed with the Securities and Exchange Commission (the "Commission") a proposed Plan to Address Extraordinary Market Volatility ("Plan").[3] A copy of the proposed Plan is attached as Exhibit A hereto. The Commission is publishing this notice to solicit comments on the proposed Plan from interested persons.[4]

I. Rule 608(a) of Regulation NMS

A. Purpose of the Plan

The Participants filed the proposed Plan in order to create a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in "NMS Stocks," as defined in Rule 600(b)(47) of Regulation NMS under the Act.[5] The proposed Plan sets forth proposed procedures that provide for market-wide limit up-limit down requirements that would be designed to prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands.[6] These limit up-limit down requirements would be coupled with Trading Pauses, as defined in Section I(X) of the proposed Plan, to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity).

As set forth in more detail in the proposed Plan, all trading centers [7] in NMS Stocks, including both those operated by Participants and those operated by members of Participants, would be required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down and trading pause requirements specified in the proposed Plan.

The single plan processor responsible for consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Act [8] would be responsible for calculating and disseminating the applicable Price Bands as provided for in Section V of the proposed Plan. The Processor for each NMS stock would calculate and disseminate to the public a lower Price Band and an upper Price Band during regular trading hours, as defined in Section I(R) of the proposed Plan, for such NMS Stock. The Price Bands would be based on a reference price for each NMS Stock that equals the arithmetic mean price of Eligible Reported Transactions for the NMS stock over the immediately preceding five-minute period (except for periods following openings and reopenings). The Price Bands for an NMS Stock would be calculated by applying the Percentage Parameter[9] for such NMS Stock to the reference price, with the lower Price Band being a Percentage Parameter below the reference price, and the upper Price Band being a Percentage Parameter above the reference price.

Section VI of the proposed Plan sets forth the details of the operation of the limit up-limit down mechanism. Section VI of the proposed Plan provides that all trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, would be required to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trades at prices that are below the lower Price Band or above the upper Price Band for an NMS Stock, consistent with the proposed Plan.

As set forth in Section VI, when one side of the market for an individual security is outside the applicable Price Band (*i.e.,* when the National Best Bid [10] is below the Lower Limit Band or the National Best Offer [11] is above the Upper Limit Band for an NMS Stock), the Processor would be required to disseminate such National Best Bid or National Best Offer with an appropriate flag identifying it as non-executable. When the other side of the market reaches the applicable Price Band (*i.e.,* when the National Best Offer is equal to the Lower Limit Band or the National Best Bid is equal to the Upper Limit Band for an NMS Stock), the market for an individual security would enter a Limit State,[12] and the Processor would be required to disseminate such National Best Offer or National Best Bid with an appropriate flag identifying it as a Limit State Quotation.[13] Trading for an NMS Stock would exit a Limit State if, within 15 seconds of entering the Limit State, the entire size of all Limit State Quotations is executed or cancelled. If

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] *See* Letter from Janet M. McGinness, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated April 5, 2011.

[4] For additional discussion about the Plan, including its relation to the single-stock circuit breakers, *see* discussion in Section II, *infra.*

[5] 17 CFR 242.600(b)(47). *See also* Section I(H) of the proposed Plan.

[6] As set forth in Section V of the proposed Plan, the Price Bands shall consist of a Lower Price Band and an Upper Price Band for each NMS Stock. The Price Bands shall be based on a Reference Price that equals the arithmetic mean price of Eligible Reported Transactions for the NMS stock over the immediately preceding five-minute period. As defined in the proposed Plan, Eligible Reported Transactions shall have the meaning prescribed by the Operating Committee for the proposed Plan, and generally mean transactions that are eligible to update the sale price of an NMS Stock.

[7] As defined in Section I(W) of the proposed Plan, a trading center shall have the meaning provided in Rule 600(b)(78) of Regulation NMS under the Exchange Act.

[8] 17 CFR 242.603(b). The proposed Plan refers to this entity as the Processor.

[9] As defined in Section (I)(M) of the proposed Plan, the Percentage Parameter shall mean the percentages for each tier of NMS Stocks set forth in Appendix A of the Plan. As such, the Percentage Parameters for Tier 1 NMS Stocks with a Reference Price of $1.00 or more shall be 5%, and the Percentage Parameters for Tier 2 NMS Stocks with a Reference Price of $1.00 or more shall be 10%. For Tier 1 and Tier 2 NMS Stocks with a Reference Price less than $1.00, the Percentage Parameters shall be the lesser of $0.15 or 75%. The Percentage Parameters for a Tier 2 NMS Stock that is a leveraged exchange-traded product shall be the applicable Percentage Parameter multiplied by the leverage ratio of such product.

[10] 17 CFR 242.600(b)(42). *See also* Section I(G) of the proposed Plan.

[11] *Id.*

[12] As set forth in Section VI(B) of the proposed Plan, when trading for an NMS Stock enters a Limit State, the Processor shall cease calculating and disseminating updated Reference Prices and Price Bands for the NMS Stock until either trading exits the Limit State or trading resumes with an opening or re-opening as provided in Section V of the proposed Plan.

[13] *See* Section I(D) of the proposed Plan.

the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange [14] would declare a five-minute Trading Pause pursuant to Section VII of the proposed Plan.

The Participants believe that, if implemented, the limit up-limit down mechanism specified in the proposed Plan will reduce the negative impacts of sudden, unanticipated price movements in NMS Stocks, thereby protecting investors and promoting a fair and orderly market. In particular, the Participants are proposing to adopt the Plan to address the type of sudden price movements that the market experienced on the afternoon of May 6, 2010.[15]

B. Governing or Constituent Documents

The governing documents of the Processor, as defined in Section I(P) of the proposed Plan, would not be affected by the proposed Plan, but if the proposed Plan is implemented, the Processor's obligations would change, as set forth in detail in the proposed Plan. In particular, as set forth in Section V of the proposed Plan, the Processor would be responsible for calculating and disseminating Price Bands during Regular Trading Hours, as defined in Section I(R) of the proposed Plan. Each Participant would take such actions as are necessary and appropriate as a party to the Market Data Plans, as defined in Section I(F) of the proposed Plan, to cause and enable the Processor for each NMS Stock to fulfill the functions set forth in the proposed Plan.

C. Implementation of Plan

The Participants propose that the initial date of the proposed Plan operations would be 120 calendar days following the publication of the Commission's order approving the proposed Plan in the **Federal Register**.

D. Development and Implementation Phases

The Participants propose that the Plan would be implemented as a one-year pilot program in two Phases, consistent with Section VIII of the proposed Plan. Phase I of proposed Plan implementation would apply immediately following the initial date of proposed Plan operations; Phase II of proposed Plan would commence six months after the initial date of the proposed Plan or such earlier date as may be announced by the Processor with at least 30 days notice. During Phase I, the proposed Plan would apply only to Tier 1 NMS Stocks, as defined in Appendix A of the proposed Plan, and the first Price Bands would be calculated and disseminated 15 minutes after the start of Regular Trading Hours, as specified in Section V(A) of the proposed Plan, and no Price Bands would be calculated and disseminated less than 30 minutes before the end of Regular Trading Hours. In Phase II, the proposed Plan would fully apply to all NMS Stocks beginning at 9:30 a.m. ET and ending at 4 p.m. ET each trading day.

E. Analysis of Impact on Competition

The Participants do not believe that the proposed Plan imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Participants also do not believe that the proposed Plan introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Act.[16]

F. Written Understanding or Agreements relating to Interpretation of, or Participation in, Plan

The Participants state that they have no written understandings or agreements relating to interpretation of the proposed Plan. Section II(C) of the proposed Plan sets forth how any entity registered as a national securities exchange or national securities association may become a Plan Participant.

G. Approval of Amendment of the Plan

Not applicable.

H. Terms and Conditions of Access

Section II(C) of the proposed Plan provides that any entity registered as a national securities exchange or national securities association under the Act may become a Participant by: (1) Becoming a participant in the applicable Market Data Plans, as defined in Section I(F) of the proposed Plan; (2) executing a copy of the Plan, as then in effect; (3) providing each then-current Participant with a copy of such executed Plan; and (4) effecting an amendment to the Plan as specified in Section III(B) of the proposed Plan.

I. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

J. Method and Frequency of Processor Evaluation

Not applicable.

K. Dispute Resolution

The proposed Plan does not include specific provisions regarding resolution of disputes between or among Participants. Section III(C) of the proposed Plan provides for each Participant to designate an individual to represent the Participant as a member of an Operating Committee.[17] No later than the initial date of the Plan, the Operating Committee would be required to designate one member of the Operating Committee to act as the Chair of the Operating Committee. The Operating Committee would monitor the procedures established pursuant to the Plan and advise the Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate. Any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, would be submitted to the Commission as a request for an amendment to the Plan initiated by the Commission under Rule 608 of Regulation NMS under the Act.[18]

II. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed National Market System Plan is consistent with the Act. A stated purpose of the proposed Plan is to address extraordinary market volatility, such as the sudden price movements that the market experienced on the afternoon of May 6, 2010. Since the events of May 6, 2010, staff of the Commission and the SROs have been working on a variety of initiatives to reduce the risk of a recurrence of the extraordinary market volatility in NMS stocks that was experienced on that day. One such initiative is the single-stock circuit breaker pilot program, which currently extends to securities included in the S&P 500 index, the Russell 1000® index, and select exchange-traded products.[19] The circuit breaker pilot is currently set to expire the earlier of August 11, 2011 or the date on which the limit up-limit down mechanism to

[14] *See* Section I(O) of the proposed Plan.

[15] The limit up-limit down mechanism set forth in the proposed Plan would replace the existing single-stock circuit breaker pilot, described more fully in Section II, Solicitation of Comments. *See e.g.,* Securities Exchange Act Release Nos. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025); 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033).

[16] 15 U.S.C. 78k–1(c)(1)(D).

[17] *See* Section I(J) of the proposed Plan.

[18] 17 CFR 242.608.

[19] *See e.g.,* Securities Exchange Act Release Nos. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025); 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033).

address extraordinary market volatility, if adopted, applies.[20]

• To the extent that the proposed Plan, if approved, would replace the current single-stock circuit breaker pilot, what are the advantages of a limit up-limit down mechanism over the current circuit breaker pilot? How would the limit up-limit down mechanism improve upon the current circuit breaker pilot? Would the proposed limit up-limit down mechanism prevent erroneous trades from occurring? What, if any, are the advantages of the current circuit breaker pilot over the proposed limit up-limit down mechanism?

• With respect to competition, would the proposed Plan impact one category of market participants more than others? What, if any, costs would market participants incur as a result of the proposed Plan? Would different market participants bear any such costs differently? How would any such competitive impacts under the proposed Plan differ from the competitive impact, if any, that market participants have experienced under the current circuit breaker pilot?

• What is "excessive short-term volatility?" Put another way, what level of volatility is appropriate in continuous trading, and at what point should circuit breakers or the proposed limit up-limit down mechanism take effect?

• Section IX of the proposed Plan provides that a Participant may withdraw from the Plan, upon obtaining approval from the Commission and upon providing not less than 30 days written notice to the other participants. How, if at all, does the analysis of the impact of the proposed Plan upon competition change if one or more participants are permitted to withdraw from the proposed Plan? Would the operation of the proposed Plan be impaired if one or more participants were permitted to withdraw from the Plan?

• Are the proposed percentage levels for the Price Bands appropriate? Are they sufficiently narrow to guard against excessive market volatility while sufficiently broad to allow trading to occur without triggering a Limit State too frequently? If not, what alternate percentage levels would be preferable?

• Is 15 seconds an appropriate maximum length of time for a particular security to be in a Limit State? Is it long enough to reasonably attract additional available liquidity without recourse to a Trading Pause? Is it short enough to reasonably limit any market uncertainty that might accompany a Limit State?

• Are the triggers for the Limit State appropriate? Would alternative triggers for entering the Limit State be more appropriate? For example, should a Limit State be entered when the National Best Bid falls below the Lower Limit Band (or the National Best Offer exceeds the Upper Limit Band), because at that point a seller (buyer) cannot submit a marketable order? What are the advantages and disadvantages of the proposed approach? What, if any, are the advantages of alternative approaches? Please describe any other potential alternative trigger, as well as its relative strengths and weaknesses.

• Are the conditions required to exit the Limit State appropriate? Should alternative or additional conditions be imposed in order to exit the Limit State, and why might those conditions be appropriate? For example, should more be required to confirm that the market for a particular security has rebounded from a Limit State than the removal of a Limit State Quotation, such as a confirming quote or trade within the Price Bands?

• Are the proposed procedures relating to the functioning of the Operating Committee appropriate? Do they appropriately balance the protection of individual Participant interests with the efficient operation of the Plan? Are there ways to improve the proposed procedures for handling a recommendation from the Operating Committee for an amendment to the Plan that receives substantial, but less than unanimous, support from Participants?

• Should the list of exchange-traded products proposed to be included in Phase I of the proposed Plan be expanded to include additional such products, *i.e.,* other exchange-traded products that have component securities that largely track the securities included in the S&P 500 and Russell 1000?

• Is the proposed phased-in implementation schedule workable? Why or why not? Should the implementation of Phase II of the proposed Plan be conditioned upon Commission approval?

Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number 4–631 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number 4–631. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the Participants' principal offices. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–631 and should be submitted on or before June 22, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

EXHIBIT A

PLAN TO ADDRESS EXTRAORDINARY MARKET VOLATILITY SUBMITTED TO THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 608 OF REGULATION NMS UNDER THE SECURITIES EXCHANGE ACT OF 1934

[20] *See e.g.,* Securities Exchange Act Release No. 64174 (April 4, 2011), 76 FR 19819 (April 8, 2011) (SR–NASDAQ–2011–042).

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Preamble

The Participants submit to the SEC this Plan establishing procedures to address extraordinary volatility in NMS Stocks. The procedures provide for market-wide limit up-limit down requirements that prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands. These limit up-limit down requirements are coupled with Trading Pauses to accommodate more fundamental price moves. The Plan procedures are designed, among other things, to protect investors and promote fair and orderly markets. The Participants developed this Plan pursuant to Rule 608(a)(3) of Regulation NMS under the Exchange Act, which authorizes the Participants to act jointly in preparing, filing, and implementing national market system plans.

I. Definitions

(A) "Eligible Reported Transactions" shall have the meaning prescribed by the Operating Committee and shall generally mean transactions that are eligible to update the last sale price of an NMS Stock.

(B) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(C) "Limit State" shall have the meaning provided in Section VI of the Plan.

(D) "Limit State Quotation" shall have the meaning provided in Section VI of the Plan.

(E) "Lower Price Band" shall have the meaning provided in Section V of the Plan.

(F) "Market Data Plans" shall mean the effective national market system plans through which the Participants act jointly to disseminate consolidated information in compliance with Rule 603(b) of Regulation NMS under the Exchange Act.

(G) "National Best Bid" and "National Best Offer" shall have the meaning provided in Rule 600(b)(42) of Regulation NMS under the Exchange Act.

(H) "NMS Stock" shall have the meaning provided in Rule 600(b)(47) of Regulation NMS under the Exchange Act.

(I) "Opening Price" shall mean the price of a transaction that opens trading on the Primary Listing Exchange, or, if the Primary Listing Exchange opens with quotations, the midpoint of those quotations.

(J) "Operating Committee" shall have the meaning provided in Section III(C) of the Plan.

(K) "Participant" means a party to the Plan.

(L) "Plan" means the plan set forth in this instrument, as amended from time to time in accordance with its provisions.

(M) "Percentage Parameter" shall mean the percentages for each tier of NMS Stocks set forth in Appendix A of the Plan.

(N) "Price Bands" shall have the meaning provided in Section V of the Plan.

(O) "Primary Listing Exchange" shall mean the Participant on which an NMS Stock is listed. If an NMS Stock is listed on more than one Participant, the Participant on which the NMS Stock has been listed the longest shall be the Primary Listing Exchange.

(P) "Processor" shall mean the single plan processor responsible for the consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act.

(Q) "Pro-Forma Reference Price" shall have the meaning provided in Section V(A)(2) of the Plan.

(R) "Regular trading hours" shall have the meaning provided in Rule 600(b)(64) of Regulation NMS under the Exchange Act.

(S) "Regulatory Halt" shall have the meaning specified in the Market Data Plans.

(T) "Reference Price" shall have the meaning provided in Section V of the Plan.

(U) "Reopening Price" shall mean the price of a transaction that reopens trading on the Primary Listing Exchange following a Trading Pause or a Regulatory Halt, or, if the Primary Listing Exchange reopens with quotations, the midpoint of those quotations.

(V) "SEC" shall mean the United States Securities and Exchange Commission.

(W) "Trading center" shall have the meaning provided in Rule 600(b)(78) of Regulation NMS under the Exchange Act.

(X) "Trading Pause" shall have the meaning provided in Section VII of the Plan.

(Y) "Upper Price Band" shall have the meaning provided in Section V of the Plan.

II. Parties

(A) List of Parties

The parties to the Plan are as follows:

(1) BATS Exchange, Inc., 8050 Marshall Drive, Lenexa, Kansas 66214
(2) BATS Y-Exchange, Inc., 8050 Marshall Drive, Lenexa, Kansas 66214
(3) Chicago Board Options Exchange, Incorporated, 400 South LaSalle Street, Chicago, Illinois 60605
(4) Chicago Stock Exchange, Inc., 440 South LaSalle Street, Chicago, Illinois 60605
(5) EDGA Exchange, Inc., 545 Washington Boulevard, Sixth Floor, Jersey City, NJ 07310
(6) EDGX Exchange, Inc., 545 Washington Boulevard, Sixth Floor, Jersey City, NJ 07310
(7) Financial Industry Regulatory Authority, Inc., 1735 K Street, NW., Washington, DC 20006

(8) NASDAQ OMX BX, Inc., One Liberty Plaza, New York, New York 10006

(9) NASDAQ OMX PHLX LLC, 1900 Market Street, Philadelphia, Pennsylvania 19103

(10) The Nasdaq Stock Market LLC, 1 Liberty Plaza, 165 Broadway, New York, NY 10006

(11) National Stock Exchange, Inc., 101 Hudson, Suite 1200, Jersey City, NJ 07302

(12) New York Stock Exchange LLC, 11 Wall Street, New York, New York 10005

(13) NYSE Amex LLC, 20 Broad Street, New York, New York 10005

(14) NYSE Arca, Inc., 100 South Wacker Drive, Suite 1800, Chicago, IL 60606

(B) Compliance Undertaking

By subscribing to and submitting the Plan for approval by the SEC, each Participant agrees to comply with and to enforce compliance, as required by Rule 608(c) of Regulation NMS under the Exchange Act, by its members with the provisions of the Plan. To this end, each Participant shall adopt a rule requiring compliance by its members with the provisions of the Plan, and each Participant shall take such actions as are necessary and appropriate as a participant of the Market Data Plans to cause and enable the Processor for each NMS Stock to fulfill the functions set forth in this Plan.

(C) New Participants

The Participants agree that any entity registered as a national securities exchange or national securities association under the Exchange Act may become a Participant by: (1) Becoming a participant in the applicable Market Data Plans; (2) executing a copy of the Plan, as then in effect; (3) providing each then-current Participant with a copy of such executed Plan; and (4) effecting an amendment to the Plan as specified in Section III(B) of the Plan.

III. Amendments to Plan

(A) General Amendments

Except with respect to the addition of new Participants to the Plan, any proposed change in, addition to, or deletion from the Plan shall be effected by means of a written amendment to the Plan that: (1) Sets forth the change, addition, or deletion; (2) is executed on behalf of each Participant; and, (3) is approved by the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act, or otherwise becomes effective under Rule 608 of Regulation NMS under the Exchange Act.

(B) New Participants

With respect to new Participants, an amendment to the Plan may be effected by the new national securities exchange or national securities association executing a copy of the Plan, as then in effect (with the only changes being the addition of the new Participant's name in Section II(A) of the Plan) and submitting such executed Plan to the SEC for approval. The amendment shall be effective when it is approved by the SEC in accordance with Rule 608 of Regulation NMS under the Exchange Act or otherwise becomes effective pursuant to Rule 608 of Regulation NMS under the Exchange Act.

(C) Operating Committee

(1) Each Participant shall select from its staff one individual to represent the Participant as a member of an Operating Committee, together with a substitute for such individual. The substitute may participate in deliberations of the Operating Committee and shall be considered a voting member thereof only in the absence of the primary representative. Each Participant shall have one vote on all matters considered by the Operating Committee. No later than the initial date of Plan operations, the Operating Committee shall designate one member of the Operating Committee to act as the Chair of the Operating Committee.

(2) The Operating Committee shall monitor the procedures established pursuant to this Plan and advise the Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate. The Operating Committee shall establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of this Plan and the Appendixes thereto. With respect to matters in this paragraph, Operating Committee decisions shall be approved by a simple majority vote.

(3) Any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, shall be submitted to the SEC as a request for an amendment to the Plan initiated by the Commission under Rule 608 of Regulation NMS.

IV. Trading Center Policies and Procedures

All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up—limit down requirements specified in Sections VI of the Plan, and to comply with the Trading Pauses specified in Section VII of the Plan.

V. Price Bands

(A) Calculation and Dissemination of Price Bands

(1) The Processor for each NMS stock shall calculate and disseminate to the public a Lower Price Band and an Upper Price Band during Regular Trading Hours for such NMS Stock. The Price Bands shall be based on a Reference Price for each NMS Stock that equals the arithmetic mean price of Eligible Reported Transactions for the NMS stock over the immediately preceding five-minute period (except for periods following openings and reopenings, which are addressed below). If no Eligible Reported Transactions for the NMS Stock have occurred over the immediately preceding five-minute period, the previous Reference Price shall remain in effect. The Price Bands for an NMS Stock shall be calculated by applying the Percentage Parameter for such NMS Stock to the Reference Price, with the Lower Price Band being a Percentage Parameter below the Reference Price, and the Upper Price Band being a Percentage Parameter above the Reference Price. The Price Bands shall be calculated beginning at 9:30 a.m. ET, and ending at 4:00 p.m. ET. Between 9:30 a.m. and 9:45 a.m. ET, and 3:35 p.m. and 4:00 p.m. ET, the Price Bands shall be calculated by applying double the Percentage Parameters set forth in Appendix A. If a Reopening Price does not occur within ten minutes after the beginning of a Trading Pause, the Price Band, for the first 30 seconds following the reopening after that Trading Pause, shall be calculated by applying triple the Percentage Parameters set forth in Appendix A.

(2) The Processor shall calculate a Pro-Forma Reference Price on a continuous basis during Regular Trading Hours, as specified in Section V(A)(1) of the Plan. If a Pro-Forma Reference Price has not moved by 1% or more from the Reference Price currently in effect, no new Price Bands shall be disseminated, and the current Reference Price shall remain the effective Reference Price. When the Pro-Forma Reference Price has moved by 1% or more from the Reference Price currently in effect, the Pro-Forma Reference Price shall become the Reference Price, and the Processor shall disseminate new

Price Bands based on the new Reference Price; provided, however, that each new Reference Price shall remain in effect for at least 30 seconds.

(B) Openings

(1) Except when a Regulatory Halt is in effect at the start of regular trading hours, the first Reference Price for a trading day shall be the Opening Price on the Primary Listing Exchange in an NMS Stock if such Opening Price occurs less than five minutes after the start of regular trading hours. During the period less than five minutes after the Opening Price, a Pro-Forma Reference Price shall be updated on a continuous basis to be the arithmetic mean price of Eligible Reported Transactions for the NMS Stock during the period following the Opening Price (including the Opening Price), and if it differs from the current Reference Price by 1% or more shall become the new Reference Price, except that a new Reference Price shall remain in effect for at least 30 seconds. Subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(2) If the Opening Price on the Primary Listing Exchange in an NMS Stock does not occur within five minutes after the start of Regular Trading Hours, the first Reference Price for a trading day shall be the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the preceding five minute time period, and subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(C) Reopenings

(1) Following a Trading Pause in an NMS Stock, and if the Primary Listing Exchange has not declared a Regulatory Halt, the next Reference Price shall be the Reopening Price on the Primary Listing Exchange if such Reopening Price occurs within ten minutes after the beginning of the Trading Pause, and subsequent Reference Prices shall be determined in the manner prescribed for normal openings, as specified in Section V(B)(1) of the Plan. If such Reopening Price does not occur within ten minutes after the beginning of the Trading Pause, the first Reference Price following the Trading Pause shall be equal to the last effective Reference Price before the Trading Pause. Subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

(2) Following a Regulatory Halt, the next Reference Price shall be the Opening or Reopening Price on the Primary Listing Exchange if such Opening or Reopening Price occurs within five minutes after the end of the Regulatory Halt, and subsequent Reference Prices shall be determined in the manner prescribed for normal openings, as specified in Section V(B)(1) of the Plan. If such Opening or Reopening Price has not occurred within five minutes after the end of the Regulatory Halt, the Reference Price shall be equal to the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the preceding five minute time period, and subsequent Reference Prices shall be calculated as specified in Section V(A) of the Plan.

VI. Limit Up-Limit Down Requirements

(A) Limitations on Trades and Quotations Outside of Price Bands

(1) All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trades at prices that are below the Lower Limit Band or above the Upper Limit Band for an NMS Stock. Single-priced opening, reopening, and closing transactions on the Primary Listing Exchange, however, shall be excluded from this limitation.

(2) When a National Best Bid is below the Lower Limit Band or a National Best Offer is above the Upper Limit Band for an NMS Stock, the Processor shall disseminate such National Best Bid or National Best Offer with an appropriate flag identifying it as non-executable. When a National Best Offer is equal to the Lower Limit Band or a National Best Bid is equal to the Upper Limit Band for an NMS Stock, the Processor shall distribute such National Best Bid or National Best Offer with an appropriate flag identifying it as a "Limit State Quotation."

(3) All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processor shall disseminate an offer below the Lower Price Band or bid above the Upper Price Band that may be submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; provided, however, that any such bid or offer shall not be included in National Best Bid or National Best Offer calculations.

(B) Entering and Exiting a Limit State

(1) All trading for an NMS Stock shall immediately enter a Limit State if the National Best Offer equals the Lower Limit Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Limit Band and does not cross the National Best Offer.

(2) When trading for an NMS Stock enters a Limit State, the Processor shall disseminate this information by identifying the relevant quotation (*i.e.,* a National Best Offer that equals the Lower Price Band or a National Best Bid that equals the Upper Price Band) as a Limit State Quotation. At this point, the Processor shall cease calculating and disseminating updated Reference Prices and Price Bands for the NMS Stock until either trading exits the Limit State or trading resumes with an opening or re-opening as provided in Section V.

(3) Trading for an NMS Stock shall exit a Limit State if, within 15 seconds of entering the Limit State, the entire size of all Limit State Quotations are executed or cancelled.

(4) If trading for an NMS Stock exits a Limit State within 15 seconds of entry, the Processor shall immediately calculate and disseminate updated Price Bands based on a Reference Price that equals the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the immediately preceding five-minute period (including the period of the Limit State).

(5) If trading for an NMS Stock does not exit a Limit State within 15 seconds of entry, the Limit State will terminate when the Primary Listing Exchange declares a Trading Pause pursuant to Section VII of the Plan. If trading for an NMS Stock is in a Limit State at the end of Regular Trading Hours, the Limit State will terminate when the Primary Listing Exchange executes a closing transaction in the NMS Stock or five minutes after the end of Regular Trading Hours, whichever is earlier.

VII. Trading Pauses

(A) Declaration of Trading Pauses

If trading for an NMS Stock does not exit a Limit State within 15 seconds of entry during Regular Trading Hours, then the Primary Listing Exchange shall declare a Trading Pause for such NMS Stock and shall notify the Processor. The Processor shall disseminate this information to the public. No trades in an NMS Stock shall occur during a Trading Pause, but all bids and offers may be displayed.

(B) Reopening of Trading During Regular Trading Hours

(1) Five minutes after declaring a Trading Pause for an NMS Stock, and if the Primary Listing Exchange has not declared a Regulatory Halt, the Primary Listing Exchange shall attempt to reopen trading using its established reopening procedures. The Trading Pause shall end when the Primary Listing Exchange reports a Reopening Price.

(2) The Primary Listing Exchange shall notify the Processor if it is unable to reopen trading in an NMS Stock for any reason other than a significant order imbalance and if it has not declared a Regulatory Halt. The Processor shall disseminate this information to the public, and all trading centers may begin trading the NMS Stock at this time.

(3) If the Primary Listing Exchange does not report a Reopening Price within ten minutes after the declaration of a Trading Pause in an NMS Stock, and has not declared a Regulatory Halt, all trading centers may begin trading the NMS Stock.

(4) When trading begins after a Trading Pause, the Processor shall update the Price Bands as set forth in Section V(C)(1) of the Plan.

(C) Trading Pauses Within Five Minutes of the End of Regular Trading Hours

(1) If a Trading Pause for an NMS Stock is declared less than five minutes before the end of Regular Trading Hours, the Primary Listing Exchange shall attempt to execute a closing transaction using its established closing procedures. All trading centers may begin trading the NMS Stock when the Primary Listing Exchange executes a closing transaction.

(2) If the Primary Listing Exchange does not execute a closing transaction within five minutes after the end of Regular Trading Hours, all trading centers may begin trading the NMS Stock.

VIII. Implementation

(A) Phase I

(1) Phase I of Plan implementation shall apply immediately following the initial date of Plan operations.

(2) During Phase I, the Plan shall apply only to the Tier 1 NMS Stocks identified in Appendix A of the Plan.

(3) During Phase I, the first Price Bands for a trading day shall be calculated and disseminated 15 minutes after the start of Regular Trading Hours as specified in Section (V)(A) of the Plan. No Price Bands shall be calculated and disseminated less than 30 minutes before the end of Regular Trading Hours, and trading shall not enter a Limit State less than 25 minutes before the end of Regular Trading Hours.

(B) Phase II—Full Implementation

(1) Six months after the initial date of Plan operations, or such earlier date as may be announced by the Processor with at least 30 days notice, the Plan shall fully apply (i) to all NMS Stocks; and (ii) beginning at 9:30 a.m. ET, and ending at 4:00 p.m. ET each trading day.

IX. Withdrawal from Plan

If a Participant obtains SEC approval to withdraw from the Plan, such Participant may withdraw from the Plan at any time on not less than 30 days' prior written notice to each of the other Participants. At such time, the withdrawing Participant shall have no further rights or obligations under the Plan.

X. Counterparts and Signatures

The Plan may be executed in any number of counterparts, no one of which need contain all signatures of all Participants, and as many of such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

IN WITNESS THEREOF, this Plan has been executed as of the ____ day of _____ 2011 by each of the parties hereto.

BATS EXCHANGE, INC.

BY: _____

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

BY: _____

EDGA EXCHANGE, INC.

BY: _____

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

BY: _____

NASDAQ OMX PHLX LLC

BY: _____

NATIONAL STOCK EXCHANGE, INC.

BY: _____

NYSE AMEX LLC

BY: _____

BATS Y-EXCHANGE, INC.

BY: _____

CHICAGO STOCK EXCHANGE, INC.

BY: _____

EDGX EXCHANGE, INC.

BY: _____

NASDAQ OMX BX, INC.

BY: _____

THE NASDAQ STOCK MARKET LLC

BY: _____

NEW YORK STOCK EXCHANGE LLC

BY: _____

NYSE ARCA, INC.

BY: _____

Appendix A—Percentage Parameters

I. *Tier 1 NMS Stocks*

(1) Tier 1 NMS Stocks shall include all NMS Stocks included in the S&P 500 Index, the Russell 1000 Index, and the exchange-traded products listed on Schedule 1 to this Appendix.

(2) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price of $1.00 or more shall be 5%.

(3) The Percentage Parameters for Tier 1 NMS Stocks with a Reference Price less than $1.00 shall be the lesser of (a) $0.15 or (b) 75%.

II. *Tier 2 NMS Stocks*

(1) Tier 2 NMS Stocks shall include all NMS Stocks other than those in Tier 1.

(2) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price of $1.00 or more shall be 10%.

(3) The Percentage Parameters for Tier 2 NMS Stocks with a Reference Price less than $1.00 shall be the lesser of (a) $0.15 or (b) 75%.

(4) Notwithstanding the foregoing, the Percentage Parameters for a Tier 2 NMS Stock that is a leveraged exchange-traded product shall be the applicable Percentage Parameter set forth in clauses (2) or (3) above, multiplied by the leverage ratio of such product.

APPENDIX A—SCHEDULE 1

Symbol	Name
AAXJ	iShares MSCI All Country Asia ex Japan Index Fund.
ACWI	iShares MSCI ACWI Index Fund.
ACWX	iShares MSCI ACWI ex US Index Fund.
ADRE	BLDRS Emerging Markets 50 ADR Index Fund.

APPENDIX A—SCHEDULE 1—Continued

Symbol	Name
AGG	iShares Barclays Aggregate Bond Fund.
AGZ	iShares Barclays Agency Bond Fund.
AMJ	JPMorgan Alerian MLP Index ETN.
BAB	PowerShares Build America Bond Portfolio.
BBH	Biotech HOLDRs Trust.
BDG	PowerShares DB Base Metals Long ETN.
BIK	SPDR S&P BRIC 40 ETF.
BIL	SPDR Barclays Capital 1–3 Month T-Bill ETF.
BIV	Vanguard Intermediate-Term Bond ETF.
BKF	iShares MSCI BRIC Index Fund.
BLV	Vanguard Long-Term Bond ETF.
BND	Vanguard Total Bond Market ETF.
BOS	PowerShares DB Base Metals Short ETN.
BRF	Market Vectors Brazil Small-Cap ETF.
BSV	Vanguard Short-Term Bond ETF.
BWX	SPDR Barclays Capital International Treasury Bond ETF.
CEW	WisdomTree Dreyfus Emerging Currency Fund.
CFT	iShares Barclays Credit Bond Fund.
CIU	iShares Barclays Intermediate Credit Bond Fund.
CSJ	iShares Barclays 1–3 Year Credit Bond Fund.
CUT	Claymore/Beacon Global Timber Index ETF.
CVY	Claymore/Zacks Multi-Asset Income Index ETF.
CWB	SPDR Barclays Capital Convertible Securities ETF.
CYB	WisdomTree Dreyfus Chinese Yuan Fund.
DBA	PowerShares DB Agriculture Fund.
DBB	PowerShares DB Base Metals Fund.
DBC	PowerShares DB Commodity Index Tracking Fund.
DBO	PowerShares DB Oil Fund.
DBP	PowerShares DB Precious Metals Fund.
DBV	PowerShares DB G10 Currency Harvest Fund.
DDG	ProShares Short Oil & Gas.
DEM	WisdomTree Emerging Markets Equity Income Fund.
DFJ	WisdomTree Japan SmallCap Dividend Fund.
DGS	WisdomTree Emerging Markets SmallCap Dividend Fund.
DIA	SPDR Dow Jones Industrial Average ETF Trust.
DJP	iPath Dow Jones-UBS Commodity Index Total Return ETN/United States.
DNO	United States Short Oil Fund.
DOG	ProShares Short Dow30.
DVY	iShares Dow Jones Select Dividend Index Fund.
DWM	WisdomTree DEFA Fund.
DWX	SPDR S&P International Dividend ETF.
ECH	iShares MSCI Chile Investable Market Index Fund.
EEB	Claymore/BNY BRIC ETF.
EEM	iShares MSCI Emerging Markets Index Fund/United States.
EFA	iShares MSCI EAFE Index Fund.
EFG	iShares MSCI EAFE Growth Index.
EFV	iShares MSCI EAFE Value Index.
EFZ	ProShares Short MSCI EAFE.
EIS	iShares MSCI Israel Capped Index Fund.
EMB	iShares JPMorgan USD Emerging Markets Bond Fund.
EPI	WisdomTree India Earnings Fund.
EPP	iShares MSCI Pacific ex-Japan Index Fund.
EPU	iShares MSCI All Peru Capped Index Fund.
EUM	ProShares Short MSCI Emerging Markets.
EWA	iShares MSCI Australia Index Fund.
EWC	iShares MSCI Canada Index Fund.
EWD	iShares MSCI Sweden Index Fund.
EWG	iShares MSCI Germany Index Fund.
EWH	iShares MSCI Hong Kong Index Fund.
EWI	iShares MSCI Italy Index Fund.
EWJ	iShares MSCI Japan Index Fund.
EWK	iShares MSCI Belgium Investable Market Index Fund.
EWL	iShares MSCI Switzerland Index Fund.
EWM	iShares MSCI Malaysia Index Fund.
EWN	iShares MSCI Netherlands Investable Market Index Fund.
EWO	iShares MSCI Austria Investable Market Index Fund.
EWP	iShares MSCI Spain Index Fund.
EWQ	iShares MSCI France Index Fund.
EWS	iShares MSCI Singapore Index Fund.
EWT	iShares MSCI Taiwan Index Fund.
EWU	iShares MSCI United Kingdom Index Fund.
EWW	iShares MSCI Mexico Investable Market Index Fund.

APPENDIX A—SCHEDULE 1—Continued

Symbol	Name
EWX	SPDR S&P Emerging Small Cap ETF.
EWY	iShares MSCI South Korea Index Fund.
EWZ	iShares MSCI Brazil Index Fund.
EZA	iShares MSCI South Africa Index Fund.
EZU	iShares MSCI EMU Index Fund.
FBT	First Trust NYSE Arca Biotechnology Index Fund.
FCG	First Trust ISE-Revere Natural Gas Index Fund.
FDN	First Trust Dow Jones Internet Index Fund.
FNI	First Trust ISE Chindia Index Fund.
FXA	CurrencyShares Australian Dollar Trust.
FXB	CurrencyShares British Pound Sterling Trust.
FXC	CurrencyShares Canadian Dollar Trust.
FXD	First Trust Consumer Discretionary AlphaDEX Fund.
FXE	CurrencyShares Euro Trust.
FXF	CurrencyShares Swiss Franc Trust.
FXI	iShares FTSE/Xinhua China 25 Index Fund.
FXY	CurrencyShares Japanese Yen Trust.
FXZ	First Trust Materials AlphaDEX Fund.
GAZ	iPath Dow Jones-UBS Natural Gas Subindex Total Return ETN.
GCC	GreenHaven Continous Commodity Index Fund.
GD	Market Vectors—Gold Miners ETF.
GDXJ	Market Vectors Junior Gold Miners ETF.
GLD	SPDR Gold Trust.
GMF	SPDR S&P Emerging Asia Pacific ETF.
GML	SPDR S&P Emerging Latin America ETF.
GSG	iShares S&P GSCI Commodity Indexed Trust.
GSP	iPath GSCI Total Return Index ETN.
GUR	SPDR S&P Emerging Europe ETF.
GVI	iShares Barclays Intermediate Government/Credit Bond Fund.
GVT	Grail American Beacon Large Cap Value ETF.
GWX	SPDR S&P International Small Cap ETF.
GXC	SPDR S&P China ETF.
HAO	Claymore/AlphaShares China Small Cap Index ETF.
HYG	iShares iBoxx $ High Yield Corporate Bond Fund.
IAI	iShares Dow Jones US Broker Dealers Index Fund.
IAT	iShares Dow Jones US Regional Banks Index Fund.
IAU	iShares COMEX Gold Trust.
IBB	iShares Nasdaq Biotechnology Index Fund.
ICF	iShares Cohen & Steers Realty Majors Index Fund.
IDU	iShares Dow Jones US Utilities Sector Index Fund.
IDX	Market Vectors—Indonesia Index ETF.
IEF	iShares Barclays 7–10 Year Treasury Bond Fund.
IEI	iShares Barclays 3–7 Year Treasury Bond Fund.
IEO	iShares Dow Jones US Oil & Gas Exploration & Production Index Fund.
IEV	iShares S&P Europe 350 Index Fund.
IEZ	iShares Dow Jones US Oil Equipment & Services Index Fund.
IFGL	iShares FTSE EPRA/NAREIT Developed Real Estate ex-US Index Fund.
IGE	iShares S&P North American Natural Resources Sector Index Fund.
IGF	iShares S&P Global Infrastructure Index Fund.
IGM	iShares S&P North American Technology Sector Index Fund.
IGN	iShares S&P North American Technology-Multimedia Networking Index Fund.
IGV	iShares S&P North American Technology-Software Index Fund.
IGW	iShares S&P North American Technology-Semiconductors Index Fund.
IHE	iShares Dow Jones US Pharmaceuticals Index Fund.
IHF	iShares Dow Jones US Healthcare Providers Index Fund.
IHI	iShares Dow Jones US Medical Devices Index Fund.
IJH	iShares S&P MidCap 400 Index Fund.
IJJ	iShares S&P MidCap 400/BARRA Value Index Fund.
IJK	iShares S&P MidCap 400 Growth Index Fund.
IJR	iShares S&P SmallCap 600 Index Fund.
IJS	iShares S&P SmallCap 600 Value Index Fund.
IJT	iShares S&P SmallCap 600/BARRA Growth Index Fund.
ILF	iShares S&P Latin America 40 Index Fund.
INP	iPath MSCI India Index ETN.
IOO	iShares S&P Global 100 Index Fund.
IPE	SPDR Barclays Capital TIPS ETF.
ITA	iShares Dow Jones US Aerospace & Defense Index Fund.
ITB	iShares Dow Jones US Home Construction Index Fund.
IVE	iShares S&P 500 Value Index Fund.
IVV	iShares S&P 500 Index Fund/US.
IVW	iShares S&P 500 Growth Index Fund.
IWB	iShares Russell 1000 Index Fund.

APPENDIX A—SCHEDULE 1—Continued

Symbol	Name
IWC	iShares Russell Microcap Index Fund.
IWD	iShares Russell 1000 Value Index Fund.
IWF	iShares Russell 1000 Growth Index Fund.
IWL	iShares Russell Top 200 Index Fund.
IWM	iShares Russell 2000 Index Fund.
IWN	iShares Russell 2000 Value Index Fund.
IWO	iShares Russell 2000 Growth Index Fund.
IWP	iShares Russell Midcap Growth Index Fund.
IWR	iShares Russell Midcap Index Fund.
IWS	iShares Russell Midcap Value Index Fund.
IWV	iShares Russell 3000 Index Fund.
IWW	iShares Russell 3000 Value Index Fund.
IWX	iShares Russell Top 200 Value Index Fund.
IWY	iShares Russell Top 200 Growth Index Fund.
IXC	iShares S&P Global Energy Sector Index Fund.
IXG	iShares S&P Global Financials Sector Index Fund.
IXJ	iShares S&P Global Healthcare Sector Index Fund.
IXN	iShares S&P Global Technology Sector Index Fund.
IXP	iShares S&P Global Telecommunications Sector Index Fund.
IYC	iShares Dow Jones US Consumer Services Sector Index Fund.
IYE	iShares Dow Jones US Energy Sector Index Fund.
IYF	iShares Dow Jones US Financial Sector Index Fund.
IYG	iShares Dow Jones US Financial Services Index Fund.
IYH	iShares Dow Jones US Healthcare Sector Index Fund.
IYJ	iShares Dow Jones US Industrial Sector Index Fund.
IYK	iShares Dow Jones US Consumer Goods Sector Index Fund.
IYM	iShares Dow Jones US Basic Materials Sector Index Fund.
IYR	iShares Dow Jones US Real Estate Index Fund.
IYT	iShares Dow Jones Transportation Average Index Fund.
IYW	iShares Dow Jones US Technology Sector Index Fund.
IYY	iShares Dow Jones US Index Fund.
IYZ	iShares Dow Jones US Telecommunications Sector Index Fund.
JJC	iPath Dow Jones-UBS Copper Subindex Total Return ETN.
JJG	iPath Dow Jones-UBS Grains Subindex Total Return ETN.
JKE	iShares Morningstar Large Growth Index Fund.
JKL	iShares Morningstar Small Value Index Fund.
JNK	SPDR Barclays Capital High Yield Bond ETF.
JXI	iShares S&P Global Utilities Sector Index Fund.
KBE	SPDR KBW Bank ETF.
KCE	SPDR KBW Capital Markets ETF.
KIE	SPDR KBW Insurance ETF.
KOL	Market Vectors—Coal ETF.
KRE	SPDR KBW Regional Banking ETF.
KXI	iShares S&P Global Consumer Staples Sector Index Fund.
LQD	iShares iBoxx Investment Grade Corporate Bond Fund.
MBB	iShares Barclays MBS Bond Fund.
MBG	SPDR Barclays Capital Mortgage Backed Bond ETF.
MDY	SPDR S&P MidCap 400 ETF Trust.
MINT	PIMCO Enhanced Short Maturity Strategy Fund.
MLPI	UBS E–TRACS Alerian MLP Infrastructure ETN.
MLPN	Credit Suisse Cushing 30 MLP Index ETN.
MOO	Market Vectors—Agribusiness ETF.
MUB	iShares S&P National Municipal Bond Fund.
MXI	iShares S&P Global Materials Sector Index Fund.
MYY	ProShares Short MidCap400.
OEF	iShares S&P 100 Index Fund.
OIH	Oil Services Holders Trust.
OIL	iPath Goldman Sachs Crude Oil Total Return Index ETN.
OLO	PowerShares DB Crude Oil Long ETN.
ONEQ	Fidelity NASDAQ Composite Index Tracking Stock ETF.
PALL	ETFS Palladium Trust.
PBW	Powershares WilderHill Clean Energy Portfolio.
PCEF	PowerShares CEF Income Composite Portfolio.
PCY	PowerShares Emerging Markets Sovereign Debt Portfolio.
PFF	iShares S&P US Preferred Stock Index Fund.
PGF	PowerShares Financial Preferred Portfolio.
PGJ	Powershares Golden Dragon Halter USX China Portfolio.
PG	PowerShares Preferred Portfolio.
PHB	PowerShares High Yield Corporate Bond Portfolio.
PHO	PowerShares Water Resources Portfolio.
PHYS	Sprott Physical Gold Trust.
PID	PowerShares International Dividend Achievers Portfolio.

APPENDIX A—SCHEDULE 1—Continued

Symbol	Name
PIN	PowerShares India Portfolio.
PIO	PowerShares Global Water Portfolio.
PMA	PowerShares Active Mega Cap Fund.
PPH	Pharmaceutical HOLDRs Trust.
PPLT	ETFS Platinum Trust.
PQY	PowerShares Active AlphaQ Fund.
PRF	Powershares FTSE RAFI US 1000 Portfolio.
PRFZ	PowerShares FTSE RAFI US 1500 Small-Mid Portfolio.
PSQ	ProShares Short QQQ.
PVI	PowerShares VRDO Tax Free Weekly Portfolio.
PWV	PowerShares Dynamic Large Cap Value Portfolio.
PXH	PowerShares FTSE RAFI Emerging Markets Portfolio.
PZA	PowerShares Insured National Municipal Bond Portfolio.
QQQQ	Powershares QQQ.
QTEC	First Trust NASDAQ-100 Technology Index Fund.
REK	ProShares Short Real Estate.
RFG	Rydex S&P Midcap 400 Pure Growth ETF.
RJA	ELEMENTS Linked to the Rogers International Commodity Index—Agri Tot Return.
RJI	ELEMENTS Linked to the Rogers International Commodity Index—Total Return.
RKH	Regional Bank HOLDRs Trust.
RPV	Rydex S&P 500 Pure Value ETF.
RSP	Rydex S&P Equal Weight ETF.
RSX	Market Vectors—Russia ETF.
RTH	Retail HOLDRs Trust.
RWJ	RevenueShares Small Cap Fund.
RWK	RevenueShares Mid Cap Fund.
RWL	RevenueShares Large Cap Fund.
RWM	ProShares Short Russell2000.
RWR	SPDR Dow Jones REIT ETF.
RWX	SPDR Dow Jones International Real Estate ETF.
RZV	Rydex S&P Smallcap 600 Pure Value ETF.
SBB	ProShares Short SmallCap600.
SBM	ProShares Short Basic Materials.
SCHA	Schwab US Small-Cap ETF.
SCHB	Schwab US Broad Market ETF.
SCHE	Schwab Emerging Markets Equity ETF.
SCHF	Schwab International Equity ETF.
SCHX	Schwab US Large-Cap ETF.
SCZ	iShares MSCI EAFE Small Cap Index Fund.
SDY	SPDR S&P Dividend ETF.
SEF	ProShares Short Financials.
SGG	iPath Dow Jones-UBS Sugar Subindex Total Return ETN.
SGOL	ETFS Gold Trust.
SH	ProShares Short S&P500.
SHM	SPDR Nuveen Barclays Capital Short Term Municipal Bond ETF.
SHV	iShares Barclays Short Treasury Bond Fund.
SHY	iShares Barclays 1–3 Year Treasury Bond Fund.
SIL	Global X Silver Miners ETF.
SIVR	ETFS Silver Trust.
SLV	iShares Silver Trust.
SLX	Market Vectors—Steel Index Fund.
SMH	Semiconductor HOLDRs Trust.
SPY	SPDR S&P 500 ETF Trust.
STPZ	PIMCO 1–5 Year US TIPS Index Fund.
SUB	iShares S&P Short Term National AMT-Free Municipal Bond Fund.
TAN	Claymore/MAC Global Solar Energy Index ETF.
TBF	ProShares Short 20+ Year Treasury.
TFI	SPDR Nuveen Barclays Capital Municipal Bond ETF.
THD	iShares MSCI Thailand Index Fund.
TIP	iShares Barclays TIPS Bond Fund.
TLH	iShares Barclays 10–20 Year Treasury Bond Fund.
TLT	iShares Barclays 20+ Year Treasury Bond Fund.
TUR	iShares MSCI Turkey Index Fund.
TUZ	PIMCO 1–3 Year U.S. Treasury Index Fund.
UDN	PowerShares DB US Dollar Index Bearish Fund.
UGA	United States Gasoline Fund LP.
UNG	United States Natural Gas Fund LP.
USO	United States Oil Fund LP.
UUP	PowerShares DB US Dollar Index Bullish Fund.
VAW	Vanguard Materials ETF.
VB	Vanguard Small-Cap ETF.
VBK	Vanguard Small-Cap Growth ETF.

APPENDIX A—SCHEDULE 1—Continued

Symbol	Name
VBR	Vanguard Small-Cap Value ETF.
VCIT	Vanguard Intermediate-Term Corporate Bond ETF.
VCR	Vanguard Consumer Discretionary ETF.
VCSH	Vanguard Short-Term Corporate Bond ETF.
VDC	Vanguard Consumer Staples ETF.
VD	Vanguard Energy ETF.
VEA	Vanguard Europe Pacific ETF.
VEU	Vanguard FTSE All-World ex-US ETF.
VFH	Vanguard Financials ETF.
VGK	Vanguard European ETF.
VGT	Vanguard Information Technology ETF.
VHT	Vanguard Health Care ETF.
VIG	Vanguard Dividend Appreciation ETF.
VIS	Vanguard Industrials ETF.
VNM	Market Vectors Vietnam ETF.
VNQ	Vanguard REIT ETF.
VO	Vanguard Mid-Cap ETF.
VOE	Vanguard Mid-Cap Value Index Fund.
VOT	Vanguard Mid-Cap Growth Index Fund.
VPL	Vanguard Pacific ETF.
VPU	Vanguard Utilities ETF.
VSS	Vanguard FTSE All World ex-US Small-Cap ETF.
VT	Vanguard Total World Stock Index Fund ETF.
VTI	Vanguard Total Stock Market ETF.
VTV	Vanguard Value ETF.
VUG	Vanguard Growth ETF.
VV	Vanguard Large-Cap ETF.
VWO	Vanguard Emerging Markets ETF.
VXF	Vanguard Extended Market ETF.
VXX	iPATH S&P 500 VIX Short-Term Futures ETN.
VXZ	iPATH S&P 500 VIX Mid-Term Futures ETN.
VYM	Vanguard High Dividend Yield ETF.
WIP	SPDR DB International Government Inflation-Protected Bond ETF.
XBI	SPDR S&P Biotech ETF.
XES	SPDR S&P Oil & Gas Equipment & Services ETF.
XHB	SPDR S&P Homebuilders ETF.
XLB	Materials Select Sector SPDR Fund.
XLE	Energy Select Sector SPDR Fund.
XLF	Financial Select Sector SPDR Fund.
XLG	Rydex Russell Top 50 ETF.
XLI	Industrial Select Sector SPDR Fund.
XLK	Technology Select Sector SPDR Fund.
XLP	Consumer Staples Select Sector SPDR Fund.
XLU	Utilities Select Sector SPDR Fund.
XLV	Health Care Select Sector SPDR Fund.
XLY	Consumer Discretionary Select Sector SPDR Fund.
XME	SPDR S&P Metals & Mining ETF.
XOP	SPDR S&P Oil & Gas Exploration & Production ETF.
XPH	SPDR S&P Pharmaceuticals ETF.
XRT	SPDR S&P Retail ETF.
XSD	SPDR S&P Semiconductor ETF.
YXI	ProShares Short FTSE/Xinhua China 25.

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BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64542; File No. SR–NYSE–2011–13]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing a Revenue Sharing Program With Correlix, Inc. and a Free Trial Period for New Users of the Correlix Service

May 25, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 18, 2011, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish a revenue sharing program with Correlix, Inc. ("Correlix") and a free trial period for new users of the Correlix service. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is filing a proposed rule change to establish a revenue sharing program with Correlix effective upon filing with the Commission. The Exchange has entered into an agreement with Correlix to provide to users [3] of the Exchange real-time analytical tools to measure the latency of orders to and from the Exchange's system as well as the latency of market data updates transmitted from the Exchange systems to the user. Under the agreement, the Exchange will receive 30 percent of the total monthly subscription fees received by Correlix from parties who have contracted directly with Correlix to use their RaceTeam latency measurement service for the Exchange. The Exchange will not bill or contract with any Correlix RaceTeam customer directly.

Pricing for the Correlix RaceTeam product for users of the Exchange will be based on the number of ports requested by the user for monitoring by Correlix; each "port" is a FIX or binary protocol connection to the Common Customer Gateway ("CCG") of NYSE Euronext, which provides connectivity to the national securities exchanges operated by NYSE Euronext (*i.e.,* NYSE, NYSE Amex LLC ("NYSE Amex") and NYSE Arca, Inc. ("NYSE Arca")).[4] The fee for users of the Exchange will be an initial $2,500 monthly base fee for the first 25 ports requested by the user for latency monitoring, and an additional $1,000 per month for each additional 25 ports (or portion thereof) requested by the user for latency monitoring.

Correlix will charge for services based on the number of ports because of the CCG technology, which is unique to the NYSE Euronext exchanges. Specifically, the use of ports as the basis of charging will permit order-related messages transmitted through the CCG to the various NYSE Euronext markets (*e.g., NYSE* vs. *NYSE Amex equities* or *NYSE Arca equities* vs. *NYSE Arca options*) to be differentiated and kept separate. For these purposes, the combination of port and user ID provides the mechanism for users to receive latency data for their transactions on a particular NYSE Euronext market. The Correlix RaceTeam product will include controls such that users will not be able to obtain latency information about options orders through an equities port connection and vice versa.

Under the program, Correlix will see an individualized unique NYSE generated identifier that will allow Correlix RaceTeam to determine round trip order time,[5] from the time the order reaches the Exchange extranet, through the Exchange matching engine, and back out of the Exchange extranet. The RaceTeam product offering does not measure latency outside of the Exchange extranet. The unique identifier serves as a technological information barrier so that the RaceTeam data collector will only be able to view data for Correlix RaceTeam subscribing users related to latency. Correlix will not see subscriber's individual order detail such as security, price or size. Individual RaceTeam subscribers' logins will restrict access to only their own latency data. Correlix will see no specific information regarding the trading activity of non-subscribers. The Exchange believes that the above arrangement will provide users of the Exchange with greater transparency into the processing of their trading activity and allow them to make more efficient trading decisions.

In addition, the Exchange proposes to establish a flexible 60-day free trial so parties will be eligible for one free 60-day trial period of Correlix services whenever they initially elect to sign-up for the service, now or in the future. The Exchange is proposing the flexible trial to ensure that all Correlix users have an equal opportunity to take advantage of an initial free trial period.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The

[3] For the purposes of this filing, the term "users" includes any "member organization," as that term is defined in NYSE Rule 2(b) and any "Sponsored Participant," as that term is defined in NYSE Rule 123B.30(a)(ii)(B).

[4] NYSE Amex and NYSE Arca have submitted similar rule filings. *See* SR–NYSEAmex–2011–20 and SR–NYSEArca–2011–12.

[5] The product measures latency of orders whether the orders are rejected, executed, or partially executed.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

Exchange believes the proposed rule will provide greater transparency into trade and information processing and thus allow market participants to make better-informed and more efficient trading decisions.

In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and with Section 6(b)(4) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that the Exchange operates or controls. In particular, NYSE notes that it operates in a highly competitive market in which market participants can readily direct orders to competing venues and that use of the Correlix RaceTeam product is completely voluntary. Further, NYSE makes the RaceTeam product uniformly available pursuant to a standard non-discriminatory pricing schedule offered by Correlix and will offer the free trial period on a uniform and non-discriminatory basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that revenue sharing programs with Correlix for the provision of latency information have been approved previously by the Commission for other markets.[12] Waiver of the 30-day operative delay will ensure that the free period is made available to all interested parties without delay. Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.[13]

At any time within 60 days of the filing of such proposed rule change, 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2011–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2011–13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2011–13 and should be submitted on or before June 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–13418 Filed 5–31–11; 8:45 am]

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[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] *See* Exchange Act Release Nos. 62605 (July 30, 2010), 75 FR 47651 (August 6, 2010) (SR–NASDAQ–2010–068); 62928 (September 17, 2010), 75 FR 58002 (September 23, 2010) (SR–EDGA–2010–09); 62929 (September 17, 2010), 75 FR 58003 (September 23, 2010) (SR–EDGX–2010–09).

[13] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78(c)(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64546; File No. SR–BATS–2011–018]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change To Adopt Rules for the Qualification, Listing and Delisting of Companies on the Exchange

May 25, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 12, 2011, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt rules for the qualification, listing and delisting of companies on the Exchange.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing rules to adopt a program for the qualification, listing and delisting of companies on the Exchange ("Listing Rules"). The Exchange proposes to eliminate the Exchange's current rules related to securities traded on BATS pursuant to unlisted trading privileges, and to replace such rules with the Listing Rules, which are primarily based on and substantially similar to the rules of the NASDAQ Stock Market LLC ("Nasdaq"). The Exchange is not proposing any changes to the Rules of the Exchange's options market ("BATS Options").

The Exchange proposes adoption of two distinct tiers of securities to be listed on the Exchange, Tier I and Tier II. The proposed standards for a security's initial and continued listing on Tier I are nearly identical to the existing standards applicable to listing on the Nasdaq Global Market ("NGM"). The proposed standards for a security's initial and continued listing on Tier II are nearly identical to the existing standards applicable to listing on the Nasdaq Capital Market ("NCM"). While the quantitative standards for Tier I and II differ, the qualitative standards for both tiers are the same, and are based on Nasdaq's existing qualitative standards, as described in further detail below. The Exchange notes that it has not proposed adoption of a tier equivalent to the Nasdaq Global Select Market tier, which is governed by the Rule 5300 Series of Nasdaq rules.

In addition to deletion of the Exchange's current Chapter XIV and adoption of the Rules described below, the Exchange proposes to modify a cross-reference in Rule 3.21 to align such reference to the new location of the defined term "UTP Derivative Securities."

Organization

As proposed, Rule 14.1 contains definitions for the rules related to the qualification, listing and delisting of Companies on the Exchange; [3] Rule 14.2 discusses the Exchange's general regulatory authority; Rule 14.3 sets forth the procedures and prerequisites for gaining a listing on the Exchange; Rules 14.4 and 14.5 contain the listing requirements for units; Rule 14.6 sets forth the disclosure obligations of listed Companies; Rule 14.7 describes Direct Registration Program requirements; Rules 14.8 and 14.9 contain the specific and quantitative listing requirements for listing on the Exchange in Tiers I and II, respectively; Rule 14.10 contains the corporate governance requirements applicable to all Companies; Rule 14.11 contains special listing requirements for securities other than common or preferred stock and warrants; Rule 14.12 contains the consequences of a failure to meet the Exchange's listing standards; and Rule 14.13 contains Exchange listing fees.

General Regulatory Authority of the Exchange

As proposed, Rule 14.2 makes clear that the Exchange, in addition to applying the enumerated criteria set forth in Chapter XIV, has broad discretionary authority over the initial and continued listing of securities on the Exchange in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. The Exchange may use such discretion to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on the Exchange inadvisable or unwarranted in the opinion of the Exchange, even though the securities meet all enumerated criteria for initial or continued listing on the Exchange.

Rule 14.2 provides Companies with guidance regarding the circumstances in which the Exchange's use of discretionary authority is invoked and the types of factors considered by the Exchange when making determinations pursuant to such authority. In addition, Rule 14.2 sets forth the Exchange's use of discretionary authority as it relates to a Company whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time. The Exchange will permit the listing of such a Company if the Company meets all applicable initial listing requirements, as well as the conditions described in Rule 14.2. In addition, Rule 14.2 addresses the Exchange's use of authority when a Company files for protection under any provision of the federal bankruptcy laws or comparable foreign laws.

General Procedures and Prerequisites for Listing

Proposed Rule 14.3 describes the application process that a Company must complete in order to be listed on the Exchange. To apply for listing on the Exchange, a Company shall execute a Listing Agreement and a Listing Application on forms made available by the Exchange in order to provide the information required by Section 12(b) of the Act.[4] A Company's qualifications will be determined on the basis of financial statements that are either: (i) Prepared in accordance with U.S. generally accepted accounting principles; or (ii) reconciled to U.S. generally accepted accounting principles as required by the Commission's rules; or (iii) prepared in accordance with International Financial Reporting Standards, as issued by the International Accounting Standards Board, for Companies that are permitted to file financial statements using those standards consistent with the Commission's rules.

[3] For purposes of the proposed rules, any issuer of a security listed or applying to list on the Exchange, including an issuer that is not incorporated (*e.g.,* a limited partnership) will be defined as a "Company."

[4] 15 U.S.C. 78l(b).

Rule 14.3 also sets forth the prerequisites for an applicant Company to become listed on the Exchange: (1) The security must be registered pursuant to Section 12(b) of the Act [5] or subject to an applicable exemption; (2) the Company must be audited by a registered independent public accountant; (3) the securities must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Act,[6] subject to certain exceptions; (4) the Company must pay fees required by Rule 14.13; (5) the securities must be in good standing with the Commission or Other Regulatory Authority; [7] (6) the Exchange shall certify to the Commission, and the securities must become effective, pursuant to the Section 12(d) of the Act; [8] and (7) the securities must be depositary eligible pursuant to the rules and procedures of a securities depository registered as a clearing agency under Section 17A of the Act [9] ("Securities Depositary").

To foster competition among markets and further the development of the national market system, pursuant to Rule 14.13, the Exchange shall permit Companies whose securities are listed on another national securities exchange to apply also to list those securities on the Exchange. The Exchange shall make an independent determination of whether such Companies satisfy all applicable listing requirements and shall require Companies to enter into a dual listing agreement with the Exchange.

While the Exchange shall certify such dually listed securities for listing on the Exchange, the Exchange shall not exercise its authority under Rule 14.3(d) separately to designate or register such dually listed securities as Exchange national market system securities within the meaning of Section 11A of the Act or the rules thereunder. As a result, these securities, which are already designated as national market system securities under the Consolidated Quotation Service ("CQS") and Consolidated Tape Association national market system plans ("CQ and CTA Plans") or the Nasdaq Unlisted Trading Privileges national market system plan ("UTP Plan"), as applicable, shall remain subject to those plans. For purposes of the national market system, such securities shall continue to trade under their current ticker symbol. The Exchange shall continue to send all quotations and transaction reports in such securities to the processor for the CTA Plan or UTP Plan, as applicable.

Disclosure Obligations

Proposed Rule 14.6 in order to set forth the requirements of a Company to provide information to the Exchange, file financial reports and other documentation required pursuant to the Securities Act of 1933 and the rules and regulations thereunder, and make public disclosures, including disclosures required pursuant to Regulation FD.[10] Such requirements include providing the Exchange's Surveillance Department with notification prior to public release of material information. In addition, Rule 14.6 sets forth obligations regarding notification to the Exchange of an administrative nature and also regarding corporate actions, such as reverse stock splits and changes to the Company's state of incorporation. The Exchange has also proposed two Interpretations and Policies to provide Companies with additional guidance due to the importance that Companies provide prompt and complete notifications. Such notice is critical to the proper functioning of the capital markets and to investor confidence.

Quantitative Listing Requirements and Standards for Tier I Securities

The Exchange has proposed to divide the quantitative listing standards into two subcategories in the proposed rules: listing requirements and listing standards. Under the proposed rules, listing requirements are quantitative metrics, all of which a Company must meet for initial or continued listing on a particular tier. Listing standards consist of bundles of quantitative metrics; however, unlike listing requirements, a Company must meet at least one listing standard to become listed or to continue listing.

The specific quantitative listing standards for both Tier I and Tier II securities proposed by the Exchange are described below.

Primary Equity Securities—Initial Listing Requirements and Standards

BATS proposes to adopt quantitative initial listing requirements pertaining to the public float, distribution of shares, and trading volume of the security identical to the requirements of NGM. Specifically, as set forth in proposed Rule 14.8(b), a Company must have at a minimum a bid price of at least $4 per share, a minimum of 1.1 million publicly held shares, and at least 400 round lot holders.

BATS also proposes to require that the issuer of the security meet at least one of the following standards—income, equity, market value, or total assets/total revenue. Each of these standards, described below, is identical to the comparable NGM standard set forth in Nasdaq Rule 5405(b).

The income standard of Rule 14.8(b)(2)(A) would require that the issuer have annual pre-tax income from continuing operations of at least $1 million in the most recently completed fiscal year or in two of the three most recently completed fiscal years, $15 million in stockholders' equity, $8 million in market value of publicly held shares, and at least three registered and active Market Makers.[11]

The equity standard of Rule 14.8(b)(2)(B) would require that stockholder's equity be at least $30 million, the issuer have a two year operating history, that the market value of publicly held shares be at least $18 million, and at least three registered and active Market Makers.

The market value standard of Rule 14.8(b)(2)(C), for currently publicly traded companies, would require that the market value of listed securities be at least $75 million, that the market value of publicly held shares be at least $20 million, and at least four registered and active Market Makers.

Finally, the total assets/total revenue standard of Rule 14.8(b)(2)(D) would require that total assets and total revenue for the most recent fiscal year and two of the three most recently completed fiscal years be at least $75 million, that the market value of publicly held shares be at least $20 million, and at least four registered and active Market Makers.

Rights and Warrants, Preferred Stock and Secondary Classes of Common Stock—Initial Listing Requirements and Standards

As is true for primary equity securities, BATS proposes to adopt requirements and standards nearly identical to those of NGM as the Tier I quantitative initial listing requirements and standards for rights and warrants and preferred stock and secondary classes of common stock, as further described below.[12]

BATS proposes to require through Rule 14.8(c)(1) that for initial listing at least 450,000 rights or warrants be issued and that the underlying security be listed on the respective exchange or

[5] 15 U.S.C. 78l(b).

[6] 15 U.S.C. 78q–1.

[7] As defined in proposed Rule 14.1(t).

[8] 15 U.S.C. 78l(d).

[9] 15 U.S.C. 78q–1.

[10] 17 CFR 243.100 *et seq.*

[11] The term Market Maker means a Member that acts as a Market Maker on BATS pursuant to Chapter XI of the Exchange's rules.

[12] *See* Nasdaq Rules 5410 and 5415.

be a covered security. BATS would also require that for warrants there must be at least 400 round lot holders. Finally, BATS would require at least three registered and active Market Makers.

Pursuant to Rule 14.8(d)(1), BATS would require that when the primary equity security of an issuer is listed on the respective exchange or is a covered security, the preferred stock or secondary classes of common stock meet certain similar requirements. Rule 14.8(d)(1) would also require that there be at least 200,000 publicly held shares with a market value of at least $4 million, a minimum bid price of at least $4 per share, at least 100 round lot holders, and at least three registered and active Market Makers.

In the event the Company's Primary Equity Security is not listed on the Exchange as a Tier I security or is not a Covered Security, the Exchange proposes that the preferred stock and/or secondary class of common stock be listed on the Exchange as a Tier I security so long as the security has met the initial listing criteria for Primary Equity Securities as set forth in Rule 14.8(b).

Units—Initial Listing and Maintenance Requirements

In addition, the Exchange has proposed a stand-alone rule applicable to the listing of units as Tier I securities, Rule 14.4. Pursuant to Rule 14.4, all units shall have at least one equity component. All components of such units shall satisfy the requirements for initial and continued listing as Tier I securities, or, in the case of debt components, satisfy the requirements described below.

All debt components of a unit, if any, shall meet the following requirements: (A) The debt issue must have an aggregate market value or principal amount of at least $5 million; (B) the issuer of the debt security must have equity securities listed on the Exchange as a Tier I security; and (C) in the case of convertible debt, the equity into which the debt is convertible must itself be subject to real-time last sale reporting in the United States, and the convertible debt must not contain a provision which gives the company the right, at its discretion, to reduce the conversion price for periods of time or from time to time unless the company establishes a minimum period of ten business days within which such price reduction will be in effect. Finally, all components of the unit shall be issued by the same issuer. All units and issuers of such units shall comply with the initial and continued listing requirements of Tier I.

For initial inclusion, a unit shall have at least three registered and active Market Makers. For continued listing, a unit shall have at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.

Primary Equity Securities—Maintenance Requirements and Standards

As with initial listing requirements and standards, BATS has proposed quantitative maintenance requirements based on the maintenance requirements and standards applicable to NGM listed issues.[13] For continued approval of a primary equity security listing, BATS Rule 14.8(e)(1) would require that there be a minimum bid price of $1 per share and at least 400 total holders. BATS would also require, under 14.8(e)(2) that issuers meet at least one of the following standards—equity, market value, or total assets/total revenue. The equity standard would require that stockholders' equity be at least $10 million, that there be at least 750,000 publicly held shares with a market value of at least $5 million, and that there be at least two registered and active Market Makers. The market value standard would require that the market value of listed securities be at least $50 million, that there be at least 1.1 million publicly held shares with a market value of at least $15 million, and that there be at least two registered and active Market Makers. The total assets/total revenue standards would require that there be total assets and total revenue of at least $50 million each for the most recently completed fiscal year or two of the three most recently completed fiscal years, at least 1.1 million publicly held shares with market value of at least $15 million, and at least four registered and active Market Makers.

Rights and Warrants, Preferred Stock and Secondary Classes of Common Stock—Maintenance Requirements

The Exchange proposes to adopt, as Rules 14.8(f) through (g), continued listing requirements nearly identical to those set forth in Nasdaq rules 5455 through 5460 for rights and warrants, and for preferred stock and secondary classes of common stock. The Exchange proposes to require that for continued listing, the rights or warrants continue to be listed on the Exchange as a Tier I security or be a Covered Security; and that there be at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid. The Exchange also proposes as Continued Listing Requirements for Preferred Stock and Secondary Classes of Common Stock that the Company's Primary Equity Security of the Company be listed on the Exchange as a Tier I security or as a Covered Security. The Exchange proposes that the preferred stock or secondary class of common stock have at least 100,000 Publicly Held Shares, a Market Value of Publicly Held Shares of at least $1,000,000; a minimum bid price of at least $1 per share; at least 100 Public Holders; and at least two registered and active Market Makers.

In the event the Company's Primary Equity Security is not listed on the Exchange as a Tier I security or is not a Covered Security, the Exchange proposes that the preferred stock and/or secondary class of common stock may continue to be listed on the Exchange as a Tier I security so long as the security has met the continued listing criteria for Primary Equity Securities as set forth in Rule 14.8(e).

Quantitative Listing Requirements and Standards for Tier II Securities

Primary Equity Securities—Initial Listing Requirements and Standards

BATS proposes to adopt quantitative initial listing requirements pertaining to the public float, distribution of shares, and trading volume of the security identical to the requirements of NCM.[14] Specifically, as set forth in proposed Rule 14.9(b)(1), a Company must have at a minimum bid price of at least $4 per share, a minimum of one million publicly held shares, at least 300 round lot holders, and at least three registered and active Market Makers. BATS would also require that in the case of ADRs there be at least 400,000 issued.

The Exchange would require in Rule 14.9(b)(2) that the issuer of the security meets at least one of the following identical standards—equity, market value, or net income.

The proposed equity standard would require stockholders' equity of at least $5 million, that the market value of publicly held shares be at least $15 million, and a two year operating history. The proposed market value standard would require that the market value of listed securities be at least $50 million, that stockholders' equity be at least $4 million, and that the market value of publicly held shares be at least $15 million. The proposed net income standard requires that the net income from continuing operations be at least $750,000 in the most recently

[13] *See* Nasdaq Rule 5450(b).

[14] *See* Nasdaq Rule 5505.

completed fiscal year or in two of the three most recently completed fiscal years, that stockholders' equity be at least $4 million, and that the market value of publicly held shares be at least $5 million.

Preferred Stock and Secondary Classes of Common Stock; Rights, Warrants, and Convertible Debt—Initial Listing Requirements

As is true for primary equity securities, BATS proposes to adopt requirements nearly identical to those of NCM as Tier II quantitative initial listing requirements for preferred stock and secondary classes of common stock as well as for rights, warrants, and convertible debt, as further described below.[15]

Pursuant to Rule 14.9(c), BATS would require that when the primary equity security of an issuer is listed on the respective exchange or is a covered security, the preferred stock or secondary classes of common stock meet certain similar requirements. Rule 14.9(c)(1) would also require that there be at least 200,000 publicly held shares with a market value of at least $3.5 million, a minimum bid price of at least $4 per share, at least 100 round lot holders, and at least three registered and active Market Makers.[16]

In the event the Company's Primary Equity Security is not listed on the Exchange as a Tier II security or is not a Covered Security, the Exchange proposes that the preferred stock and/or secondary class of common stock be listed on the Exchange as a Tier II security so long as the security has met the initial listing criteria for Primary Equity Securities as set forth in Rule 14.9(b).

BATS proposes to require through Rule 14.9(d)(1) that for initial listing, rights, warrants, and put warrants meet certain similar requirements. BATS would also require that there be at least 400,000 issued and that the underlying security be listed on the Exchange or be a covered security. In the case of warrants, Rule 14.9(d)(1) would require there be at least 400 round lot holders, and at least three registered and active Market Makers.[17]

For initial listing of convertible debt securities, BATS Rule 14.9(d)(2)(A) would require that the principal amount outstanding be at least $10 million, that the current last sale information be available in the United States with respect to the underlying security into which the bond or debenture is convertible, and at least three registered and active Market Makers.[18] In addition to these conditions, the Exchange proposes to require that issuers also meet one of the following conditions: (i) That the issuer of the debt have an equity security that is listed on BATS, Nasdaq, Amex, or the NYSE, or (ii) that an issuer whose equity security is listed on BATS, Nasdaq, Amex, or the NYSE directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security, or has guaranteed the debt security, or (iii) a nationally recognized securities rating organization (an "NRSRO") has assigned a current rating to the debt security that is no lower than an S&P Corporation "B" rating or equivalent rating by another NRSRO; or (iv) if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned: (a) an investment grade rating to an immediately senior issue; or (b) a rating that is no lower than an S&P Corporation "B" rating, or an equivalent rating by another NRSRO, to a pari passu or junior issue.[19]

For initial listing of index warrants, Rule 14.9(d)(3) would require that the minimum public distribution be at least 1 million warrants, that there be a minimum of 400 public holders, that the market value of the index warrants be at least $4 million, and that the issuer have a minimum tangible net worth in excess of $150 million. This requirement is nearly identical to the corollary NCM requirement.[20]

Units—Initial Listing and Maintenance Requirements and Standards

In addition, the Exchange has proposed a stand-alone rule applicable to the listing of units as Tier II securities, Rule 14.5. Pursuant to Rule 14.5, all component parts of units shall meet the Tier II requirements for initial and continued listing. Further, the minimum period for listing of the units shall be 30 days from the first day of listing, except the period may be shortened if the units are suspended or withdrawn for regulatory purposes. Companies and underwriters seeking to withdraw units from listing must provide the Exchange with notice of such intent at least 15 days prior to withdrawal.

For initial inclusion, a unit shall have at least three registered and active Market Makers. For continued listing, a unit shall have at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.

Primary Equity Securities—Maintenance Requirements and Standards

As with initial listing standards, BATS has proposed quantitative maintenance requirements based on the maintenance requirements applicable to NCM listed issues. For continued approval of a primary equity security listing, BATS Rule 14.9(e)(2) would require a minimum bid price of $1 per share, at least 300 public holders, at least 500,000 publicly held shares with a market value of at least $1 million, and at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.[21]

Pursuant to Rule 14.9(e)(2), BATS would require that issuers meet at least one of the following standards—equity, market value, or net income. Under the equity standard, BATS would require that stockholders' equity be at least $2.5 million. The market value standard would require that the market value of listed securities be at least $35 million. The net income standard would require net income from continuing operations of $500,000 in the most recently completed fiscal year or in two of the three most recently completed fiscal years.

Preferred Stock and Secondary Classes of Common Stock; Rights, Warrants, and Convertible Debt—Maintenance Requirements

The Exchange proposes to adopt, as Rules 14.9(f) through (g), continued listing requirements nearly identical to those set forth in Nasdaq rules 5455 through 5460 for Preferred Stock and Secondary Classes of Common Stock; Rights, Warrants, and Convertible Debt.

The Exchange proposes Continued Listing Requirements for Preferred Stock and Secondary Classes of Common Stock require that when the Primary Equity Security is listed on the Exchange as a Tier II security or is a Covered Security, a Company's preferred stock or secondary class of common stock have a minimum bid price of at least $1 per share; at least 100 Public Holders; at least 100,000 Publicly Held Shares; a Market Value of Publicly Held Shares of at least $1 million; and at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.

In the event the Company's Primary Equity Security is not listed on the Exchange as a Tier II security or is not

[15] *See* Nasdaq Rules 5510 and 5515.

[16] *See* Nasdaq Rule 5510(a).

[17] *See* Nasdaq Rule 5515(a).

[18] *See* Nasdaq Rule 5515(b).

[19] *See* Nasdaq Rule 5515(b)(4).

[20] *See* Nasdaq Rule 5515(c).

[21] *See* Nasdaq Rule 5550(b).

a Covered Security, the Exchange proposes that the preferred stock and/or secondary class of common stock be listed on the Exchange as a Tier II security so long as the security has met the criteria of the continued listing of Primary Equity Securities as set forth in Rule 14.9(e).

The Exchange also proposes for Continued Listing Requirements for Rights, Warrants, and Convertible Debt to require that for rights, warrants, and put warrants (that is, instruments that grant the holder the right to sell to the issuing company a specified number of shares of the Company's common stock, at a specified price until a specified period of time), the underlying security remains listed on the Exchange or be a Covered Security, and there be at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.

For Continued Listing Requirements and Convertible Debt Securities the Exchange proposes a principal amount outstanding of at least $5 million; at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid; and current last sale information available in the United States with respect to the underlying security into which the bond or debenture is convertible.

Corporate Governance Standards

In addition to having quantitative listing criteria based on the standards applicable to Nasdaq listed companies, particularly those designated as NGM or NCM securities, BATS has proposed nearly identical qualitative requirements. Specifically, the Exchange proposes to adopt in Rule 14.10 corporate governance requirements and related interpretations that are nearly identical to the Rule 5600 Series of Nasdaq. Such requirements relate to a Company's board of directors, audit committee requirements, Independent Director oversight of executive compensation, the director nomination process, a mandatory code of conduct, shareholder meetings, including proxy solicitation and quorum, review of related party transactions, and shareholder approval, including voting rights. In addition to the proposed Rule 14.10, the Exchange proposes to adopt interpretations and policies equivalent to Nasdaq interpretive material. Such interpretations and policies provide guidance regarding definitions other matters set forth in Rule 14.10. Exemptions to the proposed corporate governance requirements, including phase-in schedules, are set forth in paragraph (e) of proposed Rule 14.10. The Exchange believes that preliminarily adopting uniform corporate governance standards to those of Nasdaq will assist issuers and their advisors in determining the Exchange's requirements.

Listing Standards for Other Securities

In addition, the Exchange has proposed Rule 14.11 as a stand-alone section for listing standards applicable to "other securities," which includes listing requirements for Exchange Traded Funds, Index-Linked Securities, Selected Equity-linked Debt Securities, Trust Issued Receipts, and Index Warrants. The proposed standards for Rule 14.11 are both similar to BATS' current standards, applicable to securities traded on the Exchange pursuant to unlisted trading privileges, as well as Nasdaq Rules 4700 through 4730.

Failure To Meet Listing Standards

Securities of a Company that does not meet the listing standards set forth in proposed Chapter XIV are subject to delisting from, or denial of initial listing on the Exchange. Proposed Rule 14.12 sets forth procedures for the independent review, suspension, and delisting of Companies that fail to satisfy one or more standards for initial or continued listing, and thus are "deficient" with respect to the listing standards.

The Listings Qualifications Department will be responsible for identifying deficiencies that may lead to delisting or denial of a listing application; notifying the Company of the deficiency or denial; and issuing Staff Delisting Determinations and Public Reprimand Letters. Rule 14.12(c) contains provisions regarding the Listing Qualifications Department's process for notifying Companies of different types of deficiencies and their corresponding consequences. The proposed rule also sets forth the various responsibilities when in receipt of notice of a deficiency, including public notification responsibilities.

The Hearings Panel, upon timely request by a Company, will review a Staff Delisting Determination, denial of a listing application, or Public Reprimand Letter at an oral or written hearing, and issue a Decision that may, among other things, grant an "exception" to the Exchange's listing standards or affirm a delisting. The Exchange Listing and Hearings Review Council, upon timely appeal by a Company or on its own initiative, may review the Decisions of the Hearings Panel. Rule 14.12(e) contains provisions relating to the Listing Council appeal process. Finally, the Exchange Board of Directors may exercise discretion to call for review a Listing Council Decision.

Rule 14.12 also sets forth the procedures related to SEC notification of the Exchange's final Delisting Determinations, rules applicable to Adjudicators and Advisors, and general information relating to the adjudicatory process.

A Company's failure to maintain compliance with the applicable provisions of Chapter XIV will result in the termination of the listing unless an exception is granted to the Company. The termination of the Company's listing will become effective in accordance with the procedures set forth herein, including Rule 14.12(g).

Listing Fees

The Exchange proposes to commence its listings business by charging Initial Listing Fees of $100,000 and $50,000 for Tiers I and II, respectively. The initial primary listing fee for both Tiers will include a $25,000 non-refundable application fee. The Exchange also proposes to charge annual fees of $35,000 and $20,000 for Tiers I and II, respectively, on a pro-rated basis.

The Exchange proposes to waive the entry fee for any Company that is listed on another national securities exchange if such Company transfers its listing to the Exchange, is dually-listed on the Exchange and another national securities exchange but ceases to maintain its listing on that other national securities exchange or is listed on another national securities exchange but not listed on the Exchange, if the issuer of such securities is acquired by an unlisted company and, in connection with the acquisition, the unlisted company lists exclusively on the Exchange. Annual dual listing fees will be $15,000 for both tiers and will be pro-rated.

At this time, the Exchange has not proposed to charge for ministerial changes implemented by a Company (*e.g.,* name changes and symbol changes), nor has the Exchange proposed to charge a fee for necessary work related to corporate actions of a Company (*e.g.,* a reverse stock split, re-incorporation, *etc.*).

2. Statutory Basis

Approval of the rule changes proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of

Section 6(b) of the Act.[22] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[23] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

The Exchange's proposal comes at a time when there are two dominant primary listing venues, the New York Stock Exchange and Nasdaq. Further, there have recently been reports of a potential combination of these two listing venues under one corporate umbrella. Whether or not such combination occurs (and particularly if it does), the Exchange believes that the proposed change would increase competition by providing an alternative to Nasdaq and the New York Stock Exchange for a company seeking to list its securities. Accordingly, the Exchange believes that the proposal will provide companies with another option for raising capital in the public markets, thereby promoting the aforementioned principles discussed in Section 6(b)(5) of the Act.[24]

The Exchange also believes the proposal is consistent with Section 6(b)(9) of the Act,[25] because Rule 14.3(b)(8) of the proposal would adopt rules prohibiting the listing of any security issued in a limited partnership rollup transaction (as defined in Section 14(h) of the Act), unless such transaction satisfies the criteria of Section 6(b)(9) and a broker-dealer that is a member of a national securities association subject to Section 15A(b)(12) of the Act participates in the rollup transaction.

Finally, the Exchange believes the proposal is consistent with Section 6(b)(4) of the Act,[26] as it provides for the equitable allocation of reasonable dues, fees and other charges among issuers. Specifically, as proposed, the Exchange is establishing a clear-cut and simple pricing structure, that is not variable based on the number of shares or other metrics. Thus, the proposed fees are equitable in that they will be the same amongst issuers seeking to list Tier I securities and the same amongst issuers seeking to list Tier II securities. Further, the Exchange believes its proposed pricing is reasonable, as the Exchange has not proposed additional fees that issuers incur at other exchanges, including fees for issuance of additional shares, name changes and other corporate actions. Finally, the Exchange notes that its proposed pricing, while not necessarily cheaper for all issuers at all other markets, is roughly equivalent or less than issuers would pay at other exchanges. For instance, issuers listing on the Nasdaq Global Market pay between $125,000 and $225,000 initially (depending on the number of shares) and between $35,000 and $99,500 annually, compared to proposed Tier I fees of $100,000 initially and $35,000 annually.[27] Similarly, issuers listing on the Nasdaq Capital Market pay either $50,000 or $75,000 initially (depending on the number of shares) and between $17,500 and $75,000 annually,[28] compared to proposed Tier II fees of $50,000 initially and $20,000 annually. Also, as noted above, Nasdaq and NYSE charge multiple other fees applicable to additional shares issued by listed companies, corporate actions and related activities of issuers, whereas the Exchange's proposed fees do not include such additional fees.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–BATS–2011–018 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–BATS–2011–018. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2011–018 and should be submitted on or before June 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–13422 Filed 5–31–11; 8:45 am]

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[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78f(b)(9).

[26] 15 U.S.C. 78f(b)(9) [sic].

[27] *See* Nasdaq Rule 5910(a) and (c).

[28] *See* Nasdaq Rule 5920(a) and (c).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64543; File No. SR–NYSEAmex-2011–20]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing a Revenue Sharing Program With Correlix, Inc. and a Free Trial Period for New Users of the Correlix Service

May 25, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 18, 2011, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish a revenue sharing program with Correlix, Inc. ("Correlix") and a free trial period for new users of the Correlix service. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is filing a proposed rule change to establish a revenue sharing program with Correlix effective upon filing with the Commission. The Exchange has entered into an agreement with Correlix to provide to users [3] of the Exchange real-time analytical tools to measure the latency of orders to and from the Exchange's system as well as the latency of market data updates transmitted from the Exchange systems to the user. Under the agreement, the Exchange will receive 30% of the total monthly subscription fees received by Correlix from parties who have contracted directly with Correlix to use their RaceTeam latency measurement service for the Exchange. The Exchange will not bill or contract with any Correlix RaceTeam customer directly.

Pricing for the Correlix RaceTeam product for users of the Exchange will be based on the number of ports requested by the user for monitoring by Correlix; each "port" is a FIX or binary protocol connection to the Common Customer Gateway ("CCG") of NYSE Euronext, which provides connectivity to the national securities exchanges operated by NYSE Euronext (*i.e.,* NYSE Amex, New York Stock Exchange LLC ("NYSE"), and NYSE Arca, Inc. ("NYSE Arca")).[4] The fee for equities users of the Exchange will be an initial $2,500 monthly base fee for the first 25 ports requested by the user for latency monitoring, and an additional $1,000 per month for each additional 25 ports (or portion thereof) requested by the user for latency monitoring. The fee for options users of the Exchange will be an initial $1,500 monthly fee for the first 25 ports requested by the user for latency monitoring, and an additional $750 per month for each additional 25 ports (or portion thereof).

Correlix will charge for services based on the number of ports because of the CCG technology, which is unique to the NYSE Euronext exchanges. Specifically, the use of ports as the basis of charging will permit order-related messages transmitted through the CCG to the various NYSE Euronext markets (*e.g., NYSE Amex equities* vs. *NYSE* or *NYSE Amex equities* vs. *NYSE Amex options*) to be differentiated and kept separate. For these purposes, the combination of port and user ID provides the mechanism for users to receive latency data for their transactions on a particular NYSE Euronext market. The Correlix RaceTeam product will include controls such that users will not be able to obtain latency information about options orders through an equities port connection and vice versa.

Under the program, Correlix will see an individualized unique NYSE Amex generated identifier that will allow Correlix RaceTeam to determine round trip order time,[5] from the time the order reaches the Exchange extranet, through the Exchange matching engine, and back out of the Exchange extranet. The RaceTeam product offering does not measure latency outside of the Exchange extranet. The unique identifier serves as a technological information barrier so that the RaceTeam data collector will only be able to view data for Correlix RaceTeam subscribing users related to latency. Correlix will not see subscriber's individual order detail such as security, price or size. Individual RaceTeam subscribers' logins will restrict access to only their own latency data. Correlix will see no specific information regarding the trading activity of non-subscribers. The Exchange believes that the above arrangement will provide users of the Exchange with greater transparency into the processing of their trading activity and allow them to make more efficient trading decisions.

In addition, the Exchange proposes to establish a flexible 60-day free trial so parties will be eligible for one free 60-day trial period of Correlix services whenever they initially elect to sign-up for the service, now or in the future. The Exchange is proposing the flexible trial to ensure that all Correlix users have an equal opportunity to take advantage of an initial free trial period.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For the purposes of this filing, the term "users" includes any "member organization," as that term is defined in NYSE Amex Equities Rule 2(b), any "Sponsored Participant," as that term is defined in either NYSE Amex Equities Rule 123B.30(a)(ii)(B) or NYSE Amex (Options) Rule 900.2NY(77), or any "ATP Holder," as that term is defined in NYSE Amex (Options) Rule 900.2NY(5).

[4] NYSE and NYSE Arca have submitted similar rule filings. *See* SR–NYSE–2011–13 and SR–NYSEArca-2011–12.

[5] The product measures latency of orders whether the orders are rejected, executed, or partially executed.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

Exchange believes the proposed rule will provide greater transparency into trade and information processing and thus allow market participants to make better-informed and more efficient trading decisions.

In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and with Section 6(b)(4) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that the Exchange operates or controls. In particular, NYSE Amex notes that it operates in a highly competitive market in which market participants can readily direct orders to competing venues and that use of the Correlix RaceTeam product is completely voluntary. Further, NYSE Amex makes the RaceTeam product uniformly available pursuant to a standard non-discriminatory pricing schedule offered by Correlix and will offer the free trial period on a uniform and non-discriminatory basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that revenue sharing programs with Correlix for the provision of latency information have been approved previously by the Commission for other markets.[12] Waiver of the 30-day operative delay will ensure that the free period is made available to all interested parties without delay. Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.[13]

At any time within 60 days of the filing of such proposed rule change, 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex-2011–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex-2011–20. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex-2011–20 and should be submitted on or before June 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–13419 Filed 5–31–11; 8:45 am]

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[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] *See* Exchange Act Release Nos. 62605 (July 30, 2010), 75 FR 47651 (August 6, 2010) (SR–NASDAQ–2010–068); 62928 (September 17, 2010), 75 FR 58002 (September 23, 2010) (SR–EDGA–2010–09); 62929 (September 17, 2010), 75 FR 58003 (September 23, 2010) (SR–EDGX–2010–09).

[13] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78(c)(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64544; File No. SR–NYSEArca–2011–12]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing a Revenue Sharing Program With Correlix, Inc. and a Free Trial Period for New Users of the Correlix Service

May 25, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 20, 2011, NYSE Arca, Inc. (the "Exchange"

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish a revenue sharing program with Correlix, Inc. ("Correlix") and a free trial period for new users of the Correlix service. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is filing a proposed rule change to establish a revenue sharing program with Correlix effective upon filing with the Commission. The Exchange has entered into an agreement with Correlix to provide to users [3] of the Exchange real-time analytical tools to measure the latency of orders to and from the Exchange's system as well as the latency of market data updates transmitted from the Exchange systems to the user. Under the agreement, the Exchange will receive 30 percent of the total monthly subscription fees received by Correlix from parties who have contracted directly with Correlix to use their RaceTeam latency measurement service for the Exchange. The Exchange will not bill or contract with any Correlix RaceTeam customer directly.

Pricing for the Correlix RaceTeam product for users of the Exchange will be based on the number of ports requested by the user for monitoring by Correlix; each "port" is a FIX or binary protocol connection to the Common Customer Gateway ("CCG") of NYSE Euronext, which provides connectivity to the national securities exchanges operated by NYSE Euronext (*i.e.,* NYSE Arca, New York Stock Exchange LLC ("NYSE"), and NYSE Amex LLC ("NYSE Amex")).[4] The fee for equities users of the Exchange will be an initial $2,500 monthly base fee for the first 25 ports requested by the user for latency monitoring, and an additional $1,000 per month for each additional 25 ports (or portion thereof) requested by the user for latency monitoring. The fee for options users of the Exchange will be an initial $1,500 monthly fee for the first 25 ports requested by the user for latency monitoring, and an additional $750 per month for each additional 25 ports (or portion thereof).

Correlix will charge for services based on the number of ports because of the CCG technology, which is unique to the NYSE Euronext exchanges. Specifically, the use of ports as the basis of charging will permit order-related messages transmitted through the CCG to the various NYSE Euronext markets (*e.g., NYSE Arca equities* vs. *NYSE* or *NYSE Arca equities* vs. *NYSE Arca options*) to be differentiated and kept separate. For these purposes, the combination of port and user ID provides the mechanism for users to receive latency data for their transactions on a particular NYSE Euronext market. The Correlix RaceTeam product will include controls such that users will not be able to obtain latency information about options orders through an equities port connection and vice versa.

Under the program, Correlix will see an individualized unique NYSE Arca generated identifier that will allow Correlix RaceTeam to determine round trip order time,[5] from the time the order reaches the Exchange extranet, through the Exchange matching engine, and back out of the Exchange extranet. The RaceTeam product offering does not measure latency outside of the Exchange extranet. The unique identifier serves as a technological information barrier so that the RaceTeam data collector will only be able to view data for Correlix RaceTeam subscribing users related to latency. Correlix will not see subscriber's individual order detail such as security, price or size. Individual RaceTeam subscribers' logins will restrict access to only their own latency data. Correlix will see no specific information regarding the trading activity of non-subscribers. The Exchange believes that the above arrangement will provide users of the Exchange with greater transparency into the processing of their trading activity and allow them to make more efficient trading decisions.

In addition, the Exchange proposes to establish a flexible 60-day free trial so parties will be eligible for one free 60-day trial period of Correlix services whenever they initially elect to sign-up for the service, now or in the future. The Exchange is proposing the flexible trial to ensure that all Correlix users have an equal opportunity to take advantage of an initial free trial period.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes the proposed rule will provide greater transparency into trade and information processing and thus allow market participants to make better-informed and more efficient trading decisions.

In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and with Section 6(b)(4) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that the Exchange operates or controls. In particular, NYSE Arca notes that it operates in a highly

[3] For the purposes of this filing, the term "users" includes any ETP Holder or Sponsored Participant who is authorized to obtain access to the NYSE Arca Marketplace pursuant to NYSE Arca Equities Rule 7.29 (*see* NYSE Arca Equities Rule 1.1(yy)), or any OTP Holder, OTP Firm or Sponsored Participant that is authorized to obtain access to OX pursuant to NYSE Arca Options Rule 6.2A (*see* NYSE Arca Options Rule 6.1A(a)(19)).

[4] NYSE and NYSE Amex have submitted similar rule filings. *See* SR–NYSE–2011–13 and SR–NYSEAmex–2011–20.

[5] The product measures latency of orders whether the orders are rejected, executed, or partially executed.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

competitive market in which market participants can readily direct orders to competing venues and that use of the Correlix RaceTeam product is completely voluntary. Further, NYSE Arca makes the RaceTeam product uniformly available pursuant to a standard non-discriminatory pricing schedule offered by Correlix and will offer the free trial period on a uniform and non-discriminatory basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that revenue sharing programs with Correlix for the provision of latency information have been approved previously by the Commission for other markets.[12] Waiver of the 30-day operative delay will ensure that the free period is made available to all interested parties without delay. Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.[13]

At any time within 60 days of the filing of such proposed rule change, 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2011–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2011–12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2011–12 and should be submitted on or before June 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–13420 Filed 5–31–11; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] *See* Exchange Act Release Nos. 62605 (July 30, 2010), 75 FR 47651 (August 6, 2010) (SR–NASDAQ–2010–068); 62928 (September 17, 2010), 75 FR 58002 (September 23, 2010) (SR–EDGA–2010–09); 62929 (September 17, 2010), 75 FR 58003 (September 23, 2010) (SR–EDGX–2010–09).

[13] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78(c)(f).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12605 and #12606]

Oklahoma Disaster #OK–00048

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oklahoma (FEMA–1970–DR), dated 05/06/2011.

Incident: Severe Storms, Tornadoes, and Straight-line Winds.

Incident Period: 04/14/2011.

Effective Date: 05/06/2011.

Physical Loan Application Deadline Date: 07/05/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 02/06/2012.

ADDRESSES: *Submit completed loan applications to:* U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/06/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address

listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Atoka, Pushmataha.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere:	3.250
Non-Profit Organizations Without Credit Available Elsewhere:	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere:	3.000

The number assigned to this disaster for physical damage is 12605B and for economic injury is 12606B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–13309 Filed 5–31–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12566 and #12567]

Kentucky Disaster Number KY–00039

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Kentucky (FEMA–1976–DR), dated 05/04/2011.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 04/22/2011 through 05/20/2011.

Effective Date: 05/20/2011.

Physical Loan Application Deadline Date: 07/05/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 02/06/2012.

ADDRESSES: *Submit completed loan applications to:* U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Kentucky, dated 05/04/2011, is hereby amended to establish the incident period for this disaster as beginning 04/22/2011 and continuing through 05/20/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–13491 Filed 5–31–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12599 and #12600]

Kentucky Disaster Number KY–00040

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–1976–DR), dated 05/19/2011.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 04/22/2011 through 05/20/2011.

Effective Date: 05/20/2011.

Physical Loan Application Deadline Date: 07/18/2011.

EIDL Loan Application Deadline Date: 02/21/2012.

ADDRESSES: *Submit completed loan applications to:* U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the Commonwealth of Kentucky, dated 05/19/2011 is hereby amended to establish the incident period for this disaster as beginning 04/22/2011 and continuing through 05/20/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–13494 Filed 5–31–11; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes a request for a new information collection and revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov.*

(SSA) Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400, E-mail address: *OPLM.RCO@ssa.gov.*

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than August 1, 2011. Individuals can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

1. *Social Security's Public Credentialing and Authentication Process—20 CFR 401.45—0960–NEW.* Social Security is introducing a stronger citizen authentication process that will enable a new user to experience and access more electronic services.

Background:

Authentication is the foundation for secure, online transactions. Identity authentication is the process of determining with confidence that people are who they claim to be during a remote, automated session. It comprises three distinct factors: something you know, something you

have, and something you are. Single-factor authentication uses one of these factors, and multi-factor authentication uses two or more of these factors.

SSA's New Authentication Process:

Social Security's new process features credential issuance, account management, and single- and multi-factor authentication. With this process, we are working toward offering consistent authentication across Social Security's secured online services, and eventually to Social Security's automated telephone services. We will allow our users to maintain one User ID, consisting of a self-selected Username and Password, to access multiple Social Security electronic services. This new process: 1) enables the authentication of users of Social Security's sensitive electronic services, and 2) streamlines access to those services.

Social Security is developing a new authentication strategy that will:

- Issue a single User Identification (ID) for personal, business, and governmental transactions;
- Offer a variety of authentication options to meet the changing needs of the public;
- Partner with an external data provider to help us verify the identity of our online customers;
- Comply with relevant standards;
- Offer access to some of Social Security's more sensitive workloads online, while providing a high level of confidence in the identity of the person requesting access to these services;
- Offer an in-person process for those who are uncomfortable with or unable to use the Internet registration process; and
- Balance security with ease of use.

New Authentication Process Features:

SSA's new process will include the following key components: (1) Registration and identity verification, (2) enhancement of the User ID, and (3) authentication. The registration process is a one-time activity for the respondents. The respondent provides some personal information, and we use this to verify respondent identity. Respondents then select their User ID (Username & Password). Respondents will log in with this User ID each time they access SSA's online services. SSA will also allow respondents to increase the security of their credential by adding a second authentication factor.

Information SSA Will Request As Part of the Process:

SSA will ask for respondents' personal information, which may include:

- Name
- Social Security Number (SSN)
- Date of Birth
- Address—mailing and residential
- Telephone number
- Email address
- Financial information
- Cell phone number
- Responses to an identity quiz (multiple choice format questions keyed to specific data identity thieves will not be able to answer)
- Password reset questions

This collection of information, or a subset of it, is required for respondents who want to conduct business with Social Security via the Internet or our automated 800 number. We will collect this information via the Internet on SSA's public-facing website. We also offer an in-person identification verification process for individuals who cannot or are not willing to register online. We do not ask for financial information with the in-person process. In addition, if individuals opt for the enhanced or upgraded account, they will also receive a text message on their cell phones (this serves as the second factor for authentication) each time they log into SSA's online services.

Advantages of the New Authentication Strategy:

This new authentication strategy will provide a user-friendly way for the public to conduct extended business with Social Security online instead of visiting the local servicing office or requesting information over the phone. Individuals will have real-time access to their sensitive Social Security information in a safe and secured web environment.

Burden Information:

The respondents for this information collection request are individuals who choose to use the Internet or Automated Telephone Response System to conduct business with SSA.

Type of Request: Request for a new information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden hours (hours)
Internet Requestors	17,900,000	1	8	2,386,667
In-Person (Intranet) Requestors	5,800,000	1	8	773,333
Totals	23,700,000			3,160,000

2. *Help America Vote Act—0960–0706.* H.R. 3295, the Help America Vote Act of 2002, mandates that States verify the identities of newly registered voters. When newly registered voters do not have drivers' licenses or State-issued ID cards, they must supply the last four digits of their Social Security Number to their local State election agencies for verification. The election agencies forward this information to their State Motor Vehicle Administration (MVA), who inputs the data into the American Association of MVAs, a central consolidation system that routes the voter data to SSA's Help America Vote Verification (HAVV) system. Once SSA's HAVV system has confirmed the identity of the voter, the information will return along the same route in reverse until it reaches the State election agency. The official respondents for this collection are the State MVAs.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 2,352,204.

Frequency of Response: 1.

Average Burden per Response: 2 minutes.

Estimated Annual Burden: 78,407 hours.

II. SSA submitted the information collection below to OMB for clearance. Your comments regarding the information collection would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than July 1, 2011. Individuals can obtain copies of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

Supplemental Security Income (SSI)—Quality Review Case Analysis—0960–0133. To assess the SSI program and ensure the accuracy of its payments, SSA conducts legally mandated periodic SSI case analysis quality reviews. SSA uses Form SSA–8505 to conduct these reviews, collecting information on operating efficiency, the quality of underlying policies, and the

effect of incorrect payments. SSA also uses the data to determine SSI program payment accuracy rates, which is a performance measure for the agency's service delivery goals. The respondents are recipients of SSI payments selected for quality reviews.

Type of Request: Revision of an OMB-approved information collection.

Form	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
SSA–8508–BK (paper interview)	225	1	60	225
SSA–8508–BK (electronic)	4,275	1	60	4,275
Totals	4,500			4,500

Dated: May 25, 2011.

Faye Lipsky,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2011–13409 Filed 5–31–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 7488]

Waiver of Restriction on Assistance to the Arab Republic of Egypt

Pursuant to Section 7086(c)(2) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Div. F, Pub. L. 111–117), as carried forward by the Full-Year Continuing Appropriations Act, 2011 (Div. B, Pub. L. 112–10), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7086(c)(1) of the Act with respect to the Arab Republic of Egypt and I hereby waive such restriction.

This determination shall be reported to the Congress, and published in the **Federal Register**.

Dated: May 06, 2011.

Thomas Nides,

Deputy Secretary of State for Management and Resources.

[FR Doc. 2011–13536 Filed 5–31–11; 8:45 am]

BILLING CODE 4710–31–P

DEPARTMENT OF TRANSPORTATION

ITS Joint Program Office; Intelligent Transportation Systems Program Advisory Committee; Notice of Meeting

AGENCY: Research and Innovative Technology Administration, U.S. Department of Transportation.

ACTION: Notice.

This notice announces, pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 72–363; 5 U.S.C. app.), a meeting of the Intelligent Transportation Systems (ITS) Program Advisory Committee (ITS PAC). The meeting will be held on June 17, 2011, from 8 a.m. to 4 p.m. in the Oklahoma Room of the U.S. Department of Transportation (U.S. DOT) Conference Center on the lobby level of the U.S. DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590.

The ITS PAC, established under Section 5305 of Public Law 109–59, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, August 10, 2005, was created to advise the Secretary of Transportation on all matters relating to the study, development, and implementation of intelligent transportation systems. Through its sponsor, the ITS Joint Program Office (JPO), the ITS PAC makes recommendations to the Secretary regarding ITS Program needs, objectives, plans, approaches, content, and progress.

Following is the meeting preliminary agenda: (1) Welcome and Opening Remarks; (2) Review Technology Strategy Subcommittee Recommendations; (3) Review Standards and Harmonization Subcommittee Recommendations; (4) Review Program Evaluation and Strategy Subcommittee Recommendations; and (5) Summary and Action Item Review.

The meeting will be open to the public, but limited space will be available on a first-come, first-served basis. Since access to the U.S. DOT building is controlled, non-committee members who plan to attend the meeting must notify Mr. Stephen Glasscock, the Committee Designated Federal Official, at (202) 366–9126 not later than June 10, 2011. Individuals attending the meeting must report to the 1200 New Jersey Avenue entrance of the U.S. DOT Building for admission. Members of the public who wish to present oral statements at the meeting must request approval from Mr. Glasscock not later than June 10, 2011.

Questions about the agenda or written comments may be submitted by U.S. *Mail to:* U.S. Department of Transportation, Research and Innovative Technology Administration, ITS Joint Program Office, *Attention:* Stephen Glasscock, 1200 New Jersey Avenue, SE., HOIT, Room E33–415, Washington, DC 20590 or *faxed to* (202) 493–2027. The JPO requests that written comments be submitted no later than June 10, 2011.

Notice of this meeting is provided in accordance with FACA and the General Services Administration regulations (41 CFR part 102–3) covering management of Federal advisory committees.

Issued in Washington, DC, on the 25th day of May 2011.

Shelley Row,

Director, ITS Joint Program Office.

[FR Doc. 2011–13552 Filed 5–31–11; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Certificated Training Centers—Simulator Rule

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 10, 2011, vol. 76, no. 47, page 13267. To determine regulatory compliance, there

is a need for airmen to maintain records of certain training and recency of experience; a training center has to maintain records of student's training, employee qualification and training, and training program approvals.

DATES: Written comments should be submitted by July 1, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385–4293, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0570.

Title: Certificated Training Centers—Simulator Rule.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: 14 CFR part 142.73 requires that training centers maintain records for a period of one year to show trainee qualifications for training, testing, or checking, training attempts, training checking, and testing results, and for one year following termination of employment the qualification of instructors and evaluators providing those services. The information is maintained by the certificate holder and subject to review by aviation safety inspectors (operations), designated to provide surveillance to training centers to ensure compliance with airman training, testing, and certification requirements specified in other parts of the 14 CFR.

Respondents: Approximately 113 training centers and associated satellite facilities.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1,177.6 hours.

Estimated Total Annual Burden: 126,092 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on May 23, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–13568 Filed 5–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection; SWIFT Customer Satisfaction Survey

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 28, 2011, vol. 76, no. 59, page 17181. This collection of information is necessary to determine how satisfied applicants are with the automated staffing solution. The information enables the FAA to improve and enhance its automated staffing process.

DATES: Written comments should be submitted by July 1, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385–4293, or by *e-mail at: Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0699.

Title: SWIFT Customer Satisfaction Survey.

Form Numbers: There are no FAA Forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The information will be collected via an online form. It is part of the automated SWIFT staffing tool. The data collected is analyzed by Information Systems Division, AHP–100 to determine the quality of our service to our users and customers, to address any problems or issues found as a result of the data analysis.

Respondents: Approximately 175,000 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 3 minutes.

Estimated Total Annual Burden: 2,625 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on May 23, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–13583 Filed 5–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Reduction of Fuel Tank Flammability on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 28, 2011, vol. 76, no. 59, pages 17181–17182. The FAA's Fuel Tank Flammability rule requires manufacturers to report to the FAA every six months for up to 5 years after the flammability reduction system is incorporated into the fleet. The data is needed to assure system performance meets that predicted at the time of certification.

DATES: Written comments should be submitted by July 1, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385–4293, or by *e-mail at: Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0710.

Title: Reduction of Fuel Tank Flammability on Transport Category Airplanes.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: Design approval holders use flammability analysis documentation to demonstrate to their FAA Oversight Office that they are compliant with the Fuel Tank Flammability Safety rule (73 FR 42443). Semi-annual reports submitted by design approval holders provide listings of component failures discovered during scheduled or unscheduled maintenance so that the reliability of the flammability reduction means can be verified by the FAA.

Respondents: Approximately 5 design approval holders.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 100 hours.

Estimated Total Annual Burden: 4,000 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on May 23, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–13571 Filed 5–31–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA 2011–0051]

Agency Information Collection Activities: Notice of Request for Renewal of a Previously Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of a previously approved information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by July 1, 2011.

ADDRESSES: You may submit comments identified by DOT Docket ID Number FHWA 2011–0051 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received, go to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

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

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann Shemaka, 202–366–1575, Office of Bridge Technology, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Highway Bridge and National Bridge Inspection Programs.

Background: The Highway Bridge and National Bridge Inspection Programs require bridge inspection and reporting at regular intervals for all highway bridges greater than 20 feet in length located on public roads. Title 23, U.S.C., Section 144 defines the Highway Bridge Program. Title 23, U.S.C., Section 151 defines the National Bridge Inspection Program. They are further defined in regulation, 23 CFR 650 C, National Bridge Inspection Standards, and 23 CFR 650 D, Highway Bridge Program. Inspections of fracture critical bridges and underwater inspections are also required at prescribed intervals. The bridge inspection information that is provided to the FHWA on an annual basis is summarized on the Structure Inventory and Appraisal (SI&A) Sheet. The inspection information is used for multiple purposes, including: (1) The determination of the condition of the Nation's bridges; (2) as a basis for setting initial priorities for the replacement or rehabilitation of bridges under the Highway Bridge Program (HBP); and (3) for apportioning HBP funds to the States for bridge replacement or rehabilitation. In order to apportion funds for the HBP, the law requires that a cost to replace or rehabilitate each bridge needs to be determined. In order to determine that cost, the FHWA collects data on new and replaced bridges from the States annually. In addition, the information is used for strategic national defense needs and for preparing an annual report to Congress on the status of the Nation's highway bridges.

Respondents: 52 State highway agencies including the District of Columbia and Puerto Rico, and Federal agencies. The number of inspections per respondent varies in accordance with the national bridge inventory.

Estimated Average Burden per Response: The estimated average burden for each inspection is 8 hours. The estimated average burden for each cost collection report is 90 hours.

Estimated Total Annual Burden Hours: The annual burden associated with the inspection is 2,289,600 hours (286,200 inspections). The annual burden associated with the cost report is 4,680 hours (52 reports) for a combined annual burden of 2,294,280 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection of information is necessary for the U.S. DOT's performance, including whether the information will have practical utility; (2) the accuracy of the U.S. DOT's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: May 25, 2011.

Juli Huynh,

Chief, Management Programs and Analysis Division.

[FR Doc. 2011–13412 Filed 5–31–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statements: National Summary of Rescinded Notices of Intent

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA is issuing this notice to advise the public that 11 States have rescinded Notices of Intent (NOIs) to prepare 21 Environmental Impact Statements (EISs) for proposed highway projects. The FHWA Division Offices, in consultation with the State departments of transportation (State DOTs), determined that six projects were no longer viable and have formally cancelled the projects. No further Federal resources will be expended on these projects; the environmental review process has been terminated. Seven projects have been reduced in scope or found not to have significant impacts and now meet the criteria for an Environmental Assessment (EA) or a Categorical Exclusion (CE). Six projects are currently undergoing re-scoping. After additional study, two individual projects were combined into a new single corridor project and a new EIS will be prepared.

FOR FURTHER INFORMATION CONTACT: Kreig Larson, Office of Project Development and Environmental Review, (202) 366–2056, or Janet Myers, Office of the Chief Counsel, (202) 366–2019; Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by accessing the **Federal Register**'s home page at: *http://www.archives.gov* and the Government Printing Office's Web page at *http://www.gpoaccess.gov/nara.*

Background

The FHWA, as lead Federal agency under the National Environmental Policy Act (NEPA) and in furtherance of its oversight and stewardship responsibilities under the Federal-aid highway program, periodically requests that its Division Offices review, with the State DOTs, the status of all EISs and place those projects that are not actively progressing in a timely manner in an inactive project status. The FHWA maintains lists of active and inactive EIS projects on its Web site at *http://www.environment.fhwa.dot.gov/.* The FHWA has determined that inactive projects that are no longer a priority or that lack financial resources should be rescinded with a **Federal Register** notice notifying the public that project activity has been terminated. This notice covers the time period since the last summary was issued on July 6, 2010, and published in the **Federal Register** at 75 FR 44044 (July 27, 2010). As always, FHWA encourages State DOTs to work with their FHWA Division Office to determine when it is most prudent to initiate an EIS in order to best balance available resources as well as the expectations of the public.

The FHWA is issuing this notice to advise the public that at the request of 11 States (California, Idaho, Iowa, Maine, Mississippi, New Mexico, New York, Tennessee, Texas, Virginia, and Washington) the FHWA recently rescinded previously issued NOIs for 21 EISs for proposed highway projects. A listing of these projects, general location, original NOI date of publication in the **Federal Register**, and the date that the NOI was formally rescinded by notice published in the **Federal Register**, is provided below.

The FHWA Division Offices, in consultation with the State DOTs, determined that six of these projects were no longer viable projects and have formally cancelled those projects. The projects are: The Skowhegan transportation and accessibility project in Somerset County, Maine; the I–10/SR–25 connector in Harrison and Stone Counties, Mississippi; US–49/I–20 interchange in Ranking County, Mississippi; US–82/I–69 connector in Washington and Bolivar Counties, Mississippi; proposed SR–15 near Beaumont, Harrison, George, Greene, Jackson, Perry, and Stone, Mississippi; and the Southeastern Parkway and Greenbelt in Chesapeake and Virginia Beach, Virginia.

The FHWA Division Offices, in consultation with the State DOTs, determined that seven additional projects would be reduced in scope or are expected not to have significant impacts. In California, the proposed 24th Street Improvement Project in Kern County has been reduced in scope and now meets the criteria for an EA. New Mexico's Northwest Loop project in Sandoval and Bernalillo Counties has been reduced in scope and is now eligible for a CE. The Bridge Rehabilitation and Interchange Improvements Project in Queens County, New York, has been reduced in scope and will be eligible for a CE. Route 475 in Knoxville, Loudon, Knox, and Anderson Counties, Tennessee, now expects a significantly smaller traffic volume and will no longer require an EIS. Seattle, Washington's Seattle Ferry Terminal (Colman Dock) project has been reduced in scope and will require an EA or CE. The Forest Road 56 improvement project in King County, Washington, has been reduced in scope and an EA will be published. The extension of SR–374 in Montgomery County, Tennessee, is not expected to have a significant environmental impact and an EA will now be prepared.

Six projects are currently undergoing re-scoping and are expected to require either an EA or CE when re-scoping is complete. These projects include: The SH–44 project in Ada and Canyon Counties, Idaho; the roadway improvement project in Warren County, Iowa; SH–71 in Travis County, Texas; US–181/SH–286 in Nueces County, Texas; US–181/SH–286 in Cameron County, Texas; and the proposed I–69

extension near Laredo and the Lower Rio Grande Valley, Texas.

In addition, after further study and interagency coordination, it was determined that the SR138 and SR18 projects in Los Angeles County and San Bernardino County, California, should be combined into one project. A new NOI was issued and an EIS will be prepared.

State	Project name	Original NOI date	Rescinded NOI date
CA	New State Route 138 project in Los Angeles County	10/12/07	9/24/2010
CA	High Desert Corridor project, State Route 18, in San Bernardino County	1/27/2009	9/24/2010
CA	24th Street Improvement Project in Kern County	4/23/2008	11/10/2010
ID	State Highway 44 in Ada and Canyon County	8/28/2007	3/17/2011
IA	Roadway improvement project in Warren County	4/26/2007	8/4/2010
ME	The Skowhegan transportation and accessibility project in Somerset County	11/29/2005	9/3/2010
MS	I–10/SR–25 connector in Harrison and Stone Counties	8/12/2005	11/22/2010
MS	US–49/I–20 interchange in Ranking County	5/22/2009	11/30/2010
MS	US–82/I–69 connector in Washington and Bolivar Counties	11/29/2005	12/1/2010
MS	SR–15 near Beaumont, Harrison, George, Greene, Jackson, Perry, and Stone	5/28/2009	12/28/2010
NM	Northwest Loop project in Sandoval and Bernalillo Counties	1/16/2009	4/15/2011
NY	Bridge Rehabilitation and Interchange Improvements Project, Queens County	3/12/2004	9/7/2010
TN	Route 475 in Knoxville, Loudon, Knox, and Anderson Counties	11/4/2005	9/21/2010
TN	SR–374 extension in Montgomery County	4/21/2010	1/19/2011
TX	SH–71 in Travis County	6/2/2008	9/7/2010
TX	US–181/SH–286 in Cameron County	4/6/2007	10/15/2010
TX	US–181/SH–286 in Nueces County	4/6/2007	11/3/2010
TX	I–69 extension near Laredo and the Lower Rio Grande Valley	1/15/2004	1/25/2011
VA	Southeastern Parkway and Greenbelt in Chesapeake and Virginia Beach	12/24/2003	11/17/2010
WA	Seattle Ferry Terminal (Colman Dock) in Seattle	3/17/2006	2/10/2011
WA	Forest Road 56 in King County	4/27/2001	2/28/2011

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: May 23, 2011.

Victor M. Mendez,

Federal Highway Administrator.

[FR Doc. 2011–13541 Filed 5–31–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project, the US 101/Broadway Interchange Reconstruction Project in the City of Burlingame, County of San Mateo, State of California (Post Miles 16.30 to 17.06). Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before November 28, 2011. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Melanie Brent, Caltrans District 4 Office of Environmental Analysis, 111 Grand Avenue, P.O. Box 23660, Oakland, CA 94623–0660, 8 a.m. to 5 p.m. Pacific Standard Time, Telephone (510) 286–5231, *e-mail melanie_brent@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans and certain federal agencies have taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the US 101/Broadway Interchange Reconstruction Project in the State of California. The project will construct a new seven-lane Broadway overcrossing approximately 170 feet to the north of the existing four-lane structure in the City of Burlingame, County of San Mateo. The purpose of the project is to improve traffic movements and access around the interchange, accommodate future traffic increases at adjacent intersections, improve operations at the southbound US 101 ramps, and increase bicyclist and pedestrian access. The project length is 0.76 mile, and construction is anticipated to take 2 to 2.5 years. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Initial Study with Mitigated Negative Declaration/Environmental Assessment (IS/EA) for the project, approved on March 18, 2011, in the Finding of No Significant Impact (FONSI) issued on March 18, 2011, and in other documents in the FHWA project records. The IS/EA, FONSI, and other project records are available by contacting Caltrans at the address provided above. The Caltrans IS/EA and FONSI can be viewed and downloaded from the project Web site at *http://www.dot.ca.gov/dist4/documents/101_broadway_interch/ea_235840_101bdwy_fed_1_front_matter_thru_chapter_6.pdf.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. Air: Clean Air Act [42 U.S.C. 7401–7671(q)].

3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*].

6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)].

7. Wetlands and Water Resources: Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1377]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)].

8. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: May 25, 2011.

Maiser Khaled,

Acting Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. 2011–13545 Filed 5–31–11; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35500]

Saratoga and North Creek Railway, LLC—Acquisition and Operation Exemption–Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific

Saratoga and North Creek Railway, LLC (Saratoga),[1] a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific (CP) a permanent and exclusive freight rail easement over, and to operate, approximately 16.45-miles of rail line known as the Adirondack Branch extending between Adirondack Branch milepost 39.44 at or near Saratoga Springs, NY, and Adirondack Branch milepost 55.89 at or near Corinth, NY.[2] In addition, Saratoga states that it will acquire approximately 3.2 miles of operating rights for the purpose of interchange with CP between Adirondack Branch milepost 39.44 and CP's yard at Saratoga Springs located at Canadian Subdivision milepost 35.[3] The Town will remain the owner of the tracks and right-of-way.

Saratoga states that it is negotiating the terms of an agreement with CP covering its acquisition of the permanent and exclusive freight easement and operating rights over CP's reserved operating easement, as well as an agreement with the Town for the use of its track and right-of-way.[4]

This transaction is related to two simultaneously filed notices of exemption: (1) Docket No. FD 35500 (Sub-No. 1), *Saratoga and North Creek Railway, LLC–Operation Exemption–Warren County, NY,* in which Saratoga seeks an exemption under 49 CFR 1150.31 to operate over approximately 39.07 miles of rail line owned by Warren County, NY, extending between milepost 55.89 at or near Corinth, NY, and milepost 94.96 at North Creek, NY; and (2) Docket No. FD 35499, *San Luis & Rio Grande Railroad–Continuance in Control Exemption–Saratoga and North Creek Railway, LLC,* in which SLRG seeks an exemption to continue in control of Saratoga upon Saratoga's becoming a Class III rail carrier. As a result of these transactions, Saratoga will have authority to operate from Saratoga Springs to North Creek.

Saratoga indicates that its agreement with the Town will not permit the collecting, sorting, loading, unloading, transferring, or transporting of municipal solid waste or construction and demolition material.[5]

Saratoga certifies that its projected annual revenues as a result of this transaction will not result in Saratoga's becoming a Class II or Class I rail carrier and will not exceed $5 million.

Saratoga intends to consummate the transaction in either late June or early July 2011. The earliest the transaction may be consummated is after the June 15, 2011 effective date of the exemption (30 days after the exemption was filed).

If the verified 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 no later than June 8, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35500, 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 John D. Heffner, John D. Heffner, PLLC, 1750 K Street, NW., Suite 200, Washington, DC 20006.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 26, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–13493 Filed 5–31–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35499]

San Luis & Rio Grande Railroad—Continuance in Control Exemption—Saratoga and North Creek Railway, LLC

San Luis & Rio Grande Railroad (SLRG), a Class III rail carrier, has filed a verified notice of exemption to continue in control of Saratoga and

[1] Saratoga is a limited liability company, wholly owned by San Luis & Rio Grande Railroad (SLRG). SLRG is a Class III rail carrier and a subsidiary of Permian Basin Railways, Inc., which in turn is owned by Iowa Pacific Holdings, LLC.

[2] CP sold the underlying track and right-of-way to the Town of Corinth, NY (the Town), subject to CP's reservation of an exclusive and permanent easement to continue to provide common carrier freight service over the line. *See The Town of Corinth, NY–Acquisition and Operation Exemption–Canadian Pac. Ry.,* FD 34803 (STB served Jan. 11, 2006 and Mar. 9, 2006). The transaction was structured so that the Town would not incur a freight rail common carrier obligation when it purchased those rail line assets from CP. *See Me. Dep't of Transp.–Aquis. & Operation Exemption–Me. Cent. R.R.,* 8 I.C.C.2d 835 (1991). Saratoga is acquiring the easement and the associated freight rail common carrier rights and obligations that CP reserved for itself at the time of the sale.

[3] By letter filed May 18, 2011, Saratoga explains that the apparent discrepancy between the mileposts and total mileage arose over the years from CP's making changes to the track or right-of-way with the result that the distance was shortened and/or the milepost at the point of interchange was changed.

[4] While the parties have not completed the agreements, Saratoga must acquire sufficient rights to fully meet the common carrier obligation being acquired from CP.

[5] Saratoga is reminded that it cannot by contract avoid its common carrier obligation to transport a commodity over the line.

North Creek Railway, LLC (Saratoga) upon Saratoga's becoming a Class III rail carrier.[1]

This transaction is related to two simultaneously filed notices of exemption: (1) Docket No. FD 35500, *Saratoga and North Creek Railway—Acquisition and Operation Exemption—Delaware and Hudson Railway Company d/b/a Canadian Pacific,* in which Saratoga seeks an exemption under 49 CFR 1150.31 to acquire from Delaware and Hudson Railway Company, Inc, d/b/a Canadian Pacific (CP) a permanent and exclusive freight rail easement over, and to operate, approximately 16.45-miles of rail line known as the Adirondack Branch extending between Adirondack Branch milepost 39.44 at or near Saratoga Springs, NY and Adirondack Branch milepost 55.89 at or near Corinth, NY, and approximately 3.2 miles of operating rights for the purpose of interchange with CP between Adirondack Branch milepost 39.44 and CP's yard at Saratoga Springs located at Canadian Subdivision milepost 35; and (2) Docket No. FD 35500 (Sub-No. 1), *Saratoga and North Creek Railway—Operation Exemption—Warren County, NY,* in which Saratoga seeks an exemption under 49 CFR 1150.31 to operate over approximately 39.07 miles of rail line owned by Warren County, NY, extending between milepost 55.89 at or near Corinth, NY, and milepost 94.96 at North Creek, NY. As a result of these transactions, Saratoga will have authority to operate from Saratoga Springs to North Creek.

The parties intend to consummate the transaction in either late June or early July 2011. The earliest the transaction may be consummated is after the June 15, 2011 effective date of the exemption (30 days after the exemption was filed).

The parties certify that: (1) The rail lines to be operated by Saratoga will not connect with any other lines in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or with any other railroad in their corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified 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 no later than June 8, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35499, 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 John D. Heffner, John D. Heffner, PLLC, 1750 K Street, NW., Suite 200, Washington, DC 20006.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 26, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–13479 Filed 5–31–11; 8:45 am]

BILLING CODE 4915–01–P

[1] Saratoga is a limited liability company, wholly owned by SLRG. SLRG is a Class III rail carrier and a subsidiary of Permian Basin Railways, Inc. (PBR), which in turn is owned by Iowa Pacific Holdings, LLC, a noncarrier short line holding company. PBR currently owns the following Class III rail carriers: SLRG, West Texas & Lubbock Railway, Austin & Northwestern Railroad d/b/a Texas-New Mexico Railroad, Arizona Eastern Railway, Chicago Terminal Railroad, and Mount Hood Railroad.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35500 Sub-No. 1]

Saratoga and North Creek Railway, LLC—Operation Exemption—Warren County, NY

Saratoga and North Creek Railway, LLC (Saratoga),[1] a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate approximately 39.07 miles of rail line owned by Warren County, NY (the County), a noncarrier, extending between milepost 55.89 at or near Corinth, NY, and milepost 94.96 at North Creek, NY Saratoga states that the County will retain ownership of the track and right-of-way as a noncarrier.[2]

Saratoga states that it was formed by SLRG for the purpose of acquiring and operating the subject rail line and the connecting line to Saratoga Springs, NY, owned by the Town of Corinth, NY.[3]

Saratoga states that it is negotiating the terms of an agreement with the County to restore common carrier rail freight service over the subject line.[4] Saratoga also intends to restore a rail passenger excursion service over the line.

This transaction is related to two simultaneously filed notices of exemption: (1) Docket No. FD 35500, *Saratoga and North Creek Railway, LLC—Acquisition and Operation Exemption—Delaware and Hudson Railway Company, Inc, d/b/a Canadian Pacific,* in which Saratoga seeks an exemption under 49 CFR 1150.31 to acquire from CP a permanent and exclusive freight rail easement over, and to operate, approximately 16.45-miles of rail line known as the Adirondack Branch extending between Adirondack Branch milepost 39.44 at or near Saratoga Springs, NY, and Adirondack Branch milepost 55.89 at or near Corinth, NY, and approximately 3.2 miles of operating rights for the purpose of interchange with CP between Adirondack Branch milepost 39.44 and CP's yard at Saratoga Springs located at Canadian Subdivision milepost 35; and (2) Docket No. FD 35499, *San Luis & Rio Grande Railroad—Continuance in Control Exemption—Saratoga and North Creek Railway, LLC,* in which SLRG seeks an exemption to continue in control of Saratoga upon Saratoga's becoming a Class III rail carrier. As a result of these transactions, Saratoga will have authority to operate from Saratoga Springs to North Creek.

[1] Saratoga is a limited liability company, wholly owned by San Luis & Rio Grande Railroad (SLRG). SLRG is a Class III rail carrier and a subsidiary of Permian Basin Railways, Inc., which in turn is owned by Iowa Pacific Holdings, LLC.

[2] According to Saratoga, the County acquired the track and right-of-way after the line was abandoned and did not incur a common carrier obligation for the line. *See Common Carrier Status of States, State Agencies and Instrumentalities, and Political Subdivisions,* 363 I.C.C. 132 (1980), *aff'd. sub nom. Simmons* v. *ICC,* 697 F.2d 326 (D.C. Cir. 1982), codified at 49 CFR 1150.22.

[3] Saratoga states that the subject trackage connects south of Corinth with a line of railroad that extends to milepost 39.44 at Saratoga Springs, NY, where it connects with a main line of the Delaware & Hudson Railway Company, Inc. d/b/a Canadian Pacific (CP). Saratoga also states that the subject trackage continues north of North Creek to Tahawus and was operated historically as exempt industry trackage.

[4] While the parties have not completed the agreement, Saratoga must acquire sufficient rights to fully meet its common carrier obligation to operate the line.

Saratoga indicates that its agreement with the County will not permit the collecting, sorting, loading, unloading, transferring, or transporting of municipal solid waste or construction and demolition material.[5]

Saratoga certifies that its projected annual revenues as a result of this transaction will not result in Saratoga's becoming a Class II or Class I rail carrier and will not exceed $5 million.

Saratoga intends to consummate the transaction in either late June or early July 2011. The earliest the transaction may be consummated is after the June 15, 2011 effective date of the exemption (30 days after the exemption was filed).

If the verified 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 no later than June 8, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35500 (Sub-No. 1), 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 John D. Heffner, John D. Heffner, PLLC, 1750 K Street, NW., Suite 200, Washington, DC 20006.

Board decisions and notices are available on our Web site at "*http://www.stb.dot.gov.*"

Decided: May 26, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–13484 Filed 5–31–11; 8:45 am]

BILLING CODE 4915–01–P

[5] Saratoga is reminded that it cannot by contract avoid its common carrier obligation to transport a commodity over the line.

DEPARTMENT OF THE TREASURY

Open Meeting of the President's Council on Jobs and Competitiveness (PCJC)

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of open meeting.

SUMMARY: The President's Council on Jobs and Competitiveness will meet on June 13, 2011, in Raleigh-Durham, North Carolina at 1:30 p.m. Eastern Time. The meeting will be open to the public via live webcast at *http://www.whitehouse.gov/live.*

DATES: The meeting will be held on June 13, 2011 at 1:30 p.m. Eastern Time.

ADDRESSES: The PCJC will convene its meeting in Raleigh-Durham, North Carolina. The public is invited to submit written statements to the PCJC by any of the following methods:

Electronic Statements

• Send written statements to the PCJC's electronic mailbox at *PCJC@treasury.gov;* or

Paper Statements

• Send paper statements in triplicate to John Oxtoby, Designated Federal Officer, President's Council on Jobs and Competitiveness, Office of the Under Secretary for Domestic Finance, Room 1325A, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, all statements will be posted on the White House Web site (*http://www.whitehouse.gov*) without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. The Department will also make such statements available for public inspection and copying in the Department's Library, Room 1428, Main Department 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 statements by telephoning (202) 622–0990. All statements 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: John Oxtoby, Designated Federal Officer, President's Council on Jobs and Competitiveness, Office of the Under Secretary for Domestic Finance, Department of the Treasury, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 622–2000.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. II, 10(a), and the regulations thereunder, John Oxtoby, Designated Federal Officer of the PCJC, has ordered publication of this notice that the PCJC will convene its next meeting on June 13, 2011, in Raleigh-Durham, North Carolina beginning at 1:30 p.m. Eastern Time. The meeting will be broadcast on the internet via live webcast at *http://www.whitehouse.gov/live.* The purpose of this meeting is to discuss initiatives and policies to strengthen the economy, promote and accelerate job growth and bolster America's competitiveness around the world. The President will continue the discussion focused on identifying practical ways the government and business can work together to foster growth and create jobs. The PCJC will also discuss policy approaches to educating and training America's workforce to ensure that the jobs and the industries of the future are created in the United States. Due to the significant logistical difficulties of convening the members of the PCJC, the meeting has been scheduled with less than 15 days notice (see 41 CFR 102–3.150(b)).

Dated: May 25, 2011.

Rebecca Ewing,

Acting Executive Secretary, U.S. Department of the Treasury.

[FR Doc. 2011–13528 Filed 5–31–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

General Reporting and Recordkeeping by Savings Associations and Savings and Loan Holding Companies

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before July 1, 2011. A copy of this ICR, with applicable supporting documentation, can be obtained from *RegInfo.gov* at *http://www.reginfo.gov/public/do/PRAMain.*

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS *at these addresses:* Office of Information and Regulatory Affairs, *Attention:* Desk Officer for OTS, U.S. Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 393–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC

20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552 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.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at, *ira.mills@ots.treas.gov,* or on (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: General Reporting and Recordkeeping by Savings Associations and Savings and Loan Holding Companies.

OMB Number: 1550–0011.

Form Number: N/A.

Description: This information collection relates to reports and records required by the following regulations: 12 CFR 552.11 (books and records, federal stock associations), 12 CFR 545.96(c) (agency business records, Federal stock associations), 12 CFR 544.8 (communications between members of a Federal mutual savings association), 12 CFR 562.1 (regulatory reporting requirements, each savings association and its affiliates), 12 CFR 563.1 (chartering documents, each savings association), 12 CFR 563.47(e) (pension plans, each savings association or service corporation), 12 CFR 572.6(b) (standard flood hazard determination form, each savings association), 12 CFR 562.4 (audit of savings association, savings and loan holding company, or affiliate), 12 CFR 563.76(c) (offers and sales of securities of a savings association or its affiliates in any office of the savings association), 12 CFR 584.1(f) (books and records of each savings and loan holding company), 12 CFR part 226 (Regulation Z, truth in lending), 12 CFR part 202 (Regulation B, Equal Credit Opportunity Act), 12 CFR part 205 (Regulation E, electronic fund transfers), and 12 CFR part 213 (Regulation M, consumer leasing).

Savings associations use the reports and records that the regulations require for internal management control purposes and examiners use them to determine whether savings associations are being operated safely, soundly, and in compliance with regulations. An absence of the reporting and record keeping requirements would not allow for prudent internal controls or for examiners to determine the accurate performance and condition of savings associations. Savings associations use the reports and records that the regulations require for internal management control purposes and examiners use them to determine whether savings associations are being operated safely, soundly, and in compliance with regulations. An absence of the reporting and record keeping requirements would not allow for prudent internal controls or for examiners to determine the accurate performance and condition of savings associations. Specifically, OTS examiners use the reports and record keeping requirements to determine whether the savings associations are being operated safely, soundly, and in compliance with regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 741.

Estimated Frequency of Response: On occasion and annually.

Estimated Total Burden: 3,623,349 hours.

Dated: May 25, 2011.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2011–13398 Filed 5–31–11; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0215]

Agency Information Collection (Request for Information To Make Direct Payment to Child Reaching Majority) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 1, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0215" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, Fax (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0215."

SUPPLEMENTARY INFORMATION:

Title: Request for Information to Make Direct Payment to Child Reaching Majority, VA Form Letter 21–863.

OMB Control Number: 2900–0215.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 21–863 is used to determine a schoolchild's continued eligibility to death benefits and eligibility to receive direct payment at the age of majority. Death pension or dependency and indemnity compensation is paid to an eligible veteran's child when there is not an eligible surviving spouse and the child is between the ages of 18 and 23 is attending school. Until the child reaches the age of majority, payment is made to a custodian or fiduciary on behalf of the child. An unmarried schoolchild, who is not incompetent, is entitled to begin receiving direct payment on the age of majority.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 18, 2011, at page 15051.

Affected Public: Individuals or households.

Estimated Annual Burden: 3 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 20.

Dated: May 25, 2011.

By Direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–13423 Filed 5–31–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0390]

Agency Information Collection (Restored Entitlement Program for Survivors) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 1, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0390" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, Fax (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0390."

SUPPLEMENTARY INFORMATION: *Title:* Application of Surviving Spouse or Child for REPS Benefits (Restored Entitlement Program for Survivors), VA Form 21–8924.

OMB Control Number: 2900–0390.

Type of Review: Extension of a currently approved collection.

Abstract: Survivors of deceased veteran's complete VA Form 21–8924 to apply for Restored Entitlement Program for Survivors (REPS) benefits. REPS benefits is payable to certain surviving spouses and children of veterans who died in service prior to August 13, 1981 or who died as of a result of a service-connected disability incurred or aggravated prior to August 13, 1981.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 18, 2011, at pages 15051–15052.

Affected Public: Individuals or households.

Estimated Annual Burden: 600 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,800.

Dated: May 25, 2011.

By Direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–13424 Filed 5–31–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0379]

Agency Information Collection (Time Record (Work-Study Program)) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 1, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0379" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, Fax (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0379."

SUPPLEMENTARY INFORMATION:

Title: Time Record (Work-Study Program), VA Form 22–8690.

OMB Control Number: 2900–0379.

Type of Review: Extension of a currently approved collection.

Abstract: Training establishments complete VA Form 22–8690 to report the number of work-study hours a claimant has completed. When a claimant elects to receive an advance payment, VA will advance payment for 50 hours, but will withhold benefits (to recoup the advance payment) until the claimant completes 50 hours of service. If the claimant elects not to receive an advance payment, benefits are payable when the claimant completes 50 hours of service. VA uses the data collected to ensure that the amount of benefits payable to a claimant who is pursuing work-study is correct.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 18, 2011, at pages 15052–15053.

Affected Public: State, Local or Tribal Governments.

Estimated Annual Burden: 21,752 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Annual Responses: 261,020.

Estimated Number of Respondents: 65,255.

Dated: May 25, 2011.

By Direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–13425 Filed 5–31–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0115]

Agency Information Collection (Supporting Statement Regarding Marriage) Activity under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 1, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0115" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, Fax (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0115."

SUPPLEMENTARY INFORMATION:

Title: Supporting Statement Regarding Marriage, VA Form 21–4171.

OMB Control Number: 2900–0115.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected on VA Form 21–4171 is used to determine a claimant's eligibility for benefits based on a common law marital relationship. Benefits cannot be pay unless the marital relationship between the claimant and the veteran is established.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 18, 2011, at page 15054.

Affected Public: Individuals or households.

Estimated Annual Burden: 800 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 2,400.

Dated: May 25, 2011.

By Direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–13428 Filed 5–31–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New]

Proposed Information Collection (NCA PreNeed Burial Evaluation) Activity: Comment Request

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a claimant's eligibility for burial at a National Cemetery.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 1, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Mechelle Powell, National Cemetery Administration (41G), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or *e-mail: mechelle.powell@va.gov.* Please refer to "OMB Control No. 2900–New" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Mechelle Powell at (202) 461–4114 or FAX (202) 273–6695.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: NCA PreNeed Burial Eligibility Evaluation, VA Form 40–100007.

OMB Control Number: 2900–New.

Type of Review: New collection.

Abstract: VA Form Letter 40–100007 will be used to collect information from veterans and servicemembers with terminal illnesses and adult dependent children in hospitals and other institutions. The data will be used to determine their eligibility for burial in a National Cemetery prior to the actual time of need.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,000.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 8,000.

Dated: May 25, 2011.

By Direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–13429 Filed 5–31–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0262]

Agency Information Collection (Designation of Certifying Official(s)) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995

(44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 1, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0262" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov*. Please refer to "OMB Control No. 2900–0262."

SUPPLEMENTARY INFORMATION:

Titles:

a. Designation of Certifying Official(s), 22–8794.

b. Designated Official(s) Electronic Fund Transfer (EFT) Information, VA Form 22–8794a.

OMB Control Number: 2900–0262.

Type of Review: Extension of a currently approved collection.

Abstracts:

a. Educational institutions and job training establishments complete VA Form 22–8794 to provide the name of individuals authorized to certify reports on students enrollment and hours worked on behalf of the school or training facility. VA will use the data collected to ensure that education benefits are not awarded based on reports from someone other than the designated certifying official.

b. Educational institution complete VA Form 22–8794a when there is a change to their financial institution.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 18, 2011, at page 15049.

Estimated Annual Burden:

a. VA Form 22–8794—750.

b. VA Form 22–8794a—167.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VA Form 22–8794—4,500.

b. VA Form 22–8794a—1,000.

Dated: May 25, 2011.

By Direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–13426 Filed 5–31–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0161]

Agency Information Collection (Medical Expense Report) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 1, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0161" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, Fax (202) 461–0966 or e-mail *denise.mclamb@va.gov*. Please refer to "OMB Control No. 2900–0161."

SUPPLEMENTARY INFORMATION:

Title: Medical Expense Report, VA Form 21–8416.

OMB Control Number: 2900–0161.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8416 is completed by claimants in receipt of or claiming income-based benefits to report medical expenses paid. Unreimbursed medical expenses may be excluded as countable income in determining a claimant's entitlement to income-based benefits and the rate payable.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 18, 2011, at page 15053.

Affected Public: Individuals or households.

Estimated Annual Burden: 96,400 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 48,200.

Dated: May 25, 2011.

By Direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–13427 Filed 5–31–11; 8:45 am]

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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 Riverside Fairy Shrimp; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2011–0013; MO 92210–0–009]

RIN 1018–AX15

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Riverside Fairy Shrimp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise the currently designated critical habitat for the Riverside fairy shrimp (*Streptocephalus woottoni*) under the Endangered Species Act of 1973, as amended (Act). The current critical habitat consists of 306 acres (124 hectares) of land in four units in Ventura, Orange, and San Diego Counties, California. We now propose to designate approximately 2,984 acres (1,208 hectares) of land in five units in Ventura, Orange, Riverside, and San Diego Counties, California, which, if finalized as proposed, would result in an increase of approximately 2,678 acres (1,084 hectares) of critical habitat for this species.

DATES: We will consider comments received or postmarked on or before August 1, 2011. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by July 18, 2011.

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

(1) Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments to Docket Number FWS–R8–ES–2011–0013.

(2) U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS–R8–ES–2011–0013; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS2042; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: 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 760–431–5901. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not revise the designation of habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of Riverside fairy shrimp habitat;

(b) What areas occupied at the time of listing (or currently occupied) and containing features essential to the conservation of the species, should be included in the designation and why;

(c) What areas not occupied at the time of listing are essential for the conservation of the species and why;

(d) Special management considerations or protection that the features essential for the conservation of the species may require, including management for potential impacts associated with climate change; and

(e) Areas identified in this proposed revised critical habitat rule that should not be proposed as critical habitat and why.

(3) Land-use designations and current or planned activities in the subject areas and their possible impacts on proposed revised critical habitat.

(4) Information that may assist us in identifying or clarifying the physical and biological features essential to the conservation of Riverside fairy shrimp.

(5) Special management considerations or protection that the physical and biological features essential to the conservation of the species may require.

(6) Specific information regarding the occurrence, or non-occurrence, of Riverside fairy shrimp in the Cruzan Mesa vernal pools (in Los Angeles County) and, if the species is present, whether this area is essential to the conservation of the species and if so, whether the area should be considered for exclusion under section 4(b)(2) of the Act and why.

(7) Specific information on the habitat conditions for Riverside fairy shrimp and the presence of physical and biological features essential for the conservation of the species in Subunit 1b (South of Tierra Rejada Valley, which is in Ventura County), and whether this area is essential to the conservation of the species and why.

(8) Specific information regarding the occurrence of Riverside fairy shrimp within proposed Subunit 3h (Santa Rosa Plateau at Mesa de Colorado, which is in western Riverside County), whether this area is essential to the conservation of the species, and if so, whether the area should be considered for exclusion under section 4(b)(2) of the Act and why.

(9) Specific information regarding a potential occurrence of Riverside fairy shrimp at Madrona Marsh (Los Angeles County) and, if the species is present, whether this area is essential to the conservation of the species and why.

(10) Specific information regarding the presence or absence of the physical and biological features essential to the conservation of the species within proposed Subunit 5c, and whether this area is essential to the conservation of the species and why.

(11) Information on the projected and reasonably likely impacts associated with climate change on Riverside fairy shrimp and the areas we are proposing to designate as critical habitat.

(12) How the proposed revised critical habitat boundaries could be refined to more closely circumscribe the landscapes identified as containing the physical and biological features essential to the conservation of the Riverside fairy shrimp.

(13) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(14) Whether the potential exclusion under section 4(b)(2) of the Act of Subunits 2c ((MCAS) El Toro) and 2i (Southern California Edison (SCE) Viejo Conservation Bank), which are covered by the Orange County Central-Coastal Natural Community Conservation Plan/Habitat Conservation Plan (Orange County Central-Coastal NCCP/HCP), from final revised critical habitat is or

is not appropriate, and whether the benefits of excluding any specific area outweigh the benefits of including that area as critical habitat and why.

(15) Whether the potential exclusion under section 4(b)(2) of the Act of a portion of Subunit 2dA (Saddleback Meadows); portions of Subunit 2dB (O'Neill Regional Park—near Trabuco Canyon) and 2e (O'Neill Regional Park—near Cañada Gobernadora/east of Tijeras Creek); and Subunits 2f (Chiquita Ridge) and 2g (Radio Tower Road), which are covered by the Southern Orange County Natural Community Conservation Plan (NCCP)/Master Streambed Alteration Agreement/Habitat Conservation Plan (HCP), now known as the Orange County Southern Subregion HCP, from final revised critical habitat is or is not appropriate, and whether the benefits of excluding any specific area outweigh the benefits of including that area as critical habitat and why.

(16) Whether the potential exclusion under section 4(b)(2) of the Act of Subunits 3c, 3d, 3e, 3f, 3g, and 3h, which are covered by the Western Riverside County Multiple Species Habitat Conservation Plan (the Western Riverside County MSHCP) from final revised critical habitat is or is not appropriate, and whether the benefits of excluding any specific area outweigh the benefits of including that area as critical habitat and why.

(17) Whether the potential exclusion under section 4(b)(2) of the Act of Subunit 4c (Poinsettia Lane Commuter Station) as critical habitat covered by the Carlsbad Habitat Management Plan (Carlsbad HMP), a subarea plan under the Multiple Habitat Conservation Program (MHCP), from final revised critical habitat is or is not appropriate, and whether the benefits of excluding any specific area outweigh the benefits of including that area as critical habitat and why.

(18) Whether the potential exclusion under section 4(b)(2) of the Act—portions of Subunit 5d, which is covered by the County of San Diego Subarea Plan under the San Diego Multiple Species Conservation Program (MSCP) from final revised critical habitat is or is not appropriate, and whether the benefits of excluding any specific area outweigh the benefits of including that area as critical habitat and why.

(19) Although we are not proposing areas within tribal lands in this proposed rule, we seek specific information regarding the possible species occurrence within two vernal pools on or near tribal land of the Pechanga Band of Luiseño Mission Indians of the Pechanga Reservation, California (Pechanga Band of Luiseño Mission Indians), and, if the species is present, whether this area is essential to the conservation of Riverside fairy shrimp and why.

(20) Although we are not considering for exclusion lands owned by the Department of Homeland Security (DHS) along the U.S.-Mexico border in this proposed rule (Subunit 5b and a portion of land in 5h), we seek comments on whether or not these lands should be considered for exclusion under section 4(b)(2) of the Act of Federal land for national security reasons, whether such exclusion is or is not appropriate, and whether the benefits of excluding any specific area outweigh the benefits of including that area as critical habitat and why.

(21) Whether our exemption, under section 4(a)(3)(B) of the Act, of land on Department of Defense property at Marine Corps Base (MCB) Camp Pendleton and Marine Corps Air Station (MCAS) Miramar in San Diego County is or is not appropriate, and why.

(22) Whether the benefit of exclusion of any other particular area not specifically identified above outweighs the benefit of inclusion under section 4(b)(2) of the Act.

(23) Information on any quantifiable economic costs or benefits of the proposed revised designation of critical habitat.

(24) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate concerns and comments.

Our final determination concerning the revision of Riverside fairy shrimp critical habitat will take into consideration all written comments and any additional information we receive during all comment periods. The comments will be included in the public record for this rulemaking, and we will fully consider them in the preparation of our final determination. On the basis of public comments, we may, during the development of our final determination, find that areas within the proposed designation do not meet the definition of critical habitat, that some modifications to the described boundaries are appropriate, or that areas may or may not be appropriate for exclusion under section 4(b)(2) of the Act.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we withhold personal information such as your street address, phone number, or e-mail address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the proposed revision of critical habitat for Riverside fairy shrimp. This proposed rule incorporates new information specific to Riverside fairy shrimp genetics across the species' range that was not available when we completed our 2005 final critical habitat designation (70 FR 19154; April 12, 2005), and new information on the status and distribution of Riverside fairy shrimp that became available since the 2005 final critical habitat designation for this species. A summary of topics that are relevant to this proposed revised critical habitat designation is provided below. For more information on the taxonomy, biology, and ecology of Riverside fairy shrimp, please refer to the final listing rule published in the **Federal Register** on August 3, 1993 (58 FR 41384); the first and second rules proposing critical habitat published in the **Federal Register** on September 21, 2000 (65 FR 57136), and April 27, 2004 (69 FR 23024), respectively; and the subsequent final critical habitat designations published in the **Federal Register** on May 30, 2001 (66 FR 29384), and April 12, 2005 (70 FR 19154). Additionally, more species information can be found in the 1998 Recovery Plan for the Vernal Pools of Southern California (1998 Recovery Plan) finalized on September 3, 1998 (Service 1998a, pp. 1–113), in the City of San Diego's 2002–2003 Vernal Pool Inventory (City of San Diego 2004, pp. 1–125), and in the Riverside fairy shrimp 5-year review (Service 2008, pp. 1–57).

Species Description

The Riverside fairy shrimp is a small (0.56 to 0.92 inch (in)) (14 to 23 millimeter (mm)) aquatic crustacean in the order Anostraca, restricted to

seasonal (vernal) pools, ponds, swales, and other pool-like, ephemeral (lasting a short time) water bodies in southern coastal California, United States, and northern Baja California, Mexico (Eng *et al.* 1990, pp. 258–259). Riverside fairy shrimp, like all fairy shrimp in general, have stalked compound eyes, no carapace (hard outer shell), and eleven pairs of phyllopods (swimming legs that also function as gills). They swim or glide upside down by means of complex beating movements of the legs that pass, wave-like, in an anterior to posterior direction. Male and females have red-colored cercopods (anterior appendages) on all of the ninth and 30 to 40 percent of the eighth abdominal segments, which helps to distinguish this species from closely related species (Eng *et al.* 1990, p. 259).

First collected in 1979 and described as a new species by Eng *et al.* (1990, pp. 258–259), based on a type specimen collected from an area between Murrieta Golf Course and California Highway 79 in Riverside County (71 FR 14538), Riverside fairy shrimp are currently presumed to occupy 60 or fewer pool complexes throughout southern California (see *Spatial Distribution and Historical Range* below). At the time the species was listed as endangered in 1993, the type locality had been lost to development (Eriksen and Belk 1999, p. 104; Service 2008, p. 5).

Habitat

Typical habitat for fairy shrimp in California includes vernal pools, seasonally ponded areas within vernal swales, and ephemeral freshwater habitats (68 FR 46685). Riverside fairy shrimp are considered habitat specialists, found in moderate to deep (generally ranging from 10 inches (in) (25.4 centimeters (cm)) to 5 to 10 feet (ft) (1.5 to 3 meters (m)) in depth), longer-lived vernal pools and ephemeral wetlands (Eng *et al.* 1990, p. 259; Simovich and Fugate 1992, pp. 7–8; Hathaway and Simovich 1996, p. 39) because of specific life-history traits and habitat needs (see *Life History* section below).

Riverside fairy shrimp's known localities are below 2,100 ft (640 m) elevation and are within 50 miles (mi) (80 kilometers (km)) of the Pacific Ocean. Riverside fairy shrimp do not occur in riverine or marine waters or other permanent bodies of water. Water chemistry is an important factor in determining fairy shrimp distribution (Belk 1977, p. 77; Gonzales *et al.* 1996, p. 319). As previously described in the final listing rule (58 FR 41384; August 3, 1993) and the Background section of the final revised critical habitat rule (70 FR 19154; April 12, 2005), vernal pool habitats that support Riverside fairy shrimp occur in areas with Mediterranean climates (cool, wet winters and hot, dry summers), where shallow depressions become seasonally wet or inundated following winter and spring rains (Keeley and Zedler 1998, p. 2; Smith and Verrill 1998, p. 15). In general, vernal pools occur as poorly drained depressions, perched above an impermeable surface or very slowly permeable soil horizon or bedrock (Cheatham 1976, p. 88; Smith and Verrill 1998, p. 15); restrictive soil layers are typically hardpan or claypan, and bedrock types are volcanic mud or lava flows (Jones and Stokes 1987, p. 70; Zedler 1987, p. 13; Smith and Verrill 1998, p. 15). Other kinds of depressions that hold water of a similar volume, depth, and area, and for a similar duration and seasonality as vernal pools and ponded areas within swales, may also provide potential habitat for Riverside fairy shrimp.

Vernal pools may fill primarily by direct precipitation, or may have contributions from subsurface inflows from surrounding soils, which may help to minimize water level fluctuations during late winter and early spring (Hanes and Stromberg 1998, p. 48; Rains *et al.* 2006, p. 1158). Although vernal pools may typically associate with specific types of geological formations, landforms, and soils and within different types of ephemeral wetland landscapes (Zedler 1987, p. 13; Hanes and Stromberg 1998, p. 48; Smith and Verrill 1998, p.15; Rains *et al.* 2006, p. 1158), the most common unifying feature to fairy shrimp habitat, in general, is ephemerally wet, flooded, or ponded area that is typically wet during a portion of the year and dry for the remainder of the year.

Throughout this proposed revised critical habitat rule, the term "ephemeral wetlands" refers to vernal pool habitats including vernal lakes, ponds, detention basins, and other natural and manmade depressions that seasonally hold water. While these ephemeral wetlands often occur within landscapes of "mima-mound" topography (Cox 1984, pp. 1397–1398), that is, they form during winter rains as a natural hydrological feature of a gently sloping, undulating landscape, the species can also be found in disturbed vernal pool habitats where basins have been compacted or artificially deepened and therefore hold water for longer periods of time.

Depending on topography, soils, and geographic location, the period of time varies during which these ephemeral wetlands pond (referred to as the "period of inundation"). Basin size and basin shape (Keeley and Zedler 1998, p. 5), soil type, soil consistency, depth of soil to impervious layer (for example, hardpan or claypan), type and thickness of impervious layer, and other local and regional climatic factors (for example, rainfall abundance and timing, rainfall regularity, and evaporation rates) (Keeley and Zedler 1998, p. 2; Helm 1998, p. 136) all are variables that potentially affect the length of ponding in vernal pool landscapes. For southern California's ephemeral wetlands, the wet phase typically occurs between the months of October to May, and the dry phase lasts for a period of time between the months of June to September.

The Riverside fairy shrimp often hatches later in the season than other fairy shrimp species because presumably the deeper pools it inhabits require sufficient rainfall to fill (Simovich and Fugate 1992, p. 8). A minimum period of inundation, or pool duration, that Riverside fairy shrimp need in order to hatch and reach sexual maturity is approximately 8 weeks (48 to 56 days) based on field observations (Hathaway and Simovich 1996, p. 674) (see *Life History* section below for further discussion).

Mounds of soil (mima) (Scheffer 1947, p. 288), or swales (broad, shallow, vegetated, ephemerally wet areas) (Helm 1998, p. 130), that are interconnected with level or low point depressional basins and which contain appropriate impervious clay soils (providing ponding opportunities during winter and spring), are geographically fixed and limited in number. Soils and soil series that underlie vernal pool habitat that supports Riverside fairy shrimp are generally characterized by a high content of coarse sandy grains (marine alluvial sediments), loams, or clay inclusions, or a combination of these, with a subsurface clay or hardpan layer. These are also limited in number and geographically fixed. Riverside fairy shrimp are known to occur in both hardpan and claypan vernal pools in Ventura, San Diego, Los Angeles (now extirpated), Riverside, and Orange Counties, and in addition, in Riverside County on granitic (basaltic) substrate.

Vernal pools and vernal swales are often clustered into pool "complexes" (Bauder 1986a, Appendix 1, 4; Keeler-Wolf *et al.* 1998, pp. 60–61, 63–64), and may form dense, interconnected mosaics of small pools, or a sparse scattering of larger pools. Vernal pool complexes that support from one up to many distinct vernal pools are often interconnected by a shared watershed. Both the pool basin and the surrounding watershed are essential for a functioning vernal pool system (Hanes and

Stromberg 1998, p. 48). Loss of upland vegetation, increased overland water flow due to urban runoff, and alteration of the microtopography can modify the function of vernal pool systems, and alter the physiochemical parameters that the Riverside fairy shrimp requires for survival. Because the Riverside fairy shrimp requires ephemerally ponded areas for its conservation (Belk 1998, pp. 147–148), vernal pools are best described from a watershed perspective (see *Physical and Biological Features* section below, and Recovery Criteria 1 and 2 in the 1998 Recovery Plan for Vernal Pools of Southern California (Service 1998a, pp. iv–vi)).

The size and number of inundated basins and their associated biota are directly correlated to the amount and timing of precipitation (City of San Diego 2004, p. 6). In southern California, rainfall is erratic within and between years as well as strongly seasonal (Zedler 1987, p. 12). Pool size, location and elevation, upland hydrology, physiochemical processes, and unique species assemblages may all factor into the distribution of vernal pool species (Eng *et al.* 1990, p. 273; Branchiopod Research Group 1996, pp. 1–2; Gonzalez *et al.* 1996, p. 319). Water chemistry (dissolved solutes, alkalinity, salinity, and temperature) and length of time vernal pools are inundated with water (see *Life History* section below) are important factors that potentially limit and determine the distribution of Riverside fairy shrimp within and among pools complexes.

Water in the pools that typically support Riverside fairy shrimp has low total dissolved solids and alkalinity (means of 77 and 65 milligrams per liter (mg/l) or parts per million (ppm), respectively), corroborated by pH at neutral or just below (6.4–7.1) (Eng *et al.* 1990, p. 254; Gonzalez *et al.* 1996, p. 317; Eriksen and Belk 1999, p. 104). Riverside fairy shrimp have been shown to tightly regulate their internal body chemistry for pool environments that have low salinity and low alkalinity (Gonzalez *et al.* 1996, pp. 317–318). Pools are generally open and unvegetated with turbid water conditions; habitat lies within annual grasslands, which may be interspersed through chaparral or coastal sage scrub vegetation (Lahti *et al.* 2010, p. 5). Riverside fairy shrimp are typically found in water temperatures ranging between 50 and 77 degrees Fahrenheit (10 and 25 degrees Celsius) (Hathaway and Simovich 1996, p. 671).

Life History

As discussed in detail in the Background section of the final revised critical habitat rule (70 FR 19154; April 12, 2005), Riverside fairy shrimp feed on algae, bacteria, protozoa, rotifers, and bits of detritus, and constitute a cornerstone in the food web for a wide array of aquatic and terrestrial species.

Because vernal pool ecosystems are highly variable in the length of time pools remain filled, Riverside fairy shrimp have adapted their life-history strategies accordingly. Riverside fairy shrimp populations withstand a seasonal desiccation of their pools by producing resting eggs (herein referred to as reproductive cysts), which when mature can survive environmental conditions such as extremes in temperatures, the digestive tracts of animals, and years of desiccation before hatching under the correct environmental conditions (Pennak 1989, pp. 352–353; Eriksen and Belk 1999, p. 22). Because not all reproductive cysts will hatch with any given refilling of their pool, these reproductive cysts form a "cyst bank" in the soil from which new populations of adults may develop, even in pools that have not had adults for years (Eriksen and Belk 1999, p. 105). Therefore, it is not mandatory for ideal conditions to exist every year for this species to persist.

Adult Riverside fairy shrimp are usually observed from mid-March to April (Eng *et al.* 1990, p. 259); however, the hatching periods may be extended in years with early or late rainfall. Unlike San Diego fairy shrimp (*Branchinecta sandiegonensis*), a species that matures quickly (7 to 14 days), Riverside fairy shrimp hatch and mature within 48 to 56 days, depending on water temperature (Hathaway and Simovich 1996, p. 674; Simovich and Hathaway 1997, p. 39; Eriksen and Belk 1999, p. 105). Because of its distinctly longer maturation, Riverside fairy shrimp are typically restricted to relatively deep (greater than 12 in (30 cm)), cool water vernal pools that are inundated for a longer time to complete their reproductive life cycle (Hathaway and Simovich 1996, p. 675) . This longer deve1opment time is thought to account for the species' restriction to deep pools, their rarity, and later appearance (Simovich and Fugate 1992, p. 8).

Spatial Distribution and Historical Range

As discussed in detail in the **Background** section of the final revised critical habitat rule (70 FR 19154; April 12, 2005), Riverside fairy shrimp are considered to have one of the most restricted distributions among fairy shrimps endemic to the West Coast (Eng *et al.* 1990; p. 259, Simovich and Fugate 1992, p. 7; Eriksen and Belk 1999, p. 104). Because the Riverside fairy shrimp has a slower developmental rate, the species is limited to fairly deep, and moderate in size, pools that support a longer ponding duration. The Riverside fairy shrimp is, therefore, restricted to a subset of vernal pools and vernal pool complexes in southern California (Ventura, Orange, Riverside, and San Diego Counties) and in northern Mexico (Service 1998a, p. 19; Eriksen & Belk 1999, p. 104). The Riverside fairy shrimp has likely been extirpated from Los Angeles County. With the exception of the Riverside County populations, all populations are within approximately 15 mi (24 km) of the coast. Riverside fairy shrimp range over a north-south distance of approximately 163 mi (262 km) within southern California (excluding Baja, Mexico locations) and occupy pools that range in elevation from 46 to 2,076 ft (14 to 633 m).

For the purposes of this proposed revised critical habitat designation, the word *occurrence* may be a single pool or a pool complex. Keeler-Wolf *et al.* (1998, p. 8) define a vernal pool complex as a set of naturally occurring pools in close proximity. A singular pool—geographically situated such that the pool basin is isolated from adjoining vernal pool topography by distances greater than 10 mi (16 km)—or a network of one or more vernal pool basins in close proximity, that is to say a vernal pool complex, may comprise an occurrence. At the time of listing in 1993, nine historical occurrences for Riverside fairy shrimp were known: Four occurrences in a 37-square-mile (91-square-km) area near Temecula, California (western Riverside County); one occurrence in Orange County, California; two documented occurrences in San Diego County, California; and two occurrences in Baja California, Mexico (58 FR 41384; August 3, 1993).

In our 2008 5-year review of Riverside fairy shrimp, we assembled and reassessed occurrence data for the species (Service 2008, pp. 6–8). Seven of the nine historical occurrences (five in the United States and two in Mexico) were presumed extant at the time Riverside fairy shrimp was listed in 1993 (Service 2008, pp. 7–8). The type locality in western Riverside County (at Murrieta Golf Course) was already extirpated by the time the species was listed, and the single-referenced occurrence from Orange County has never been confirmed. Based on our analysis in the 2008 5-year review for Riverside fairy shrimp, with the discovery of additional occurrences, the regrouping of vernal pool complexes, and the extirpation of nine known occurrences since listing, we concluded

that there were approximately 45 known extant (or presumed extant) occurrences (approximately 200 vernal pools) of Riverside fairy shrimp (Service 2008, p. 5). Discovery of additional occurrences since the time of the 1998 Recovery Plan, include at least four more occurrences, all in western Riverside County: Warm Springs Ranch Pool, Schau Pool, Rancho California Road Pools, and an occurrence (two pools, Pool 4 and Pool 5 in Selheim and Searcy 2010, p. 98) atop Santa Rosa Plateau along Mesa de Colorado. Identification of additional occurrences since listing (1993) has resulted from surveys conducted in locations that were not surveyed prior to 1993. In sum, Riverside fairy shrimp are presently considered to be extant in approximately 49 occurrences (vernal pools and vernal pool complexes), four more than we reported in the 2008 5-year review (Service 2008, pp. 5, 10).

Extant occurrences not identified in the 1993 listing rule (but presumed extant at the time of listing) are located in the following general areas: (1) One occurrence in Ventura County (Tierra Rejada Preserve and South of Tierra Rejada Valley); (2) seven occurrences in Orange County: (MCAS) El Toro, SCE Viejo Conservation Bank, Saddleback Meadows, O'Neill Regional Park—near Trabuco Canyon, O'Neill Regional Park—near Cañada Gobenadora/east of Tijeras Creek, Chiquita Ridge, and Radio Tower Road; (3) nine occurrences in Riverside County at the Australia Pool, the Scott Road Pool, the Warm Springs Ranch Pools, the Schleuniger Pool, the Schau Pool, in the Johnson Ranch area, the Field Pool, the Rancho California Road Pool, and a newly documented occurrence on the Santa Rosa Plateau along Mesa de Colorado; (4) ten occurrences in north San Diego County on MCB Camp Pendleton: San Onofre State Beach, State Park-leased lands, near Christianitos Creek foothills (along the northwest corner of MCB Camp Pendleton); area south of San Onofre State Beach, in Uniform Training Area; Las Pulgas North; Las Pulgas East; Las Pulgas West; Cockleburr North; Cockleburr South; Stuart Mesa; San Mateo; and Wire Mountain; and (5) seven occurrences in central and southern San Diego County, outside of MCB Camp Pendleton: on MCAS Miramar (AA1 pool); City of Carlsbad (Poinsettia Lane Commuter Train Station); and numerous pools on Otay Mesa (southern San Diego County) including what is referred to as the "J series" of vernal pool complexes (J2, J4, J5, J11, J12, J14, J15, J16–18, J29–31, J33).

For the purpose of this proposed revised critical habitat designation, we consider areas where Riverside fairy shrimp have been documented since listing (since 1993) to be within the geographical area occupied by the species at the time of listing (in 1993). As discussed in the 5-year review, most of the additional occurrences identified since listing fall generally within the range of the Riverside fairy shrimp described in the listing rule, although the identification of some occurrences (complexes) broadened the specific range within Ventura, Orange, Riverside, and San Diego Counties (Service 2008, p. 8). As with many species, listing often results in greater efforts to conduct surveys, which may reveal a greater number of occurrences than was initially known.

We believe that these additional occurrences were occupied at the time of listing but had not been identified due to lack of survey effort. We believe occurrences documented since the 1993 listing do not represent an expansion of the species' distribution and range into previously unoccupied areas (with the exception of Johnson Ranch Created Pools), but rather a better understanding of the historical distribution and range of the species (Service 2008, p. 9). Because occurrences documented since listing are within relative proximity to existing, occupied, vernal pool habitat or within similar landscape types (e.g., coastal terraces and mesas, inland valleys, inland mesas, cismontane depressions) supporting ephemeral wetlands with occurrences that were known at the time of listing, it is reasonable to conclude, based on several life-history traits, that Riverside fairy shrimp were present at the time of listing in these unsurveyed habitats.

Riverside fairy shrimp are generally sedentary and are adapted to survive and persist in seasonally ephemeral habitat. Because they are sedentary, possess limited dispersal capabilities (passive dispersal mediated by resistant stages), and exhibit specialized habitat affinities (specific habitat types with fixed landscape features, see *Life History* and *Habitat* sections of this document), we believe it is unlikely that additional occurrences have become established during the relatively short time period since the listing of this species (with the exception of Johnson Ranch Created Pools). With the exception of the land we are proposing to designate under section 3(5)(A)(ii) of the Act—Johnson Ranch Created Pools (in Riverside County), which were created after the species was listed—we consider all known occurrences to be occupied at the time of listing and within the geographical area occupied by the species at the time of listing in this proposed critical habitat designation. Therefore, throughout this proposed rule, we refer to all occurrences (with the exception of Johnson Ranch Created Pools) as being occupied at the time of listing whether the areas were documented before or after the species was listed.

We are designating one area, Johnson Ranch Created Pools, as essential under section 3(5)(A)(ii) of the Act. Although this area falls within the currently occupied geographic range of the species, at the time Riverside fairy shrimp was listed, it was not occupied.

Each area that we are proposing as revised critical habitat contains a currently extant (or in the case of Subunit 1b, considered extant) occurrence of Riverside fairy shrimp; however, Riverside fairy shrimp do not physically occur throughout the entirety of each area. The 2,984 ac (1,208 ha) we are proposing as revised critical habitat contains occurrences of Riverside fairy shrimp as well as surrounding upland areas (the contributing watershed) that contain the physical and biological features essential to support Riverside fairy shrimp where they physically occur within the proposed revised critical habitat subunits (see *Physical and Biological Features* below). For specific information about how this proposed rule compares to the final critical habitat designated for this species in 2005, see the **Summary of Changes From Previously Designated Critical Habitat** section below.

New Information Specific to Riverside Fairy Shrimp

A study to gather genetic distribution data for Riverside fairy shrimp across its range, using mitochondrial DNA (mtDNA) on the cytochrome oxidase I (COI) gene, was conducted in 2010 (Lahti *et al.* 2010, pp. 1–47). Sequencing of 179 individuals from 32 pools comprising 20 pool complexes detected low population genetic variability overall at the selected locus, and resulted in detection of five unique haplotypes (Lahti *et al.* 2010, p. 17). A haplotype is a combination of alleles (the alternative forms of a gene that is located at a specific position on a specific chromosome) at a single locus or multiple loci that are transmitted together on the same chromosome. This was the first study of its kind to look at genetic composition and variation of Riverside fairy shrimp across its range and, as such, represents preliminary information. Most of the genetic variability was limited to San Diego County (Camp Pendleton, San Diego

north; haplotypes D, E) and Otay Mesa (San Diego south; haplotypes B, C), and all pools in Riverside and Orange Counties were fixed for the most common haplotype, haplotype A (Lahti *et al.* 2010, p. 17).

Although the amount of genetic variation was low, haplotype frequencies among complexes varied, showing approximately 60 percent of the genetic variability partitioned among pool complexes and 18 percent partitioned among regions (Lahti *et al.* 2010, p. 19). Lahti *et al.* concluded that low variation at the COI gene region does not confer definitive evidence that Riverside fairy shrimp populations are currently connected by high levels of gene flow rangewide; on the contrary in areas where genetic variation was detected, haplotype frequencies varied significantly across even geographically proximate pools, suggesting low gene flow (Lahti *et al.* 2010, p. 19). Genetic variability and genetic differentiation between and among populations (and across the species' distribution) may be important to long-term species persistence because it represents the raw material for adaptation to differing local conditions and environmental stochasticity (Frankham 2005, p. 754). The maintenance of genetic variability is crucial to the survival of a species with declining populations and a limited range, such as the Riverside fairy shrimp (Gilpin and Soulé 1986, pp. 32–33; Lesica and Allendorf 1995, p. 756). Loss of genetic connectivity and diversity can hinder a population's ability to adapt to ecological perturbations commonly associated with urbanization, such as habitat degradation, climatic changes, and introduced species (Vandergast *et al.* 2007, p. 977). Vernal pool complexes throughout the range of the Riverside fairy shrimp, and within different habitat types, are critical for the conservation of this species.

Previous Federal Actions

The Riverside fairy shrimp was listed as an endangered species on August 3, 1993 (58 FR 41384). For a history of Federal actions prior to 2001, please refer to the September 21, 2000, proposed critical habitat rule (65 FR 57136). On May 30, 2001, we published a final rule designating critical habitat for the Riverside fairy shrimp (66 FR 29384). On November 6, 2001, the Building Industry Legal Defense Foundation, Foothill/Eastern Transportation Corridor Agency, National Association of Home Builders, California Building Industry Association, and Building Industry Association of San Diego County filed a lawsuit in the United States District Court for the District of Columbia challenging the designation of Riverside fairy shrimp critical habitat and alleging errors in our promulgation of the May 30, 2001, final rule. We requested a voluntary remand, and on October 30, 2002, critical habitat for this species was vacated by order of the Federal District Court for the District of Columbia and the Service was ordered to publish a new final rule with respect to the designation of critical habitat for the Riverside fairy shrimp (*Building Industry Legal Defense Foundation, et al.,* v. *Gale Norton, Secretary of the Interior, et al., and Center for Biological Diversity, Inc. and Defenders of Wildlife, Inc.* Civil Action No. 01–2311 (JDB) (U.S. District Court, District of Columbia)).

On April 27, 2004, we again proposed to designate critical habitat for the Riverside fairy shrimp (69 FR 23024). The final critical habitat published in the **Federal Register** on April 12, 2005 (70 FR 19154). On January 14, 2009, 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 Riverside fairy shrimp (*Center for Biological Diversity* v. *United States Fish and Wildlife Service and Dirk Kempthorne, Secretary of the Interior,* Case No. 3:09–CV–0050–MMA–AJB). A settlement agreement was reached with the plaintiffs (Case No. 3:09–cv–00051–JM–JMA; November 16, 2009) in which we agreed to submit a proposed revised critical habitat designation for the Riverside fairy shrimp to the **Federal Register** by May 20, 2011, and submit a final revised critical habitat designation to the **Federal Register** by November 15, 2012.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. 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 requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time it was listed must contain physical and biological features which are essential to the conservation of the species, and it is included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life-history needs of the species, including but not limited to areas which provide for space, food, cover, and protected habitat.

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 to 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 revised critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources include the 1998 Recovery Plan and the 2008 5-year review 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 and species are often dynamic in that both may shift naturally within an area or from one area to another over time. Climate change will be a particular challenge for biodiversity because the interaction of additional stressors associated with climate change and current stressors may push species beyond their ability to survive (Lovejoy 2005, 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 (IPCC) 2007, p. 1181). Climate change may lead to increased frequency and duration of severe storms and droughts (McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015; Golladay *et al.* 2004, p. 504). The southwestern region of the country is predicted to become drier and hotter overall (Hayhoe *et al.* 2004, p. 12424; Seager *et al.* 2007, p. 1181). Predictions of climatic conditions for smaller subregions such as California are less certain.

Documentation of climate-related changes that have already occurred in California (Croke *et al.* 1998, pp. 2128, 2130; Brashears *et al.* 2005, p. 15144), and future drought predictions for California (e.g., Field *et al.* 1999, pp. 8–10; Lenihen *et al.* 2003, p. 1667; Hayhoe *et al.* 2004, p. 12422; Brashears *et al.* 2005, p. 15144; Seager *et al.* 2007, p. 1181) and North America (IPCC 2007, p. 9), indicate prolonged drought and other climate-related changes will continue in the foreseeable future. While climate change was not discussed in the 1993 listing rule, drought was noted in the rule as a stochastic (random or unpredictable) event that could have drastic effects on Riverside fairy shrimp, given its fragmented and restricted range (58 FR 41384, p. 41389, August 3, 1993; Service 1998a, p. 34). The magnitude and frequency with which local climate-related changes or drought-induced impacts may negatively affect limited ephemeral wetland habitats, in terms of their seasonal timing, ponding durations, or patterns of inundation and dry down, remains untested.

In southern California, climatic variables affecting vernal pool habitats are most influenced by distance from the coast, topography, and elevation (Bauder and McMillian 1998, p. 64). As presence and persistence of Riverside fairy shrimp appear to be associated with precipitation patterns, draw-down factors, and other regional climatic factors including aridity (Eriksen and Belk 1999, p. 71), the likely impacts of climate change on ecological processes for Riverside fairy shrimp are most closely tied to availability and persistence of ponded water during the winter and spring. Vernal pools are particularly sensitive to slight increases in evaporation or reductions in rainfall due to their relative shallowness and seasonality (Field *et al.* 1999, p. 19). Based on existing data, weather conditions in which vernal pool flooding promotes hatching, but in which pools become dry (or too warm) before embryos are fully developed, are expected to have the greatest negative impact on Riverside fairy shrimp resistance and resilience. In the 2008 5-year review, we noted that climate change may potentially cause changes in vernal pool inundation patterns and pool consistency and that drought may decrease or terminate reproductive output if pools fail to flood, or if pools dry up before reproduction is complete (Service 1998a, p. 34). Long-term or continuing drought conditions may deplete cyst banks in affected pools as new reproductive cysts are not deposited. Additionally, localized climate-related changes may alter the temporal spatial array of occupied habitat patches (across and between pool complexes) across the species' geographical range. The ability of Riverside fairy shrimp to survive is likely to depend in part on their ability to disperse to pools where conditions are suitable (Bohonak and Jenkins 2003, p. 786) through passive dispersal mechanisms utilizing reproductive cysts (see *Life History* section above).

The information currently available on the effects of global climate change and increasing temperatures does not adequately predict the location and magnitude of climate change effects to Riverside fairy shrimp; therefore, we are unable to determine if any additional areas may be appropriate to include in this proposed revised critical habitat designation to address the effects of climate change. We specifically request information from the public on the currently predicted effects of climate change on Riverside fairy shrimp and its habitat. Furthermore, we recognize that designation of critical habitat may not include all habitat areas that we may eventually determine are necessary for the recovery of the species, based on scientific data not now available to the Service. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not promote the recovery of the species.

Areas that support populations of Riverside fairy shrimp, but are outside the critical habitat designation, will continue to be subject to conservation actions we and other Federal agencies

implement under section 7(a)(1) of the Act. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future Recovery Plans, habitat conservation plans (HCPs), section 7 consultations, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Physical and Biological Features

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to propose as revised critical habitat, we consider those physical and biological features that are essential to the conservation of the species and which may require special management considerations or protection. 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 Riverside fairy shrimp from studies of this species' habitat, ecology, and life history as described below. Additional information can be found in the final listing rule published in the **Federal Register** on August 3, 1993 (58 FR 41384), and the 1998 Recovery Plan (Service 1998a). We have determined that the Riverside fairy shrimp requires physical and biological features described below.

Space for Individual and Population Growth and for Normal Behavior

Riverside fairy shrimp require vernal pool habitat to grow and reproduce. Their life cycle requires periods of inundation as well as dry periods (Ripley *et al.* 2004, pp. 221–223). Habitats (ephemeral wetlands) that provide space for growth and persistence of Riverside fairy shrimp include areas that generally pond for 2 to 8 months and dry down for a period during the late spring to summer months. Habitats include natural and manmade pools (usually >12 in (30 cm) deep) which support these longer inundation periods; some of these habitats are artificial pools (cattle tanks and road embankments) which have been modified or deepened with berms (Hathaway and Simovich 1996, p. 670). Artificial depressions, often associated with degraded vernal pool habitat, are capable of functioning as habitat and can support vernal pool species including Riverside fairy shrimp (Moran 1977, p. 155; Service 1998a, p. 22). Space for the Riverside fairy shrimp's normal growth and behavior requires an underlying soil series (typically clay soil inclusions with a subsurface claypan or hardpan component), which forms an impermeable layer, that sustains appropriate inundation periods (i.e., water only slowly percolates once filled) and provides necessary physiological requirements, including but not limited to, appropriate water temperature and water chemistry (mineral) regimes, a natural prey base, foraging opportunities, and areas for predator avoidance.

Intact vernal pool hydrology (including the seasonal filling and drying down of pools) is the essential feature that governs the life cycle of the Riverside fairy shrimp. An intact hydrological regime includes seasonal hydration (during not all but most years) followed by drying out of the substrate to promote overwintering of cysts, and provide conditions to support a viable cyst bank for the following season. Proper timing of precipitation and the associated hydrological and soil processes in the upland watershed contributes to the provision of space for growth and normal behavior; seasonal filling and persistence of the vernal pool is necessary for cyst hatching and successful reproduction of Riverside fairy shrimp (see Sites for Breeding, Reproduction, and Rearing (or Development) of Offspring, below).

To maintain high-quality vernal pool ecosystems, the vernal pool basin or complex and its upslope vernal pool watershed (adjacent vegetation and upland habitat) must be available and functional (Hanes and Stromberg 1998, p. 38). Adjacent upland habitat supplies important hydrologic inputs to sustain vernal pool ecosystems. Protection of the upland habitat between vernal pools within the watershed is essential for maintaining space needs for Riverside fairy shrimp (i.e., inundation periods of adequate length to support the entire life-history function and reproductive cycles necessary for Riverside fairy shrimp) and to buffer the vernal pools from edge effects.

Vernal pools generally occur in complexes, which are defined by two or more vernal pools in the context of a larger vernal pool watershed. The local watershed associated with a vernal pool complex includes all surfaces in the surrounding area that flow into the vernal pool complex. Within a vernal pool complex, vernal pools are hydrologically connected to one another within the local geographical context. These vernal pool complexes may connect by either surface, or subsurface, flowing water. Pools and complexes are dependent on adjacent geomorphology and microtopography for maintenance of their unique hydrological conditions (Service 1998a, p. 23). Water may flow over the surface from one vernal pool to another (over-fill or "overbanking"), throughout a network of swales, or low-point depressions within a watershed. Due to an impervious clay layer or hardpan, water can also flow and collect below ground, such that the soil remains saturated with water. The result of the movement of the water through vernal pool systems is that pools fill and hold water continuously for a number of days, to weeks, to months, following the initial rainfall (Hanes *et al.* 1990, p. 51). Some hydrologic systems have watersheds that cover a large area and that contribute to filling and the hydrological dynamics of the system, while other hydrologic systems have very small watersheds and fill almost entirely from direct rainfall. It is also possible that subsurface inflows from surrounding soils within a watershed contribute to filling some vernal pools (Hanes *et al.* 1990, p. 53; Hanes and Stromberg 1998, p. 48).

Impervious subsurface layers of clay soils or hardpan geology, combined with flat to gently sloping topography, serve to inhibit rapid infiltration of rainwater, resulting in ponded water in vernal pools (Bauder and McMillian 1998, pp. 57–59). These soils also act as a buffer to moderate the water chemistry and rate of water loss to evaporation (Zedler 1987, pp. 17–30). In Ventura County, soils series known to support Riverside fairy shrimp include, but are not limited to, the Azule, Calleguas, Cropley, and Linne soil series. In Orange County, soils series include the Alo, Balcom, Bosanko, Calleguas, Cieneba, Myford, and Soper soil series. In western Riverside County, vernal pool habitat known to support Riverside

fairy shrimp includes the Altamont, Auld, Bosanko, Cajalco, Claypit, Murrietta, Porterville, Ramona, Traver, and Willows soil series. In San Diego County, vernal pool habitat known to support Riverside fairy shrimp includes the Diablo, Huerhuero, Linne, Placentia, Olivenhain, Salinas, Stockpen, and Redding soil series. Soil series data are based on 2008 Soil Survey Data and are available online at: *http://websoilsurvey.nrcs.usda.gov.* For additional information on soils, see Primary Constituent Elements (PCEs) for Riverside Fairy Shrimp.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Riverside fairy shrimp are filter feeders and their diet consists mostly of algae, bacteria, and other microorganisms (Parsick 2002, pp. 37–41, 65–70). In a natural vernal pool setting, these food items are readily available. Typically, an undisturbed, intact surface and subsurface soil structure (not permanently altered by anthropogenic land use activities such as deep, repetitive discing, or grading), and the associated hydrogeomorphic processes within the basin and upland watershed, are necessary to provide food, water, minerals, and other physiological needs for Riverside fairy shrimp. Water temperature, water chemistry, and length of time vernal pools are inundated with water are the important factors in the hatching and temporal appearance of Riverside fairy shrimp (Gonzalez *et al.* 1996, pp. 315–316; Hathaway and Simovich 1996, p. 669). Riverside fairy shrimp hatch and reproduce in water at temperatures that range generally from 5 to 20 degrees Celsius (C) (41 to 68 degrees Fahrenheit (F)), and typically do not hatch at temperatures greater than 25 degrees C (77 degrees F) (Hathaway and Simovich 1996, pp. 674–675). Riverside fairy shrimp have a wider thermal tolerance than San Diego fairy shrimp (*Branchinecta sandiegonensis*), which allows Riverside fairy shrimp to hatch later in the season when deeper vernal pools are still filled with water.

Cover or Shelter

Ponding of vernal pool habitat (water) also provides cover and shelter for Riverside fairy shrimp. During the time these habitats are inundated, water plays an important role in providing the necessary aquatic environment (shelter) for the fairy shrimp to complete their life-history requirements. Without protection from desiccation provided by water, fairy shrimp would be unable to hatch, grow, mature, reproduce, and disperse within the vernal pool habitat (Helm 1998, p. 136; Service 1998a, p. 34; Eriksen and Belk 1999, pp. 71, 105). Additionally, the wet period (ponding) excludes species that are exclusively terrestrial, providing a level of shelter from predation and competition for the fairy shrimp that are adapted to short-lived, ephemeral wetland habitats.

The undisturbed soil bank also provides cover and shelter for fairy shrimp cysts during the dry-down period of the vernal pool habitat. The drying phase allows reproductive cysts to overwinter, as the cysts lay dormant in the soil; basin soils provide cover and shelter to Riverside fairy shrimp as the vernal pool dries out (Simovich and Hathaway 1997, p. 42; Eriksen and Belk 1999, p. 105). By maintaining the population in a dormant state, reproductive cysts, and the undisturbed soil in which they rest, protect Riverside fairy shrimp from predators and competitors during the dry period in vernal pools. Cyst dormancy is an important life-history adaptation to surviving arid phases, and is important for synchronizing life cycles in unstable and ephemeral wetland habitats (Belk and Cole 1975, pp. 209–210). Like the wet period exclusion of terrestrial plants, the dry-down period also excludes species that are exclusively aquatic (such as fish), providing shelter for specially adapted Riverside fairy shrimp.

Sites for Breeding, Reproduction, and Rearing (or Development) of Offspring

Mature shrimp are typically observed from mid-March to April (Eng *et al.* 1990, p. 259). In years with early or late rainfall, the hatching period may be extended. Riverside fairy shrimp can reach sexual maturity and begin mating approximately 8 weeks from the time a vernal pool fills with water (Hathaway and Simovich 1996, p. 673). Length of time to maturity presumably restricts Riverside fairy shrimp from occupying shallow pools that often last only several days to a few weeks (Hathaway and Simovich, p. 674).

Because vernal pool ecosystems are highly variable in the length of time pools remain filled, Riverside fairy shrimp have become adapted to some degree of unpredictability in their habitat (Eriksen and Belk 1999, pp. 104–105) and to a system where the conditions needed for success occur transitorily. Depending on rainfall and environmental conditions, a vernal pool may fill and recede numerous times. Often the pool may evaporate before Riverside fairy shrimp are able to mature and reproduce (Ripley *et al.* 2004, pp. 221–223). Therefore, when the females' eggs are fertilized, they begin to develop; the development of the fertilized eggs stops at an early stage (after a few cell divisions) and the eggs enter diapause (become dormant). Diapausing eggs are often referred to as "cysts" or "resting eggs." Riverside fairy shrimp cysts are small (finer than a tip of a pencil) and contain a dormant fairy shrimp embryo encased in a hard outer shell. These cysts are generally retained in a brood pouch on the underbelly of the female until she dies, when both drop to the bottom of the vernal pool to become part of a cyst bank in the soil layer of the vernal pool. During subsequent filling events, eggs may emerge from dormancy and hatch, or continue to diapause. Signals that break diapause include temperature and oxygen concentrations (Belk and Cole 1975, p. 216, see Thorp and Covich, p. 767). Resting eggs of freshwater crustaceans have been shown to survive drying, heat, freezing, and ingestion by birds (Fryer 1996, pp. 1–14). Resting stages (dormancy) appear to be an adaptation to temporary habitats and may aid in long-distance dispersal (Belk and Cole 1975, pp. 209, 222; Williams 1985, p. 97).

Researchers have found that only a small portion of the cysts in the cyst bank hatch each time the vernal pool fills. As only small percentages of Riverside fairy shrimp cysts hatch in any given year, if the pool dries before the species is able to mature and reproduce, there are still many more cysts left in the soil that may hatch the next time the pool fills (Simovich and Hathaway 1997, p. 42). Simovich and Hathaway (1997, pp. 40–43) referred to this as "bet-hedging" and concluded that it allows fairy shrimp, including Riverside fairy shrimp, to survive in an unpredictable environment. The "bet-hedging" ensures that some cysts will be available for hatching when the vernal pools hold water for a period long enough for Riverside fairy shrimp to complete their entire life cycle. Thus, reproductive output is spread over several seasons for small aquatic crustaceans living in variable environments. Allowing conditions within the above physical parameters to occur on a naturally cyclic basis is essential for the survival and conservation of the Riverside fairy shrimp.

As previously discussed in the Background section above, Riverside fairy shrimp are restricted to a small subset of long-lasting vernal pools and ephemeral wetlands in southern California because this species has a relatively longer maturation rate than other fairy shrimp, taking approximately

8 weeks to reach sexual maturity and begin mating (Hathaway and Simovich 1996, p. 673). This distinctly longer maturation rate presumably restricts Riverside fairy shrimp typically to pools that are moderate to deep vernal pools and ephemeral basins (generally ranging from 10 in (25.4 cm) to 5 to 10 feet (1.5 to 3 meters) in depth) (Hathaway and Simovich 1996, p. 675).

Habitats That Are Protected From Disturbance or Are Representative of the Historical, Geographical, and Ecological Distributions of the Species

The majority of complexes and pools that currently support Riverside fairy shrimp have experienced some level of disturbance, some more recently or to a greater extent than others. Pools that support Riverside fairy shrimp are generally found in flat or moderately sloping areas, primarily in annual, disturbed (such as grazed or deep disced) grassland and chaparral habitats. These areas are more vulnerable to agriculture, cattle, and off-road vehicle activity.

Estimates of the historical distribution of Riverside fairy shrimp suggest that 90 to 97 percent of vernal pool habitat has been lost in southern California (Mattoni and Longcore 1997, pp. 71–73, 86–88; Bauder and McMillan 1998, p. 66; Keeler-Wolf *et al.* 1998, p. 10; Service 1998a, p. 45). Consideration should be given to conserve much of the remaining Riverside fairy shrimp occurrences from further loss and degradation in a configuration that maintains habitat function and species viability (Service 1998a, p. 62). Historically, there were larger complexes of vernal pools including areas on the Los Angeles coastal prairie (Mattoni and Longcore 1997, p. 88). In other places, such as Riverside County, there is a possibility of documenting additional occurrences given more intensive survey efforts and reporting. Because Riverside County has not yet been developed and fragmented to the same extent as Los Angeles County, we believe undocumented occurrences of the Riverside fairy shrimp may occur in Riverside County.

The conservation of Riverside fairy shrimp is dependent on several factors including, but not limited to, maintenance of areas (of sufficient size and configuration to sustain natural ecosystem components, functions, and processes) that provide appropriate inundation and ponding durations, natural hydrologic regimes and appropriate soils, intermixed wetland and upland watershed, connectivity among pools within geographic proximity to facilitate gene flow among complexes, and protection of existing vernal pool composition and structure.

In a few locations, two species of fairy shrimp, San Diego fairy shrimp and Riverside fairy shrimp, are known to co-occur (Hathaway and Simovich 1996, p. 670). However when these species do co-occur, they rarely have been observed to coexist as adults (Hathaway and Simovich 1996, p. 670); given Riverside fairy shrimp's slower rate of development, San Diego fairy shrimp are usually found earlier in the season than Riverside fairy shrimp (Hathaway and Simovich 1996, p. 675). Maturation rates are responsible for the sequential appearance of the species as adults in pools where they co-occur (Hathaway and Simovich 1996, p. 675). Neither species is found in the nearby desert or mountain areas, as temperature has been shown to play an important role in the spatial and temporal appearance of fairy shrimp.

Primary Constituent Elements (PCEs) for Riverside Fairy Shrimp

Under the Act and its implementing regulations, we are required to identify the physical and biological features essential to the conservation of Riverside fairy shrimp in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the elements of physical and biological features that are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to Riverside fairy shrimp are:

(1) Ephemeral wetland habitat consisting of vernal pools and ephemeral habitat that have wet and dry periods appropriate for the incubation, maturation, and reproduction of Riverside fairy shrimp in all but the driest of years, such that the pools:

(a) Are inundated (pond) approximately 2 to 8 months during winter and spring, typically filled by rain, surface and subsurface flow;

(b) generally dry down in the late spring to summer months;

(c) may not pond every year; and

(d) provide the suitable water chemistry characteristics to support Riverside fairy shrimp. These characteristics include physiochemical factors such as alkalinity, pH, temperature, dissolved solutes, dissolved oxygen, which can vary depending on the amount of recent precipitation, evaporation, or oxygen saturation; time of day; season; and type and depth of soil and subsurface layers. Vernal pool habitat typically exhibits a range of conditions but remains within the physiological tolerance of the species. The general ranges of conditions include but are not limited to:

(i) Dilute, freshwater pools with low levels of total dissolved solids (low ion levels (sodium ion concentrations generally below 70 mmol/l);

(ii) low alkalinity levels (lower than 80 to 1,000 milligrams per liter (mg/l)); and

(iii) a range of pH levels from neutral to alkaline (typically in range of 6.4–7.1).

(2) Intermixed wetland and upland habitats that function as the local watershed, including topographic features characterized by mounds, swales, and low-lying depressions within a matrix of upland habitat that result in intermittently flowing surface and subsurface water in swales, drainages, and pools described in PCE 1. Associated watersheds provide water to fill the vernal or ephemeral pools in the winter and spring months. Associated watersheds vary in size and therefore cannot be generalized, and they are affected by factors including surface and underground hydrology, the topography of the area surrounding the pool or pools, the vegetative coverage, and the soil substrates in the area. Size of associated watershed likely varies from a few acres to greater than 100 ac (40 ha).

(3) Soils that support ponding during winter and spring which are found in areas characterized in PCEs 1 and 2 that have a clay component or other property that creates an impermeable surface or subsurface layer. Soil series with a clay component or an impermeable surface or subsurface layer typically slow percolation, increase water run-off (at least initially), and contribute to the filling and persistence of ponding of ephemeral wetland habitat where Riverside fairy shrimp occur. Soils and soil series known to support vernal pool habitat include, but are not limited to:

(a) The Azule, Calleguas, Cropley, and Linne soils series in Ventura County;

(b) the Alo, Balcom, Bosanko, Calleguas, Cieneba, and Myford soils series in Orange County;

(c) the Cajalco, Claypit, Murrieta, Porterville, Ramona, Traver, and Willows soils series in Riverside County; and

(d) the Diablo, Huerhuero, Linne, Placentia, Olivenhain, Redding, Salinas, and Stockpen soils series in San Diego County.

This proposed rule identifies the PCEs necessary to support one or more of the

life-history functions of Riverside fairy shrimp and those areas containing the PCEs. We believe conservation of the Riverside fairy shrimp is dependent upon a multitude of factors. Conservation and management of areas across the species' range that maintain normal hydrologic and ecological functions where existing populations survive and reproduce and that are representative of the geographic distribution of the species, conservation of areas representative of the ecological distribution of Riverside fairy shrimp (various combinations of soil types, vernal pool chemistry, geomorphic surfaces and vegetation community associations), and conservation of areas that allow for the movement of cysts between areas representative of the geographic and ecological distribution of the species (within and between vernal pool complexes) are the considered criteria needed for the conservation of Riverside fairy shrimp.

We are proposing to designate most of the known occupied habitat of Riverside fairy shrimp because: (1) Riverside fairy shrimp are non-migratory; (2) disjunct populations likely represent unique, locally adapted populations (adapted to unique, site-specific or habitat-specific environmental conditions); and (3) gene exchange between populations or critical habitat units is likely infrequent. Where management units are sufficiently distant (16 to 159 mi (26 to 256 km)) from one another, the likelihood of gene exchange is reduced. All of the areas proposed contain one or more of the PCEs essential for the species that may require special management considerations or protection. We have also determined that all of the areas we are proposing (including Johnson Ranch Created Pools (Subunit 3h) that was occupied after the time of listing) are essential to the conservation of the species because these areas: (1) Maintain the genetic variability of Riverside fairy shrimp across its known geographic range and allow for a varying nature and expression of the species, (2) allow for gene flow and dispersal, and habitat availability that accommodate natural processes of local extirpation and colonization over time (and thereby reduce the risk of extinction through random and natural events), and (3) maintain a full range of varying habitat types and characteristics for a species by encompassing a full extent of the physical, biological and environmental conditions essential for the conservation of Riverside fairy shrimp.

Not all life-history functions require all of the PCEs. Therefore, not all areas designated as revised critical habitat will contain all of the PCEs. All units and subunits proposed to be designated as critical habitat are currently occupied (with the exception of Subunit 1b, which is considered to be occupied by Riverside fairy shrimp) and contain one or more primary constituent elements that support the life-history needs of the species. In the case of this proposed designation, most of the units contain all of the PCEs.

Special Management Considerations or Protection

When designating critical habitat, we first assess whether there are specific areas within the geographical area occupied by the species at the time of listing that contain features which are essential to the conservation of the species and which may require special management considerations or protection, before considering whether any areas unoccupied at time of listing may be essential to conserve the species. Although the determination that special management may be required is not a prerequisite to designating critical habitat in areas essential for the conservation of the species that are outside the geographical area occupied at the time of listing, all areas (units/subunits) we are proposing as revised critical habitat in this proposed rule, whether occupied or unoccupied at time of listing, require special management considerations or protection of the essential features to address current and future threats to Riverside fairy shrimp, to maintain or enhance the physical and biological features essential to its conservation, and to ensure the recovery and survival of the species. The areas proposed as revised critical habitat represent our best assessment of the habitat that meets the definition of critical habitat for Riverside fairy shrimp at this time.

A detailed discussion of the threats impacting the physical and biological features essential to the conservation of Riverside fairy shrimp which may require special management considerations or protection can be found in the 1991 proposed listing rule (56 FR 57503; November 12, 1991), the 1993 final listing rule (58 FR 41384; August 3, 1993), the 2001 critical habitat designation (66 FR 29384; May 30, 2001), the 2005 critical habitat designation (70 FR 19154; April 12, 2005), the 2008 5-year review for Riverside fairy shrimp (Service 2008, pp. 12–37), and the 1998 Recovery Plan (Service 1998a, pp. 1–100).

The physical and biological features in areas proposed as revised critical habitat in this proposed critical habitat designation all face ongoing threats that require special management considerations or protection. Threats which may require special management considerations or protection include: vernal pool elimination due to agricultural and urban development, including activities associated with construction of infrastructure (highways, utilities, water storage, etc.) (PCEs 1, 2, 3); the construction of physical barriers or impervious surfaces around a vernal pool complex (PCEs 1, 2); altered water quality/quantity (PCEs 1, 2, 3) due to channeling water runoff into a vernal pool complex or introduction of water, other liquids, or chemicals (including herbicides and pesticides) into the vernal pool basin; physical disturbance to the claypan and hardpan soils within the vernal pool basin (PCEs 1, 3), including the discharge of dredged or fill material into vernal pools and erosion of sediments from fill material; the disturbance of soil profile by grading, digging, or other earthmoving work within the basin or its upland slopes and/or other activities such as off-road vehicle use, heavy foot traffic, grazing, vegetation removal, fire management, or road construction within the watershed for the vernal pools; the invasion of nonnative plant and animal species into the vernal pool basin (PCEs 1, 2), which alter hydrology and soil regimes within the vernal pool; and any activity which permanently alters the function of the underlying claypan or hardpan soil layer (PCE 3) resulting in the disturbance or destruction of the vernal pool flora or the associated upland watershed (PCEs 2, 3). All of these threats have the potential to permanently reduce or increase: the depth of a vernal pool, the ponding duration and inundation of the vernal pool, or other vernal pool features beyond the tolerances of Riverside fairy shrimp (PCE 1).

Loss and degradation of wetland habitat, most directly from conversion to agriculture and development, was cited in the final listing rule as a cause for the decline of Riverside fairy shrimp (58 FR 41387; August 3, 1993). Most of the populations of this species are located in San Diego, Orange, and Riverside Counties. These counties have had (and continue to have) increasing human populations and attendant housing, development, and infrastructure needs. Natural areas in these counties are frequently near or bounded by urbanized areas. Grading, discing, and scraping in areas for urbanization results in loss of vernal pool topography and soil surface as well as the subsurface soil layers to the degree that they will no longer support

ponding for Riverside fairy shrimp (PCE 3). Urban development modifies and removes vernal pool topography, compacts or disturbs soils such that basins and upland watershed components are altered, and likely eliminates or fragments populations of Riverside fairy shrimp through direct crushing of cysts, through disruption of soils and removal of the cyst bank, and through the modification of upland hydrology and topography, which may potentially isolate a pool or pools within a pool complex. Overall, habitat loss continues to be the greatest direct threat to Riverside fairy shrimp.

Because the flora and fauna in vernal pools or swales can change if the hydrologic regime is altered (Bauder 1986b), human activities that reduce the extent of the watershed or which alter runoff patterns (i.e., timing, amount, or flow of water) (PCE 2) may also eliminate Riverside fairy shrimp, reduce their population sizes or reproductive success, or alter the duration or filling of basins such that the location of sites inhabited by this species may shift. Changes to hydrologic patterns due to cattle trampling, off-road vehicle use, human trampling, road development, military activities, and water management activities, impact vernal pools (PCEs 1, 2, 3) (58 FR 41387; August 3, 1993). Due to the species highly fragmented and restricted range, exacerbation of impacts from habitat fragmentation (species isolation) on the species' genetic diversity, patterns of gene flow, and persistence; reductions in air and water quality due to human urbanization; or changes in nutrient availability associated with altered hydrology (Bauder 1986b, pp. 209–211) may further impact vernal pool habitats. Unpredictable natural events, such as drought or fire can be especially devastating due to the fragmented and restricted range of the species (58 FR41390, August 3, 1993). These threats may require special management considerations or protection.

Changes in hydrology that affect the Riverside fairy shrimp's primary constituent elements are caused by activities that alter the surrounding topography or change historical water flow patterns in the watershed (PCEs 2, 3). Even slight alterations of the hydrology can change the depth, volume, and duration of ponding inundation; water temperature; soil; mineral and organic matter transport to the pool; and water quality and chemistry, which in turn can make the ephemeral wetland habitat (basin) (PCE 1) unsuitable for Riverside fairy shrimp. Activities that impact the hydrology include, but are not limited to, road building, grading and earth moving, impounding natural water flows, and draining of the pool(s) or of their immediately surrounding upland watershed. Impacts to the hydrology of vernal pools can be managed through avoidance of such activities in and around the pools and the associated surrounding upland areas.

Disturbance to the impermeable substrate layer of claypan and hardpan soils within vernal pools occupied by the Riverside fairy shrimp (PCE 3) may alter the depth, ponding inundation, water temperature, and water chemistry. Physical disturbances to claypan and hardpan soils may be caused by excavation of borrow material, off-road vehicles, military training activities, repeated or deep agricultural discing, drilling, or creation of berms that obstruct the natural hydrological surface or sub-surface flow of water run-off and precipitation. Impacts to the soils of vernal pools can be managed through avoidance of these activities in and around the pools and the associated surrounding upland areas.

Invasive plant species may alter the ponding inundation and water temperature by changing the evaporation rate and shading of standing water in vernal pools (PCEs 1, 2, 3). Invasive plant species, such as brass-buttons (*Cotula coronopifolia*) and Pacific bentgrass *(Agrostis avenaceae*), compete with native vernal plant species and may alter the physiochemical factors of the water (PCE 1), the ponding duration (PCE 1), and the upland habitat (PCE 2), and may modify the soils (PCE 3) in these vernal pools. Impacts due to invasive plants can be managed such that activities needed to remove and manage native vernal pool plants, are conducted to maintain the appropriate hydrology and physiochemical nature of the vernal pools required by the life-history processes of Riverside fairy shrimp.

Further discussion of specific threats facing individual proposed revised critical habitat units is provided in the unit descriptions below. In these proposed revised critical habitat units, special management considerations or protection may be needed to ensure the long-term existence and management of ephemeral and upland habitat sufficient for the shrimp's successful reproduction and growth, adequate feeding habitat, and proper physiochemical and environmental regimes, linked hydrology, and connectivity within the landscape.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available in determining areas within the geographical area occupied at the time of listing that contain the features essential to the conservation of the Riverside fairy shrimp, and areas outside of the geographical area occupied at the time of listing that are essential for the conservation of the Riverside fairy shrimp. We reviewed available information pertaining to the habitat requirements of the species. In accordance with the Act and its implementing regulations at 50 CFR 424.12(e), we considered whether designating additional areas outside those areas occupied at the time of listing are essential to ensure the conservation of the species. We are proposing designation of critical habitat in areas within the geographical area occupied by the species at the time of listing in 1993 with features essential to conservation of the species that may require special management considerations and protection. We are also proposing designation of the the Johnson Ranch Created Pools area. Although this area was not occupied at the time of listing, we believe the area is also essential for the conservation of the the Riverside fairy shrimp, considering the very restricted distribution of the species. We believe the long-term conservation of Riverside fairy shrimp depends upon the ongoing protection and management of these remaining, occupied vernal pools within the known range of the species.

During preparation of the 1998 Recovery Plan for Vernal Pools in Southern California (see further explanation below), we evaluated the data on known Riverside fairy shrimp occurrences and determined, based on the features associated with vernal pools and vernal pool complexes, those necessary for the stabilization and reclassification of the species (Service 1998a, Appendices F, G). We since have reevaluated those areas based on species occupancy, and their hydrology, watershed, and topographic features, and their current management needs. Lands are proposed for designation (with the exception of Subunit 3g) based on sufficient PCEs being present to support the species' life-history processes.

In determining which areas of habitat occupied at time of listing currently contain the physical and biological features essential to the conservation of Riverside fairy shrimp, we used all

available scientific and commercial data including information from the 1991 proposed listing rule (56 FR 57503; November 12, 1991); the 1993 final listing rule (58 FR 41384; August 3, 1993); the 2004 proposed critical habitat designation for Riverside fairy shrimp (69 FR 23024; April 27, 2004); the 2005 final critical habitat designation (70 FR 19154; April 12, 2005); the 1998 Recovery Plan (Service 1998a, pp. 1–113); the 2008 5-year review for Riverside fairy shrimp (Service 2008, pp. 1–57); the California Department of Fish and Game's (CDFG) California Natural Diversity Database (CNDDB) records; published peer-reviewed articles; unpublished papers and reports; academic theses; survey results; Geographic Information System (GIS) data (such as species occurrences, soil data, land use, topography, and ownership maps); and correspondence to the Service from recognized experts. We solicited new information collected since publication of the 1998 Recovery Plan and 2005 final critical habitat designation, including information from State, Federal, and tribal governments; scientific data on Riverside fairy shrimp collected by academia and private organizations; information in reports submitted during consultations under section 7 of the Act; information contained in analyses for individual and regional HCPs where Riverside fairy shrimp is a covered species; and data collected from reports submitted by researchers holding recovery permits under section 10(a)(1)(A) of the Act.

At the time Riverside fairy shrimp was listed in 1993, the geographical area occupied by the species was considered to include Orange, Riverside, and San Diego Counties, as well as Baja, Mexico (58 FR 41384; August 3, 1993). We now have additional records of occurrence for Riverside fairy shrimp extending the species' distribution; we believe these additional areas were occupied at the time of listing but were not identified at the time of listing or in the Recovery Plan.

Although not explicitly detailed, the Recovery Plan identifies areas essential to the recovery of the species as those that are determined necessary to advance at least one of the following conservation criteria: (1) Maintain habitat function and spatial configuration for species viability in the long term; (2) support stable, intact occurrences; (3) represent unique habitat or habitat associations within the species' range; and (4) capture the ecological, biological, edaphic (soils), micro-topography, genetic, and geographical variation within vernal pools and vernal pool complexes throughout the species' range.

Our determination of habitat essential to the conservation of Riverside fairy shrimp takes into consideration this generalized conservation approach and areas identified in the 1998 Recovery Plan as necessary for the species stabilization and reclassification. The 1998 Recovery Plan identifies "management areas" on which the long-term conservation and recovery of Riverside fairy shrimp depends. Appendices F and G in the 1998 Recovery Plan defined known vernal pool complexes essential to the conservation of several vernal pool species, including Riverside fairy shrimp (Service 1998a, pp. F1–G3). Eight distinct management areas were identified based on plant and animal distribution, soil types, and climatic variables (Service 1998a, pp. 38–39). Management areas include vernal pools and complexes known to be occupied and essential to the conservation of Riverside fairy shrimp.

The 1998 Recovery Plan uses management areas to define regional conservation objectives. We have used these same management areas and names to assist us in identifying specific areas essential to the conservation of the Riverside fairy shrimp where possible. In cases when new occurrence data identifies occupied vernal pools not identified in the Recovery Plan, we have relied on the best available scientific data to update map coverages (for example, in Orange and Riverside Counties). We believe these new occurrences were in fact occupied at the time of listing, but only have been documented since the publication of the recovery plan. Our 2005 final rule to designate critical habitat used locations identified in Appendices F and G of the 1998 Recovery Plan; however, for this proposed revised critical habitat (due to improvements to the PCEs and mapping methodologies), some additions and subtractions have occurred in areas previously identified as essential either in the 1998 Recovery Plan or in the 2005 final critical habitat designation (Table 1). In some cases, areas within subunits have been reduced because they simply do not contain the PCEs essential to the conservation of the Riverside fairy shrimp. In other cases, we have new distribution information which has led us to remove areas previously determined as essential because the physical and biological features do not support the necessary PCEs, such that we no longer believe that they meet the definition of essential to the conservation of the species (i.e., are areas which have been significantly altered or impacted since the 2005 designation). Specific differences from the 2005 final rule are summarized in the Summary of Changes from Previously Designated Critical Habitat section of this rule.

TABLE 1—AREAS IDENTIFIED AS NECESSARY FOR STABILIZING RIVERSIDE FAIRY SHRIMP POPULATIONS AS LISTED IN APPENDIX F OF 1998 RECOVERY PLAN, AS IDENTIFIED AS ESSENTIAL IN THE 2005 FINAL CRITICAL HABITAT DESIGNATION, AND AS IDENTIFIED AS ESSENTIAL IN THIS 2011 PROPOSED REVISED CRITICAL HABITAT DESIGNATION

Name/location	Listed in Appendix F of 1998 Recovery Plan	2005 Final critical habitat (fCH) designation (subunit)	2011 Proposed revised critical habitat (prCH) (subunit)
Unit 1: Ventura County (Goleta and Transverse MA)			
Tierra Rejada Preserve (*RP: Carlsberg (Ranch))	Yes	1a	1a.
South of Tierra Rejada Valley (east of Hwy 23)	No	1b	1b.
Cruzan Mesa (*RP: Cruzan Mesa)	Yes	1c; Removed	Not proposed.
Unit 2: Los Angeles Basin-Orange County Foothills (Los Angeles Basin—Orange MA)			
(MCAS) El Toro (*RP: El Toro)	Yes	2c; 4(b)(2) exclusion	2c.

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Name/location	Listed in Appendix F of 1998 Recovery Plan	2005 Final critical habitat (fCH) designation (subunit)	2011 Proposed revised critical habitat (prCH) (subunit)
SCE Viejo Conservation Bank	No	No subunit #; 4(b)(2) exclusion	2i.
Saddleback Meadow (*RP: Saddleback Meadow)	Yes #	2d; 4(b)(2) exclusion	2dA.
O'Neill Regional Park—near Trabuco Canyon	Yes #	2d; 4(b)(2) exclusion	2dB.
O'Neill Regional Park—near Cañada Gobernadora/east of Tijeras Creek	Yes #	2	2e.
Chiquita Ridge (*RP: Chiquita Ridge)	Yes	2f; 4(b)(2) exclusion	2f.
"RP: Orange County Foothills (undescribed)"	Yes #		Proposed as subunits herein (2dB, 2e, 2g, 2h, 2i).
Radio Tower Road	No	2g; 4(b)(2) exclusion	2g.
San Onofre State Beach, State Park-leased land (near Christianitos Creek foothills).	No	2h; 4(a)(3) exemption	2h.
Unit 3: Riverside Inland Valleys (Riverside MA)			
March Air Reserve Base	No	3a; Removed	Not proposed.
March Air Reserve Base	No	3b; 4(a)(3) exemption	Not proposed.
Australia Pool	No	No subunit #; 4(b)(2) exclusion	3c.
Scott Road Pool	No	No subunit #; 4(b)(2) exclusion	3d.
Schleuniger Pool	No	No subunit #; 4(b)(2) exclusion	3e.
Skunk Hollow and Field Pool (aka Barry Jones Wetland Mitigation Bank) (*RP: Skunk Hollow/Murrieta).	Yes	No subunit #; 4(b)(2) exclusion	3f.
Johnson Ranch Created Pool	No	No subunit #; 4(b)(2) exclusion	3g.
Santa Rosa Plateau—Mesa de Colorado (*RP: Santa Rosa Plateau)	Yes	Not proposed	3h.
No Unit #: Northern San Diego County Military Land, Exempted (San Diego North Coastal Mesa MA)			
Stuart Mesa, Marine Corps Base (MCB) Camp Pendleton (*RP: Stuart Mesa).	Yes	No subunit #; 4(a)(3)(B) exemption	4(a)(3)(B) exemption.
Cockleburr, MCB Camp Pendleton (*RP: Cockleburr)	Yes	No subunit #; 4(a)(3)(B) exemption	4(a)(3)(B) exemption.
Las Pulgas, MCB Camp Pendleton (*RP: Las Pulgas)	Yes	No subunit #; 4(a)(3)(B) exemption	4(a)(3)(B) exemption.
Land south of San Onofre State Park	Yes	No subunit #; 4(b)(2) exclusion for Mission Critical.	4(a)(3)(B) exemption.
San Mateo, MCB Camp Pendleton (*RP: San Mateo)	Yes	No subunit #; 4(a)(3)(B) exemption	Not proposed.
Wire Mountain, MCB Camp Pendleton (*RP: Wire Mountain)	Yes	4(a)(3)(B) exemption	Not proposed.
Portion of San Onofre State Beach, State Park-leased land near Christianitos Creek foothills) (*RP: State Park Lease Area).	No	No subunit #; 4(b)(2) exclusion for National Security.	4(a)(3)(B) exemption.
No Unit #: Central Sand Diego County, Military Land, Exempted—(San Diego Central Coastal Mesa MA)			
AA 1–7, 9–13 East Miramar (Pool 10) (AA1 East)	Yes	4(a)(3)(B) exemption	4(a)(3)(B) exemption.
Unit 4: San Diego North Coastal Mesas (San Diego: North Coastal MA)			
Poinsettia Lane Commuter Train Station (JJ 2) (*RP: JJ 2 Poinsettia Lane).	Yes	4c	4.
Unit 5: San Diego Southern Coastal Mesas (San Diego: South Coastal MA)			
J 33 (Sweetwater High School)	No	5a; 4(b)(2) exclusion	5a.
J 15 Arnie's Point (*RP: J2, J5, J7, J11–21, J23–30)	Yes#	5b; 4(b)(2) exclusion	5b.
East Otay Mesa (*RP: Otay Mesa undescribed)	Yes	5c; partial 4(b)(2) exclusion	5c.
"Otay Mesa vernal pool complexes" (*RP: J2, J5, J7, J11–21, J23–30)	Yes#	No subunit #; 4(b)(2) exclusion	Proposed as subunits below.
J29–31 (*RP: J2, J5, J7, J11–21, J23–30)	Yes#	No subunit #; 4(b)(2) exclusion	5d.

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Name/location	Listed in Appendix F of 1998 Recovery Plan	2005 Final critical habitat (fCH) designation (subunit)	2011 Proposed revised critical habitat (prCH) (subunit)
J2 N, J4, J5 (Robinhood Ridge—J2) (*RP: J2, J5, J7, J11–21, J23–30)	Yes	No subunit #; 4(b)(2) exclusion	5e.
J2 S and J2 W (aka Hidden Valley, Cal Terraces, Otay Mesa Road) (*RP: J2, J5, J7, J11–21, J23–30).	Yes	No subunit #; 4(b)(2) exclusion	5f.
J14	No	No subunit #; 4(b)(2) exclusion	5g.
J11–12, J16–19 (Goat Mesa) (*RP: J2, J5, J7, J11–21, J23–30)	Yes	No subunit #; 4(b)(2) exclusion	5h.

MA: Management Area as defined in 1998 Recovery Plan.
(*RP): Indicates the name of pool (or pool complex) as stated in the 1998 Recovery Plan.
No: not in 1998 Recovery Plan; occurrence not identified until after 1998.
Yes: indicates the location was identified in the 1998 Recovery Plan.
Yes#: indicates the location was considered in the 1998 Recovery Plan, but at that time was grouped ("lumped") as multiple vernal pool complexes. These locations have now been "unlumped" in this 2011 proposed rule.

We consider all areas proposed as revised critical habitat to have been occupied at the time of listing (with the exception of Johnson Ranch Created Pools—Subunit 3g, which was not occupied at the time of listing). As further discussed in the unit descriptions below, all areas proposed as critical habitat for Riverside fairy shrimp are currently occupied by the species (Subunit 1b is considered occupied—see unit description below), are within the species' geographical range, and contain PCEs to support at least one of its life-history functions. If protocol surveys fail to confirm occupancy of Subunit 1b, we are also proposing to designate this area under Section 3(5)(A)(ii) of the Act because we have determined the area is essential for the conservation of the Riverside fairy shrimp (see Subunit 1b unit description below).

As noted above, we also are proposing designation of an area not occupied by the species at the time of listing but which is currently occupied (3g; Johnson Ranch Created Pools), because we have determined the area is essential for the conservation of the species (see unit description below).

We are proposing critical habitat in specific areas that include ephemeral wetland habitat and intermixed wetland and upland habitats of various sizes that possess appropriate soils and topography that support ponding during winter and spring; are within the known geographical and elevation range of Riverside fairy shrimp; are geographically distributed; represent unique ecological or biological features and associations; and will help protect against stochastic extirpation, allow for local adaptation, and provide connectivity to facilitate dispersal and genetic exchange. By protecting a variety of habitats throughout the species' historical range, we increase the probability that the species can adjust in the future to various limiting factors that may affect the population, such as changes in abundance and timing of precipitation.

As required by section 4(b)(1)(A) of the Act, we used the best scientific data available in determining areas that contain the features that are essential to the conservation of Riverside fairy shrimp. The steps we followed in identifying critical habitat are described in detail below.

(1) We determined, in accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, the physical and biological habitat features that are essential to the conservation of the species (see *Physical and Biological Features* section above).

(2) We compiled all available observational data on Riverside fairy shrimp into a GIS database. Data on locations of Riverside fairy shrimp occurrences are based on collections and observations made by biologists, biological consultants, and academic researchers. We compiled data from the following sources to create our GIS database for Riverside fairy shrimp: (a) Data used in the 1998 Recovery Plan, in the 2005 final critical habitat rule for Riverside fairy shrimp, and in the 2008 5-year review for Riverside fairy shrimp; (b) the CNDDB data report for Riverside fairy shrimp and accompanying GIS records (CNDDB 2010, pp. 1–9); (c) data presented in the City of San Diego's Vernal Pool Inventory for 2002–2003 (City of San Diego 2004, pp. 1–125); (d) monitoring reports for Riverside fairy shrimp from MCB Camp Pendleton and MCAS Miramar; (e) the Western Riverside County MSHCP species GIS database; and (f) the Carlsbad Fish and Wildlife Office's (CFWO) internal species GIS database, which includes the species data used for the County of San Diego MSCP and Western Riverside County MHCP, reports from section 7 consultations, and Service observations of Riverside fairy shrimp (CFWO internal species GIS database).

Compiled data were reviewed to ensure accuracy. Each data point in our database was checked to ensure that it represented an original collection or observation of Riverside fairy shrimp and that it was mapped in the correct location. Data points that did not match the description for the original collection or observation were remapped in the correct location or removed from our database.

(3) We determined which occurrences were extant at the time of listing based on the listing rule as well as information that has become available since listing. We considered several sources in compiling the best available data on Riverside fairy shrimp vernal pool distribution and species occurrence; we have concluded that, with the exception of Johnson Ranch Created Pools (Subunit 3g), all currently occupied vernal pools were also occupied and extant at the time of listing (see Background section, and the specific unit descriptions below). We have drawn this conclusion because Riverside fairy shrimp has limited dispersal capabilities, and because surveys for the species at the time of listing were incomplete. We believe that the documentation of additional occurrences within the range of the

species after the species was listed was due to an increased effort to survey for this species. Therefore, we believe that all of the areas currently extant, excepting Johnson Ranch Created Pools which were created using cysts salvaged from a nearby historic occurrence (at Redhawk development), were occupied prior to the time this species was listed.

(4) We identified which areas contain the PCEs and identified which of those areas may require special management considerations or protection. All areas containing PCEs were mapped and areas not containing PCEs were removed. Units were designated based on sufficient PCEs being present to support Riverside fairy shrimp life-history processes. Some units contain all of the identified PCEs and support multiple life stages (resting cyst, nauplii, adult). Some units contain only some of the PCEs necessary to support adult Riverside fairy shrimp. Areas that we have identified as having one or more PCEs: (a) Contain large, interconnected ephemeral wetlands; have large numbers of individuals observed; or have habitat areas that allow for connections between existing occurrences of Riverside fairy shrimp; (b) represent important occurrences of this species that are on the geographic edge of this species' distribution; (c) contain occurrences that are more isolated from other occurrences by geographic features, but may represent unique adaptations to local features (biogeochemistry, hydrology, microclimate, soil mineralogy, soil fertility, soil formation processes, and evolutionary time scale); or (d) exist within the distribution of this species and provide connections between occupied areas. The conservation of stable and persistent occurrences throughout the species' range helps to maintain connectivity between occurrences that are in proximity to one another and maintain potential gene flow.

(5) We circumscribed boundaries of potential critical habitat, based on information obtained from the above steps. To map areas proposed as revised critical habitat, we used data on known Riverside fairy shrimp locations and those vernal pools and vernal pool complexes that we identified in the 1998 Recovery Plan as essential for the stabilization and reclassification of the species. For areas identified as essential, we mapped the specific areas that contain the physical and biological features needed to support life-history functions for Riverside fairy shrimp (PCEs). We took the following actions: We first mapped the ephemeral wetland habitat in the occupied area using occurrence data, aerial imagery, and 1:24,000 topographic maps. We then mapped the intermixed wetland and upland habitats that function as the local watersheds and the topography and soils that support the occupied ephemeral wetland habitat. We mapped these areas to identify the gently sloping area associated with ephemeral wetland habitat and any adjacent areas that slope directly into the ephemeral wetland habitat, which contribute to the hydrology of the ephemeral wetland habitat. We delineated the border of the proposed revised critical habitat around the occupied ephemeral wetlands and associated local watershed areas to follow natural breaks in the terrain such as ridgelines, mesa edges, and steep canyon slopes.

(6) Once all areas containing the PCEs were mapped, we removed all areas not containing the physical and biological features essential to the conservation of Riverside fairy shrimp. For example, when determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical and biological features for Riverside fairy shrimp. 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 proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a 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 would affect the physical and biological features in any adjacent critical habitat.

(7) We also exempted areas within the boundaries of MCB Camp Pendleton and MCAS Miramar for this proposed rule because we determined these areas are exempt under section 4(a)(3)(B)(i) of the Act from critical habitat designation (see Exemptions section below).

We are proposing for designation as revised critical habitat lands that we have determined were occupied at the time of listing and are currently occupied and contain physical and biological features that are essential to the conservation of the species because they support Riverside fairy shrimp life-history processes, and one area that was not occupied at the time of listing (Johnson Ranch Created Pools) that we have determined is essential for the conservation of Riverside fairy shrimp.

Summary of Changes From Previously Designated Critical Habitat

The areas identified in this proposed rule constitute a proposed revision of the areas we designated as critical habitat for Riverside fairy shrimp on April 12, 2005 (70 FR 19154). In cases where we have new information or information that was not available for the previous designation, we made changes to the critical habitat for Riverside fairy shrimp to ensure that this proposed rule reflects the best scientific data available.

We made a number of changes to this proposed rule compared to the 2005 final critical habitat designation, including the following:

(1) We refined the Primary Constituent Elements (PCEs) to specifically capture those physical and biological features essential to the conservation of Riverside fairy shrimp, and to more accurately describe a range of physiochemical factors (e.g., dissolved solutes, temperature, and other water chemistry attributes) that are necessary for completion of Riverside fairy shrimp's essential life-history processes.

(2) We incorporated information related to the genetics of the species rangewide and new distribution data that have become available to us following the 2005 critical habitat designation.

(3) We renamed unit and subunit numbers, and when appropriate redefined (redrew) boundaries to improve and better delineate those areas containing features essential to the survival and conservation of Riverside fairy shrimp. Boundaries more precisely capture the underlying physical and biological features associated with vernal pools and vernal pool complexes throughout the species' range. In the 2005 rule, we used 330-ft (100-m) Universal Transverse Mercator (UTM) (North American Datum 1927 (NAD 27)) grid cells overlaid on top of those vernal pool complexes and their associated watershed. In this proposed revision, because we have improved our mapping methodology and our selection criteria, areas containing upland habitat not directly contributing to the hydrology of the vernal pools have not been included in this proposal.

(4) We re-evaluated areas considered for exclusion from critical habitat designation under section 4(b)(2) of the Act for which we are seeking public comment (see Public Comments section of this rule).

(5) We added, subtracted, and revised areas that do or do not meet the definition of critical habitat. Certain areas identified as previously meeting the definition of critical habitat were determined—based on a review of the best available scientific and commercial information—to no longer meet the definition of critical habitat. In these cases, we removed areas that no longer meet the definition of critical habitat due to significant alterations in drainage or development within the watershed. The revised criteria resulted in inclusion of areas essential to the conservation of the species and removal of areas (since the 2004 proposed rule or the 2005 final rule) that no longer meet the definition of critical habitat.

In this proposed revised critical habitat, we have identified 33 areas that we believe meet the definition of critical habitat. One of the areas being proposed was unoccupied at the time of listing (Johnson Ranch Created Pools). Each of the 33 areas contains the physical and biological features essential to the conservation of Riverside fairy shrimp. Table 2 shows a comparison of the locations, units, and acreage between the 2005 final critical habitat designation and this proposed revised critical habitat designation. Eight of the 33 areas determined to be essential are in north San Diego County on MCB Camp Pendleton and are exempt from this proposed rule under section 4(a)(3)(B)(i) of the Act: San Onofre State Beach, State Park-leased lands, near Christianitos Creek foothills (along the northwest corner of MCB Camp Pendleton); area south of San Onofre State Beach, in Uniform Training Area; Las Pulgas North; Las Pulgas East; Las Pulgas West; Cockleburr North; Cockleburr South; and Stuart Mesa; One area is on MCAS Miramar (AA1) and is also exempt from this proposed rule under section 4(a)(3)(B) of the Act. The remaining 25 areas (5 units consisting of 25 subunits) that meet the definition of critical habitat are mapped as proposed revised critical habitat for Riverside fairy shrimp, are presented in Table 2, and are described in the unit descriptions below.

TABLE 2—EVALUATION OF UNITS AND SUBUNITS FOR AREAS CONTAINING ESSENTIAL FEATURES BETWEEN 2005 FINAL CRITICAL HABITAT (FCH) AND 2011 PROPOSED REVISED CRITICAL HABITAT (PRCH CONSIDERED TO MEET THE DEFINITION OF CRITICAL HABITAT

[Note: If amount in 2005 final critical habitat is bracketed, the unit/subunit and its acreage were proposed in 2004 but removed in 2005.]

Location*	2005 Final critical habitat [or prCH 2004]		2011 Proposed revised critical habitat	
	Subunit	Area containing essential features 2005	Subunit	Area containing essential features 2011
Unit 1: Ventura County Management Area				
Tierra Rejada Preserve	1a	47 ac (19 ha)	1a	18 ac (7 ha).
South of Tierra Rejada Valley.	1b	185 ac (75 ha)	1b	448 ac (182 ha).
Cruzan Mesa	[1c; 534 ac (216 ha)]; Removed.	0 ac (0 ha)	1c; no longer meets definition of essential; no confirmed species occupancy data.	0 ac (0 ha).
Unit 2: Los Angeles Basin-Orange County Foothills Management Area				
LAX	[2a; 49 ac (20 ha)]; Removed.	0 ac (0 ha)	2a; no longer meets definition of essential; PCEs no longer present.	0 ac (0 ha).
LAX	[2b; 54 ac (22 ha)]; Removed.	0 ac (0 ha)	2b; no longer meets definition of essential; PCEs no longer present.	0 ac (0 ha).
(MCAS) El Toro	[2c; Excluded under section 4(b)(2)].	14 ac (6 ha)	2c	26 ac (11 ha).
SCE Viejo Conservation Bank.	Excluded under section 4(b)(2).	84 ac (34 ha)	2i	63 ac (25 ha).
Saddleback Meadows and O'Neill Regional Park—near Trabuco Canyon.	Unit 2 combined; portion excluded under section 4(b)(2).	57 ac (23 ha) Excluded	2dA	256 ac (104 ha).
		49 ac (20 ha)	2dB	91 ac (37 ha).
O'Neill Regional Park—near Cañada Gobernadora/east of Tijeras Creek.	Excluded under section 4(b)(2).	101 ac (41 ha)	2e	70 ac (28 ha).
Chiquita Ridge	Excluded under section 4(b)(2).	262 ac (106 ha)	2f	56 ac (23 ha).
Radio Tower Road	Excluded under section 4(b)(2).	417 ac (169 ha)	2g	51 ac (21 ha).
San Onofre State Beach, State Park-leased lands.	Excluded under section 4(b)(2).	47 ac (19 ha)	2h	107ac (43 ha).
Unit 3: Riverside Inland Valleys Management Area				
March Air Reserve Base	[3a; 44 ac (18 ha)]; Removed	0 ac (0 ha)	3a; no longer meets definition of essential; PCEs no longer present.	0 ac (0 ha).

TABLE 2—EVALUATION OF UNITS AND SUBUNITS FOR AREAS CONTAINING ESSENTIAL FEATURES BETWEEN 2005 FINAL CRITICAL HABITAT (FCH) AND 2011 PROPOSED REVISED CRITICAL HABITAT (PRCH CONSIDERED TO MEET THE DEFINITION OF CRITICAL HABITAT—Continued

[Note: If amount in 2005 final critical habitat is bracketed, the unit/subunit and its acreage were proposed in 2004 but removed in 2005.]

Location*	2005 Final critical habitat [or prCH 2004]		2011 Proposed revised critical habitat	
	Subunit	Area containing essential features 2005	Subunit	Area containing essential features 2011
March Air Reserve Base	3b; Excluded under section 4(b)(2).	101 ac (41 ha)	3b; no longer meets definition of essential; PCEs no longer present.	0 ac (0 ha).
Australia Pool	Excluded under section 4(b)(2).	529 ac (214 ha)	3c	19 ac (8 ha).
Scott Road Pools	Excluded under section 4(b)(2).	15 ac (6 ha)	3d	9 ac (4 ha).
Schleuniger Pool	Excluded under section 4(b)(2).	136 ac (55 ha)	3e	23 ac (9 ha).
Skunk Hollow and Field Pool (Barry Jones Wetland Mitigation Bank).	Excluded under section 4(b)(2).	230 ac (93 ha)	3f	163 ac (66 ha).
Johnson Ranch Created Pools.	Excluded under section 4(b)(2).	82 ac (33 ha)	3g	54 ac (22 ha).
Santa Rosa Plateau—Mesa de Colorado.	Excluded under section 4(b)(2).	4,394 ac (1,778 ha)	3h	597ac (242 ha).
Unit 4: San Diego North and Central Coastal Mesas Management Area				
MCB Camp Pendleton	4(a)(3) exemption	2,936 ac (1,188 ha)	4(a)(3) exemption	1,929 ac (780 ha).
Poinsettia Lane Commuter Station.	2c; partially excluded under section 4(b)(2).	22 ac (9 ha)	4c	9 ac (4 ha).
Miramar (AA1 East)	4(a)(3) exemption	117 ac (47 ha)	4(a)(3) exemption	59 ac (24 ha).
Unit 5: San Diego: Southern Coastal Mesas Management Area				
Sweetwater (J33)	Proposed 5a; partially excluded under section 4(b)(2).	3 ac (1 ha)	5a	2 ac (1 ha).
Arnie's Point (J15)	Proposed 5a	122 ac (49 ha)	5b	29 ac (12 ha).
Otay Mesa (including J2, J4, J5, J11, J14, J15, J16–18, J33).	Excluded under section 4(b)(2).	2,004 ac (811 ha) [1]	Now includes 5a, 5b, 5e, 5f, 5g, 5h.	
East Otay Mesa (undescribed).	5c; partially excluded under section 4(b)(2).	111 ac (45 ha)	5c	57 ac (23 ha).
J23–J25, formerly part of east Otay Mesa.	Excluded under section 4(b)(2).	301 ac (122 ha)	Not proposed, determined not essential.	0 ac (0 ha).
J19, J21, J27–28	Excluded under section 4(b)(2).	524 ac (212 ha)	Not proposed, determined not essential.	0 ac (0 ha).
J29–J31, J2 N, J4, J5 (includes Robinhood Ridge).	Excluded under section 4(b)(2).	645 ac (261 ha)	5d	370 ac (150 ha).
	Excluded under section 4(b)(2).	portion of 2,004 ac (811 ha) [1].	5e	44 ac (18 ha).
J2 S, J2 W (includes Hidden Valley, Cal Terraces, and Otay Mesa Road).	Excluded under section 4(b)(2).	portion of 2,004 ac (811 ha) [1].	5f	33 ac (13 ha).
J14	Excluded under section 4(b)(2).	ortion of 2,004 ac (811 ha) [1].	5g	136 ac (55 ha).
J11E, J11 W, J12, J16–19	Excluded under section 4(b)(2).	portion of 2,004 ac (811 ha) [1].	5h	255 ac (103 ha).
Total Area Essential for the Conservation of Riverside fairy shrimp**.		13,535 ac (5,477 ha)	5 units, 25 subunits	4,974 ac (2,013 ha).

**Note: Column may not add due to rounding.

*Location is based on vernal complex names used in 1998 Recovery Plan; unit names are based on Management Areas as identified in the 1998 Recovery Plan.

**Values in this table may not sum due to rounding.

[1] 2,004 ac (811 ha) formerly "lumped sum" under Otay Mesa vernal pool complexes—these are now identified as individual subunits: 5a, 5b, 5e, 5f, 5g, 5h.

The following section provides detailed descriptions of the changes made in this proposed rule and points to new information that precipitated each change.

The PCEs in this proposed rule describe the ephemeral wetland habitat where Riverside fairy shrimp occur along with associated hydrological attributes (ponding, water chemistry, dry down) (PCE 1), the upland habitat (watershed and underlying hydrology) characteristics that support the ephemeral wetlands and their function (PCE 2), and the soils and topography (PCE 3) that allow water to pond during winter and spring months. Compared to the 2005 PCE regarding the vernal pools where Riverside fairy shrimp occur (ephemeral wetland habitats), we have added information about the necessary timing and duration of ponding and broadened the range of physiochemical parameters that may occur in order to more clearly characterize the breadth of conditions in which this species occurs (PCE 1). For the 2005 PCE involving the local watershed and filling of the ephemeral wetland habitat (intermixed wetland and upland habitats that act as a local watershed), we now discuss the land features (topography) that contribute to a functional hydrologic regime (i.e., local watershed) (PCE 2). For the 2005 PCE that related to soil types associated with habitat for Riverside fairy shrimp (soils that support ponding during winter and spring), we now state that hardpan or claypan soil series types (including a partial list) create an impermeable surface or subsurface and facilitate the slow percolation and minimal run-off of water necessary for the ephemeral wetland habitat where Riverside fairy shrimp occur (PCE 3).

Similar to the 2005 critical habitat, we used the 1998 Recovery Plan as a guide; however, in this proposed revised critical habitat we conducted additional analyses of all the Riverside fairy shrimp data currently available which are substantially more complete than what was known at the time the 1998 Recovery Plan was approved. The result of our additional analysis is that some areas identified as essential in the 2005 designation were removed, and other areas that were not identified as essential in the 2005 rule, such as areas in existence at the time of listing but not evaluated or included due to lack of surveys for Riverside fairy shrimp, are included in this proposed rule.

In this proposed revised critical habitat designation, we have described the steps used to identify and delineate the areas we are proposing as revised critical habitat in better detail compared to the 2005 critical habitat designation, to ensure that the public better understands why the areas are being proposed as critical habitat. In improving our explanation and intent, we have discontinued the use of the "core" and "satellite" population areas, as further discussed below.

In the 2004 proposed critical habitat designation (69 FR 23024; April 27, 2004), we discussed the areas that represent "core population areas" and "isolated population areas" for Riverside fairy shrimp. Core population areas are defined in the 2004 proposed rule (69 FR 23027; April 27, 2004) as multiple pools or pool complexes containing Riverside fairy shrimp that are within close proximity (approximately 5 mi (8 km)) of other occupied pools and pool complexes and that contain the necessary PCEs to support one or more life-history functions essential to the conservation of Riverside fairy shrimp. Isolated populations are defined in the 2004 proposed rule (69 FR 23027; April 27, 2004) as single pools or pool complexes that are known to contain Riverside fairy shrimp, are separated from other known locations by greater than 10 mi (16 km), and which contain the necessary PCEs to support one or more life-history functions essential to the conservation of Riverside fairy shrimp.

Four "core" population areas—Orange County Foothills, Western Riverside County, the southern coastal portion of Camp Pendleton in San Diego County, and Otay Mesa in San Diego County—and seven isolated ("satellite") populations—the City of Moorpark in Ventura County; Cruzan Mesa and Los Angeles International Airport in Los Angeles County; March Air Reserve Base and near the City of Banning in Riverside County; and in the City of Carlsbad and on MCAS Miramar in San Diego County—were identified as essential for Riverside fairy shrimp in the 2004 proposed critical habitat designation (69 FR 23024; April 27, 2004). We have discontinued the use of this "core" and "satellite" terminology for labeling areas essential to the conservation of the species and have focused on the habitat characteristics of essential areas.

Large, interconnected ephemeral wetland areas supporting vernal pools or vernal pool complexes in areas with potential for more species complexity and associations are essential to, and will serve as anchors for, the overall conservation of this species. As discussed in the 1998 Recovery Plan, conserving larger, interconnected wetland areas with representative habitat heterogeneity (consisting of dissimilar elements or parts) adjacent to lands with compatible uses are generally preferable to smaller, more isolated pools (Service 1998a, p. 61). Conservation of these areas will sustain the largest populations of Riverside fairy shrimp, allowing the species to persist where it will be less constrained by the threats that negatively impact its essential habitat features (PCEs). However, more isolated (i.e., separated from other known locations by greater than 10 mi (16 km)) habitat areas also support stable, intact occurrences of Riverside fairy shrimp and are also essential to the conservation of the species. Preservation of remaining habitat, including the more isolated pools, serves a fundamental role in the survival and recovery of Riverside fairy shrimp because these areas may represent unique habitat and assemblages within this species' range. A full array of vernal pools and their constituent species, including a range of physical attributes that characterize various occurrences and associations (e.g., pool soils and topography) may be as rare as the individual species associated with them. The more isolated habitat areas occur over a wide range of soils and at various elevations such that, over a range of environmental variables, the preservation of these pools will help maintain the genetic diversity and adaptive potential of Riverside fairy shrimp and may enable them to survive and potentially respond to future environmental changes and threats. In summary, we believe the areas proposed in this revised critical habitat would provide for the conservation of Riverside fairy shrimp by: (1) Maintaining the physical and biological features essential to the conservation of the species in areas where Riverside fairy shrimp are known to occur; (2) maintaining the current distribution of Riverside fairy shrimp, and thus preserving an array of unique habitat and assemblages within this species' range, preserving genetic variation and adaptive potential of Riverside fairy shrimp throughout its range, and minimizing the potential effects of local extinction; and (3) including an area that was not occupied at the time of listing but that is essential to conserve the species.

In the 2005 final critical habitat designation, both larger, interconnected ephemeral wetland areas and isolated, small basins and pools were identified as essential to the conservation of the species due largely in part to the species' limited numbers and distribution (Service 2005, p. 19178). Given the historical loss of vernal pool

habitat in southern California (Mattoni and Longcore 1997; Bauder and McMillian 1998; Keeler-Wolf *et al.* 1998), the conservation of the few remaining occurrences of Riverside fairy shrimp was considered essential for its conservation (Service 1998a). Further, given that Riverside fairy shrimp have a narrow geographic distribution and unique and specialized habitat requirements within that range, we concluded in the 2004 proposed critical habitat designation that all known occupied locations of Riverside fairy shrimp were essential to the conservation of the species (Service 2004, p. 23027). In this proposed revised designation, we have concluded that the conservation of the remaining occupied locations of Riverside fairy shrimp within the geographical range known at the time of listing, and the one created pool area outside the known geographical location at the time of listing capture those areas essential to the conservation of the species. We used the following criteria in the selection of areas that contain the essential features for the Riverside fairy shrimp and focused on designating units and subunits in: (1) Areas throughout the current geographic, elevation, and ecological distribution of the species; (2) areas that maintain the current population structure across the species' range; (3) areas that retain or provide for connectivity within occupied sites such that they would allow for water or wind dispersal to adjacent ephemeral wetland habitat; (4) areas that possess large continuous blocks of occupied habitat, representing source populations and/or unique ecological characteristics; and (5) areas that contain sufficient upland habitat around each occupied location to allow for sufficient survival and recruitment to maintain a self-sustaining population over the long term.

By improving our mapping methodology, we more accurately define the critical habitat boundaries and better represent those areas that possess the physical and biological features essential to the conservation of Riverside fairy shrimp. In the 2005 final rule, we used a 100-meter grid resolution to delineate critical habitat, which resulted in more poorly defined and larger critical habitat areas. In this proposed rule, we accurately mapped areas that contain the PCEs by directly approximating the delineation of essential features rather than using a 100-meter grid. We believe the result is a more precise mapping of the habitat features and the areas which contain features essential to the conservation of the species. In this proposed revised critical habitat, upland areas (located immediately surrounding the vernal pool basins) and ephemeral wetlands (areas that contain one or more of the PCEs for the Riverside fairy shrimp) were mapped based on topographic features such as ridges, mounded micro-topography (mima mounds), and elevation gradients or slopes. Boundaries for these areas were further refined and delineated by mapping those areas that slope toward the pools, from highest point to highest point in the immediate surrounding upland areas, following the map's topographic elevation gradient around the high points (peaks), to the sides and the lowest part of the basin that encompass the complex of vernal pools. Those areas that the topographic maps show sloping steeply away from the pools, or that are developed or altered, such that necessary PCEs (for example, water, soil, and minerals) cannot be transported toward the vernal pools over such areas, are left outside of the refined delineation. This method was used for vernal pools in both basin and mesa-type topographic settings. Although our mapping methodology results in fewer described acres captured, it is a more accurate depiction of critical habitat boundaries that possess the physical and biological features essential to the conservation of the species.

The 2005 final critical habitat designation (70 FR 19154; April 12, 2005) included 4 units, one of which consisted of two subunits (1A and 1B), comprising a total of 306 ac (124 ha). We identified an additional 13,607 ac (5,506 ha) of land containing features essential to the conservation of Riverside fairy shrimp that were exempted from the 2005 critical habitat designation pursuant to section 4(a)(3)(B)(i) of the Act, or excluded under section 4(b)(2) of the Act (70 FR 19180; April 12, 2005). This proposed rule identifies 4,972 ac (2,012 ha) considered to contain the physical and biological features essential to the conservation of Riverside fairy shrimp (including military land exempt under section 4(a)(3) of the Act (see Table 1, above, and Table 3, below)). The essential habitat identified in this proposed revision is 9,504 ac (3,846 ha) less than we identified as essential, inclusive of what was excluded or exempted, in the 2005 rule. The acreage reduction is primarily due to our attempt to more accurately delineate the areas that contain the physical and biological features essential to the conservation of Riverside fairy shrimp. We acknowledge the possibility that, due to mapping, data, and resource constraints, there may be some undeveloped areas mapped as critical habitat that do not contain the PCEs. We made every effort to exclude all developed areas, and other land unlikely to contain primary constituent elements essential for Riverside fairy shrimp conservation. Any such structures remaining inside the proposed revised critical habitat are not considered part of the units. This also applies to the land on which the structure lies. A brief discussion of each area designated as critical habitat is provided in the unit descriptions below.

We identified several areas that are exempt under section 4(a)(3)(B)(i) of the Act or will be considered for exclusion under section 4(b)(2) of the Act (see Table 3). In this proposed rule, eight areas (seven areas on MCB Camp Pendleton (1,929 ac (781 ha)) and one area on MCAS Miramar (59 ac (24 ha)) are determined exempt under section 4(a)(3)(B)(i) of the Act. These lands are on land owned, managed, or under the control of the Department of Defense and are addressed in an approved integrated natural resources management plan (INRMP) (in the case of San Onofre State Beach, State Park-leased lands under the Real Estate Agreements and Leases section of the INRMP; see Exclusions section below). Military lands exempt from proposed designation under section 4(a)(3)(B) of the Act are not assigned subunit identifiers; however, MCB Camp Pendleton falls within Unit 4 as discussed in the unit descriptions below. We will consider certain areas for exclusion from final designation under section 4(b)(2) of the Act. Any exclusion in the final revised critical habitat designation could differ from the exclusions we made in the 2005 final critical habitat designation.

TABLE 3—(1) PROPOSED HABITAT DETERMINED TO BE ESSENTIAL, (2) PROPOSED HABITAT EXEMPTED PURSUANT TO 4(a)(3)(B)(i) OF THE ACT, (3) PROPOSED HABITAT BEING CONSIDERED FOR EXCLUSION PURSUANT TO SECTION 4(b)(2) OF THE ACT UNDER HCP, (4) PROPOSED HABITAT BEING CONSIDERED FOR EXCLUSION PURSUANT TO SECTION 4(b)(2) FOR NATIONAL SECURITY REASONS, (5) TOTAL PROPOSED HABITAT CONSIDERED FOR EXCLUSION, (6) TOTAL PROPOSED HABITAT CONSIDERED FOR EXEMPTION AND EXCLUSION, AND (7) TOTAL HABITAT PROPOSED AS REVISED CRITICAL HABITAT IN THIS 2011 RULE

(1) Habitat determined to be essential to the conservation of the Riverside fairy shrimp	4,972 ac (2,012 ha).
(2) Proposed habitat exempted pursuant to section 4(a)(3)(B)(i) of the Act (MCAS Miramar and MCB Camp Pendleton)	1,988 ac (805 ha).
(3) Proposed habitat being considered for exclusion pursuant to section 4(b)(2) of the Act under approved habitat conservation plan (HCP).	1,219 ac (493 ha).
(4) Proposed habitat being considered for exclusion pursuant to section 4(b)(2) for national security reasons	0 ac (0 ha).
(5) Total proposed habitat considered for exclusion	1,219 ac (493 ha).
(6) Total proposed habitat exempted or considered for exclusion	3,207 ac (1,298 ha).
(7) Total habitat proposed in 2011 as revised critical habitat (total proposed minus total exempted)	2,984 ac (1,208 ha).

We have identified several areas that are being considered for exclusion under section 4(b)(2) of the Act (see Table 3). In the 2005 rule, we excluded several subunits under section 4(b)(2) of the Act within the planning boundaries of: (a) The Orange County Southern Subregion HCP, (b) the draft City of Oceanside Subarea Plan and the City of Carlsbad's HMP under the MHCP, (c) the Western Riverside County MSHCP, and (d) the City and County of San Diego Subarea Plans under the MSCP. In this proposed revised critical habitat rule, we identified several areas we are considering for exclusion under section 4(b)(2) of the Act within the planning boundaries of, as follows: (a) The Orange County Central-Coastal subregional NCCP/HCP, (b) The Orange County Southern Subregion HCP, (c) the City of Carlsbad's HMP under the MHCP, (d) the Western Riverside County MSHCP, and (e) the County of San Diego Subarea Plan under the MSCP (see the Exclusions section).

We are requesting public comment on the potential exclusion of 89 ac (36 ha) covered by the Orange County Central-Coastal subregional NCCP/HCP; 233 ac (94 ha) covered by the Orange County Southern Subregion HCP; 865 ac (350 ha) covered by the Western Riverside County MSHCP; 9 ac (4 ha) covered by the Carlsbad HMP under the MHCP; and 23 ac (9 ha) covered by the County of San Diego Subarea Plan under the MSCP. Any exclusions we make in the final revised critical habitat designation may differ from the exclusions we made in the 2005 final critical habitat designation.

Areas designated as critical habitat units in this proposed rule are divided into five separate units (Units 1 through 5) which follow the six Management Areas presented in the 1998 Recovery Plan (Service 1998a, p. 38). We have combined two management areas identified in the 1998 Recovery Plan, the San Diego: North Coastal Mesas Management Area and the San Diego: Central Coastal Mesas Management Area into one, single unit (Unit 4) for this proposed rule. The management areas are based primarily on geographical locations, although we have considered these locations in terms of underlying soil types and geomorphic processes, size and type of associated watershed, and topographic position (i.e., coastal mesa, inland valley, on granitic soils, etc.). Where possible, unit and subunit labels in this proposed rule follow previous naming conventions found in the 2005 critical habitat. We have retained original names associated with management areas, units, subunits, or pool complex names, where possible, to reduce confusion and promote consistency between previous rules and this proposed revision. Changes from the 2005 final critical habitat rule, however, include the following unit name reassignments: Unit 3 now includes land in Riverside County (land previously excluded from the 2005 designation of critical habitat and which, therefore, had no unit or subunit numbers assigned), and Unit 5 now incorporates Otay Mesa in southern San Diego County, previously labeled as Unit 4 in the 2005 rule. As with the 2005 final critical habitat rule, some land within the San Diego North and Central Coastal Mesa Management Areas (Service 1998a, p. 46) has not been proposed because these lands have been determined to be exempt under 4(a)(3)(B)(i) of the Act (MCAS Miramar and MCB Camp Pendleton) (see Tables 1 and 2 above; and Exemptions section below).

Following a new analysis of the best available scientific information, proposed habitat areas have been added or subtracted based on new information received. In Table 2 above, we have provided a comparison between the 2005 final critical habitat designation and this proposed revised critical habitat rule and identify the change in area (by subunit) between the 2005 critical habitat designation and this proposed revised critical habitat designation. As already stated, some areas designated in the 2005 rule are not being proposed for designation because they do not meet the criteria used to identify areas essential to the conservation of Riverside fairy shrimp (see *Criteria Used to Identify Critical Habitat* for additional discussion). Further we are proposing to designate as revised critical habitat areas not considered in the 2005 final designation (Johnson Ranch Created Pools).

Two areas identified as meeting the definition of critical habitat in the 2004 proposed rule, but removed from the 2005 final critical habitat designation, are not proposed in this revision of critical habitat (Los Angeles Airport and March Air Reserve Base). The best available scientific and commercial data indicate these two areas no longer contain the physical and biological features essential to the conservation of the species and that the species has been extirpated. Further, we are not proposing three areas (Cruzan Mesa in Los Angeles, Banning in western Riverside County, and Wire Mountain in San Diego County) in this proposed rule, because we believe that these areas do not meet the definition of critical habitat, and because we do not possess sufficient data to substantiate Riverside fairy shrimp occurrence (we have conflicting accounts of positive species identification). San Mateo Pool (MCB Camp Pendleton, San Diego County) has been removed from our proposed designation because we possess insufficient data to evaluate its current status or condition, need for special management, or persistence of the occurrence and we, therefore, do not consider it to meet the definition of critical habitat. In the 2005 final critical habitat designation for Riverside fairy shrimp, we mentioned evidence of two vernal pools on or near tribal land

within the Pechanga Band of Luiseño Mission Indians reservation (6 ac (2 ha)) near the City of Temecula with possible historical occurrences, but, based on information available from 2004, we were unable to confirm these occurrences (70 FR 19199). Due to insufficient occurrence information and evidence of severely modified and impacted pools from years of discing and plowing, we are not proposing to designate critical habitat on tribal lands of the Pechanga Band of Luiseño Mission Indians (see Public Comments section above).

For three areas in this rule (portions of proposed Subunits 5b, 5c, and 5h), we have removed portions of the areas previously defined as essential in 2005 because, due to their proximity to the border and ongoing impacts from border patrol activities, we believe they no longer contribute to the long-term viability of Riverside fairy shrimp. More information about the units and subunits that contain the physical and biological features essential to the conservation of Riverside fairy shrimp and an explanation of how the added or removed areas do or do not contribute to the conservation of Riverside fairy shrimp is provided below in the Proposed Revised Critical Habitat Designation section.

In summary, on April 27, 2004, we proposed revised critical habitat of 5,795 ac (2,345 ha) in 5 units, including 19 subunits, located in Los Angeles, Orange, Riverside, San Diego and Ventura Counties. In response to information received during the public comment periods for our 2004 proposed critical habitat, refined mapping methodology, and re-evaluation of essential habitat, we removed 4,822 ac (1,951 ha) of non-essential habitat from the designation (Cruzan Mesa and Los Angeles Airport (Los Angeles County), March Air Reserve Base (Riverside County), and portions within southwestern and southeastern Otay Mesa (San Diego County)). In 2005, we designated approximately 306 ac (124 ha) as critical habitat for Riverside fairy shrimp in 4 units, one of which consisted of two subunits (1A and 1B) (70 FR 19154; April 12, 2005). For this proposed revision, we have included 5 units, including 25 subunits, comprising a total of 2,984 ac (1,208 ha) of land determined to be essential to the conservation of Riverside fairy shrimp.

Proposed Revised Critical Habitat Designation

We propose to designate 2,984 ac (1,208 ha) in 5 units, containing 25 subunits, as critical habitat for Riverside fairy shrimp. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for Riverside fairy shrimp. The proposed revised critical habitat includes Riverside fairy shrimp habitat throughout the species' range in the United States. Proposed units generally correspond to the geographic areas identified as "Management Areas" in the 1998 Recovery Plan (Service 1998a, pp. 35–44). This proposed rule, when finalized, will supersede the 2005 critical habitat designation for Riverside fairy shrimp in 50 CFR 17.95(h).

The five map units proposed for designation as critical habitat are referred to by the following geographical names: (Map Unit 1) Ventura County (Transverse Range); (Map Unit 2) Los Angeles Basin—Orange County Foothills; (Map Unit 3) Riverside County Inland Valleys; (Map Unit 4) San Diego Northern and Central Coastal Mesas; and (Map Unit 5) San Diego Southern Coastal Mesas. Areas proposed as revised critical habitat are under Federal, State, local, and private ownership. The approximate area of proposed revised critical habitat by county and land ownership is shown in Table 4.

TABLE 4—PROPOSED REVISED CRITICAL HABITAT FOR RIVERSIDE FAIRY SHRIMP

[Not including exempted land]

Critical habitat unit	Federal land	State land	Local land	Private land	Total area
Unit 1: Ventura County			31 ac (13 ha)	435 ac (176 ha)	466 ac (189 ha).
1a. Tierra Rejada Preserve				18 ac (7 ha)	18 ac (7 ac).
1b. South of Tierra Rejada Valley			31 ac (13 ha)	417 ac (169 ha)	448 ac (182 ha).
Unit 2: Los Angeles Basin—Orange County Foothills.			142 ac (58 ha)	576 ac (233 ha)	718 ac (291 ha).
2c. (MCAS) El Toro			18 ac (7 ha)	8 ac (3 ha)	26 ac (11 ac).
2dA. Saddleback Meadows.			4 ac (2 ha)	252 ac (102 ha)	256 ac (104 ha).
2dB. O'Neill Regional Park—near Trabuco Canyon.			75 ac (30 ha)	15 ac (6 ha)	90 ac (37 ha).
2e. O'Neill Regional Park—near Cañada Gobernadora.			45 ac (18)	24 ac (10 ha)	69 ac (28 ha).
2f. Chiquita Ridge				56 ac (23 ha)	56 ac (23 ha).
2g. Radio Tower Road				51 ac (21 ha)	51 ac (21 ha).
2h. San Onofre State Beach, State Park-leased land (near Christianitos Creek foothills).				107 ac (43 ha)	107 ac (43 ha).
2i. SCE Viejo Conservation Bank.				63 ac (25 ha)	63 ac (25 ha).
Unit 3: Riverside Inland Valleys.		54 ac (22 ha)		811 ac (328 ha)	865 ac (350 ha).
3c. Australia Pool				19 ac (8 ha)	19 ac (8 ha).
3d. Scott Road Pool				9 ac (4 ha)	9 ac (4 ha).
3e. Schleuniger Pool				23 ac (9 ha)	23 ac (9 ha).

TABLE 4—PROPOSED REVISED CRITICAL HABITAT FOR RIVERSIDE FAIRY SHRIMP—Continued

[Not including exempted land]

Critical habitat unit	Federal land	State land	Local land	Private land	Total area
3f. Skunk Hollow and Field Pool (Barry Jones Wetland Mitigation Bank).				163 ac (66 ha)	163 ac (66 ha).
3g. Johnson Ranch Created Pools.		54 ac (22 ha)			54 ac (22 ha).
3h. Santa Rosa Plateau—Mesa de Colorado.				597 ac (242 ha)	597 ac (242 ha).
Unit 4: San Diego North and Central Coastal Mesas.		6 ac (3 ha)		3 ac (1 ha)	9 ac (4 ha).
4c. Poinsettia Lane Train Station.		6 ac (3 ha)		3 ac (1 ha)	9 ac (4 ha).
Unit 5: San Diego Southern Coastal Mesas.	40 ac (16 ha)	256 ac (104 ha)	157 ac (64 ha)	472 ac (191 ha)	925 ac (375 ha).
5a. Sweetwater (J33)			2 ac (less than 1 ha)	less than 1 ac (0 ha)	2 ac (less than 1 ha).
5b. Arnie's Point (J15)	29 ac (12 ha)				29 ac (12 ha).
5c. East Otay Mesa				57 ac (23 ha)	57 ac (23 ha).
5d. J29–31	less than 1 ac (0 ha)	211 ac (85 ha)		159 ac (64 ha)	370 ac (149 ha).
5e. J2 N, J4, J5: (Robinhood Ridge).			32 ac (13 ha)	12 ac (5 ha)	44 ac (18 ha).
5f. J2 W and J2 S: (Hidden Trails, Cal Terraces, Otay Mesa Road).			22 ac (9 ha)	11 ac (4 ha)	33 ac (13 ha).
5g. J14		45 ac (18 ha)	18 ac (7 ha)	72 ac (29 ha)	135 ac (55 ha).
5h. J11 E and J11 W, J12, J16–18 (Goat Mesa).	11 ac (4 ha)		83 ac (34 ha)	161 ac (65 ha)	255 ac (103 ha).
Totals	40 ac (16 ha)	316 ac (128 ha)	330 ac (135 ha)	2,297 ac (929 ha)	2,984 ac (1,208 ha).

Note: Sums of land areas may not total due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for Riverside fairy shrimp, below.

Unit 1: Ventura County Unit (Transverse Range)

Unit 1 is located in central Ventura County and consists of two occupied subunits totaling approximately 31 ac (13 ha) of local land and 435 ac (176 ha) of private land. This proposed unit includes the vernal pools near the city of Moorpark in Ventura County, at Tierra Rejada Preserve (formerly called Carlsberg Ranch) on the west side of State Highway 23, and a basin to the southeast of Carlsberg Ranch site, east of State Highway 23 called South of Tierra Rejada Valley. This unit occurs within the larger Santa Clara-Calleguas/Calleguas-Conejo Tierra Rejada Valley watershed, within the east-west trending Transverse (mountain) Range. The Transverse Range system was formed by the interaction of an east-west oceanic fault zone with the San Andreas Fault. Because the interaction of the two fault systems has been extensive and continues with rapid local uplift, Riverside fairy shrimp habitat within the Transverse Range reflects past activities of tectonic processes and their effects on watershed development. Accelerated erosion, sedimentation, and debris processes, such as mud and rock flows, landslides, wind flows, and debris flows (i.e., soil-development processes), contribute to a unique set of physiochemical and geomorphic features for pools occupied by Riverside fairy shrimp.

Subunit 1a: Tierra Rejada Preserve

Subunit 1a is located near the City of Moorpark, in southeastern Ventura County, California. This subunit is located on what was formerly known as the Carlsberg Ranch, at the north end of the Tierra Rejada Valley, just west of State Highway 23. It is near the northeast intersection of Moorpark Road and Tierra Rejada Road in a residential housing development. Subunit 1a consists of 18 ac (7 ha) of privately owned land. The vernal pool (pond), 4.6 acres (1.7 ha) in size, is located in the Tierra Rejada Vernal Pool Preserve, owned and managed by Mountains Recreation and Conservation Authority (MCRA). Subunit 1a contains areas identified in the 1998 Recovery Plan (Appendix F) as necessary to stabilize and protect (conserve) existing populations of Riverside fairy shrimp.

This subunit is occupied at the time of listing and remains occupied. Resting cysts were detected in recent soil analyses (Chris Dellith 2010, pers. comm.) and adult fairy shrimp were observed on April 7, 2011 (Judi Tamasi 2010, pers. comm.), the first observation of adults since the 2000–2001 ponding season. This area is essential to the conservation of this species for several reasons. The pool supports endangered Orcutt's grass (*Orcuttia californica*), which is an indicator of longer ponding duration. This pool is fundamentally different in terms of size, origin, depth and duration of ponding, contributing areas (watershed), and the thickness of the underlying sediments compared to flat areas of older soils with highly developed claypans and hardpans throughout the State (Hecht *et al.* 1998, p. 47); it was formed primarily by tilting and subsidence along the Santa Rosa fault (Hecht *et al.* 1998, p. 5). Given its geologic and hydrologic features and the associated wetland vegetation occurring within the subunit, this pool possesses a set of physical and biological factors unique to this occurrence to which the Riverside fairy shrimp has likely become adapted. The present biological resources and value of the pool have been sustained through "substantial disturbance and change in general area of the vernal pool" given history of land and water use and analysis of 60 years of aerial photography (Hecht *et al.* 1998, p. 6 and Appendix A). Although Lahti

et al. (2011) did not survey this pool during their completion of a rangewide genetic analysis, this occurrence does represent the northernmost extension of the species' occupied range, within a notably unique vernal wetland type (Hecht *et al.* 1998, p. 5 and see discussion below).

Subunit 1a contains the physical and biological features that are essential to the conservation of Riverside fairy shrimp, including appropriate soil series (Azule, Calleguas, and Linne soil series; PCE 3) situated on a saturated fault between rocks of different permeability ("tectonogenic" Hecht *et al.* 1998, p. 5), and it is "sediment-tolerant" given that it possesses a watershed with reasonably steep slopes (10–50 percent slopes) with scrub vegetation yielding substantial amounts of sediment that provide nutrients, minerals, and hydrology (Hecht *et al.* 1998, p. 6). Additionally, because of adjacent urban development, altered hydrology, and potential for runoff, this vernal pool may require special management considerations or protection for the recovery of Riverside fairy shrimp. This subunit has one large ponding feature, and is essential to maintain habitat function, genetic diversity, and species viability (Service 1998a, p. 65) at the species' northernmost geographical distribution.

Due to its unique geographic location and other features stated above, Subunit 1a is essential to the conservation of Riverside fairy shrimp. Although preliminary genetic studies are not definitive with regards to gene flow and genetic variability across the range of this species, populations at the edge of a species' distribution have been demonstrated to be important sources of genetic variation and may provide an important opportunity for colonization or re-colonization of unoccupied vernal pools and, thus, contribute to long-term conservation (and recovery) of the species (Gilpin and Soulé 1986, pp. 32–33; Lande 1999, p. 6). Research on genetic differentiation among fairy shrimp species across their known distributions have demonstrated that geographically distinct populations may or may not be genetically distinct, but that they have unique genetic characteristics allowing for environmental changes (Bohonak 2003, p. 3; Lahti *et al.* 2010, p. 17). These characteristics may not be present in other parts of a species' range (Lesica and Allendorf 1995, p. 756). For these reasons, subunit 1a is uniquely situated and considered essential for recovery of the Riverside fairy shrimp.

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 plant species (nonnative grasses and *Schinus molle* (Peruvian pepper groves)) and alterations to the hydrologic cycle including type conversion of habitat; activities that remove or destroy the habitat assemblage of the pools, such as creation of fuel breaks, mowing, and grading; and human encroachment that occurs in the area. For example, inundation from artificial water sources can cause pools to stay inundated longer than normal or even convert vernal pools into perennial pools that are not suitable for Riverside fairy shrimp (Service 2008, p. 16). Please see *Special Management Considerations or Protection* section of this proposed rule for a discussion of the threats to Riverside fairy shrimp habitat and potential management considerations.

Subunit 1b: South of Tierra Rejada Valley

Subunit 1b is located near the City of Moorpark in Ventura County, California. This proposed subunit is approximately 1.5 km (1 mi) southeast of Subunit 1a and east of State Highway 23. Subunit 1b consists of 31 ac (13 ha) of locally owned land and 417 ac (169 ha) of private land. We assume that Subunit 1b was not identified in the 1998 Recovery Plan (Appendix F) because at that time we were unable to confirm occupancy. To the best of our knowledge, this subunit has never been protocol surveyed to confirm presence or absence of Riverside fairy shrimp (Chris Dellith 2010, pers. comm.). This subunit, however, was proposed and designated as essential habitat in the previous 2005 proposed revised critical habitat rule because we considered it occupied (see discussion below) and because the necessary PCEs were present. Although we continue to presume Subunit 1b is occupied despite the absence of protocol survey results and have determined that the subunit contains the PCEs and therefore meets the definition of critical habitat under Section 3(5)(A)(i) of the Act, we are also proposing to designate Subunit 1b under Section 3(5)(A)(ii) of the Act. Even if Subunit 1b was not occupied at the time of listing, the subunit is essential for the conservation of the species due to its suitable habitat conditions, proximity to subunit 1a, and location at the northernmost extent of the species' range.

Subunit 1b is located approximately one mile to the south of Tierra Rejada Preserve (Subunit 1a), within the Tierra Rejada Valley watershed. Like Subunit 1a, this pool is one of the last representatives of what is believed to be a historic distribution of coastal terrace vernal pools common to the marine terraces and inland area of Ventura County prior to the 1950s. This subunit is considered occupied based on several factors which strongly suggest the likelihood of Riverside fairy shrimp occurrence. As discussed in the 2005 proposed rule (70 FR 19154, p. 19181) these are: (1) The important biotic and abiotic conditions (soil type, geology, morphology, local climate, topography, and plant associations, e.g. California Orcutt's grass) suggesting the presence of vernal pool ponding at appropriate season and for appropriate duration; (2) topographic features and ponding evidence based on aerial surveys confirming a ponding pool basin; (3) several large permanent and semi-permanent pools observed within the Subunit's local watershed; (4) proximity (less than 1 mi (1500 m)) to a known Riverside fairy shrimp occurrence and likely within the known dispersal distance expected for an invertebrate species with a resistant cyst stage; and (5) the determination that Subunit 1a and Subunit 1b are adjoined, based on fluvial and geomorphic evidence suggesting that the Tierra Rejada Valley river system once likely connected the two pools and would have provided the connectivity to disperse cysts between the two subunits.

Subunit 1b is proposed as revised critical habitat because we have determined it to be essential for the conservation of the species as it includes one or more pools capable of maintaining habitat function, genetic diversity, and species viability (Service 1998a, p. 65) for Riverside fairy shrimp at the northern limit of its current distribution, and it is near, and likely has connectivity with, a known occupied location of ecological and distributional significance. It is also identified as essential because best supporting evidence indicates the basin contains appropriate depth and ponding duration (PCEs 1), soils and topography (PCEs 2 and 3), elevation, and water chemistry (pH, temperature, salinity, etc.; PCE 1) to satisfy life-history needs of existing populations, either on-site or located nearby within subunit 1a.

Unit 2: Los Angeles Basin—Orange County Foothills

Unit 2 is located in central coastal Orange County and consists of 8 subunits totaling approximately 718 ac (291 ha) of land. This unit contains 142 ac (58 ha) of locally owned land, and 576 ac (233 ha) of privately owned land. Unit 2 falls within the Los Angeles

Basin-Orange Management Area as outlined in the 1998 Recovery Plan. The majority of vernal pools in this management area were extirpated prior to 1950, and only a small number of vernal pools remain in Los Angeles and Orange Counties (Service 1998a, p. 40). This unit includes the vernal pools and vernal pool-like ephemeral ponds located along a north-south band in the Orange County Foothills. This unit includes examples of the historic distribution of coastal terraces at moderate elevations (183 m to 414 m (600 ft to 1,358 ft)) and includes ephemeral ponds formed by landslides and fault activity, and remnant stream (fluvial) terraces along foothill ridgelines (Taylor *et al.* 2006, pp. 1–2).

Occupied Riverside fairy shrimp pools occur on: former Marine Corps Air Station (MCAS) El Toro; SCE Viejo Conservation Bank; Saddleback Meadows; O'Neill Regional Park—near Trabuco Canyon (east of Tijeras Creek at the intersection of Antonio Parkway and the Foothill Transportation Corridor (FTC-north segment)); O'Neill Regional Park—near Cañada Gobernadora; Chiquita Ridge; Radio Tower Road; and San Onofre State Beach, State Park-leased land (near Christianitos Creek foothills) that falls partially within MCB Camp Pendleton. These vernal pools are the last remaining vernal pools in Orange County known to support this species (58 FR 41384) and represent pools of a unique type of vernal pool habitat that differs from the traditional mima mound vernal pool complexes of coastal San Diego County, the coastal pools at MCB Camp Pendleton, and the inland pools of Riverside County (70 FR 19182).

The areas within Unit 2 were occupied at the time of listing, are still occupied, and contain the physical and biological features that are essential to the conservation of Riverside fairy shrimp, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). In almost all cases, slow-moving or still surface water and/or saturated soils are present at or near vernal pool habitat. Conservation of an array of vernal pools supporting Riverside fairy shrimp in the foothill region of Orange County is essential to the conservation of the species by providing for necessary habitat function, natural genetic diversity and exchange, and species viability in the central portion of the species' range.

Subunit 2c: (MCAS) El Toro

Subunit 2c is located in the City of Irvine, in southern Orange County, California. It is situated about 8 miles southeast of the city of Santa Ana and 12 miles northeast of the city of Laguna Beach. This subunit is approximately 0.75 km (0.5 mi) southeast of Portola Parkway and bounded to the northeast by California Highway 241. The Marine Corps Air Station (MCAS) El Toro was a jet air station supporting Pacific Fleet Marine Forces, and officially closed in 1999. Most of the MCAS El Toro site is in unincorporated territory over which the County of Orange has direct land use planning and development authority. Subunit 2c consists of 18 ac (7 ha) of locally owned land and 8 ac (3 ha) of private land. Subunit 2c contains areas identified in the 1998 Recovery Plan (Appendix F) as necessary to stabilize and protect (conserve) existing populations of Riverside fairy shrimp, as well as other proposed and listed vernal pool species.

This subunit is considered essential for the recovery of Riverside fairy shrimp because it is currently occupied and includes one or more pools to maintain habitat function, genetic diversity, and species viability (Service 1998a, p. 65). Further, it is identified as essential because the basin contains appropriate depth and ponding duration, soils, elevation, and water chemistry (pH, temperature, salinity, etc.), which fulfill Riverside fairy shrimp's life-history needs. The habitat consists of a seasonal pond that appears to be artificial, and has been impacted, modified, and degraded by live munitions firings, groundwater contamination, and off-highway vehicle (OHV) use. Restoration of the pond began in 2001, and included the installation of monitoring wells for contamination and regular monitoring for Riverside fairy shrimp. Subunit 2c contains the physical and biological features that are essential to the conservation of Riverside fairy shrimp, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 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 plant species (nonnative grasses) that occur in the vernal pool basins, the potential for ongoing groundwater contamination, and OHV impacts. Please see the *Special Management Considerations or Protection* section of this proposed rule for a discussion of the threats to Riverside fairy shrimp habitat and potential management considerations. We are considering this subunit for exclusion under 4(b)(2) of the Act; please see the Exclusions section of this proposed rule for more information.

Subunit 2dA: Saddleback Meadows

Subunit 2dA is located in the community of Silverado, in southern Orange County, California. This subunit is near the St. Michaels College Preparatory School, east of El Toro Road, and south and west of Live Oak Canyon Road. Subunit 2dA consists of 4 ac (2 ha) of locally owned land and 252 ac (102 ha) of privately owned land. Subunit 2dA contains areas identified in the 1998 Recovery Plan (Appendix F) as necessary to stabilize and protect (conserve) existing populations of Riverside fairy shrimp, as well as other proposed and listed vernal pool species.

This subunit is considered essential for the recovery of Riverside fairy shrimp because it is currently occupied and includes one or more pools to maintain habitat function, genetic diversity, and species viability (Service 1998a, p. 65). Further, it is identified as essential because the basin contains appropriate depth and ponding duration, soils, elevation, and water chemistry (pH, temperature, salinity, etc.), which fulfill Riverside fairy shrimp's life-history needs. This vernal pool complex includes a series of natural and impounded cattle troughs that have been breached and degraded by past agricultural activities and urban development. In addition, Subunit 2dA is an important link to the northern occupied locations, and represents a nearby source for re-colonization of pools in the Orange County foothills. Proposed Subunit 2dA contains the physical and biological features that are essential to the conservation of Riverside fairy shrimp, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 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 plant species, development, or grazing that may occur in the vernal pool basins. Please see the *Special Management Considerations or Protection* section of this proposed rule for a discussion of the threats to

Riverside fairy shrimp habitat and potential management considerations. We are considering portions of this subunit for exclusion under 4(b)(2) of the Act; please see the Exclusions section of this proposed rule for more information.

Subunit 2dB: O'Neill Regional Park—Near Trabuco Canyon

Subunit 2dB is located approximately 1.5 km (1 mi) southeast of Subunit 2dA in southern Orange County, California. This subunit is west of Live Oak Canyon Road, and northeast of the O'Neill Regional Park—near Cañada Gobernadora (see Subunit 2e below). In the 2008 5-year review, this area was referred to as 'O'Neill Park/Clay Flats pond property' (Service 2008, p. 7). Subunit 2dB consists of 75 ac (30 ha) of locally owned land (State Parks) and 15 ac (6 ha) of privately owned land. Subunit 2dB was not specifically identified in the 1998 Recovery Plan (Appendix F), but is classified as necessary to stabilize and protect (conserve) existing populations of Riverside fairy shrimp within the "Orange County Foothills (undescribed)" heading in Appendix F (Service 1998a, p. F1).

This subunit is considered essential for the recovery of Riverside fairy shrimp because it is currently occupied and includes one or more pools essential to maintain habitat function, genetic diversity, and species viability (Service 1998a, p. 65). Further, it is identified as essential because the basin contains appropriate depth and ponding duration, soils, elevation, and water chemistry (pH, temperature, salinity, etc.), which fulfill Riverside fairy shrimp's life-history needs. This proposed subunit 2dB contains the physical and biological features essential to the conservation of Riverside fairy shrimp, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 3). A portion of this subunit lies at 1,413 ft (431 m) and is among the highest elevation occurrences of Riverside fairy shrimp.

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 plant species and activities such as unauthorized recreational use, OHV use, and fire management. Please see the *Special Management Considerations or Protection* section of this proposed rule for a discussion of the threats to Riverside fairy shrimp habitat and potential management considerations. We are considering portions of this subunit for exclusion under 4(b)(2) of the Act; please see the Exclusions section of this proposed rule for more information.

Subunit 2e: O'Neill Regional Park—Near Cañada Gobernadora/east of Tijeras Creek

Subunit 2e is located near the City of Rancho Santa Margarita in southern Orange County, California. This subunit is east of Cañada Gobernadora and bounded to the west by California Highway 241. In the 2008 5-year review, this area was referred to as east of Tijeras Creek complex (Service 2008, p. 7). Subunit 2e consists of 45 ac (18 ha) of locally owned land and 24 ac (10 ha) of private land. Subunit 2e was not specifically identified in the 1998 Recovery Plan (Appendix F), but was classified as necessary to stabilize and protect (conserve) existing populations of Riverside fairy shrimp within the "Orange County Foothills (undescribed)" heading in Appendix F (Service 1998a, p. F1).

This subunit is considered essential to the conservation of Riverside fairy shrimp because it is currently occupied and includes one or more pools essential to maintain habitat function, genetic diversity, and species viability (Service 1998a, p. 65). Further, it is identified as essential because the basin contains appropriate depth and ponding duration, soils, elevation, and water chemistry (pH, temperature, salinity, etc.), which fulfill Riverside fairy shrimp's life-history needs. Areas within this proposed subunit contain clay, clay loam, or sandy loam and consist primarily of dry-land agriculture and sagebrush-buckwheat scrub habitat. Located in the water drainages of the foothills of the Santa Ana Mountains, this pool rests in a canyon bottomland at approximately 919 ft (280 m) of elevation. Subunit 2e contains the physical and biological features essential to the conservation of Riverside fairy shrimp because it: (1) Contains the PCEs for Riverside fairy shrimp, including clay soils and loamy soils underlain by a clay subsoil (PCE 3), areas with a natural, generally intact surface and subsurface soil structure (PCE 2), and the ephemeral habitat (PCE 1) that support Riverside fairy shrimp, including slow-moving or still surface water and/or saturated soils; and (2) supports a stable, persistent occurrence of the species.

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 plant species and anthropogenic activities (e.g., surrounding residential and commercial development, unauthorized recreational use, OHV use, and fire management). Please see the *Special Management Considerations or Protection* section of this proposed rule for a discussion of the threats to Riverside fairy shrimp habitat and potential management considerations. We are considering portions of this subunit for exclusion under 4(b)(2) of the Act; please see the Exclusions section of this proposed rule for more information.

Subunit 2f: Chiquita Ridge

Proposed Subunit 2f is located in the community of Trabuco, a small unincorporated community north of the town of Rancho Santa Margarita in Rancho Mission Viejo, in the southern Orange County foothills of California. This subunit is west of the Cañada Chiquita Valley, east of Antonio Parkway, and approximately 3.5 km (2.25 mi) north of Ortega Highway State Route 74. This proposed subunit consists of 56 ac (23 ha) of privately owned land. Subunit 2f contains areas identified in the 1998 Recovery Plan (Appendix F) as necessary to stabilize and protect (conserve) existing populations of Riverside fairy shrimp, as well as other proposed and listed vernal pool species.

This subunit is considered essential for the recovery of Riverside fairy shrimp because it is currently occupied and includes one or more pools essential to maintain habitat function, genetic diversity, and species viability (Service 1998a, p. 65). Further, it is identified as essential because the basin contains appropriate depth and ponding duration, soils, elevation, and water chemistry (pH, temperature, salinity, etc.), which fulfill Riverside fairy shrimp's life-history needs. This site has two vernal pools with confirmed Riverside fairy shrimp occupancy and which formed in depressions created by landslide-like movements of the earth. These pools and Subunit 2h (described below) have been referred to as either earthen slumps, or "sag" pools. In addition, the federally endangered San Diego fairy shrimp co-occurs within this subunit. Chiquita Ridge is within the San Juan Creek watershed and includes the perennial streams of Cañada Gobernadora and Trabuco Creek. Radio Tower Road—Subunit 2g (see next subunit description)—is also within this watershed (Dudek and Associates 2001b). Proposed Subunit 2f contains the physical and biological features

essential to the conservation of Riverside fairy shrimp, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 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 plant species and anthropogenic activities, including, grazing, discing, and water quality degradation. Please see the *Special Management Considerations or Protection* section of this proposed rule for a discussion of the threats to Riverside fairy shrimp habitat and potential management considerations. We are considering this subunit for exclusion under 4(b)(2) of the Act; please see Exclusions section of this proposed rule for more information.

Subunit 2g: Radio Tower Road

Subunit 2g is located in southern Orange County, California, east of Antonio Parkway, south/southwest of the Ortega Highway, and to the northwest of Trampas Canyon. Subunit 2g consists of 51 ac (21 ha) of privately owned land. Subunit 2g was not specifically identified in the 1998 Recovery Plan (Appendix F), but is classified as necessary to stabilize and protect (conserve) existing populations of Riverside fairy shrimp within the "Orange County Foothills (undescribed)" heading in Appendix F (Service 1998a, p. F1).

This subunit is considered essential for the recovery of Riverside fairy shrimp because it is currently occupied and includes one or more pools essential to maintain habitat function, genetic diversity, and species viability (Service 1998a, p. 65). Further, it is identified as essential because the basin contains appropriate depth and ponding duration, soils, elevation, and water chemistry (pH, temperature, salinity, etc.), which fulfill Riverside fairy shrimp's life-history needs. This site provides habitat for Riverside fairy shrimp as well as the federally endangered San Diego fairy shrimp. While this plan highlights the conservation value of the vernal pools at this site, the area has not yet been set aside as a preserve. One pool occurs at the northern end of the subunit, and a second pool occurs to the south. Subunit 2g contains the physical and biological features that are essential to the conservation of Riverside fairy shrimp, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils (Soper gravelly loams) that support ponding during winter and spring months (PCE 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 plant species and anthropogenic activities (e.g., grazing and fire management). Please see the *Special Management Considerations or Protection* section of this proposed rule for a discussion of the threats to Riverside fairy shrimp habitat and potential management considerations. We are considering this subunit for exclusion under 4(b)(2) of the Act; please see the Exclusions section of this proposed rule for more information.

Subunit 2h: San Onofre State Beach, State Park-Leased Lands

Subunit 2h is located along the border shared between Orange and San Diego Counties, southeast of Richard Steed Memorial Park, and north of Christianitos Road. Nearly one-half of this proposed subunit (105 ac (42 ha)) occurs on Department of Defense (DOD) land on MCB Camp Pendleton and is determined exempt under section 4(a)(3)(B)(i) of the Act. Notwithstanding, Subunit 2h consists of 105 ac (42 ha) of federally owned (DOD) land and 107 ac (43 ha) of privately owned land. The portion of Subunit 2h which falls within DOD land, the "Cal State Parks Lease" as described in the 2007 INRMP (U.S. Marine Corp 2007, p. 2–30) is part of a lease agreement made on September 1, 1971, for a 50-year term. At one time, approximately 24,000 acres of land at Camp Pendleton was outleased for sheep grazing (U.S. Marine Corp 2007, p. 2–29). Around 2003, all sheep grazing outleases were cancelled (U.S. Marine Corp 2007, p. 2–29). As the largest single leaseholder on the MCB Camp Pendleton, specific uses no longer include grazing but include within portions of Subunit 2h include: Military thoroughfares (roads), military training with advanced coordination, utility easements, fire suppression activities, and public recreation. Subunit 2h is a Riverside fairy shrimp location that was discovered after the 1993 listing rule and 1998 Recovery Plan were written.

This subunit is considered essential for the recovery of Riverside fairy shrimp because it is currently occupied and includes one or more pools essential to maintain habitat function, genetic diversity, and species viability (Service 1998a, p. 65). It represents an important ecological linkage for genetic exchange between the coastal mesa pools of San Diego and the Orange County Foothills occurrences. Further, it is identified as essential because the basin contains appropriate depth and ponding duration, soils, elevation, and water chemistry (pH, temperature, salinity, etc.), which fulfill Riverside fairy shrimp's life-history needs. Subunit 2h consists of two sag pools at the eastern section of the unit and its associated upland watersheds on land within Orange County near the City of San Clemente. Subunit 2h contains the physical and biological features that are essential to the conservation of Riverside fairy shrimp, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 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 plant species and anthropogenic activities (e.g., military activities, unauthorized recreational use, agricultural runoff, OHV use, and fire management). Please see the *Special Management Considerations or Protection* section of this proposed rule for a discussion of the threats to Riverside fairy shrimp habitat and potential management considerations. Essential habitat within the boundaries of Camp Pendleton has been exempted from critical habitat under section 4(a)(3)(B)(i) of the Act.

Subunit 2i: SCE Viejo Conservation Bank

Subunit 2i is located near the City of Lake Forest in southern Orange County, California. This subunit is bounded by Glenn Ranch Road to the north, El Toro Road to the southeast, and California Highway 241 to the southwest. Subunit 2i consists of 63 ac (25 ha) of privately owned land. Subunit 2i was not specifically identified in the 1998 Recovery Plan (Appendix F) but is classified as necessary to stabilize and protect (conserve) existing populations of Riverside fairy shrimp within the "Orange County Foothills (undescribed)" heading in Appendix F (Service 1998a, p. F1).

This subunit is considered essential for the recovery of Riverside fairy shrimp because it is currently occupied and includes one or more pools essential to maintain habitat function, genetic diversity, and species viability (Service 1998a, p. 65). Further, it is

identified as essential because the basin contains appropriate depth and ponding duration, soils, elevation, and water chemistry (pH, temperature, salinity, etc.), which fulfill Riverside fairy shrimp's life-history needs. Subunit 2i contains the physical and biological features that are essential to the conservation of Riverside fairy shrimp, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 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 plant species and anthropogenic activities (e.g., development, unauthorized recreational use, OHV use, and fire management). Please see the *Special Management Considerations or Protection* section of this proposed rule for a discussion of the threats to Riverside fairy shrimp habitat and potential management considerations. We are considering this subunit for exclusion under 4(b)(2) of the Act; please see the Exclusions section of this proposed rule for more information.

Unit 3: Riverside County Inland Valleys

Unit 3 is located in western Riverside County, California, and consists of 6 subunits totaling 865 ac (350 ha). This unit contains 54 ac (22 ha) of State land and 811 ac (328 ha) of private land. These totals do not include lands formerly identified in 2005 as essential within March Air Reserve Base (3b; 101 ac (41 ha)) and inside the Pechanga Band of Luiseño Mission Indians reservation (6 ac (2 ha)) near the City of Temecula. These areas have been removed from this proposed revised designation (see Summary of Changes from Previously Designated Critical Habitat section of this rule). This unit contains natural vernal pool complexes, detention ponds, and created (enhanced) ephemeral basins included within the general vicinity of the Back Basin of Lake Elsinore, pools north and east of the City of Murrieta, and pools on Mesa de Colorado atop the Santa Rosa Plateau. The six subunits contained within Unit 3 are: Australia Pool, Scott Road Pool, Schleuniger Pool, Skunk Hollow, and Field Pool (also known as Barry Jones Wetland Mitigation Bank) (all previously identified as essential but excluded under section 4(b)(2) in 2005) (Service 2005, p. 19195); Johnson Ranch Created Pools; and two recently discovered Riverside fairy shrimp occupied pools on Mesa de Colorado atop Santa Rosa Plateau (Selheim and Searcy 2010, p. 97).

Vernal pool and pool complexes in this unit are generally isolated to a degree from maritime influence, are greater than approximately 8 mi (15 km) in distance from the coast, and are representative of pools with alluvial or volcanic (basalt) soil types. Riverside fairy shrimp populations in this unit occur at the eastern limit of occupied habitat for Riverside fairy shrimp within the species' known range. The pools contain the primary constituent elements described above relating to ponding, consist of functionally intact watersheds, and possess appropriate underlying soil substrates (Los Posas loam, Los Posas rocky loam, Murrieta stony clay loam, Wyman loam, and Fallbrook rocky sandy loam) and appropriate topography and hydrology. Riverside County pools also are at the highest of all elevations among occupied pools for Riverside fairy shrimp, ranging from 385 m to 633 m (1,265 ft to 2,076 ft). All subunits within Riverside County are within the Western Riverside MSHCP.

Because Unit 3 occurs in an inland valley, and consists mainly of isolated pools (with the exception of the Santa Rosa Plateau) rather than the larger vernal pool complexes on coastal mesas, pools in this unit generally have larger watersheds and therefore represent a unique function and type of vernal pool habitat when compared to the other units. All subunits within this unit are known to be occupied, some recently documented (since 2005), including two pools recently confirmed as occupied by Riverside fairy shrimp on the Santa Rosa Plateau during a 2009 survey (Selheim and Searcy 2010, p. 98). This unit supports vernal pool complexes with several plant and animal genera endemic to California vernal pool habitats, including the federally endangered *Orcuttia californica, Pogogyne abramsii* (San Diego mesa mint), and vernal pool fairy shrimp (*Branchinecta lynchi*).

Subunit 3c: Australia Pool

Subunit 3c is located in the City of Lake Elsinore, northwest of Sedco Hills, in western Riverside County, California. This subunit is west of Interstate 15 and north of the Links at Summerly golf course, near the southeastern shore of Lake Elsinore. Subunit 3c consists of 19 ac (8 ha) of privately owned land. Subunit 3c was not identified in the 1998 Recovery Plan (Appendix F) (Service 1998a, p. F1). The pool is located in an area that has been graded, is approximately 0.94 acre (less than 1 ha) in size and 20 in (25.4 cm) deep, and is considered to be an artificially modified vernal pool (CNDDB, September 21, 2010).

This subunit is considered essential for the conservation of Riverside fairy shrimp because it was occupied at the time of listing and is currently occupied and includes one or more pools essential to maintain habitat function, genetic diversity, and species viability (Service 1998a, p. 65). Further, it is essential because the basin contains appropriate depth and ponding duration, soils, elevation, and water chemistry (pH, temperature, salinity, etc.), which fulfill Riverside fairy shrimp's life-history needs. Subunit 3c contains the physical and biological features that are essential to the conservation of Riverside fairy shrimp, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 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 plant species and anthropogenic activities (e.g., potential development, altered hydrology, OHV use, and water quality impacts). Please see the *Special Management Considerations or Protection* section of this proposed rule for a discussion of the threats to Riverside fairy shrimp habitat and potential management considerations. We are considering this subunit for exclusion under 4(b)(2) of the Act; please see Exclusions section of this proposed rule for more information.

Subunit 3d: Scott Road Pool

Subunit 3d is located in the City of Menifee in western Riverside County, California. This subunit is in the lot northeast of the intersection between Haleblain Road and Scott Road. Subunit 3d consists of 9 ac (4 ha) of privately owned land. Subunit 3d was not identified in the 1998 Recovery Plan (Appendix F) (Service 1998a, p. F1) as essential to the conservation of the species, because Subunit 3d had not been surveyed at the time it was written. However, this subunit was occupied at the time of listing and is currently occupied.

This subunit is considered essential for the recovery of Riverside fairy shrimp because it includes one or more pools essential to maintain habitat function, genetic diversity, and species viability (Service 1998a, p. 65). Further,

it is essential because the basin contains appropriate depth and ponding duration, soils, elevation, and water chemistry (pH, temperature, salinity, etc.), which fulfill Riverside fairy shrimp's life-history needs. Subunit 3d contains the physical and biological features that are essential to the conservation of Riverside fairy shrimp, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 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 plant species, agricultural activities, and residential/commercial development that occur in the vernal pool basins. Please see the *Special Management Considerations or Protection* section of this proposed rule for a discussion of the threats to Riverside fairy shrimp habitat and potential management considerations. We are considering this subunit for exclusion under 4(b)(2) of the Act; please see Exclusions section of this proposed rule for more information.

Subunit 3e: Schleuniger Pool

Subunit 3e is located in the City of Wildomar in western Riverside County, California. This subunit is bounded by Meadow Park Circle on the west and La Estrella Street to the south. Subunit 3e consists of 23 ac (9 ha) of privately owned land. Subunit 3e was not identified in the 1998 Recovery Plan (Appendix F) (Service 1998a, p. F1) as essential to the conservation of the species, because Subunit 3e had not been surveyed at the time it was written. However, this subunit was occupied at the time of listing and is currently occupied.

This subunit is considered essential for the recovery of Riverside fairy shrimp because it includes one or more pools essential to maintain habitat function, genetic diversity, and species viability (Service 1998a, p. 65). Further, it is essential because the basin contains appropriate depth and ponding duration, soils, elevation, and water chemistry (pH, temperature, salinity, etc.), which fulfill Riverside fairy shrimp's life-history needs. This vernal pool complex occurred naturally, but has been degraded from residential development and associated water discharge from surrounding properties. Subunit 3e contains the physical and biological features that are essential to the conservation of Riverside fairy shrimp, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 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 plant species and anthropogenic activities (e.g., residential water run-off and fire management). Please see the *Special Management Considerations or Protection* section of this proposed rule for a discussion of the threats to Riverside fairy shrimp habitat and potential management considerations. We are considering this subunit for exclusion under 4(b)(2) of the Act; please see Exclusions section of this proposed rule for more information.

Subunit 3f: Skunk Hollow and Field Pool (Barry Jones Wetland Mitigation Bank)

Subunit 3f is located in the City of Temecula in western Riverside County, California. This subunit is east of California Highway 79 and bounded by Murrieta Hot Springs Road to the south, Pourroy Road to the west, Bella Vista Sports Field off of Browning Street to the north, and Beeler Road to the east. Subunit 3f consists of 163 ac (66 ha) of privately owned land. Subunit 3f includes the Barry Jones Wetland Mitigation Bank, which comprises 140 acres (the 33-acre Skunk Hollow Pool and 107 acres of the pool's watershed). The Barry Jones Wetland Mitigation Bank was established in 1997 to serve as off-site compensatory mitigation for unavoidable impacts to wetland habitats (Center for Natural Lands Management 1997).

Subunit 3f contains areas identified in the 1998 Recovery Plan (Appendix F) as necessary to stabilize and protect (conserve) existing populations of Riverside fairy shrimp, as well as other proposed and listed vernal pool species. This subunit was occupied at the time of listing and is currently occupied.

This subunit is considered essential for the recovery of Riverside fairy shrimp because it includes one or more pools essential to maintain habitat function, genetic diversity, and species viability (Service 1998a, p. 65). Further, it is essential because the basin contains appropriate depth and ponding duration, soils, elevation, and water chemistry (pH, temperature, salinity, etc.), which fulfill Riverside fairy shrimp's life-history needs. The isolated pool at Skunk Hollow is a relatively large (up to 10 ac (4 ha)) pool, verging upon a vernal lake. It may remain wet through much of the year and only contain vernal pool plant species on its drying margins. This pool is the largest valley vernal pool remaining in all of southern California (Eriksen and Belk 1999, p. 104). This pool represents a set of physical (hydrological), ecological, and biological factors (including a unique vegetation assemblage) that make this pool different from other vernal pools in the species' range. Its habitat consists of a seasonally astatic (directionally changing) swale pool, deepened somewhat by excavation and located in a thin strip of disturbed coastal sage scrub and grassland vegetation (CNDDB 2010). It contains the physical and biological features that are essential to the conservation of Riverside fairy shrimp, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils (Willows silty clay) that support ponding during winter and spring months (PCE 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 plant species and anthropogenic activities (e.g., residential and commercial development, unauthorized recreational use, OHV use, and fire management). Please see the *Special Management Considerations or Protection* section of this proposed rule for a discussion of the threats to Riverside fairy shrimp habitat and potential management considerations. We are considering this subunit for exclusion under 4(b)(2) of the Act; please see Exclusions section of this proposed rule for more information.

Subunit 3g: Johnson Ranch Created Pools

Subunit 3g is located in the City of Temecula in western Riverside County, California. This subunit is approximately 1 mi (1.5 km) east of Subunit 3f and approximately 0.75 mi (1.25 km) south of Borel Road. Subunit 3g consists of 54 ac (22 ha) of State-owned land. Subunit 3g was not identified in the 1998 Recovery Plan (Appendix F) (Service 1998a, p. F1) because occupancy was established for Riverside fairy shrimp after the Recovery Plan was written.

This vernal pool complex is a Service-approved vernal pool restoration site created in January 2001. Seven basins (approximately 2 ac (0.8 ha) and a surrounding watershed of approximately 12 ac (5 ha)) were created to avoid permanent loss of the Riverside

fairy shrimp population at the Redhawk development (located in Temecula) and to offset adverse effects to Riverside fairy shrimp associated with grading, construction, and maintenance of the Redhawk residential development project. This subunit is considered essential to conservation and recovery of Riverside fairy shrimp because it is currently occupied; is located in a larger intact watershed free of adjacent commercial or residential development; includes one or more pools essential to maintain habitat function, genetic diversity, and species viability (Service 1998a, p. 65); represents an important historic population with a high baseline fairy shrimp density (at Redhawk properties) we determined was necessary to "provide[s] for long-term conservation of Riverside fairy shrimp and contribute[s] to an ongoing regional conservation effort, for the long-term survival of this endangered species" (Service 2001b, p. 11).

We are considering this subunit for exclusion under 4(b)(2) of the Act; please see Exclusions section of this proposed rule for more information.

Subunit 3h: Santa Rosa Plateau—Mesa de Colorado

Subunit 3h is located on the Santa Rosa Plateau near the City of Murrieta in western Riverside County, California. This subunit is east/northeast of the intersection between Via Volcano and Avocado Mesa roads. Subunit 3h consists of 597 ac (242 ha) of privately owned land; more than half of the land (348 ac (141 ha)) is owned and conserved by The Nature Conservancy within the Santa Rosa Plateau Ecological Reserve. Subunit 3h contains areas identified in the 1998 Recovery Plan (Appendix F) as necessary to stabilize and protect (conserve) existing populations of Riverside fairy shrimp, as well as other proposed and listed vernal pool species. The Santa Rosa Plateau pools are variable in size, ranging up to about 10 ac (4 ha) (vernal lake) and occur on the Mesa de Colorado and adjacent mesas on basalt (volcanic) flows. There are fewer than a dozen of these pools Statewide (Keeler-Wolf *et al.* 1998, p. 77).

This subunit is considered essential for the recovery of Riverside fairy shrimp because it is the last representative pool on the Southern Basalt Flow; it was occupied at the time of listing; is currently occupied; and it includes one or more pools essential to maintain habitat function, genetic diversity and species viability (Service 1998a, p. 65). Further, it is essential because the basin contains appropriate depth and ponding duration, clay-loam soils over granitic substrate, elevation, and water chemistry (pH, temperature, salinity, etc.), which fulfill Riverside fairy shrimp's life-history needs. Land within this subunit contain Las Posas loam, Ramona sandy loam, Willows silty clay, and Wyman loam soil series, and vegetation consists primarily of annual and needlegrass grassland and vernal pool habitats. Subunit 3h contains the physical and biological features that are essential to the conservation of Riverside fairy shrimp: Clay loam soil series underlain by heavy clay loams or clays derived from olivine basalt lava flows that generally occur on mesas and gentle to moderate slopes (2 to 15 percent slopes) (i.e., PCE 1, 3) and areas with a natural, generally intact surface and subsurface soil structure that support Riverside fairy shrimp (PCE 2). Subunit 3h supports a stable occurrence of Riverside fairy shrimp, provides potential connectivity between occurrences of Riverside fairy shrimp, supports a unique habitat type, and is at the highest elevation for Riverside fairy shrimp occupied pools throughout the species' range (2,076 ft (633 m)). Because these pools occur on an expansive mesa at higher altitude, they generally also have much larger watersheds for pool size, and represent a physically, ecologically, and genetically unique assemblage essential to the long-term conservation of the species. This unit also supports the federally endangered *Orcuttia californica* and supports the southernmost population of the vernal pool fairy shrimp.

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 plant species and anthropogenic activities (e.g., grazing, unauthorized recreational use, OHV use, fire management, and water quality discharge). Please see the *Special Management Considerations or Protection* section of this rule for a discussion of the threats to Riverside fairy shrimp habitat and potential management considerations. We are considering this subunit for exclusion under 4(b)(2) of the Act; please see Exclusions section of this proposed rule for more information.

Unit 4: San Diego Northern Coastal Mesa and Central Coastal Mesa Management Unit

Unit 4 is located in north and central coastal San Diego County, and includes vernal pools associated with coastal terraces north of the San Dieguito River (i.e., northern Coastal Mesa Management Unit, including MCB Camp Pendleton and the City of Carlsbad) and the coastal terraces and mesa of central San Diego County from the San Dieguito River south to San Diego Bay and north of the Sweetwater River (Central Coastal Mesa Management Unit; see Service 1998a, p. 43).

Within Unit 4, eight areas on MCB Camp Pendleton and one area on MCAS Miramar identified as essential habitat are exempt from this proposed revised critical habitat designation. These MCB Camp Pendleton areas are exempt under section 4(a)(3)(B)(i) of the Act because they are covered by the 2007 integrated natural resources management plan (INRMP), which provides a benefit to Riverside fairy shrimp (see Exemptions section of this proposed rule for a detailed discussion). MCB Camp Pendleton has several large vernal pool complexes that support Riverside fairy shrimp. Land exempt (1,929 ac (780 ha)) from critical habitat designation on MCB Camp Pendleton includes: San Onofre State Beach, State Park-leased lands, near Christianitos Creek foothills (along the northwest corner of MCB Camp Pendleton); area south of San Onofre State Beach, in Uniform Training Area; Las Pulgas North; Las Pulgas East; Las Pulgas West; Cockleburr North; Cockleburr South; and Stuart Mesa. All these pool complexes occur within the San Diego North Coastal Mesas Management Area as identified in the 1998 Recovery Plan.

Also exempt from this proposed revised critical habitat are the vernal pools within the San Diego Central Coastal Mesa Management Area, as identified in the 1998 Recovery Plan, which contains 59 ac (24 ha) of land, all on MCAS Miramar. MCAS Miramar is exempt in this proposed revised critical habitat designation for Riverside fairy shrimp under section 4(a)(3)(B)(i) of the Act because MCAS Miramar has completed an INRMP (U.S. Marine Corps 2006) that provides a benefit to Riverside fairy shrimp (see the Exemptions section of this proposed rule for a detailed discussion).

Subunit 4c: Poinsettia Lane Commuter Train Station

Subunit 4c is located adjacent to the City of Carlsbad in San Diego County, California. This subunit is loosely bounded by Avenida Encinas on the north, a housing development on the east, Poinsettia Lane on the south, and train tracks to the west. Subunit 4c consists of approximately 9 ac (3 ha) that contains 6 ac (2 ha) of public land owned by the North County Transit District, and 3 ac (1 ha) of private land.

Subunit 4c contains areas identified in the 1998 Recovery Plan (Appendix F) as necessary to stabilize and protect (conserve) existing populations of Riverside fairy shrimp, as well as other proposed and listed vernal pool species.

The subunit includes one or more pools essential to maintain habitat function, genetic diversity, and species viability (Service 1998a, p. 65). Further, it is identified as essential because the basin contains appropriate depth and ponding duration, soils, elevation, and water chemistry (pH, temperature, salinity, etc.), which fulfill Riverside fairy shrimp's life-history needs. Subunit 4c is an isolated habitat, representative of a unique type of vernal pool that no longer has extensive distribution. This vernal pool, north of San Dieguito River in San Diego County, and adjacent to the Poinsettia Lane Commuter Station in the City of Carlsbad, is representative of the last remaining coastal terrace vernal pool basin, with the exception of some vernal pool complexes located on MCB Camp Pendleton. The Poinsettia Lane vernal pools represent the most coastal location where the San Diego fairy shrimp and the Riverside fairy shrimp co-occur. Because this complex is associated with a remnant of coastal terrace habitat, has a unique community assemblage, and is one of the last remaining coastal occurrences of Riverside fairy shrimp, it is considered essential for the conservation of the species. The Poinsettia Lane vernal pool complex consists of a series of vernal pools that run parallel to a berm created by the train tracks. Subunit 4c contains the primary constituent elements relating to the pooling basins, watersheds, underling soil substrate and topography. Subunit 4c contains the physical and biological features that are essential to the conservation of Riverside fairy shrimp including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 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 plant species and activities (e.g., unauthorized recreational use and water quality discharge). Please see the *Special Management Considerations or Protection* section of this proposed rule for a discussion of the threats to Riverside fairy shrimp habitat and potential management considerations. We are considering this subunit for exclusion under 4(b)(2) of the Act; please see Exclusions section of this proposed rule for more information.

Unit 5: San Diego Southern Coastal Mesas

Unit 5 is located in Southern San Diego County and consists of eight subunits totaling 925 ac (375 ha). This unit contains 40 ac (16 ha) of federally owned land, 256 ac (104 ha) of State-owned land, 157 ac (64 ha) of locally owned land, and 472 ac (191 ha) of private land. This unit falls within the San Diego Southern Coastal Management Area, as identified in the 1998 Recovery Plan. Land proposed as critical habitat includes vernal pool complexes within the jurisdictions of the Service, City of San Diego, County of San Diego, Department of Homeland Security (Border Crossing, formerly INS), other DOD land, and private interests. This unit contains several mesa-top vernal pool complexes on western Otay Mesa (Bauder vernal pool complexes J2 N, J2 S, J2 W, J4, J5, J11 W, J11 E, J12, J15, J16–18, J33) and eastern Otay Mesa (Bauder pool complexes J29–31, and J33) as in Appendix D of City of San Diego (2004). These vernal pool complexes are associated with coastal mesas from the Sweetwater River south to the U.S.-Mexico International Border and represent the southern-most occurrences of Riverside fairy shrimp in the United States. This unit also contains most of the species' genetic diversity based on rangewide analyses, with Otay Mesa pools being significantly differentiated from one another (Lahti *et al.* 2010, p. 19). This area is essential to the conservation of the Riverside fairy shrimp for the following reasons: (1) These vernal pool complexes represent the few remaining examples of the much larger and mostly extirpated vernal pool complexes on the highly urbanized Otay Mesa (Bauder 1986); (2) recent genetic work indicates that complexes within this unit (J26, and J29–30) support Riverside fairy shrimp with a unique haplotype (B); and (3) it is only one of three locations that supports haplotype C (Lahti *et al.* 2010). Maintaining this unique genetic structure may be crucial in the conservation of this species.

Subunit 5a: Sweetwater (J33)

Subunit 5a is located in the City of San Diego in southern San Diego County, California. This subunit is at Sweetwater High School (site J33), south of the intersection between Otay Mesa and Airway roads. Subunit 5a consists of 2 ac (<1 ha) of locally owned land and <1 ac (0 ha) of private land. Subunit 5a contains areas identified in the 1998 Recovery Plan (Appendix F) as necessary to stabilize and protect (conserve) existing populations of Riverside fairy shrimp, as well as other proposed and listed vernal pool species.

This subunit is considered essential for the recovery of Riverside fairy shrimp because it includes one or more pools essential to maintain habitat function, genetic diversity, and species viability (Service 1998a, p. 65). Further, it is essential because the basin contains appropriate depth and ponding duration, soils, elevation, and water chemistry (pH, temperature, salinity, etc.), which fulfill Riverside fairy shrimp's life-history needs. This subunit is under the jurisdiction of the Sweetwater Union High School District. Subunit 5a contains the physical and biological features that are essential to the conservation of Riverside fairy shrimp, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils (Olivenhain cobbly loam soil series) that support ponding during winter and spring months (PCE 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 plant species and anthropogenic activities (e.g., unauthorized recreational use and OHV use). Please see the *Special Management Considerations or Protection* section of this proposed rule for a discussion of the threats to Riverside fairy shrimp habitat and potential management considerations.

Subunit 5b: Arnie's Point (J15)

Subunit 5b is located in the Otay Mesa region of southern San Diego County, California. This subunit is bounded by the U.S.-Mexico International Border to the south and a warehouse at the end of Calle de Linea to the east. Subunit 5b consists of 29 ac (12 ha) of federally owned land. Subunit 5b was not specifically identified in the 1998 Recovery Plan (Appendix F), but is classified as necessary to stabilize and protect (conserve) existing populations of Riverside fairy shrimp within the "J2, J5, J7, J11–21, J23–30 Otay Mesa" heading in Appendix F (Service 1998a, p. F1).

This subunit is considered essential for the recovery of Riverside fairy shrimp because it includes one or more pools essential to maintain habitat function, genetic diversity, and species viability (Service 1998a, p. 65). Further, it is essential because the basin contains

appropriate depth and ponding duration, soils, elevation, and water chemistry (pH, temperature, salinity, etc.), which fulfill Riverside fairy shrimp's life-history needs. Subunit 5b supports a stable occurrence of Riverside fairy shrimp and provides potential connectivity between occurrences of Riverside fairy shrimp in northern Mexico and southern San Diego. Subunit 5b contains the physical and biological features that are essential to the conservation of Riverside fairy shrimp, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 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 plant species and activities (e.g., military exercises and OHV use). Please see the *Special Management Considerations or Protection* section of this proposed rule for a discussion of the threats to Riverside fairy shrimp habitat and potential management considerations.

Subunit 5c: East Otay Mesa

Subunit 5c is located in the eastern Otay Mesa region of southern San Diego County, California. This subunit is approximately 1.75 mi (2.75 km) southeast of Kuebler Ranch and just north of the U.S.-Mexico International Border. Subunit 5c consists of 57 ac (23 ha) of privately owned land. These lands fall within the County of San Diego Subarea Plan under the San Diego MSCP. Subunit 5c was not specifically identified in the 1998 Recovery Plan (Appendix F), but is classified as necessary to stabilize and protect (conserve) existing populations of Riverside fairy shrimp within the "J2, J5, J7, J11–21, J23–30 Otay Mesa" heading in Appendix F (Service 1998a, p. F1). This subunit was occupied at the time of listing and is currently occupied.

This subunit is considered essential for the recovery of Riverside fairy shrimp because it includes one or more pools essential to maintain habitat function, genetic diversity, and species viability (Service 1998a, p. 65). Further, it is essential because the basin contains appropriate depth and ponding duration, soils, elevation, and water chemistry (pH, temperature, salinity, etc.), which fulfill Riverside fairy shrimp's life-history needs. The vernal pool in this subunit has been impacted by off-road vehicle use, cattle grazing, and nonnative grasses. Subunit 5c contains the physical and biological features that are essential to the conservation of Riverside fairy shrimp, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 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 plant species and anthropogenic activities (e.g., development, OHV use, water run-off, and grazing). Please see the *Special Management Considerations or Protection* section of this proposed rule for a discussion of the threats to Riverside fairy shrimp habitat and potential management considerations.

Subunit 5d: J29–31

Subunit 5d is located in the Otay Mesa region of southern San Diego County, California. This subunit is to the east and west of California Highway 125, south of the Otay Valley, and north of the U.S.-Mexico International Border. Subunit 5d consists of less than 1 ac (0 ha) of federally owned land, 211 ac (85 ha) of State-owned lands (Caltrans), and 159 ac (64 ha) of private land. Subunit 5d was not specifically identified in the 1998 Recovery Plan (Appendix F), but is classified as necessary to stabilize and protect (conserve) existing populations of Riverside fairy shrimp within the "J2, J5, J7, J11–21, J23–30 Otay Mesa" heading in Appendix F (Service 1998a, p. F1). This subunit was occupied at the time of listing and is currently occupied.

This subunit is considered essential for the recovery of Riverside fairy shrimp because it includes one or more pools essential to maintain habitat function, genetic diversity, and species viability (Service 1998a, p. 65). Further, it is essential because the basin contains appropriate depth and ponding duration, soils, elevation, and water chemistry (pH, temperature, salinity, etc.), which fulfill Riverside fairy shrimp's life-history needs. Subunit 5d is predominantly in the City of San Diego in San Diego County, California, although portions of pools J29–31 are within the County of San Diego's jurisdiction. This subunit contains a large area of habitat that supports sizable occurrences of Riverside fairy shrimp and provides potential connectivity between occurrences of Riverside fairy shrimp in Subunits 5e and 5c. This subunit contains several mesa-top vernal pool complexes on eastern Otay Mesa (Bauder vernal pool complexes J22, J29, J30, J31 N, J31 S as in Appendix D of City of San Diego, 2004, and Service GIS). Subunit 5d contains the physical and biological features that are essential to the conservation of Riverside fairy shrimp, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 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 plant species and anthropogenic activities (e.g., OHV use, unauthorized recreational use, impacts from development (including water run-off), and fire management). Please see the *Special Management Considerations or Protection* section of this proposed rule for a discussion of the threats to Riverside fairy shrimp habitat and potential management considerations.

We are considering a portion of this subunit for exclusion under 4(b)(2) of the Act; please see Exclusions section of this proposed rule for more information.

Subunit 5e: J2 N, J4, J5 (Robinhood Ridge)

Subunit 5e is located in the Otay Mesa region of southern San Diego County, California. This subunit is approximately 1 mi (1.5 km) east of Ocean View Hills Parkway, 0.6 mi (1 km) north of California Highway 905, and bounded by Vista Santo Domingo to the east. Subunit 5e consists of 32 ac (13 ha) of locally owned land and 12 ac (5 ha) of private land. Subunit 5e was not specifically identified in the 1998 Recovery Plan (Appendix F), but is classified as necessary to stabilize and protect (conserve) existing populations of Riverside fairy shrimp within the "J2, J5, J7, J11–21, J23–30 Otay Mesa" heading in Appendix F (Service 1998a, p. F1). This subunit was occupied at the time of listing and is currently occupied.

This subunit is considered essential for the recovery of Riverside fairy shrimp because it includes one or more pools essential to maintain habitat function, genetic diversity, and species viability (Service 1998a, p. 65). Further, it is essential because the basin contains appropriate depth and ponding duration, soils, elevation, and water chemistry (pH, temperature, salinity, etc.), which fulfill Riverside fairy shrimp's life-history needs. Subunit 5e contains the physical and biological features that are essential to the

conservation of Riverside fairy shrimp, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 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 plant species and anthropogenic activities (e.g., OHV use, unauthorized recreational use, impacts from development, and fire management). Please see the *Special Management Considerations or Protection* section of this proposed rule for a discussion of the threats to Riverside fairy shrimp habitat and potential management considerations.

Subunit 5f: J2 W and J2 S (Hidden Trails, Cal Terraces, and Otay Mesa Road)

Subunit 5f is located in the Otay Mesa region of southern San Diego County, California, and consists of three pool complexes. All complexes are located north of California Highway 905 and southwest of subunit 5e, with one complex in the lot southwest of Ocean View Hills Parkway, one bounded to the west by Hidden Trails Road, and one bounded by Corporate Center Drive to the west. Subunit 5f consists of 22 ac (9 ha) locally owned land and 11 ac (4 ha) of private land. Subunit 5f was not specifically identified in the 1998 Recovery Plan (Appendix F), but is classified as necessary to stabilize and protect (conserve) existing populations of Riverside fairy shrimp within the "J2, J5, J7, J11–21, J23–30 Otay Mesa" heading in Appendix F (Service 1998a, p. F1). This subunit was occupied at the time of listing and is currently occupied.

This subunit is considered essential for the recovery of Riverside fairy shrimp because it includes one or more pools essential to maintain habitat function, genetic diversity, and species viability (Service 1998a, p. 65). Further, it is essential because the basin contains appropriate depth and ponding duration, soils, elevation, and water chemistry (pH, temperature, salinity, etc.), which fulfill Riverside fairy shrimp's life-history needs. Subunit 5f contains the physical and biological features that are essential to the conservation of Riverside fairy shrimp, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 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 plant species and anthropogenic activities (e.g., OHV use; unauthorized recreational use; impacts from development, including water run-off; and fire management). Please see the *Special Management Considerations or Protection* section of this proposed rule for a discussion of the threats to Riverside fairy shrimp habitat and potential management considerations.

Subunit 5g: J14

Subunit 5g is located in the Otay Mesa region of southern San Diego County, California. This subunit is south of California Highway 905, southeast of Caliente Avenue, west of Heritage Road, and northwest of Spring Canyon. Subunit 5g consists of 45 ac (18 ha) of State-owned land (Caltrans), 18 ac (7 ha) of locally owned land, and 72 ac (29 ha) of private land. Subunit 5g was not specifically identified in the 1998 Recovery Plan (Appendix F), but is classified as necessary to stabilize and protect (conserve) existing populations of Riverside fairy shrimp within the "J2, J5, J7, J11–21, J23–30 Otay Mesa" heading in Appendix F (Service 1998a, p. F1). This subunit was occupied at the time of listing and is currently occupied.

This subunit is considered essential for the recovery of Riverside fairy shrimp because it includes one or more pools essential to maintain habitat function, genetic diversity, and species viability (Service 1998a, p. 65). Further, it is essential because the basin contains appropriate depth and ponding duration, soils, elevation, and water chemistry (pH, temperature, salinity, etc.), which fulfill Riverside fairy shrimp's life-history needs. Subunit 5g contains the physical and biological features that are essential to the conservation of Riverside fairy shrimp, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 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 plant species and anthropogenic activities (e.g., OHV use; unauthorized recreational use; impacts from development, including water run-off; and fire management). Please see the *Special Management Considerations or Protection* section of this proposed rule for a discussion of the threats to Riverside fairy shrimp habitat and potential management considerations.

Subunit 5h: J11 E and J11 W, J12, J16–18 (Goat Mesa)

Subunit 5h is located in the Otay Mesa region of southern San Diego County, California. This subunit is north and west of subunit 5b, bounded by the U.S.-Mexico International Border to the south, and dissected by Jeep Trail. Subunit 5h consists of 11 ac (4 ha) of federally owned (DHS lands), 83 ac (34 ha) of locally owned land, and 161 ac (65 ha) of privately owned land. The locally owned land is held by the City of San Diego, and the privately owned land includes holdings by Pardee Homes. Subunit 5h was not specifically identified in the 1998 Recovery Plan (Appendix F), but is classified as necessary to stabilize and protect (conserve) existing populations of Riverside fairy shrimp within the "J2, J5, J7, J11–21, J23–30 Otay Mesa" heading in Appendix F (Service 1998a, p. F1). This subunit was occupied at the time of listing and is currently occupied.

This subunit is considered essential for the recovery of Riverside fairy shrimp because it includes one or more pools essential to maintain habitat function, genetic diversity, and species viability (Service 1998a, p. 65). Further, it is essential because the basin contains appropriate depth and ponding duration, soils, elevation, and water chemistry (pH, temperature, salinity, etc.), which fulfill Riverside fairy shrimp's life-history needs. Subunit 5h contains the physical and biological features that are essential to the conservation of Riverside fairy shrimp, including ephemeral wetland habitat (PCE 1), intermixed wetland and upland habitats that act as the local watershed (PCE 2), and the topography and soils that support ponding during winter and spring months (PCE 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 plant species and anthropogenic activities (e.g., OHV use; unauthorized recreational use; impacts from development, including water run-off; and fire management). Please see the *Special Management Considerations or Protection* section of this proposed rule for a discussion of the threats to Riverside fairy shrimp habitat and potential management considerations.

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 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of "destruction or adverse modification" (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

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 section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, or are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we 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:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species, or avoid the likelihood of destroying or adversely modifying critical habitat, or both.

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 sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

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. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for Riverside fairy shrimp. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species. For Riverside fairy shrimp, this includes supporting viable vernal pools containing the species and the associated microwatersheds upon which the pools depend.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect Riverside fairy shrimp critical habitat, when carried out, funded, or authorized by a Federal agency, will require section 7 consultation. These activities include, but are not limited to:

(1) Actions that result in ground disturbance. Such activities could include, but are not limited to, residential or commercial development, OHV activity, pipeline construction, new road construction or widening, existing road maintenance, manure dumping, and grazing. These activities potentially impact the habitat and physical and biological features essential to Riverside fairy shrimp by damaging, disturbing, and altering soil composition through direct impacts, increased erosion, and increased nutrient content. Additionally, changes in soil composition may lead to changes in the vegetation composition, thereby changing the overall habitat type.

(2) Actions that would impact the ability of an ephemeral wetland to continue to provide habitat for Riverside fairy shrimp and other native species that require this specialized habitat type. Such activities could include, but are not limited to, water impoundment, stream channelization, water diversion, water withdrawal, and development activities. These activities could alter the biological and physical features essential to the conservation of Riverside fairy shrimp by eliminating ponding habitat; changing the duration and frequency of the ponding events on which this species relies; making the habitat too wet, thus allowing obligate wetland species to become established; making the habitat too dry, thus allowing upland species to become

established; causing large amounts of sediment or manure to be deposited in Riverside fairy shrimp habitat; or causing increased erosion and incising of waterways.

(3) Actions that result in alteration of the hydrological regimes typically associated with Riverside fairy shrimp habitat, including actions that would impact the soil and topography that cause water to pond during the winter and spring months. Such activities could include, but are not limited to, deep-ripping of soils, trenching, soil compaction, and development activities. These activities could alter the biological and physical features essential to the conservation of Riverside fairy shrimp by eliminating ponding habitat, impacting the impervious nature of the soil layer, or making the soil so impervious that water pools for an extended period that is detrimental to Riverside fairy shrimp (see Primary Constituent Elements for Riverside Fairy Shrimp section above). These activities could alter surface layers and the hydrological regime in a manner that promotes loss of soil matrix components, ponding regimes, or hydrological connectivity to upland habitats to support the growth and reproduction of Riverside fairy shrimp.

(4) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities, or any activity funded or carried out by a Federal agency that could result in excavation or mechanized land clearing of Riverside fairy shrimp critical habitat. These activities could alter the habitat in such a way that cysts of Riverside fairy shrimp are crushed, Riverside fairy shrimp are removed, or ephemeral wetland habitat is permanently altered.

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. We analyzed INRMPs developed by military installations located within the range of the proposed revised critical habitat designation for Riverside fairy shrimp to determine if they are exempt under section 4(a)(3) of the Act. The following areas are Department of Defense lands with completed, Service-approved INRMPs within the proposed revised critical habitat designation.

Approved INRMPs

MCB Camp Pendleton (Units 4 and portion of 2h)

In the previous final critical habitat designation for Riverside fairy shrimp, we exempted MCB Camp Pendleton from the designation (70 FR 19154; April 12, 2005). MCB Camp Pendleton completed their INRMP in November 2001, and updated the INRMP in March 2007 (U.S. Marine Corps 2007). The INRMP includes the following conservation measures for the Riverside fairy shrimp: (1) Surveys and monitoring, studies, impact avoidance and minimization, and habitat restoration and enhancement; (2) species survey information stored in MCB Camp Pendleton's GIS database and recorded in a resource atlas which is published and updated on a semi-annual basis; (3) application of a 984-ft (300-m) radius to protect the micro-watershed buffers around current and historic Riverside fairy shrimp locations; and (4) use of the resource atlas to plan operations and projects to avoid impacts to the Riverside fairy shrimp and to trigger section 7 consultations if an action may affect the species. These measures are established, ongoing aspects of existing programs and/or Base directives (e.g., Range and Training Regulations), or measures that are being implemented as a result of previous consultations.

MCB Camp Pendleton implements Base directives to avoid and minimize adverse effects to the Riverside fairy shrimp, such as: (1) Bivouac, command post, and field support activities should be no closer than 984 ft (300 m) to occupied Riverside fairy shrimp habitat year round; (2) Vehicle and equipment operations should be limited to existing road and trail networks year round; and (3) Environmental clearance is required prior to any soil excavation, filling, or grading. MCB Camp Pendleton has also demonstrated ongoing funding of their INRMP and management of endangered and threatened species. MCB Camp Pendleton continues to expend significant resources for management of federally listed species and habitat on their land, including management actions that provide a benefit for the Riverside fairy shrimp. Moreover, in partnership with the Service, MCB Camp Pendleton provides funding for Service biologists to assist in implementing their Sikes Act program and buffer land acquisition initiative.

Based on MCB Camp Pendleton's past funding history for listed species and their Sikes Act program (including the management of Riverside fairy shrimp), we believe there is a high degree of certainty that MCB Camp Pendleton will continue to implement the INRMP in coordination with the California Department of Fish and Game and with the Service in a manner that provides a benefit to the Riverside fairy shrimp. We also believe that there is a high degree of certainty that the conservation efforts of their INRMP will be effective. Service biologists work closely with MCB Camp Pendleton on a variety of endangered and threatened species issues, including the Riverside fairy shrimp. The management programs and Base directives to avoid and minimize impacts to the species are consistent with current and ongoing section 7 consultations with MCB Camp Pendleton.

Lands that contain the features essential to the conservation of

Riverside fairy shrimp are within the following areas: San Onofre State Beach, State Park-leased land (near the Christianitos Creek foothills (portion of Subunit 2h); see paragraph below for discussion), Oscar One, Oscar Two, Victor, area south of Onofre State Park (Uniform Training Area), Red Beach, and Tango (U.S. Marine Corps 2007, Section 4, pp. 51–76).

State Park-leased lands are treated under the Real Estate Agreements and Lease section in the INRMP. Base real estate agreements (e.g., leases, easements, outleases, and assignments) cover approximately 5,000 ac of the Base (not inclusive of leased acreage within cantonment areas). These agreements include easements for public utilities and transit corridors; leases to public educational and retail agencies; State Beach leases; and agricultural leases for row crop production and seed collection.

In the portion of Subunit 2h within MCB Camp Pendleton boundaries, permissible activities include military thoroughfares (use of roads), military training (with advanced coordination), fire suppression activities, and public recreational access. Lessees are required to manage the natural resources on the lands leased for their use consistent with the philosophies and supportive of the objectives of the Camp Pendleton INRMP. Each lessee that manages and/or controls use of lands leased from Camp Pendleton (e.g., State Parks, agriculture leases) is required to generate and submit a natural resources management plan for their leased lands for approval by the Base within one year of establishment of their lease or renewal. Lessees are also required to identify any activity that may affect federally regulated resources (e.g., listed species, wetlands, waters of the United States) and provide information and mitigation that may be required to support consultation with the applicable regulatory agency.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that all identified lands are subject to the MCB Camp Pendleton INRMP and that conservation efforts identified in the INRMP will provide a benefit to Riverside fairy shrimp and vernal pool habitat on MCB Camp Pendleton. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 1,929 ac (781 ha) of habitat in this proposed revised critical habitat designation because of this exemption.

MCAS Miramar (Within Unit 4)

In the previous final critical habitat designation for Riverside fairy shrimp, we exempted MCAS Miramar from the designation of critical habitat (70 FR 19154; April 12, 2005). MCAS Miramar completed an INRMP in May 2000, which was updated in October 2006 (Gene Stout and Associates *et al.* 2006). The INRMP is being implemented at MCAS Miramar. The INRMP provides for conservation, management, and protection of the Riverside fairy shrimp. The INRMP classifies nearly all of the vernal pool basins and watersheds on MCAS Miramar as a Level I Management Area. A Level I Management Area receives the highest conservation priority within the INRMP. Preventing damage to vernal pool resources is the highest conservation priority in management areas with the Level I designation. The conservation of vernal pool basins and watersheds in a Level I Management Area is achieved through educating base personnel; taking proactive measures to avoid accidental impacts, including signs and fencing; developing procedures to respond to and fix accidental impacts on vernal pools; and maintaining an updated inventory of vernal pool basins and associated vernal pool watersheds.

Since the completion of MCAS Miramar's INRMP, the Service has received reports on their vernal pool monitoring and restoration program and correspondence detailing the installation's expenditures on the objectives outlined in its INRMP. MCAS Miramar continues to monitor and manage its vernal pool resources. Ongoing programs include a study on the effects of fire management on vernal pool resources, vernal pool mapping, and species/vernal pool surveys. Based on the value MCAS Miramar's INRMP assigns to vernal pool basins and watersheds, and the management actions undertaken to conserve them, we find that the INRMP provides a benefit for the Riverside fairy shrimp.

Land that contains the features essential to the conservation of Riverside fairy shrimp is within the following area at MCAS Miramar: AA1 east complex, near the junction of Interstate 15 and Pomerado Road. Based on the aforementioned considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the INRMP provide a benefit to Riverside fairy shrimp and vernal pool habitat on 59 ac (24 ha) of habitat on the western portion of MCAS Miramar (Gene Stout and Associates *et al.* 2006, Section 7, pp. 17–23).

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the MCAS Miramar INRMP and that conservation efforts identified in the INRMP will provide a benefit to Riverside fairy shrimp occurring in habitats within or adjacent to MCAS Miramar. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 59 ac (24 ha) of habitat in this revised proposed critical habitat designation because of this exemption.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall 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 legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

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 exercise our delegated discretion on behalf of the Secretary to exclude a particular area from the designation, we 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 the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we may exercise our delegated 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, and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

In the case of Riverside fairy shrimp, the benefits of critical habitat include public awareness of Riverside fairy shrimp presence and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for Riverside fairy shrimp due to the protection from adverse modification or destruction of critical habitat. In practice, a Federal nexus exists only on Federal land or for projects undertaken, funded, or requiring authorization by a Federal agency.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to benefit national security; ameliorate disparate economic impacts; result in conservation; result in the continuation, strengthening, or encouragement of partnerships; or results in implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide. When we evaluate the existence of a conservation plan when considering the benefits of exclusion, 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 we determine that they do, 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.

Based on the information from our economic analysis, provided by entities seeking exclusion, as well as any additional public comments we receive, we will evaluate whether certain lands in the proposed revised critical habitat are appropriate for exclusion from the final designation pursuant to section 4(b)(2) of the Act. If we conclude that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then we may exercise our delegated discretion to exclude the lands from the final designation.

We are considering exercising our delegated discretion to exclude the following lands from the critical habitat designation for Riverside fairy shrimp: Subunits 2c; 2i; portions of Subunits 2dA, 2dB, and 2e; 2f; 2g; all of Unit 3 (Subunits 3c, 3d, 3e, 3f, 3g, and 3h); Unit 4; and a portion of Subunit 5d.

We are considering whether to exclude these areas because:

(1) Their value for conservation will be preserved for the foreseeable future by existing protective actions, or

(2) They are appropriate for exclusion under the "other relevant factor" provisions of section 4(b)(2) of the Act.

However, we specifically solicit comments on the inclusion or exclusion of these areas. In the paragraphs below, we provide a detailed analysis of our proposed exclusion of these lands under section 4(b)(2) of the Act.

TABLE 5—AREAS BEING CONSIDERED FOR EXCLUSION FROM THE RIVERSIDE FAIRY SHRIMP PROPOSED REVISED CRITICAL HABITAT UNDER SECTION 4(B)(2) OF THE ACT

Subunit by plan**	Acreage
Orange County Central-Coastal NCCP	
2c. (MCAS) El Toro	26 ac (11 ha)
2i. SCE Viejo Conservation Bank	63 ac (25 ha)
Subtotal for Orange County Central-Coastal Subregional NCCP/HCP	*89 ac (36 ha)*
Orange County Southern Subregion HCP	
2dA. Saddleback Meadows	4 ac (2 ha)
2dB. O'Neill Regional Park—near Trabuco Canyon	75 ac (30 ha)
2e. O'Neill Regional Park—near Cañada Gobernadora/east of Tijeras Creek	47 ac (19 ha)
2f. Chiquita Ridge	56 ac (23 ha)
2g. Radio Tower Road	51 ac (21 ha)
Subtotal for Orange County Southern Subregion HCP	*233 ac (94 ha)*
Western Riverside County MSHCP	
3c. Australia Pool	19 ac (8 ha)
3d. Scott Road Pool	9 ac (4 ha)
3e. Schleuniger Pool	23 ac (9 ha)
3f. Skunk Hollow and Field Pool (Barry Jones Wetland Mitigation Bank)	163 ac (66 ha)
3g. Johnson Ranch Created Pools	54 ac (22 ha)
3h. Santa Rosa Plateau—Mesa de Colorado	597 ac (242 ha)
Subtotal for Western Riverside County MSHCP	*865 ac (350 ha)*
San Diego MHCP—Carlsbad HMP	
4c. Poinsettia Lane Commuter Train Station (JJ2)	9 ac (4 ha)
Subtotal Carlsbad HMP under the San Diego MHCP	*9 ac (4 ha)*

TABLE 5—AREAS BEING CONSIDERED FOR EXCLUSION FROM THE RIVERSIDE FAIRY SHRIMP PROPOSED REVISED CRITICAL HABITAT UNDER SECTION 4(B)(2) OF THE ACT—Continued

Subunit by plan**	Acreage
County of San Diego Subarea Plan under the MSCP	
5d. J29–31 (portion)	23 ac (9 ha)
Subtotal County of San Diego Subarea Plan under the MSCP	*23 ac (9 ha)*
Total	1,219 ac (493 ha)*

* Values in this table may not sum due to rounding.

** All lands that fall within the boundaries of an HCP are being considered for exclusion, with the exception of the City of San Diego Subarea Plan. Because the Riverside fairy shrimp is no longer a covered species under the City of San Diego's Subarea Plan under the MSCP (City relinquished their permit on April 20, 2010), we are not considering for exclusion critical habitat areas falling within the boundary of the City of San Diego Subarea Plan.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing a new analysis of the economic impacts of the proposed revised critical habitat designation and related factors.

We prepared and finalized an analysis of the economic impacts for the previous proposed critical habitat designation (Economic and Planning Systems, Inc. 2005). That economic analysis determined that retrospective costs (costs since listing, 1993–2004) total $400 million. Total prospective costs of the 2004 proposed rule were $70 to $370 million in impacts that may occur in the 20 years (2004–2024) following the proposed designation of critical habitat. Based on the 2004 economic analysis, we concluded that the designation of critical habitat for Riverside fairy shrimp, as proposed in 2004, would not result in significant small business impacts. This analysis is presented in the notice of availability for the economic analysis published in the **Federal Register** on October 19, 2004 (69 FR 61461).

The prior economic analysis included costs coextensive with the listing of the species, in other words, costs attributable to the listing of the species as well as costs attributable to the designation of critical habitat. Because the Act directs the Secretary to consider the economic impacts of specifying any particular area as critical habitat, we believe the appropriate framework for analysis is to compare the costs associated with actions in a world with critical habitat to those costs likely to be incurred in the absence of critical habitat designation. Our new analysis will therefore focus on the specific costs attributable to designating the areas proposed in this proposed rule as critical habitat.

We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov,* or by contacting the Carlsbad Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT** section). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat for reasons of national security. We consider whether there are lands owned or managed by the DOD or Department of Homeland Security (DHS) where a national security impact might exist. In preparing this proposal, we have exempted from the designation of critical habitat those Department of Defense lands with completed INRMPs determined to provide a benefit to Riverside fairy shrimp but where a national security impact may exist. Areas identified as owned and managed by DOD on MCB Camp Pendleton and MCAS Miramar that are exempt from critical habitat designation under section 4(a)(3) of the Act are discussed in the Exemptions section above. We are not proposing any lands for exclusions based on national security impacts under section 4(b)(2) of the Act in this proposed revised critical habitat.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We take into account a number of factors including whether there are habitat conservation plans (HCPs) or other management plans covering an 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.

Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships

We are considering the exclusion of current land management or conservation plans (HCPs as well as other types) that include measures to protect and manage Riverside fairy shrimp and its habitat.

We are considering the exclusion of non-Federal lands covered by the Orange County Central-Coastal NCCP/HCP, the Orange County Southern Subregion HCP, the Western Riverside County MSHCP, City of Carlsbad HMP under the San Diego MHCP, and County of San Diego Subarea Plan under the MSCP that provide measures to protect Riverside fairy shrimp and its habitat (see Table 5 above for a list of areas we are considering for exclusion). Portions of the proposed revised critical habitat units for Riverside fairy shrimp may warrant exclusion from the designation of critical habitat under section 4(b)(2) of the Act based on the partnerships, management, and protection afforded under these approved and legally operative HCPs that are redundant with, and thus reduce the benefits provided by critical habitat designation. Only lands that fall within HCP boundaries are being considered for exclusion. All lands that fall within the boundaries of an HCP are being considered for

exclusion, with the exception of the City of San Diego Subarea Plan. Because the Riverside fairy shrimp is no longer a covered species under the City of San Diego's Subarea Plan under the MSCP (City relinquished their permit on April 20, 2010; see below), we are not considering excluding critical habitat areas falling within the boundary of the City of San Diego Subarea Plan. In this proposed rule, we are seeking input from the HCP stakeholders and the public as to reasons supporting whether or not we should exercise our delegated discretion to exclude these areas from the final critical habitat designation. We are requesting comments on the benefit to Riverside fairy shrimp from these plans (see Public Comments section).

We are not considering the exclusion of non-federal lands covered by the City of San Diego Subarea Plan under the MSCP. Based on a 2006 Federal district court ruling in *Center for Biological Diversity* v. *Bartel,* 98–CV–2234 (S.D.Cal.), the court enjoined the incidental take permit issued to the City of San Diego based on the City's Subarea Plan, as it applied to Riverside fairy shrimp and six other vernal pool species. The court held that the City's Subarea Plan does not provide adequate protection for Riverside fairy shrimp as a result of Plan deficiencies and in light of *Solid Waste Agency of Northern Cook County (SWANCC)* v. *U.S. Army Corps of Engineers,* 531 U.S. 159 (2001). As a result, the City surrendered permit coverage for seven vernal pool species, including Riverside fairy shrimp on April 20, 2010, and the Service cancelled the permit insofar as it applied to the seven species on May 14, 2010. Because the Riverside fairy shrimp is no longer a covered species under the City of San Diego's Subarea Plan under the MSCP, we are not considering for exclusion critical habitat areas falling within the boundary of the City of San Diego Subarea Plan. The City is currently preparing a new HCP to obtain incidental take coverage for the Riverside fairy shrimp and other vernal pool species. Despite the City's relinquishment of their permit, 54 percent, or 1,369 pools of all currently identified vernal pool habitat within the boundaries of the City's subarea plan have been conserved by covenant of easement, conservation easement, or dedication in fee title to the City (City of San Diego 1997, 2006). The City continues to monitor and manage vernal pools in support of the MSCP.

Orange County Central-Coastal NCCP

The Orange County Central-Coastal NCCP/HCP was developed in cooperation with numerous local jurisdictions, State agencies and participating landowners, including the cities of Anaheim, Costa Mesa, Irvine, Orange, and San Juan Capistrano; Southern California Edison; Transportation Corridor Agencies; The Irvine Company; California Department of Parks and Recreation; Metropolitan Water District of Southern California; and the County of Orange. Approved in 1996, the Central-Coastal NCCP/HCP provides for the establishment of approximately 38,738 ac (15,677 ha) of reserve land for 39 Federal or State-listed and unlisted sensitive species within the 208,713 ac (84,463 ha) plan area in central and coastal Orange County. The Orange County Central-Coastal NCCP/HCP is a multi-species conservation program that minimizes and mitigates expected habitat loss and associated incidental take of covered species within the plan area. The "Reserve System" created pursuant to the NCCP/HCP is designed to function effectively as a multiple-habitat and multiple-species reserve that specifically includes vernal pool habitat and Riverside fairy shrimp (R.J. Meade Consulting, Inc. 1996).

The Orange County Central—Coastal NCCP/HCP provides for monitoring and adaptive management of covered species and their habitat within this Reserve System (Consultation #1–6–FW–24, Service 1996, pp. 1–4). Conditionally covered species, including the Riverside fairy shrimp, receive protection not only through the establishment and management of the Reserve System, but also additional mitigation measures specified in the NCCP/HCP and Implementing Agreement (IA) (Service 1996, p. 6). Under the NCCP/HCP, incidental take for Riverside fairy shrimp is limited to highly degraded or artificial vernal pools. Take of Riverside fairy shrimp in non-degraded, natural vernal pool habitat is not authorized. If a planned activity will affect Riverside fairy shrimp in a highly degraded or artificial vernal pool, it "must be consistent with a mitigation plan that: 1) Addresses design modifications and other on-site measures that are consistent with the project's purposes, minimizes impacts, and provides appropriate protections for vernal pool habitat, 2) provides for compensatory vernal pool habitat restoration/creation at an appropriate location (which may include the reserve or other open space) and includes relocation of potential cyst-bearing soils, and 3) provides for monitoring and adaptive management of vernal pools consistent with Chapter 5 of this NCCP" (R.J. Meade Consulting, Inc. 1996; p. 97).

Permittees implement the above conservation measures for Riverside fairy shrimp and other covered species over the 75-year permit term, as well as provide commitments in perpetuity regarding habitat protection for lands in the Reserve System and commitments outlined in the IA (R.J. Meade Consulting 1996, p. 12). The Service acknowledged in the IA that the Orange County Central-Coastal NCCP/HCP provides for the conservation, protection, restoration, enhancement, and management of the species covered under the plan (including Riverside fairy shrimp) and their habitats.

To date, monitoring and management related to Riverside fairy shrimp have included reserve-wide vernal pool surveys conducted from 1997 through 2001 and ongoing control of invasive nonnative vegetation in the upland environment. We are considering exercising our delegated discretion to exclude a total of 89 ac (36 ha) of land that are owned by or are under the jurisdiction of the permittees of the Orange County Central-Coastal NCCP/HCP (see Table 5 above).

Orange County Southern Subregion HCP

A large-scale HCP encompassing approximately 86,021 ac (34,811 ha) in southern Orange County, 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 Southern Subregion HCP was developed in support of applications for incidental take permits for 32 covered species, including Riverside fairy shrimp, by the County of Orange (County), Rancho Mission Viejo, LLC (Rancho Mission Viejo), and the Santa Margarita Water District (Water District) in connection with proposed residential development and related actions in southern Orange County. The Service issued permits based on the plan on January 10, 2007. The permit and plan cover a 75 year period.

The Southern Subregion HCP provides for the conservation of covered species, including Riverside shrimp, through the establishment of an approximately 30,426 ac (12,313 ha) habitat reserve and 4,456 ac (1,803 ha) of supplemental open space areas (Service 2007, p. 19), which primarily consists of land owned by Rancho Mission Viejo and three pre-existing County parks (Service 2007, pp. 10, 19). Subunits 2g and 2h fall within the boundaries of the habitat reserve of this HCP.

The Southern Subregion HCP is expected to provide benefits for the conservation of Riverside fairy shrimp through the implementation of the following conservation measures: conservation of vernal pools within the habitat reserve; minimizing impacts to vernal pools from development; maintaining water quality/quantity; controlling non-native invasive species; managing livestock grazing; and minimizing human access and disturbance. Specifically, any development must be located at least 1000 ft. (305 m) away from the vernal pools and be built at a lower elevation than the vernal pools to avoid hydrological alterations (Service 2007, p. 133). Water quality monitoring will be conducted throughout the life of the permit at occupied vernal pools near development (Service 2007, p. 133).

We acknowledged in the Implementing Agreement for the Orange County Southern Subregion HCP that the conservation strategy for this HCP provides a comprehensive, habitat-based approach to the protection of covered species and their habitats by focusing on the lands and aquatic resource areas essential for the long-term conservation of the covered species (including Riverside fairy shrimp) and by providing for appropriate management for those lands (Dudek 2007, p. 64). This acknowledgement was made for habitat within Subarea 1, which includes all of the habitat reserve lands, including Subunits 2g and 2h of the proposed critical habitat.

The Orange County Southern Subregion HCP currently provides conservation for the Riverside fairy shrimp habitat at O'Neill Regional Park, Chiquita Ridge, and Radio Tower Road, all within Unit 2, most of which is within the boundaries of the HCP. Unit 2g consists of 51 ac (21 ha), all of which is private land within the HCP. Unit 2f consists of 56 ac (23 ha) that is also private land within the HCP. Portions of Subunits 2dA (4 ac (2 ha)), 2dB (75 ac (30 ha)), and 2e (47 ac (19 ha)) also fall within the boundaries of the HCP. The land is conserved with conservation easements, and funds were designated for the management of this area to benefit vernal pool species, including Riverside fairy shrimp (Service 2007, pp. 15–17). We are considering exercising our delegated discretion to exclude a total of 233 ac (94 ha) of land that falls within the jurisdiction of the Orange County Southern Subregion HCP (see Table 5 above). We intend to exclude critical habitat from areas covered by the Orange County Southern Subregion HCP based on the protections outlined above and per the provisions laid out in the IA, to the extent consistent with the requirements of 4(b)(2) of the Act. We encourage any public comment in relation to our consideration of the areas in portions of Subunits 2dA, 2dB, 2e, and subunits 2g and 2h for inclusion or exclusion (see Public Comments section above).

Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP)

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. The Western Riverside County MSHCP addresses 146 listed and unlisted "covered species," including Riverside fairy shrimp. The Western Riverside County MSHCP is a multispecies conservation program designed to minimize and mitigate the expected loss of habitat and associated incidental take of covered species resulting from covered development activities in the plan area. On June 22, 2004, the Service issued a single incidental take permit under section 10(a)(1)(B) of the Act to 22 permittees under the Western Riverside County MSHCP to be in effect for a period of 75 years (Service 2004). Core areas for Riverside fairy shrimp at Skunk Hollow and Field Pool (Barry Jones Wetland Mitigation Bank), Lake Elsinore Back Basin (Australia pool), and Murrieta (Schleuniger pool) will be conserved or will remain within the MSHCP Conservation Area. The Plan provides for the survival of the species within the Plan Area by ensuring the species is conserved within 90 percent of occupied areas with long-term conservation value, and will support recovery by enhancing habitat conserved for the species.

The Western Riverside County MSHCP, when fully implemented, will establish approximately 153,000 ac (61,917 ha) of new conservation lands (Additional Reserve Lands) to complement the approximate 347,000 ac (140,426 ha) of preexisting natural and open space areas (Public/Quasi-Public (PQP) lands) in the plan area. PQP lands include those under ownership of public agencies, primarily the U.S. Forest Service (USFS) and Bureau of Land Management (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 configuration and composition of the ARL are described in text within the bounds of the approximately 310,000-ac (125,453-ha) criteria area. ARL lands are being acquired and conserved as part of the ongoing implementation of the Western Riverside County MSHCP.

Species-specific conservation objectives are included in the Western Riverside County MSHCP for Riverside fairy shrimp. One objective is to conserve at least 11,942 ac (4,833 ha) of occupied or suitable habitat for the species. In addition, other areas within the Criteria Area identified as important for the Riverside fairy shrimp will be conserved. This objective is intended to be met through implementation of the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools policy under the Plan, which states that for occupied properties, 90 percent of the area that provides long-term conservation value for Riverside fairy shrimp shall be conserved. We acknowledged in section 14.10 of the Implementing Agreement (IA) for the Western Riverside County MSHCP that the plan provides a comprehensive, habitat-based approach to the protection of covered species, including Riverside fairy shrimp, by focusing on lands essential for the long-term conservation of the covered species and appropriate management for those lands (WRCRCA *et al.* 2003, p. 51).

Consistent with the terms of the IA we are considering exercising our delegated discretion to exclude 865 ac (350 ha) of Riverside fairy shrimp habitat on permittee-owned or controlled land in Unit 3 that meets the definition of critical habitat for Riverside fairy shrimp within the Western Riverside County MSHCP under section 4(b)(2) of the Act. The 1993 final listing rule for Riverside fairy shrimp attributed the primary threat from present or threatened destruction, modification or curtailment of its habitat or to: urban and agricultural development, off-road vehicle use, cattle trampling, human trampling, road development, military activities, and water management activities (58 FR 41387; August 3, 1993). The 1993 final listing rule also identified other natural and manmade factors including introduction of nonnative plant species, competition with invading species, trash dumping, fire, fire suppression activities, and drought (58 FR 41389; August 3, 1993) as primary threats to Riverside fairy shrimp. The Western Riverside County MSHCP helps to address these threats through a regional planning effort, and

outlines species-specific objectives and criteria for the conservation of Riverside fairy shrimp. We intend to exclude critical habitat from areas covered by the Western Riverside County MSHCP based on the protections outlined above and per the provisions laid out in the IA, to the extent consistent with the requirements of 4(b)(2) of the Act. We encourage any public comment in relation to our consideration of the areas in Unit 3 for inclusion or exclusion (see Public Comments section above).

Multiple Habitat Conservation Program (MHCP), in San Diego County—Carlsbad HMP

The Multiple Habitat Conservation Program (MHCP) is a comprehensive, multi-jurisdictional, planning program designed to create, manage, and monitor an ecosystem preserve in northwestern San Diego County. The MHCP is also a subregional plan under the State of California's Natural Communities Conservation Plan (NCCP) program that was developed in cooperation with California Department of Fish and Game (CDFG). The MHCP preserve system (i.e., focused planning area or FPA) is intended to protect viable populations of native plant and animal species and their habitats in perpetuity, while accommodating continued economic development and quality of life for residents of northern San Diego County. The MHCP includes an approximately 112,000-ac (45,324-ha) study area within the cities of Carlsbad, Encinitas, Escondido, San Marcos, Oceanside, Vista, and Solana Beach. These cities will implement their respective portions of the MHCP through subarea plans. Only the City of Carlsbad has completed its subarea plan at this time, which is called the Carlsbad Habitat Management Plan (Carlsbad HMP). The section 10(a)(1)(B) incidental take permit and Implementing Agreement for the City of Carlsbad HMP were issued on November 12, 2004 (Service 2004c). Conservation requirements within the Carlsbad HMP for Riverside fairy shrimp include conserving 100 percent of the known Riverside fairy shrimp habitat and implementation of the MHCP's narrow endemic and no-net-loss of wetlands (including vernal pools) policies for any additional vernal pools discovered in MHCP planning area These policies require all vernal pools and their watersheds within the MHCP study area to be 100 percent conserved, regardless of occupancy by Riverside fairy shrimp and regardless of location inside or outside of the FPA, unless doing so would remove all economic uses of a property. In the event that no project alternative is feasible that avoids all impacts on a particular property, the impacts must be minimized and mitigated to achieve no net loss of biological functions and values (Service 2004, p. 330).

Unit 4c covers the Poinsettia Commuter Train Station vernal pool complex within the Carlsbad HMP, and consists of 9 ac (4 ha); 3 ac (1 ha) of private property and a 6-ac (2-ha) property owned by the North County Transit District. The Poinsettia Commuter Train Station vernal pool complex supports the only known occurrence of Riverside fairy shrimp within the boundaries of the Carlsbad HMP. The Riverside fairy shrimp is a conditionally-covered species under the Carlsbad HMP, and the City of Carlsbad will receive full coverage for this species when the Poinsettia Commuter Train Station vernal pool complex is managed, monitored and protected in perpetuity, as outlined in the biological opinion for the Carlsbad HMP (Service 2004, pp. 327–33). While funds have been designated through past consultations for managing and monitoring of these properties to benefit vernal pool species, including Riverside fairy shrimp, a long-term manager has not been identified and no one is currently managing or monitoring these properties. In addition, the properties are not protected with recorded conservation easements.

We agreed in the Implementing Agreement (IA) for the Carlsbad HMP that we would consider the Carlsbad HMP in the preparation of any proposed critical habitat designation for a covered species, and further acknowledged that the Carlsbad HMP incorporates special management actions to manage covered species and their habitats in a manner that will provide for the conservation of the covered species, including Riverside fairy shrimp (City of Carlsbad *et al.* 2004, p. 17).

We are considering exercising our delegated discretion to exclude under section 4(b)(2) of the Act a total of 9 ac (4 ha) that meet the definition of critical habitat for Riverside fairy shrimp within the Carlsbad HMP under the MHCP. We will analyze the benefits of inclusion and the benefits of exclusion of the area covered by this subarea plan in the final revised critical habitat rule for Riverside fairy shrimp. We encourage any public comment in relation to our consideration of the areas in Subunit 4c for exclusion (see Public Comments section above).

San Diego Multiple Species Conservation Program (MSCP)—County of San Diego Subarea Plan

Riverside fairy shrimp is covered under the County of San Diego Subarea Plan. We are considering exercising our delegated discretion to exclude lands covered by this plan (see Table 5 for a list of the areas that we are considering for exclusion). Portions of the proposed revised critical habitat units for Riverside fairy shrimp may warrant exclusion from the designation of critical habitat under section 4(b)(2) of the Act based on the partnerships, management, and protection afforded under this approved and legally operative HCP that are redundant with protections provided by critical habitat designation. Only lands that fall within HCP boundaries are being considered for exclusion. In this proposed rule, we are seeking input from the HCP stakeholders and the public as to reasons supporting whether or not we should exclude these areas from the final critical habitat designation.

The Multiple Species Conservation Program (MSCP) is a comprehensive habitat conservation planning program that encompasses 582,243 ac (235,626 ha) within 12 jurisdictions of southwestern San Diego County. The MSCP is a subregional plan that identifies the conservation needs of 85 federally listed and sensitive species, including the Riverside fairy shrimp, and serves as the basis for development of subarea plans by each jurisdiction in support of section 10(a)(1)(B) permits. The subregional MSCP identifies where mitigation activities should be focused, such that upon full implementation of the subarea plans approximately 171,920 ac (69,574 ha) of the 582,243-ac (235,626-ha) MSCP plan area will be preserved and managed for covered species. The MSCP also provides for a regional biological monitoring program, and Riverside fairy shrimp is identified as a first priority species for field monitoring.

Consistent with the MSCP, the conservation of Riverside fairy shrimp is addressed in the County of San Diego Subarea Plan. The County of San Diego Subarea Plan identifies areas that are hard-lined for conservation and areas where mitigation activities should be focused to assemble its preserve (i.e., Pre-approved Mitigation Area). Implementation of the County of San Diego Subarea Plan will result in a minimum 98, 379-ac (39,813 ha) preserve area.

Subunit 5d is within the County of San Diego Subarea Plan and is identified as a hard-lined preserve area.

These hard-lined preserve lands were designated in conjunction with the Otay Ranch Specific plan and are to be conveyed to a land manager (e.g., County or Federal government) in phases such that 1.18 ac (0.48 ha) is conserved for every 1 ac (0.40 ha) developed. A natural resource management plan has been developed that addresses the preservation, enhancement, and management of sensitive natural resources on the 22,899-ac (9,267ha) Otay Ranch hard-lined preserve area (MSCP 1997, pp. 3–15).

In Section 9.17 of the Implementing Agreement (IA) for the Subarea Plan we agreed to consider the MSCP and County of San Diego Subarea Plan in our preparation of any proposed critical habitat designations concerning any covered species, including Riverside fairy shrimp (Service *et al.* 1998, p. 23).

We are considering exercising our delegated discretion to exclude from critical habitat a portion of subunit 5d covered by the County of San Diego Subarea Plan under section 4(b)(2) of the Act. This area encompasses approximately 23 ac (9 ha) of land.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment during the public comment period on our specific assumptions and conclusions in this proposed revised designation of critical habitat.

We will consider all comments and information we receive during the comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (Regulatory Planning and Review). OMB bases its determination upon the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 801 *et seq.*), 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 effect of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the RFA to require Federal agencies to provide a certification statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

We are preparing a new analysis of the economic impacts of this proposed revision to critical habitat for Riverside fairy shrimp. At this time, we lack current economic information necessary to provide an updated factual basis for the required RFA finding with regard to this proposed revision to critical habitat. Therefore, we defer the RFA finding until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and Executive Order 12866. Upon completion of the draft economic analysis, we will announce availability of the draft economic analysis of the proposed designation in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. We have concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect the designation of this proposed critical habitat to significantly affect energy supplies, distribution, or use. Based on an analysis conducted for the previous designation of critical habitat and extrapolated to this designation, along with a further analysis of the additional areas included in this revision, we determined that this proposed rule to designate revised critical habitat for Riverside fairy shrimp is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that

"would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or Tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not expect this rule to significantly or uniquely affect small governments. Small governments would be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions would not adversely affect the critical habitat. Therefore, a Small Government Agency Plan is not required. However, as we conduct our economic analysis for the rule, we will further evaluate this issue and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for Riverside fairy shrimp 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 designation of revised critical habitat for Riverside fairy shrimp would not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed 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 proposed critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by the Riverside fairy shrimp imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical and biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat essential to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), it has been determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed to revise critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the elements of the physical and biological features essential to the conservation of Riverside fairy shrimp within the designated areas to assist the public in understanding the habitat needs of the species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We determined that there are no tribal lands that were occupied by Riverside fairy shrimp at the time of listing that contain the features essential to the conservation of the species, and no tribal lands unoccupied by Riverside fairy shrimp that are essential for the conservation of the species. Therefore, we are not proposing to designate critical habitat for Riverside fairy shrimp on tribal lands. We will continue to coordinate with tribal governments as applicable during the designation process.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of 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.

Proposed Regulation Promulgation

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

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

2. In § 17.95, amend paragraph (h) by revising the entry for "Riverside Fairy Shrimp (*Streptocephalus woottoni*)" to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(h) *Crustaceans.*

* * * * *

Riverside Fairy Shrimp (*Streptocephalus woottoni*)

(1) Unit descriptions are depicted for Ventura, Orange, Riverside, and San Diego Counties, California, on the maps below.

(2) Within these areas, the primary constituent elements of the physical and biological features essential to the conservation of Riverside fairy shrimp consist of three components:

(i) Ephemeral wetland habitat consisting of vernal pools and ephemeral habitat that have wet and dry periods appropriate for the incubation, maturation, and reproduction of Riverside fairy shrimp in all but the driest of years, such that the pools:

(A) Are inundated (pond) approximately 2 to 8 months during winter and spring, typically filled by rain, surface and subsurface flow;

(B) Generally dry down in the late spring to summer months;

(C) May not pond every year; and

(D) Provide the suitable water chemistry characteristics to support Riverside fairy shrimp. These characteristics include physiochemical factors such as alkalinity, pH, temperature, dissolved solutes, dissolved oxygen, which can vary depending on the amount of recent precipitation, evaporation, or oxygen saturation; time of day; season; and type and depth of soil and subsurface layers. Vernal pool habitat typically exhibits a range of conditions but remains within the physiological tolerance of the species. The general ranges of conditions include but are not limited to:

(*1*) Dilute, freshwater pools with low levels of total dissolved solids (low ion levels (sodium ion concentrations generally below 70 mmol/l);

(*2*) Low alkalinity levels (lower than 80 to 1,000 milligrams per liter (mg/l)), and

(*3*) A range of pH levels from neutral to alkaline (typically in range of 6.4–7.1).

(ii) Intermixed wetland and upland habitats that function as the local watershed, including topographic features characterized by mounds, swales, and low-lying depressions within a matrix of upland habitat that result in intermittently flowing surface and subsurface water in swales, drainages, and pools described in paragraph (h)(2(i) of this entry. Associated watersheds provide water to fill the vernal or ephemeral pools in the winter and spring months. Associated watersheds vary in size and therefore cannot be generalized, and they are affected by factors including surface and underground hydrology, the topography of the area surrounding the pool or pools, the vegetative coverage, and the soil substrates in the area. Size of associated watershed likely varies from a few acres to greater than 100 ac (40 ha).

(iii) Soils that support ponding during winter and spring which are found in areas characterized in paragraphs (h)(2)(i) and (h)(2)(ii), respectively, of this entry, that have a clay component or other property that creates an impermeable surface or subsurface layer. Soil series with a clay component or an impermeable surface or subsurface layer typically slow percolation, increase water run-off (at least initially), and contribute to the filling and persistence of ponding of ephemeral wetland habitat where Riverside fairy shrimp occur. Soils and soil series known to support vernal pool habitat include, but are not limited to:

(A) The Azule, Calleguas, Cropley, and Linne soils series in Ventura County;

(B) The Alo, Balcom, Bosanko, Calleguas, Cieneba, and Myford soils series in Orange County;

(C) The Cajalco, Claypit, Murrieta, Porterville, Ramona, Traver, and

Willows soils series in Riverside County; and

(D) The Diablo, Huerhuero, Linne, Placentia, Olivenhain, Redding, Salinas, and Stockpen soils series in San Diego County.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, 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 using a base of U.S. Geological Survey 7.5' quadrangle maps. Unit descriptions were then mapped using Universal Transverse Mercator (UTM) zone 11, North American Datum (NAD) 1983 coordinates.

(5) **Note:** Index map of critical habitat units for the Riverside fairy shrimp (*Streptocephalus woottoni*) follows:

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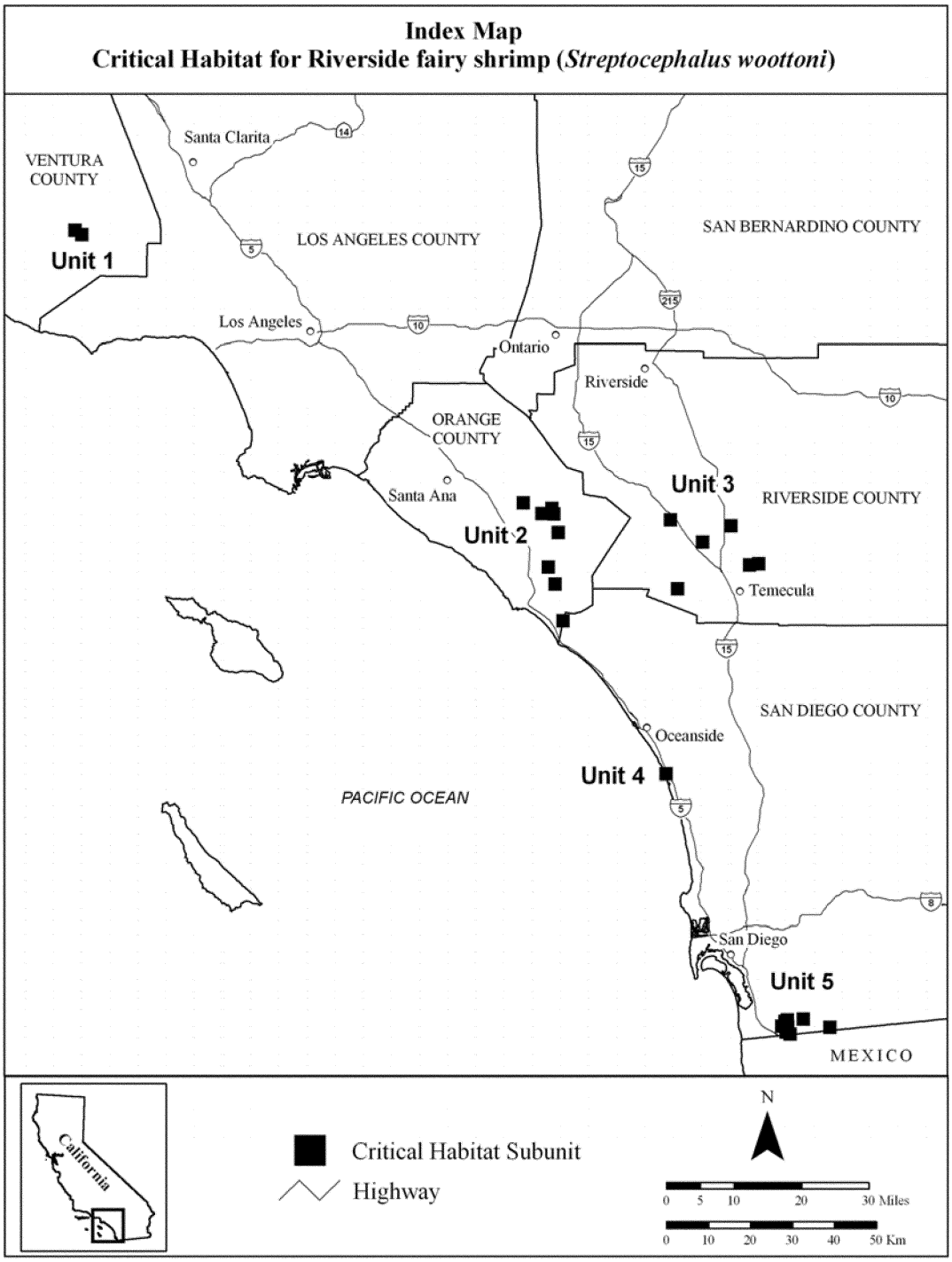
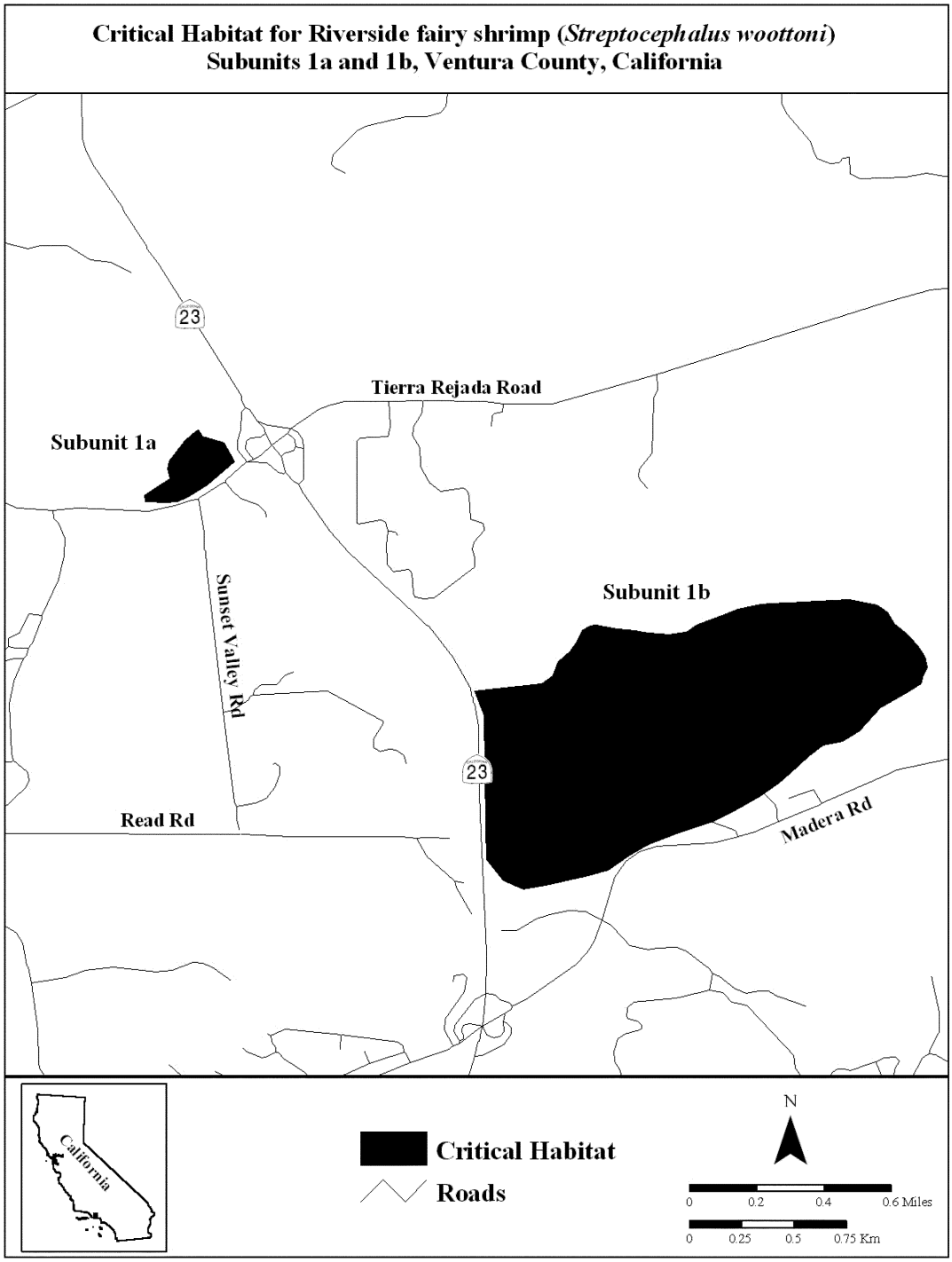


(6) Unit 1: Ventura County, California.

(i) Subunit 1a: Tierra Rejada Preserve. [Reserved for textual description of subunit.]

(ii) Subunit 1b: South of Tierra Rejada Valley. [Reserved for textual description of subunit.]

(iii) Map of Unit 1, subunits 1a and 1b, follows:

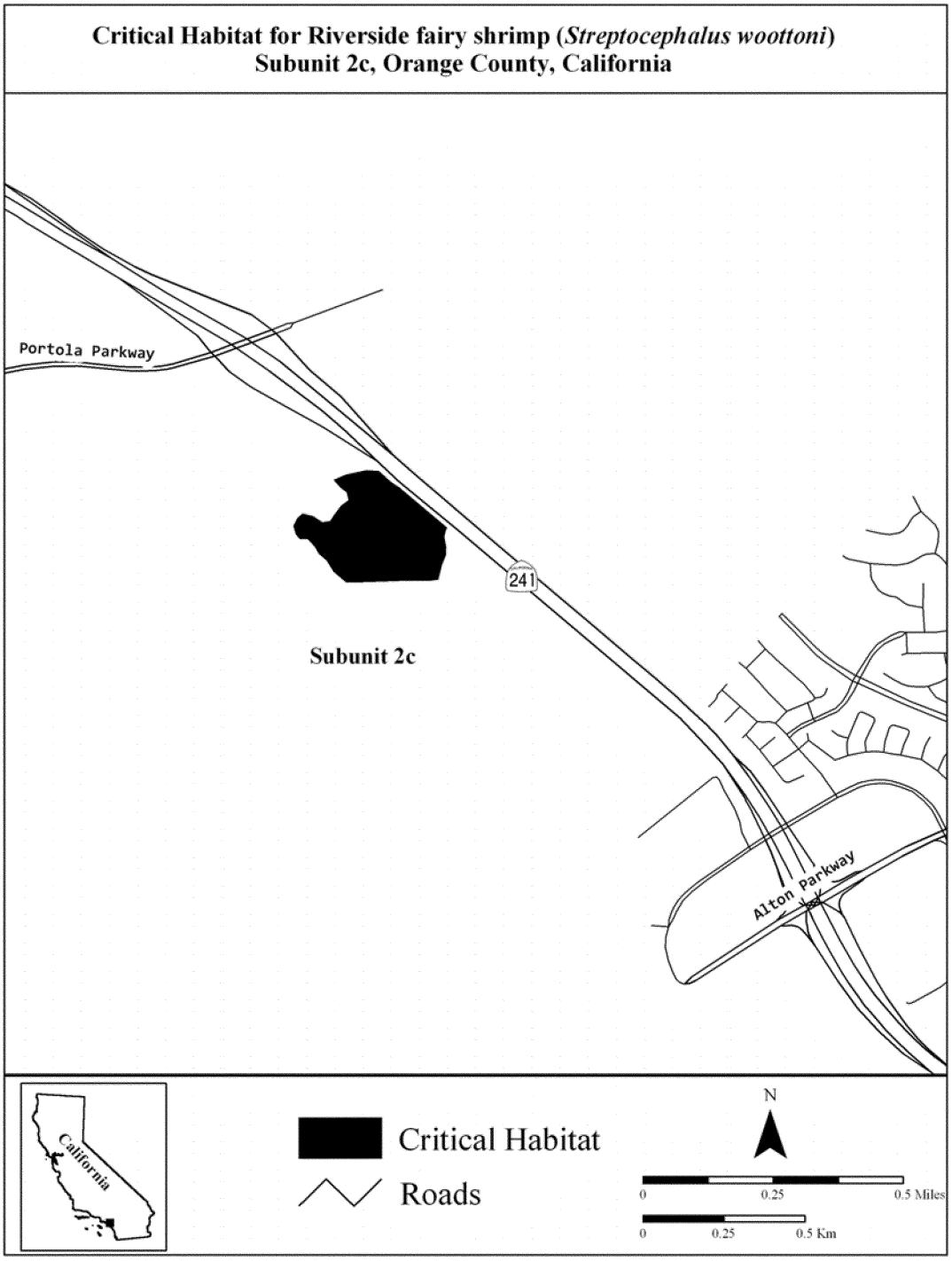


(7) Unit 2: Los Angeles Basin-Orange County Foothills—Orange County, California.

(i) Subunit 2c: (MCAS) El Toro.

(A) [Reserved for textual description of subunit.]

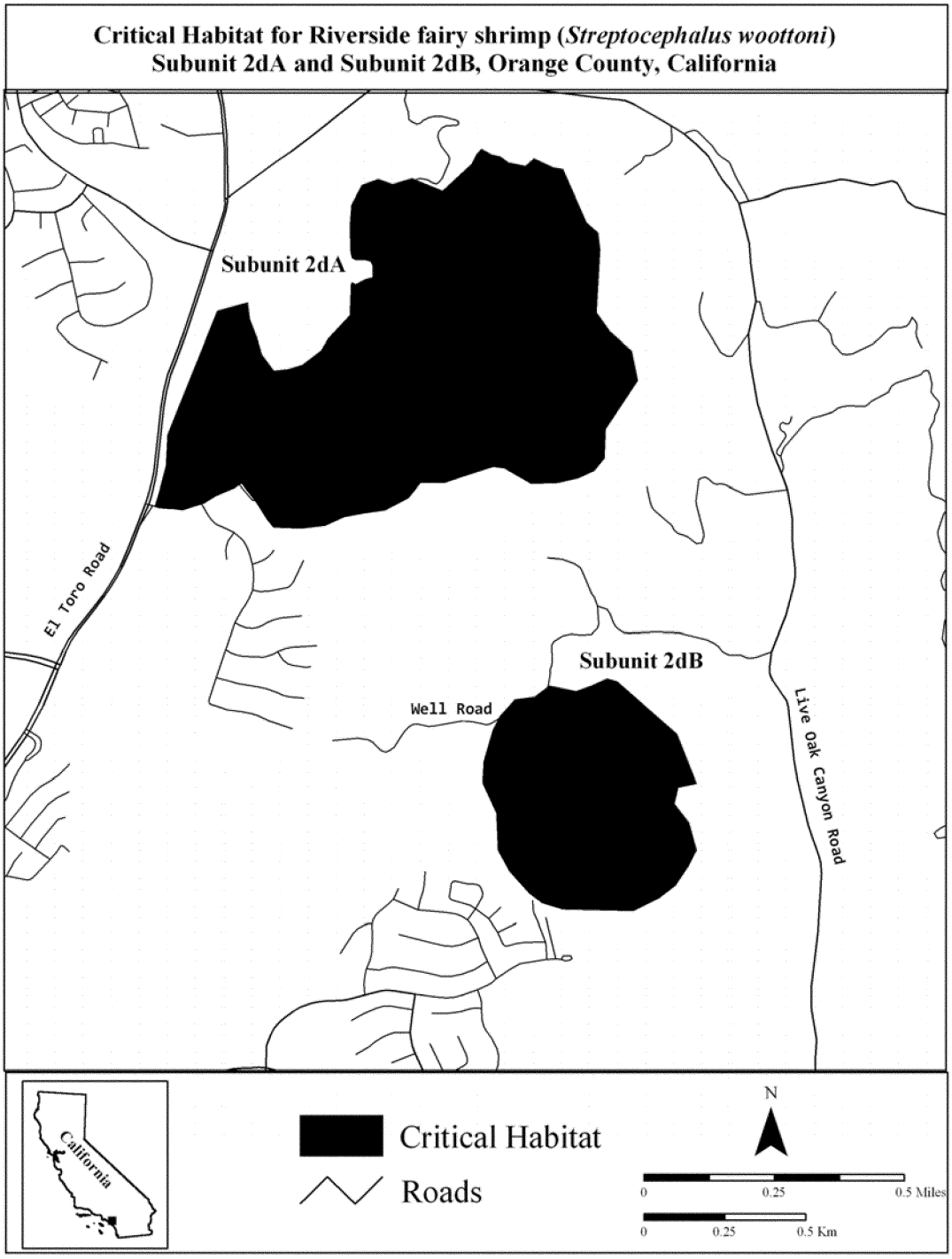
(B) Map of Subunit 2c, (MCAS) El Toro, follows:



(ii) Subunit 2dA: Saddleback Meadows.

(A) [Reserved for textual description of subunit.]

(B) Map of Subunit 2dA, Saddleback Meadows, and subunit 2dB, O'Neill Regional Park—near Trabuco Canyon, follows:



(iii) Subunit 2dB: O'Neill Regional park—near Trabuco Canyon.

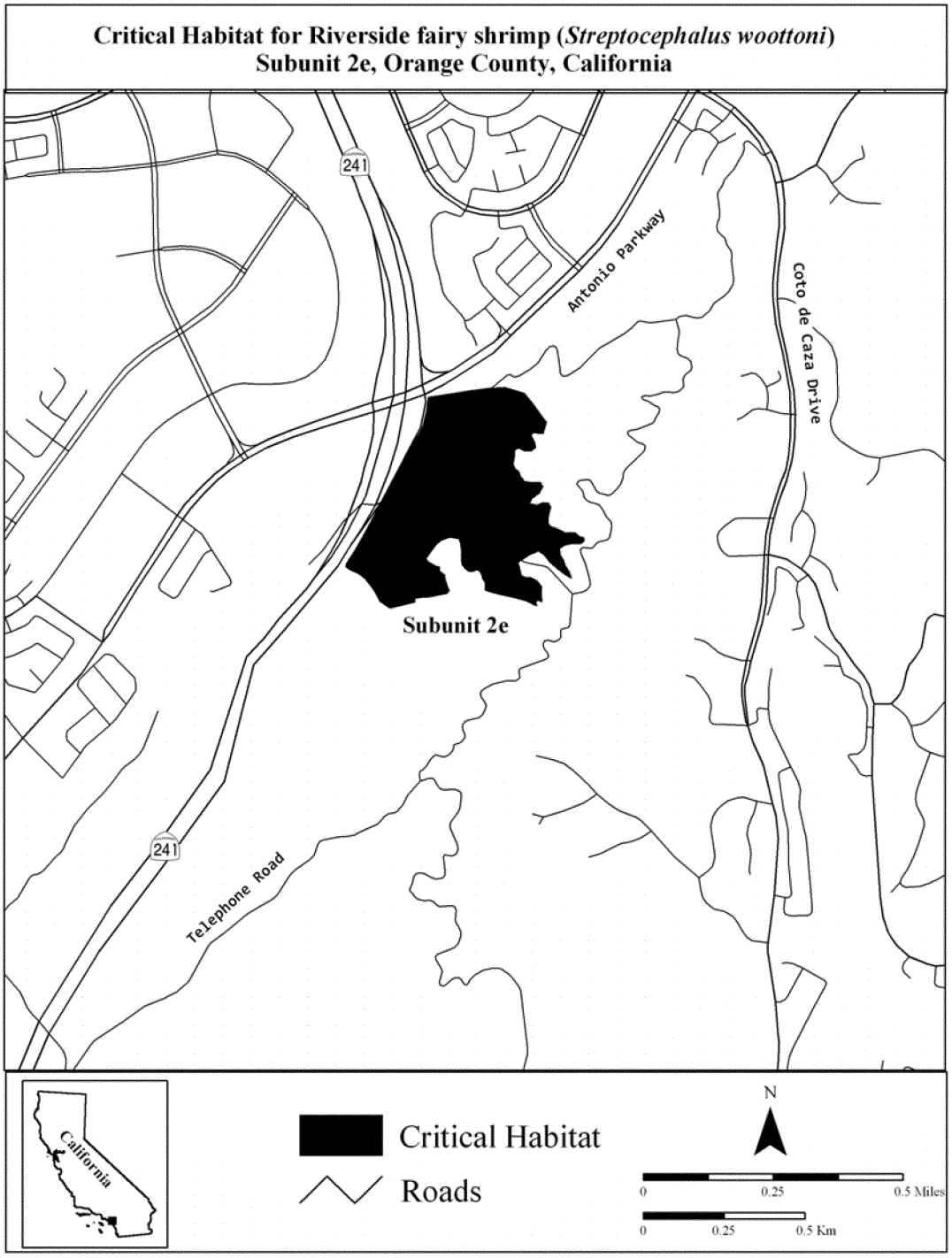
(A) [Reserved for textual description of subunit.]

(B) Map of Subunit 2dB, O'Neill Regional Park—near Trabuco Canyon, is provided at paragraph (h)(7)(ii)(b) of this entry.

(iv) Subunit 2e: O'Neill Regional Park—near Cañada Gobernadora.

(A) [Reserved for textual description of subunit.]

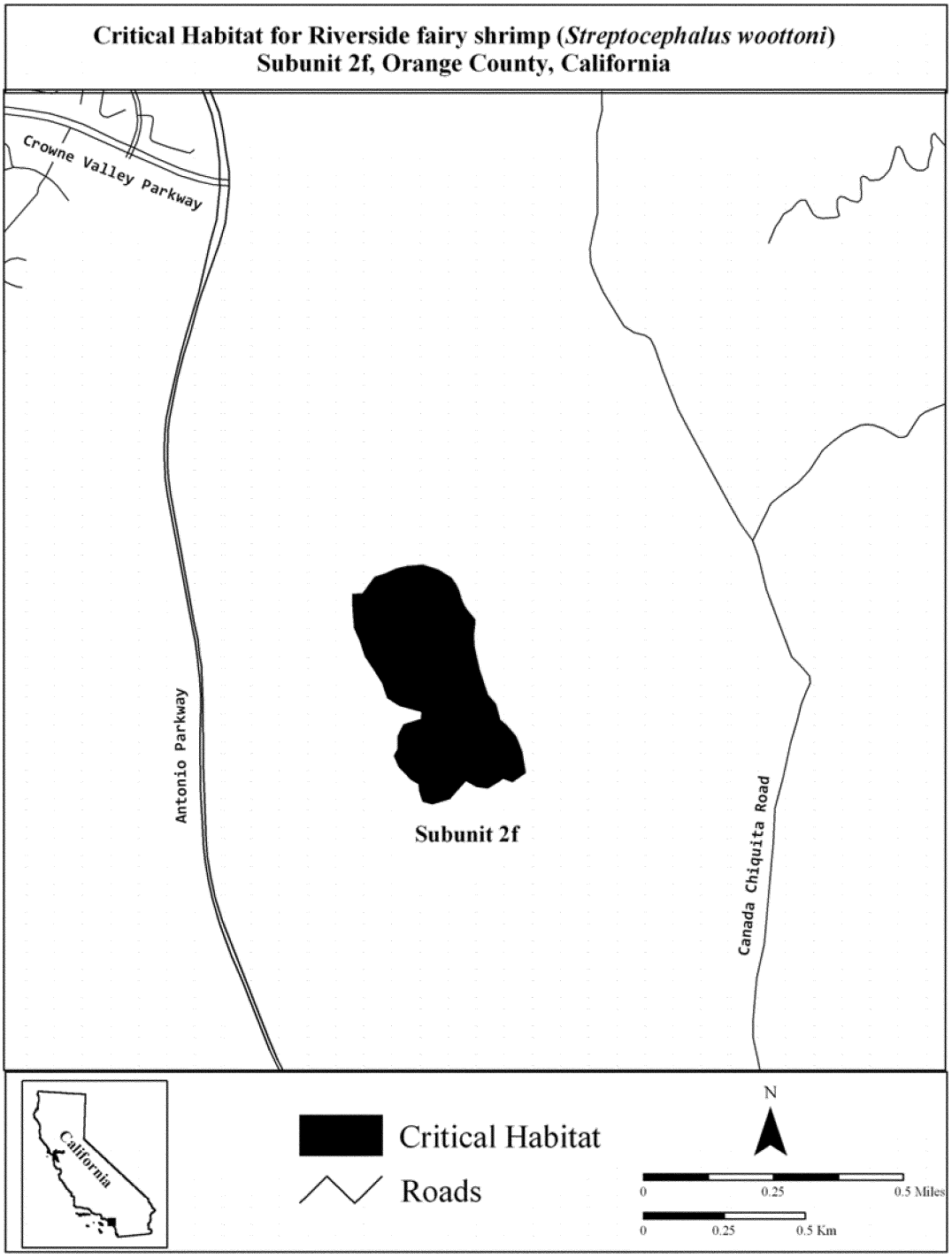
(B) Map of Subunit 2e, O'Neill Regional Park—near Cañada Gobernadora, follows:



(v) Subunit 2f: Chiquita Ridge.

(A) [Reserved for textual description of subunit.]

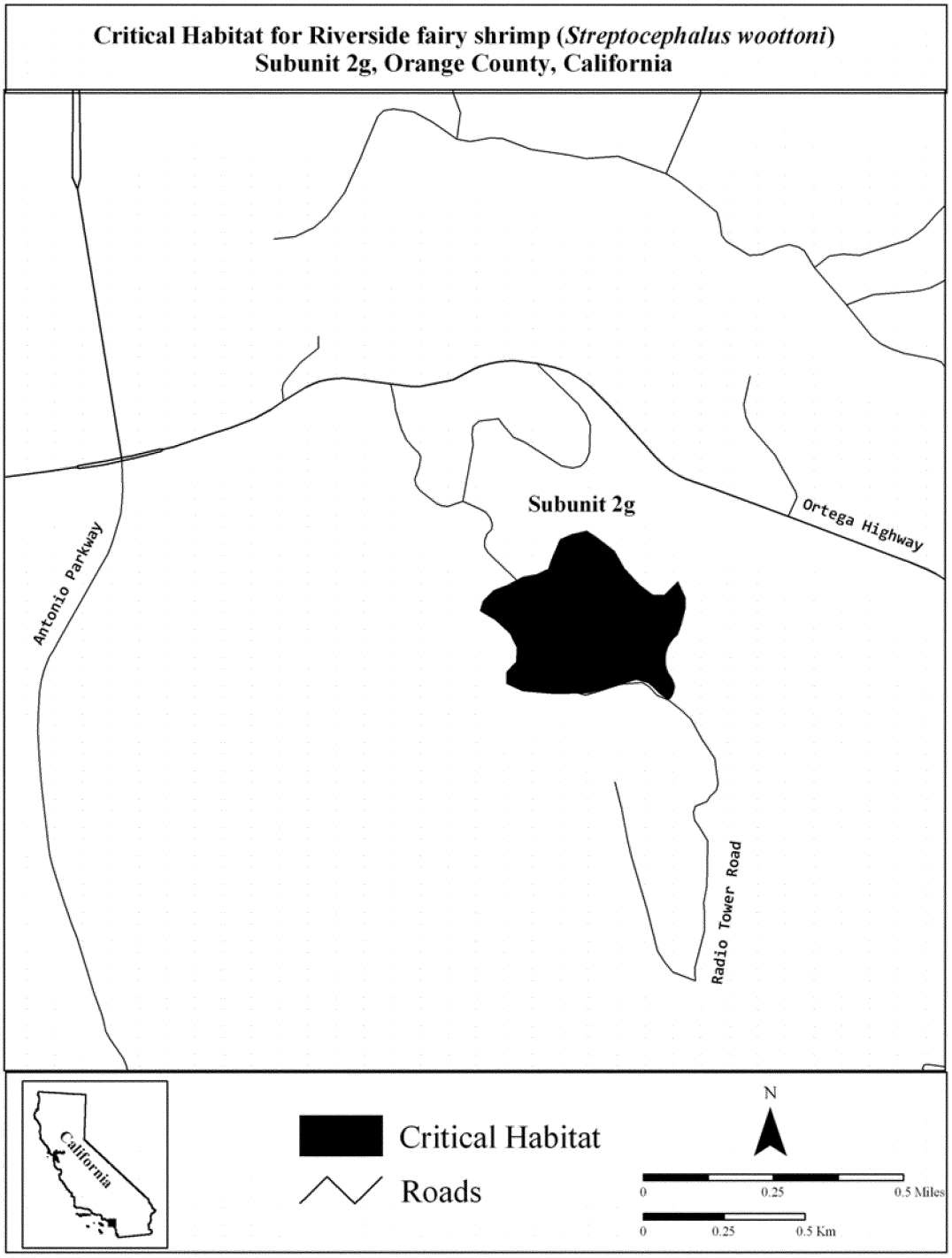
(B) **Note:** Map of Subunit 2f, Chiquita Ridge, follows:



(vi) Subunit 2g: Radio Tower Road.

(A) [Reserved for textual description of subunit.]

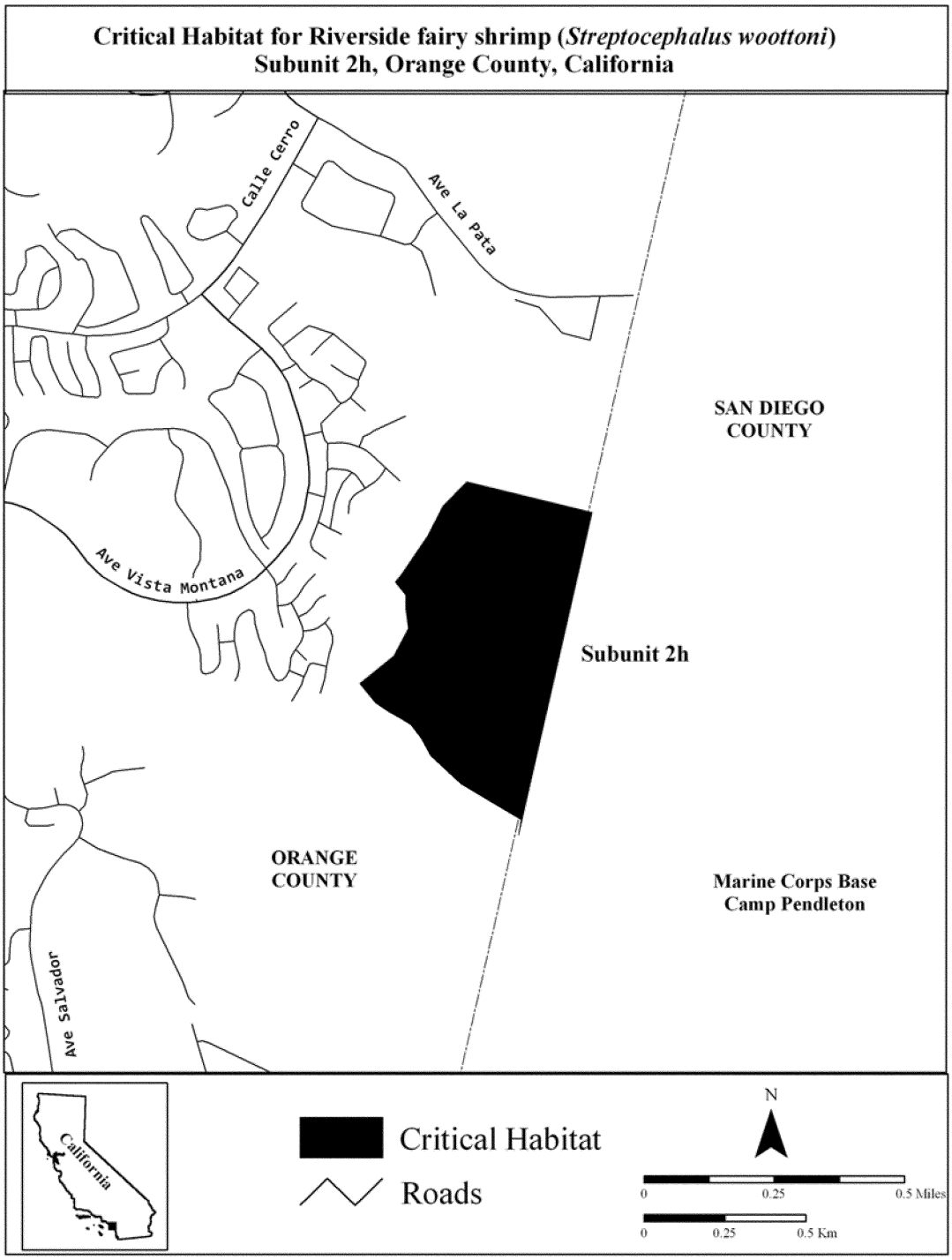
(B) Map of Subunit 2g, Radio Tower Road, follows:



(vii) Subunit 2h: San Onofre State Beach, State Park-leased land (near Christianitos Creek foothills).

(A) [Reserved for textual description of subunit.]

(B) Map of Subunit 2h, San Onofre State Beach, State Park-leased land (near Christianitos Creek foothills)– near Camp Pendleton, follows:



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(viii) Subunit 2i: SCE Viejo Conservation Bank.

(A) [Reserved for textual description of subunit.]

(B) Map of Subunit 2i, SCE Viejo Conservation Bank, follows:

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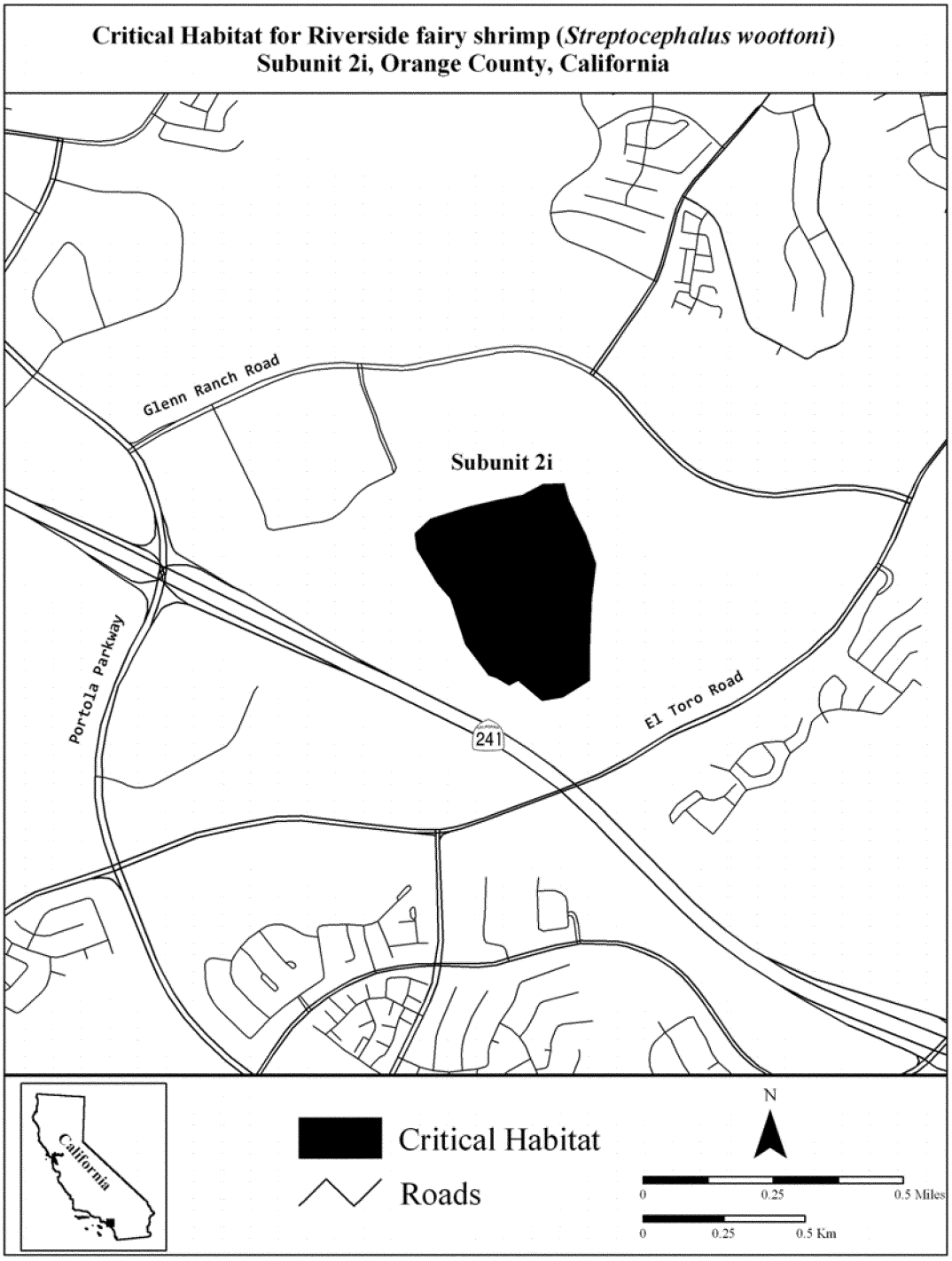
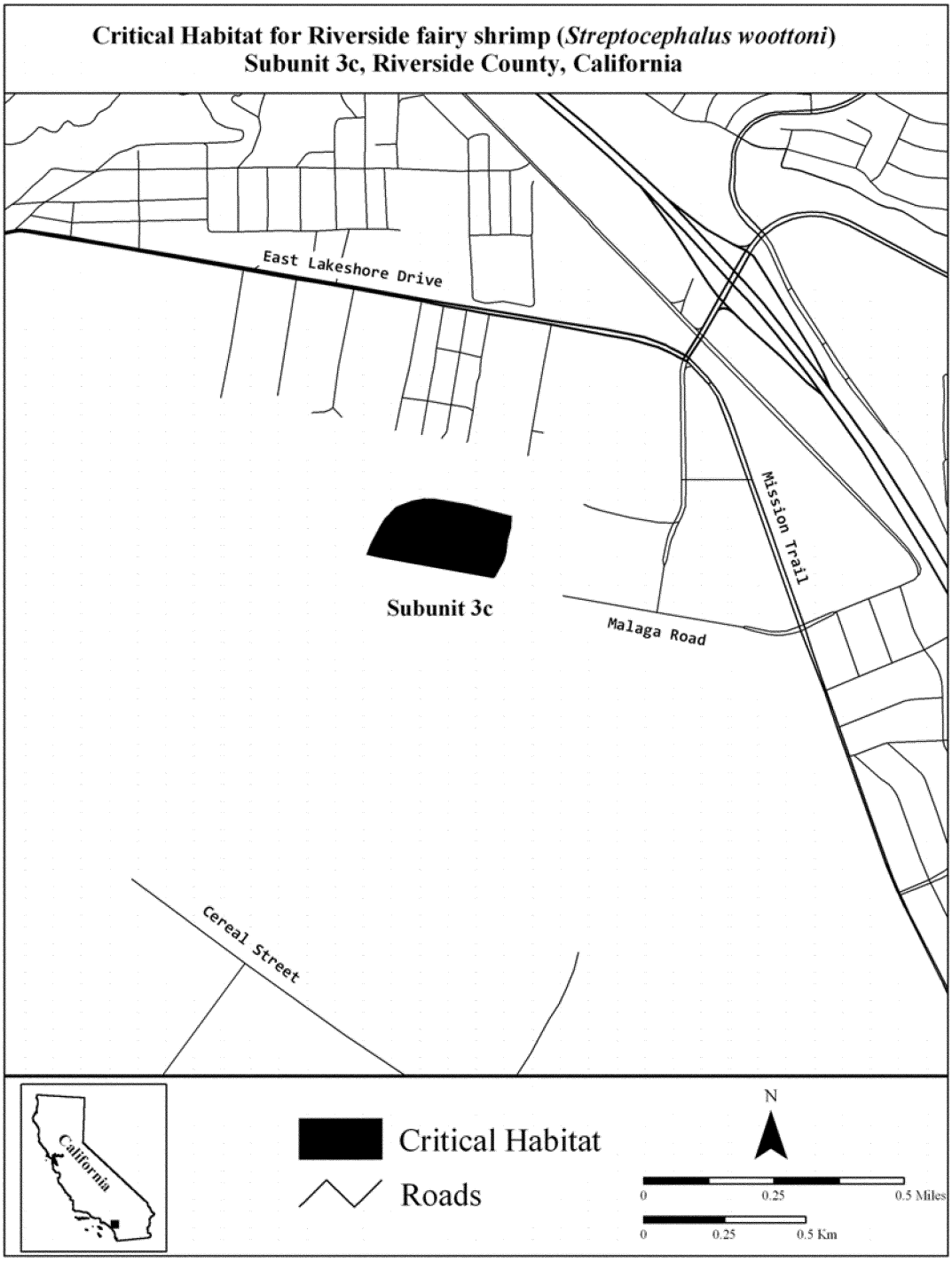


(8) Unit 3: Riverside Inland Valleys—Riverside County, California.

(i) Subunit 3c: Australia Pool.

(A) [Reserved for textual description of subunit.]

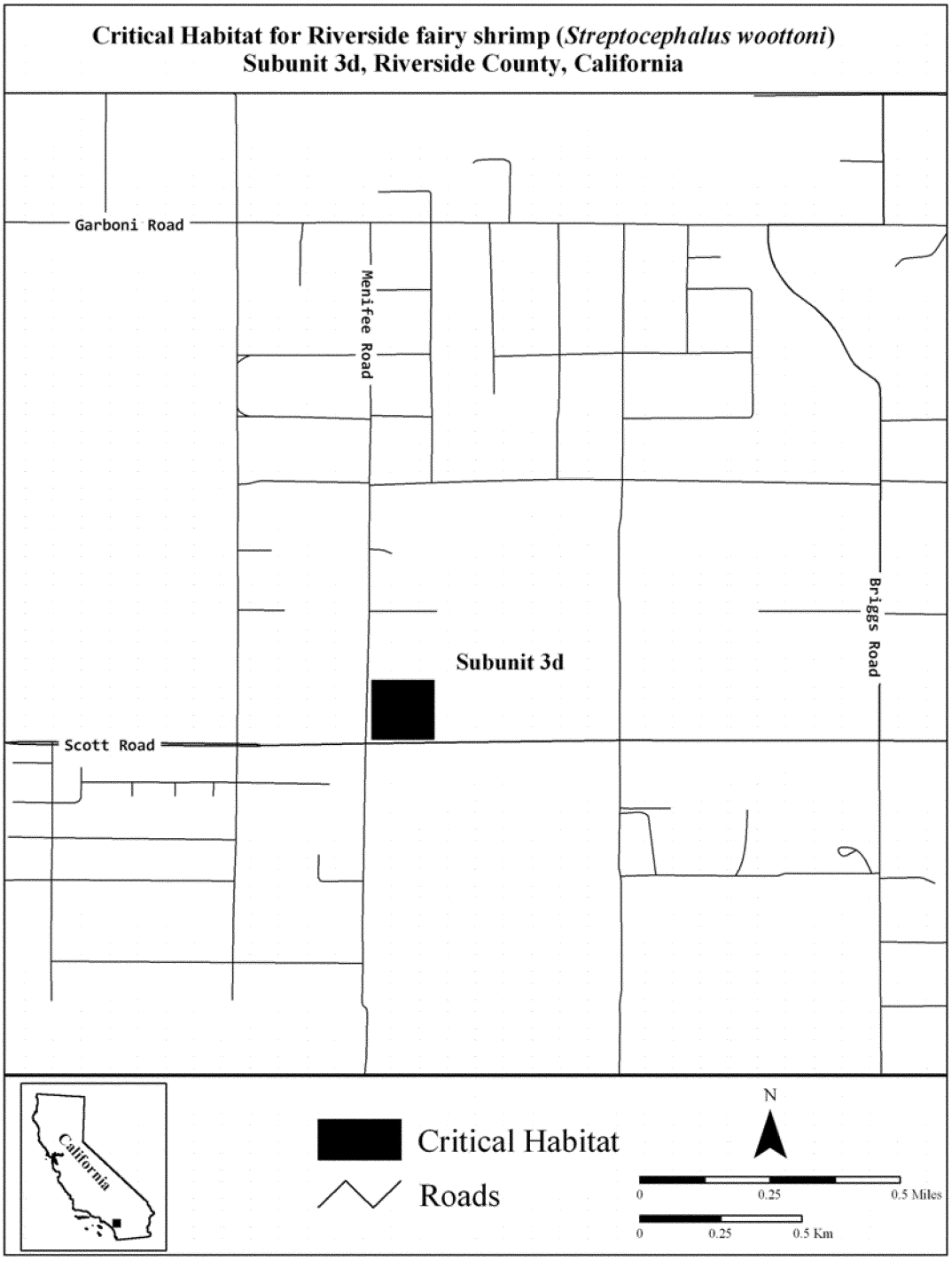
(B) Map of Subunit 3c, Australia Pool, follows:



(ii) Subunit 3d: Scott Road Pool.

(A) [Reserved for textual description of subunit.]

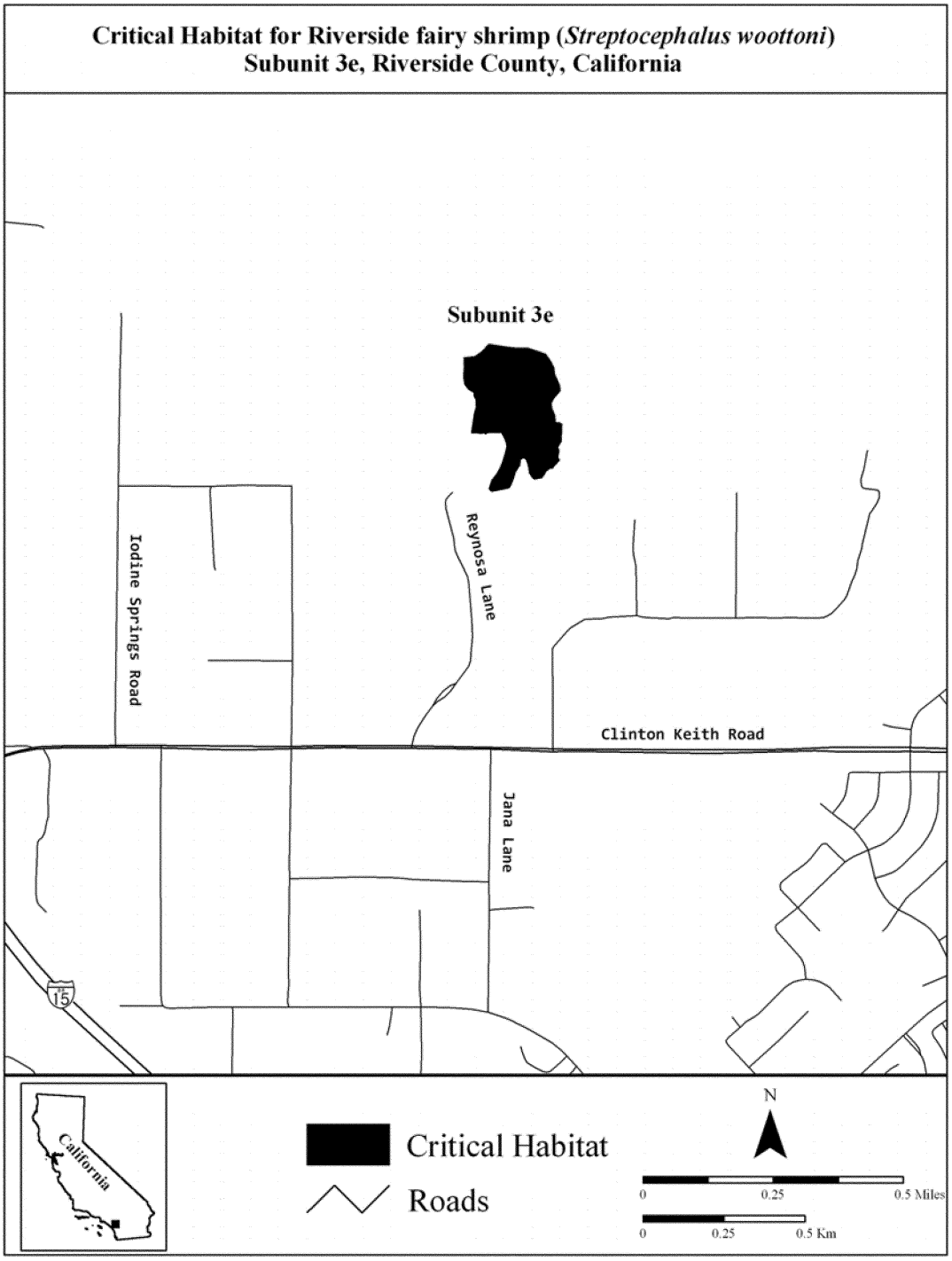
(B) Map of Subunit 3d, Scott Road Pool, follows:



(iii) Subunit 3e: Schleuniger Pool.

(A) [Reserved for textual description of subunit.]

(B) Map of Subunit 3e, Schleuniger Pool, follows:

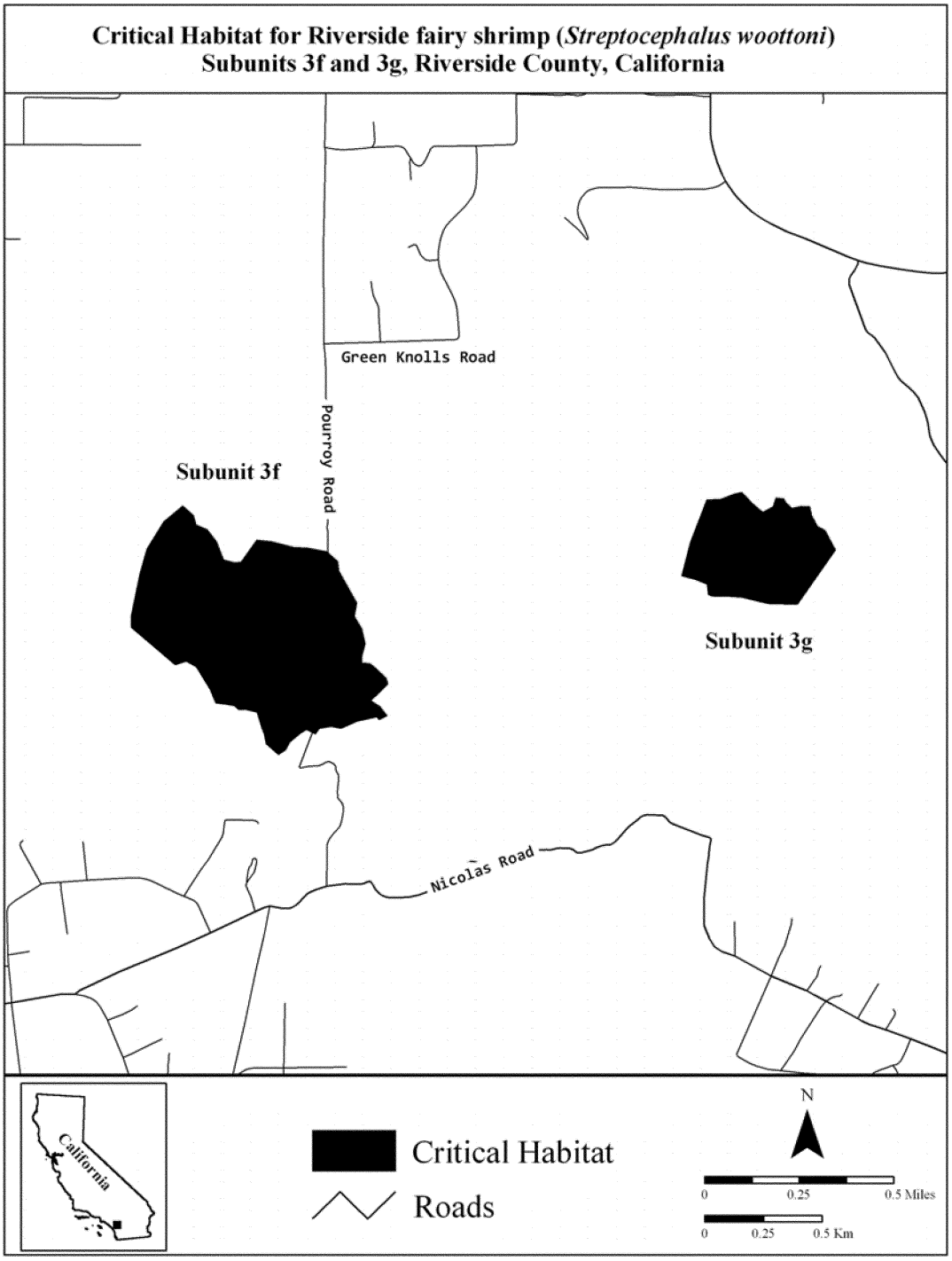


(iv) Subunit 3f: Skunk Hollow and Field Pool (Barry Jones Wetland Mitigation Bank).

(A) [Reserved for textual description subunit.]

(B) Map of Subunit 3f, Skunk Hollow and Field Pool, and Subunit 3g, Johnson Ranch Created Pools follows:

BILLING CODE 4310–55–C



(v) Subunit 3g: Johnson Ranch Created Pools.

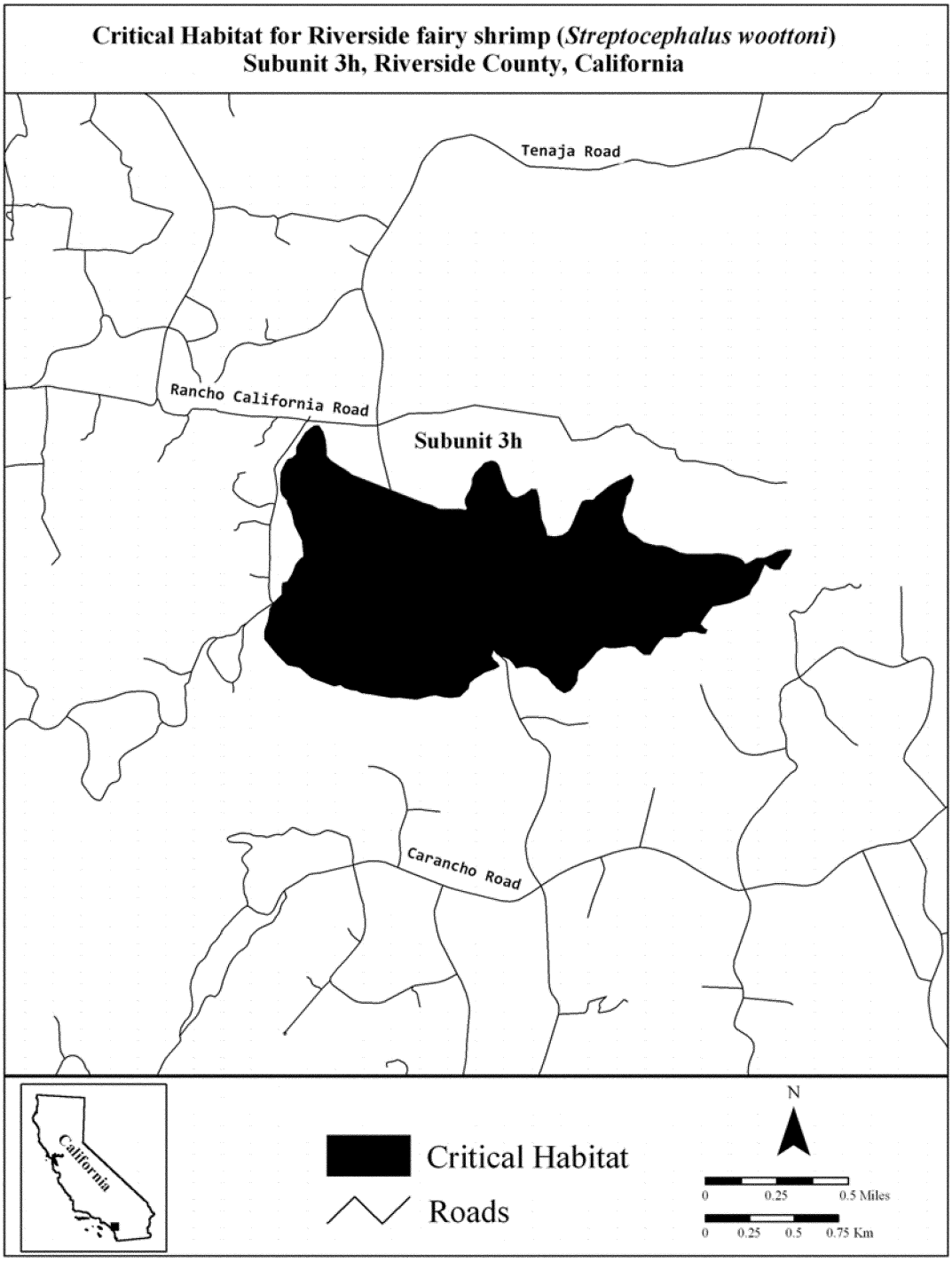
(A) [Reserved for textual description of subunit.]

(B) Map of Subunit 3g, Johnson Ranch Created Pools, is provided at paragraph (h)(8)(iv)(B) of this entry.

(vi) Subunit 3h: Santa Rosa Plateau—Mesa de Colorado.

(A) [Reserved for textual description of subunit.]

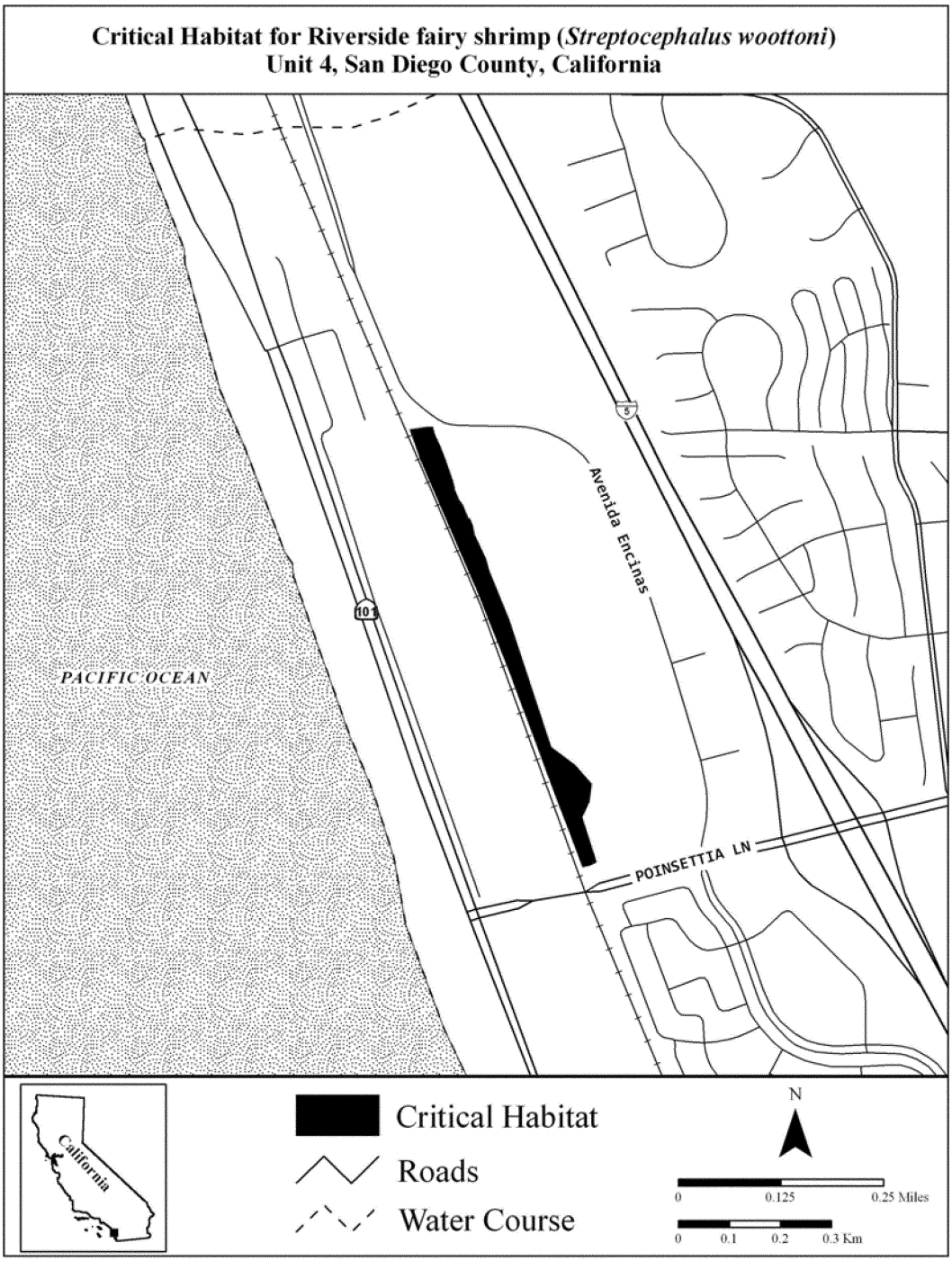
(B) Map of Subunit 3h, Santa Rosa Plateau—Mesa de Colorado, follows:



(9) Unit 4: San Diego North and Central Coastal Mesas—San Diego County, California.

(i) Poinsettia Lane Commuter Train Station (JJ2). [Reserved for textual description of unit.]

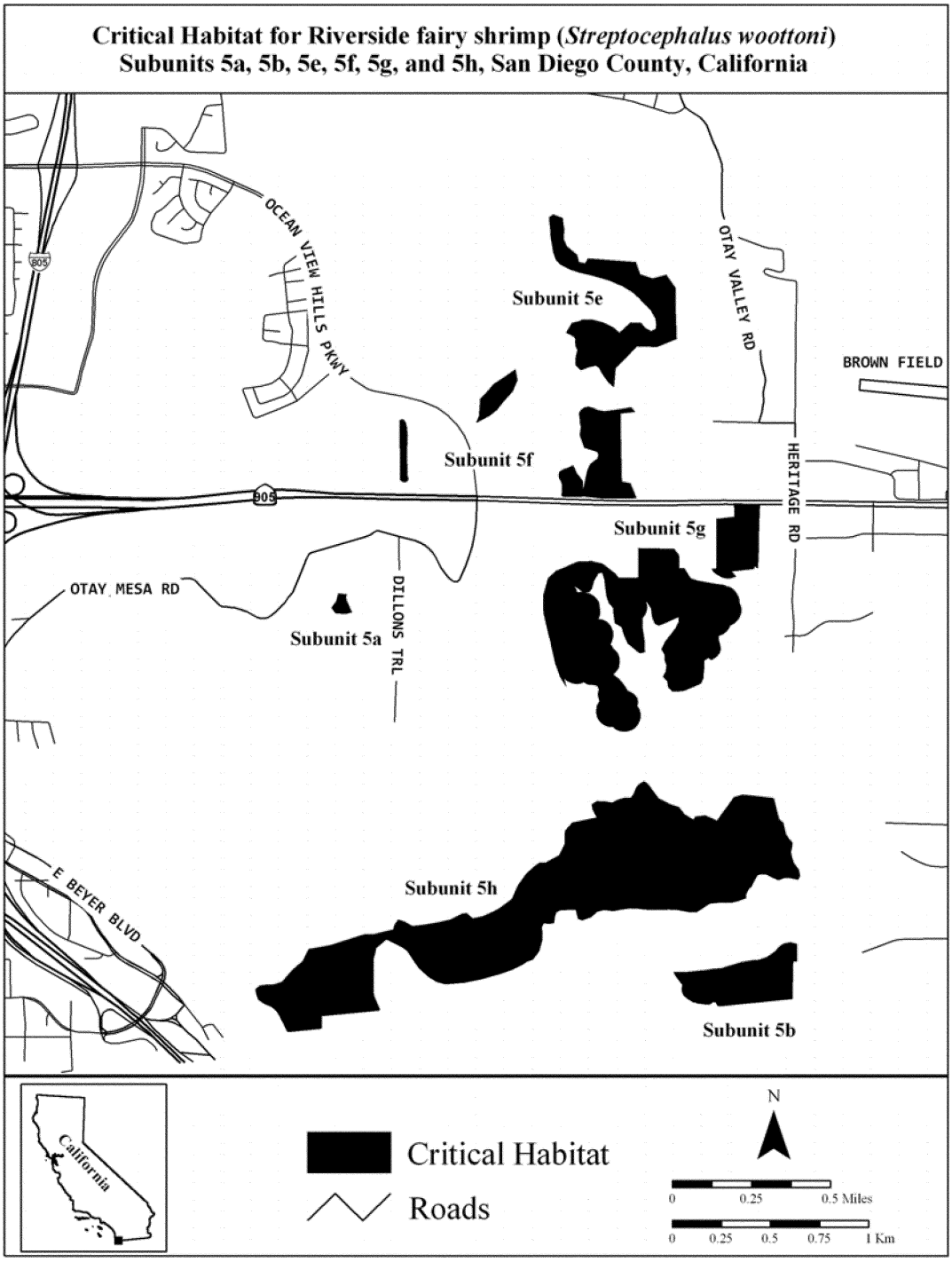
(ii) Map of Unit 4, Poinsettia Lane Commuter Train Station—JJ2, follows:



(10) Unit 5: San Diego Southern Coastal Mesas—San Diego County, California. (i) Subunit 5a: Sweetwater (J33).

(A) [Reserved for textual description of subunit.]

(B) Map of Subunits 5a, 5b, 5e, 5f, 5g, and 5h follows:



(ii) Subunit 5b: Arnie's Point (J15).

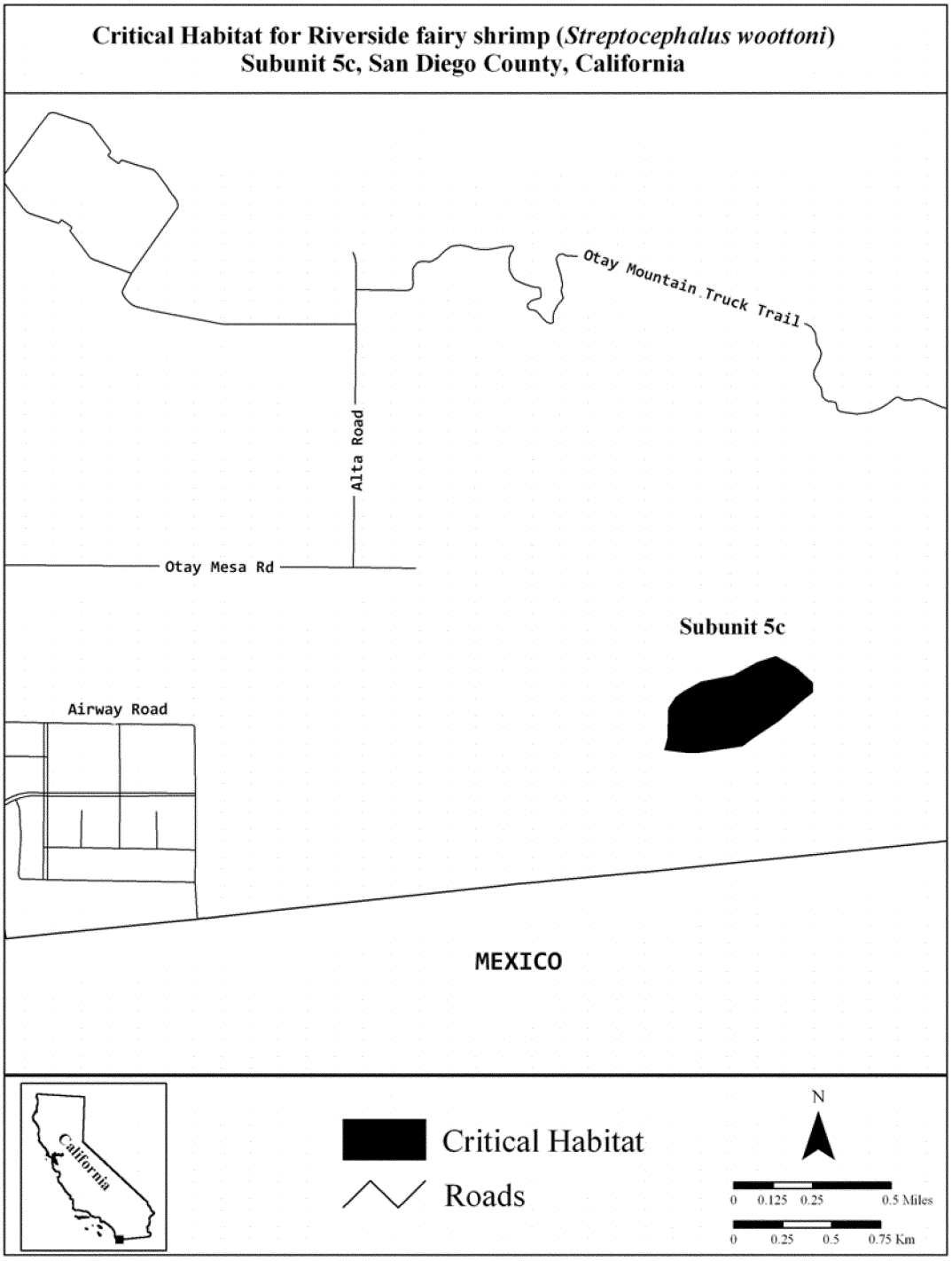
(A) [Reserved for textual description of subunit.]

(B) Map of Subunit 5b, Arnie's Point—J15, is provided at paragraph (h)(10)(i)(B) of this entry.

(iii) Subunit 5c: East Otay Mesa.

(A) [Reserved for textual description of subunit.]

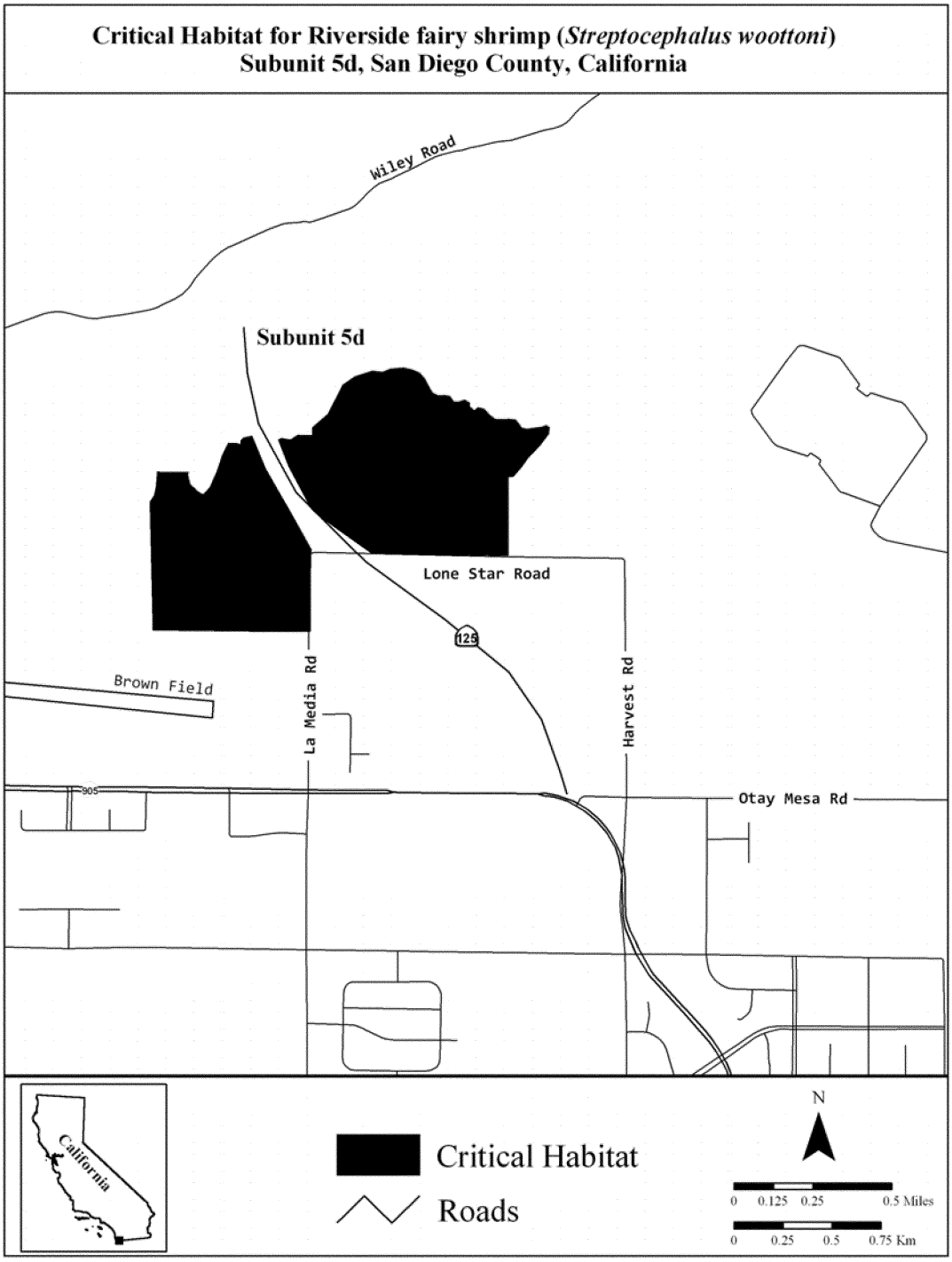
(B) Map of Subunit 5c, East Otay Mesa, follows:



(iv) Subunit 5d: J29–31.

(A) [Reserved for textual description of subunit.]

(B) Map of Subunit 5d, J29–31, follows:



(v) Subunit 5e: J2 N, J4, J5 (Robinhood Ridge).

(A) [Reserved for textual description of subunit.]

(B) Map of Subunit 5e, J2 N, J4, J5 (Robinhood Ridge), is provided at paragraph (h)(10)(i)(B) of this entry.

(vi) Subunit 5f: J2 W and J2 S (Hidden Trails, Cal Terraces, and Otay Mesa Road).

(A) [Reserved for textual description of subunit.]

(B) Map of Subunit 5f, J 2W, and J 2S—Hidden Trails, Cal Terraces, and Otay Mesa Road, is provided at paragraph (h)(10)(i)(B) of this entry.

(vii) Subunit 5g: J14.

(A) [Reserved for textual description of subunit.]

(B) Map of Subunit 5g, J14, is provided at paragraph (h)(10)(i)(B) of this entry.

(viii) Subunit 5h: (J11 E, J11 W, J12, J16–18 (Goat Mesa)).

(A) [Reserved for textual description of subunit.]

(B) Map of Subunit 5h, J11 E, J11 W, J12, J16–18 (Goat Mesa), is provided at paragraph (h)(10)(i)(B) of this entry.

* * * * *

Dated: May 19, 2011.

Eileen Sobeck,

Acting Assistant Secretary for Fish Wildlife and Parks.

[FR Doc. 2011–12947 Filed 5–31–11; 8:45 am]

BILLING CODE 4310–55–C

FEDERAL REGISTER

Vol. 76 Wednesday,

No. 105 June 1, 2011

Part III

Department of Energy

10 CFR Part 430

Energy Conservation Program for Certain Consumer Appliances: Test Procedures for Battery Chargers and External Power Supplies; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2009–BT–TP–0019]

RIN 1904–AC03

Energy Conservation Program for Certain Consumer Appliances: Test Procedures for Battery Chargers and External Power Supplies

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) is amending its test procedures for battery chargers and external power supplies. In particular, DOE is inserting a new active mode energy consumption test procedure for battery chargers, which is necessary to develop energy conservation standards for battery chargers as mandated by the Energy Independence and Security Act of 2007 (EISA 2007). DOE is also amending portions of its existing standby and off mode battery charger test procedure by decreasing the required testing time. Further, DOE is amending its active mode single-voltage external power supply test procedure to permit the testing of certain types of external power supplies. Finally, DOE is inserting a new procedure to address multiple-voltage external power supplies, which are not covered under the current single-voltage external power supply test procedure.

DATES: This rule is effective July 1, 2011. After November 28, 2011, manufacturers may not make any representation regarding battery charger or external power supply energy consumption or efficiency unless such battery charger or external power supply has been tested in accordance with the final rule provisions in appendix Y (for battery chargers) and appendix Z (for external power supplies).

ADDRESSES: You may review copies of all materials related to this rulemaking at the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

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I. Authority and Background

Title III of the Energy Policy and Conservation Act, 42 U.S.C. 6291, *et seq.* (EPCA or the Act), sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291–6309) establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles," which covers consumer products and certain commercial products (all of which are referred to below as "covered products"), including battery chargers and external power supplies.

Under EPCA, the overall energy conservation program for consumer products and commercial equipment consists essentially of the following parts: testing, labeling, and Federal energy conservation standards. The testing requirements consist of procedures that manufacturers of covered products must use to certify to the U.S. Department of Energy (DOE) that their products comply with the required energy conservation standards and to rate the efficiency of their products. These test procedures would also be used during enforcement-related testing when determining whether a given product complies with the relevant standards.

Today's final rule provides, among other things, a new active mode energy consumption test procedure for battery chargers, which is necessary to develop energy conservation standards for battery chargers as mandated by the Energy Independence and Security Act of 2007 (EISA 2007). Today's rule also

modifies the existing procedure found in appendix Y to 10 CFR part 430, subpart B. In particular, the test procedure that DOE is adopting today provides a uniform method to test the energy efficiency of a battery charger, which is a necessary prerequisite to the setting of any energy conservation standard for these products. Consequently, DOE is promulgating today's rule in anticipation of the final rule that will set standards for battery chargers.

Additionally, today's rule introduces other changes to the procedures found in 10 CFR 430, subpart B, appendix Z, which covers the energy efficiency testing of an external power supply. In particular, the rule amends aspects of the current procedure when measuring the energy consumption of a Class A external power supply. A Class A external power supply is one that is: designed to convert line voltage AC input into lower voltage AC or DC output; able to convert to only 1 AC or DC output voltage at a time; sold with, or intended to be used with, a separate end-use product that constitutes the primary load; contained in a separate physical enclosure from the end-use product; is connected to the end-use product via a removable or hard-wired male/female electrical connection, cable, cord, or other wiring; and has nameplate output power that is less than or equal to 250 watts. See 42 U.S.C. 6291(36)(C). Today's rule also adds a procedure to facilitate testing of a multiple-voltage external power supply. The test procedure requires loading the multiple-voltage external power supply at five separate loading levels and requires that these five outputs be reported individually.

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of such test procedures. See generally 42 U.S.C. 6293. As part of these requirements, the procedures must be reasonably designed to measure the energy use, energy efficiency, or annual operating cost during a period that is representative of typical use and not be "unduly burdensome." (42 U.S.C. 6293(b)(3)) In addition, consistent with 42 U.S.C. 6293(b)(2) and Executive Order 12899, 58 FR 69681 (Dec. 30, 1993), if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them, with a comment period of not less than 75 days. Finally, in any rulemaking to amend a test procedure, DOE must determine "to what extent the proposed test procedure would alter the measured energy efficiency as determined under the existing test procedure." (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2)) DOE discusses its consideration of the amendments to the test procedures for battery chargers and external power supplies in the section that follows.

DOE published a notice of proposed rulemaking (NOPR) on April 2, 2010 (75 FR 16958) in which it discussed in more detail many of the testing issues brought forward in the framework document and an accompanying public meeting to discuss the approach that DOE planned to use in setting energy conservation standards for battery chargers and external power supplies. See 74 FR 26816 (June 4, 2009) (discussing the framework document for battery chargers and external power supplies).[1] (The public meeting discussing the framework document was held on July 16, 2009. That meeting also included discussions related to test procedure issues. A related meeting to discuss the preliminary analysis DOE performed in examining standards for these products also generated some discussion related to test procedure issues.) DOE held a public meeting to discuss its test procedure NOPR on May 7, 2010, where it also received comments on the proposals set forth in the NOPR (hereafter referred to as the NOPR public meeting). A 75-day comment period as prescribed by EPCA was afforded to interested parties.

Battery chargers and external power supplies operate similarly in that they both take electricity from a power source, usually from a wall outlet, and convert it into a form that can be used either to power an application directly or to charge and maintain the energy in a battery. Specifically, they both take power at one voltage and current type, typically 120 volts alternating current (AC), and convert it to lower-voltage direct current (DC) power. Because these products operate in a similar manner, DOE is consolidating its evaluation of potential energy conservation standards for battery chargers and external power supplies together in a single rulemaking proceeding. Additional details related to the authority and background of this rulemaking can be found in section I of the NOPR. 75 FR 16958, 16959–16960.

II. Summary of the Final Rule

Today's final rule does two key things. First, it adopts new test procedures for the active mode of battery chargers and all modes of multiple-voltage external power supplies. Second, it modifies existing parts of the battery charger and external power supply test procedures (for example, the duration of the battery charger standby and off mode tests). In doing so, it amends both appendices Y and Z in multiple places. Furthermore, although DOE is retaining the current language of certain sections of appendices Y and Z, in selecting amendments for inclusion in today's final rule, DOE considered all aspects of the existing battery charger and external power supply test procedures. By examining these procedures in this comprehensive manner, this rulemaking satisfies the 7-year review requirement of 42 U.S.C. 6293(b). Subsequent amendments will, as needed, be made in a manner consistent with the schedule set out in that provision.

As explained in greater detail in this notice, the final rule makes the following specific changes to the current regulations:

(1) Inserts a new test procedure to measure the energy consumption of battery chargers in active mode to assist in the development of energy conservation standards;

(2) Amends the battery charger test procedure to decrease the testing time of battery chargers in standby and off modes;

(3) Amends the single-voltage external power supply test procedure to accommodate external power supplies with Universal Serial Bus (USB) outputs and other types of external power supplies that cannot be tested in accordance with the current test procedure; and

(4) Inserts a new test procedure for multiple-voltage external power supplies, a type of non-Class A external power supply that DOE evaluated in its non-Class A determination analysis and that will be covered under the energy conservation standard.

Table II.1 lists the sections of 10 CFR part 430 affected by the amendments in this rule. The left-hand column in the table cites the locations of the affected CFR provisions, while the right-hand column lists the changes.

[1] U.S. Department of Energy—Office of Energy Efficiency and Renewable Energy. Energy Conservation Program for Consumer Products *Energy Conservation Standards Rulemaking for Battery Chargers and External Power Supplies.* May 2009. Washington, DC. Available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/bceps_frameworkdocument.pdf.*

TABLE II.1—SUMMARY OF PROPOSED CHANGES AND AFFECTED SECTIONS OF 10 CFR PART 430

Existing Section in 10 CFR Part 430	Summary of modifications
Section 430.23 of Subpart B—Test procedures for the measurement of energy and water consumption.	• Modify '(aa) battery charger' to include energy consumption in active mode.
Appendix Y to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Battery Chargers.	• Renumber the existing sections to ease referencing and use by testing technicians.
1. Scope	• Limit scope to include only battery chargers intended for operation in the United States.
2. Definitions	• Add definitions for: ○ Active power or real power (P). ○ Ambient temperature. ○ Apparent power (S). ○ Batch charger. ○ Battery rest period. ○ C-rate. ○ Equalization. ○ Instructions or manufacturer's instructions. ○ Measured charge capacity. ○ Rated battery voltage. ○ Rated charge capacity. ○ Rated energy capacity. ○ Total harmonic distortion (THD). ○ Unit under test (UUT). • Remove definitions for: ○ Accumulated nonactive energy. ○ Energy ratio or nonactive energy ratio. • Modify definitions for: ○ Active mode. ○ Multi-port charger. ○ Multi-voltage à la carte charger. ○ Standby mode.
3. Test Apparatus and General Instructions	• Insert apparatus and instructions to measure energy consumption in active mode.
4. Test Measurement	• Insert procedures to measure energy consumption in active mode. • Modify 4(c) to change standby mode measurement time. • Modify 4(d) to change off mode measurement time.
Appendix Z to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of External Power Supplies.	
1. Scope	• No change.
2. Definitions	• Modify definition of active power.
3. Test Apparatus and General Instructions	• Modify 3(b) to accommodate multiple-voltage external power supplies.
4. Test Measurement	• Modify 4(a) to accommodate external power supplies that communicate with the load, perform current limiting, or have output power greater than 250 watts. • Modify 4(b) to accommodate multiple-voltage external power supplies.

In developing today's amendments, DOE considered comments received from interested parties in response to the standby and off mode test procedure, framework document, NOPR, and NOPR public meeting. Although a part of the standards rulemaking, DOE also considered comments to the framework document insofar as these comments had any bearing with respect to test procedure-related items. Numerous commenters sought to have DOE require testing in additional modes of operation in which products had not been tested under the current procedure, such as active or charge mode. DOE reviewed the existing test procedures for battery chargers and external power supplies and found that, with some modifications, they could be used as a basis for updating DOE's test procedures to address some of the limitations identified by commenters. These modifications are discussed in greater detail below.

Interested parties who commented on the NOPR consisted of manufacturers (Associate of Home Appliance Manufacturers (AHAM), Power Tool Institute (PTI), Euro-Pro, Phillips, Sony Electronics, Inc., Delta-Q Technologies Corp. and Wahl Clipper); an energy efficiency advocate (Appliance Standards Awareness Project (ASAP)); and utility companies (Pacific Gas and Electric (PG&E) and Southern California Edison).

DOE also examined whether the amendments to its test procedures would significantly change the measured energy consumption or efficiency of battery chargers or external power supplies. This question is particularly important for Class A external power supplies, which are subject to the EISA minimum efficiency standard that took effect on July 1, 2008. (42 U.S.C. 6295(u)(3)(A))

The amendments to the single-voltage external power supply test procedure, which is used to test compliance with Class A external power supply standards, affect the measured efficiency of external power supplies with USB outputs and external power supplies that communicate with their loads—which together comprise the subset of Class A external power supplies to which these amendments would apply. The term "communicating" with a load refers to an external power supply's ability to identify or otherwise exchange

information with its load (*i.e.,* the end-use product to which it is connected). This technique is used to tailor the operation of the external power supply to the needs of the load as well as to prevent the possibility of the supply being used with incompatible loads, which could damage the product. While most external power supplies provide power at a fixed output voltage regardless of what load is connected to their outputs, some external power supplies will only provide power once they have "communicated" with the load and identified it as the intended load.

The remaining amendments included in today's final rule have the following impacts on measured energy consumption or efficiency:

(1) The battery charger active mode test procedure amendment changes the measured energy consumption of battery chargers by eliminating the nonactive energy ratio metric and replacing it with a new metric that measures energy consumption in active mode;

(2) The standby and off mode test procedure amendment changes the measured energy consumption of battery chargers or external power supplies when operating in these modes; and

(3) The multiple-voltage external power supply amendment inserts a new test procedure for these products.

The procedure being adopted today will be used to help DOE in establishing the energy conservation standards for these products through a separate rulemaking that is currently underway.

A. Battery Charger Active Mode Test Procedure

Prior to this final rule, the DOE battery charger test procedure, first created by the EPACT 2005 En Masse final rule (71 FR 71340 (December 8, 2006)) and amended by the standby and off mode test procedure final rule (74 FR 13318 (March 27, 2009)), did not measure battery charger energy consumption in all modes. Instead, it excluded the energy consumed by the battery charger while charging a battery (*i.e.* active mode energy consumption). The procedure measured energy consumption only in standby (or no battery) and off modes (*i.e.* inactive mode energy consumption). DOE had adopted this earlier approach because the timing of the rulemaking did not permit an addition of an active mode test procedure at that time. 71 FR 71340, 71360.

The battery charger active mode test procedure in today's final rule removes the inactive mode calculation. This calculation, found in section 4(a) of appendix Y, is a composite of different operational modes that, under the changes introduced by today's final rule, are to be measured separately.

The final rule also makes three additional key changes to the battery charger test procedure. First, it adds an active mode measurement to section 4(b) to account for the energy consumed by a battery charger while it is charging a battery. Second, it amends the scope, definitions, and test apparatus and general instructions (sections 1, 2, and 3) to address the changes brought about by the introduction of the new active mode test procedure. Third, it reorganizes the battery charger sections to enhance their readability and ease of use to help reduce the prospect of differing interpretations while conducting the test.

The active mode amendment that DOE is adopting today is based in large part on the battery charger system test procedure already adopted by the California Energy Commission (CEC).[2] DOE, however, has modified that procedure to help decrease the overall testing burden faced by manufacturers when testing these products and by increasing the procedure's clarity. Examples of how DOE has accomplished these goals include modifying the procedure to use terms consistent with other DOE rulemakings and dividing more complex procedures into simpler, discrete steps for testing technicians to follow. These changes are discussed further in section III.B.

B. Review of Battery Charger and External Power Supply Standby Mode and Off Mode Test Procedures

DOE addressed the EPCA requirements to prescribe definitions and test procedures for measuring the energy consumption of external power supplies and battery chargers in standby and off modes (42 U.S.C. 6298(gg)(A) and (B)) in its March 27, 2009, test procedure final rule. That final rule incorporated standby and off mode measurements as well as updated definitions into appendices Y and Z. 74 FR 13318.

In today's final rule, DOE amends the battery charger test procedure by requiring the use of a 30-minute warm-up period followed by a 10-minute measurement period. Previously, the DOE test procedure required a 1-hour measurement period. This amendment harmonizes DOE's standby and off mode measurement requirement for battery chargers with the requirement contained in section IV of part 1 of the CEC battery charger test procedure. DOE is harmonizing its procedure with the CEC battery charger test procedure to produce a less burdensome procedure while preserving testing accuracy. No changes are being made to the standby and off mode test procedures for external power supplies. Detailed discussion of the changes can be found in section III.C.

C. Review of Single-Voltage External Power Supply Test Procedure

DOE is amending the test procedure for single-voltage external power supplies to accommodate several classes of external power supplies that cannot be tested in a representative or repeatable manner under the current test procedure. These external power supplies include those devices that (1) communicate with their loads through USB and other protocols (*e.g.* I2C and TCP/IP),[3] (2) limit their output current below the maximum current listed on their nameplates, and (3) have output power in excess of 250 watts. In its NOPR, DOE presented a general outline for a possible test method for these products, but stated that because these types of external power supplies did not exist in significant numbers in the market, DOE was unable to analyze them in depth and develop a testing approach using the single-voltage external power supply procedure. 75 FR 16958, 16962. DOE received generally supportive comments on its proposals for dealing with the three different external power supply types, especially those proposals regarding external power supplies that communicate with their loads. The test procedure revisions adopted in this final rule are described in greater detail in section III.D.

D. Multiple-Voltage External Power Supply Test Procedure

Pursuant to 42 U.S.C. 6295(u)(1)(E)(i)(I), DOE performed a determination analysis and concluded that those external power supplies equipped with multiple simultaneous output voltages were appropriate candidates for separate energy conservation standards. 75 FR 16958, 16974. Because DOE was unaware of any procedure that could be used to measure the energy consumption of these devices, DOE sought to develop such a procedure by modifying the

[2] Ecos Consulting, Electric Power Research Institute (EPRI) Solutions, Southern California Edison (SCE). *Energy Efficiency Battery Charger System Test Procedure.* Version 2.2. November 12, 2008. *http://www.energy.ca.gov/appliances/2008 rulemaking/2008-AAER-1B/2008-11-19_BATTERY_CHARGER_SYSTEM_TEST_PROCEDURE.PDF.*

[3] Devices of this type include cellular telephones and portable media players such as MP3 players.

procedures currently used by the CEC when measuring the energy consumption of single-voltage external power supplies [4] and internal power supplies.[5] 73 FR 48054, 48058 (August 15, 2008). DOE looked to the CEC's test procedure as the starting point for creating a multiple voltage external power supply procedure because of the aforementioned positive determination. DOE also believed that the CEC test procedure was the most accurate and appropriate of all the test procedures it examined and that adopting the CEC test procedure would allow DOE to maintain consistency with DOE's single-voltage external power supply test procedure, which was also based on a CEC test procedure. DOE's 73 FR 48064.

In today's final rule, DOE is adopting a test procedure generally consistent with both its earlier approach from its August 2008 proposal to address multiple-voltage external power supplies within the context of its standby mode test procedure and its more recent proposal. See 73 FR 48054, 48064 and 75 FR 16958, 16974. Although DOE had initially considered the adoption of a multiple-voltage external power supply procedure as part of its August 2008 NOPR, it declined to include such a procedure in the March 2009 final rule because of the substantial number of issues raised by commenters and the limited time provided by EISA 2007 to fully consider all of these concerns. 74 FR 13322. These concerns have since been resolved in light of additional comments, data, and information developed as part of today's final rule.

Incorporating this amendment into the external power supply test procedure will enable DOE to evaluate power consumption for multiple-voltage external power supplies in all modes of operation: active, standby (or no-load), and off. A detailed discussion of DOE's test procedure for multiple-voltage external power supplies can be found in section III.E.

[4] Calwell, C., Foster, S., and Reeder, T. *Test Method for Calculating the Energy Efficiency of Single-Voltage External Ac-Dc and Ac-Ac Power Supplies,* August 11, 2004, previously incorporated by reference into appendix Y. Ecos Consulting for the California Energy Commission; Sacramento, CA. *http://www.energystar.gov/ia/partners/prod_development/downloads/power_supplies/EPSupplyEffic_TestMethod_0804.pdf.*

[5] Mansoor, A., *et al.* and May-Ostendorp, P., *et al. Generalized Test Protocol for Calculating the Energy Efficiency of Internal Ac-Dc Power Supplies, Rev. 6.4.3.* October 22, 2009. EPRI and Ecos Consulting for the California Energy Commission; Sacramento, CA. *http://efficientpowersupplies.epri.com/pages/Latest_Protocol/Generalized_Internal_Power_Supply_Efficiency_Test_Protocol_R6.4.3.pdf.*

III. Discussion

Commenters raised a variety of issues related to DOE's proposal. These issues are addressed in greater detail in the sections that follow.

A. Effective Date for the Amended Test Procedures

The April 2010 proposal provided for an effective date of 30 days after publication of the final rule. That notice also indicated that the amendments to the battery charger and non-Class A external power supply test procedures would be required to be used once DOE sets standards for these particular products. 75 FR 16958, 16963.

Commenters voiced concerns with the 30-day effective date set forth in the test procedure NOPR. AHAM and PTI specifically asked for clarification on the language regarding the effective date. (AHAM, Pub. Mtg. Tran., No. 2 at p. 220; PTI, Pub. Mtg. Tran., No. 2 at p. 236) AHAM specifically voiced that clarification is important to prevent the need for relabeling products and avoiding possible conflicts with applicable State and ENERGY STAR specifications. (AHAM, Pub. Mtg. Tran., No. 2 at p. 223)

In addition to clarity, commenters requested more time to comply. Euro-Pro commented that it is difficult to re-label products, update all associated paperwork and advertisements, and sell the product in the marketplace within 30 days. (Euro-Pro, Pub. Mtg. Tran., No. 2 at p. 224) Euro-Pro further commented that it is difficult to comply with the new test procedure, whether given 30 or 180 days, and that DOE should provide a calendar date by which the procedure would go into effect. (Euro-Pro, Pub. Mtg. Tran., No. 2 at p. 233) Finally, AHAM urged DOE to make the test procedure effective, including the ENERGY STAR test procedure, when the standard becomes effective, to avoid confusion and issues with non-conformance. (AHAM, No. 10 at p. 4)

Commenters indicated that providing a lead time of 30 days would be insufficient to transition to a new test procedure. DOE notes that, any representations of energy use or efficiency made by a manufacturer must be based on the test procedure established by DOE. Manufacturers have 180 days from the establishment of that procedure to ensure that any such representations are based on that DOE-established test procedure. 42 U.S.C. 6293(c)(2)

Currently, there are no energy conservation standards for battery chargers and non-Class A external power supplies. To clarify the timing of the test procedure requirements that DOE is adopting today, DOE is amending the regulatory text to address this issue. Because of the 180-day requirement, as a practical matter, manufacturers have a full six months to adjust to the new procedure before having to make representations based on that procedure. Manufacturers would need to use the new procedure for battery chargers and non-Class A external power supplies once the this date for making representations is reached. Any written representations, such as those prescribed by the Federal Trade Commission in accordance with 42 U.S.C. 6294, would need to be made consistent with the test procedure as amended by today's final rule. Accordingly, although today's rule becomes effective 30 days after publication in the **Federal Register**, manufacturers have 180 days from the publication of today's final rule to use the test procedure for any written representation of energy efficiency or use. And since such requirements are not likely to be established until after DOE sets energy efficiency standards for these products in mid- to-late 2011, manufacturers will have considerable time to adjust to the new procedure before they are required to use this procedure to certify compliance with those new standards. (Given that today's rule does not prescribe any substantive changes that would affect the measured energy efficiency or use of Class A external power supplies, DOE does not anticipate any difficulties for manufacturers who are certifying these products.)

Finally, interested parties asked DOE to clarify how products that cannot be tested can be sold in the United States. (ASAP, No. 11 at p. 12; SCE, No. 13 at p. 12; PG&E, No. 12 at p. 12) They commented that DOE should disallow the sale of products that cannot be tested by the test procedure, but wanted to ensure that a product that must be tested under the procedure does not provide a path for manufacturers to avoid the energy conservation standard requirements. (ASAP, No. 11 at p. 12; SCE, No. 13 at p. 12; PG&E, No. 12 at p. 12) DOE acknowledges the interested parties' concerns and clarifies that, in general, products that cannot be tested in accordance with the DOE test procedure will not be permitted to be sold in the United States. However, a process is available to permit manufacturer to seek a waiver from the test procedure in special circumstances. As part of this process, an alternative test procedure must be provided by the manufacturer seeking the waiver in

order to provide a means to measure the energy use or efficiency of that product. See 10 CFR 431.27 (detailing requirements for obtaining a waiver from the required test procedure).

B. Battery Charger Active Mode Test Procedure

Prior to today's final rule, the battery charger test procedure consisted of four parts: (1) Scope, (2) definitions, (3) test apparatus and general instructions, and (4) test measurement. The test measurement section included four subparts to address the measurement of four separate energy consumption modes—inactive mode,[6] active mode, standby mode, and off-mode. Inactive mode energy consumption is measured for purposes of evaluating battery charger performance under the voluntary ENERGY STAR testing program.[7]

During the standby and off mode test procedure rulemaking from 2008, numerous interested parties commented that the current DOE test procedure is insufficient for the development of energy conservation standards because it does not measure energy consumption during active (*i.e.,* charging) mode. Many of these interested parties also recommended that DOE adopt the optional battery charger test procedure then under consideration in draft form at the CEC. As mentioned in the standby and off mode test procedure final rule, 74 FR 13318, DOE was unable to act on these comments, as it had not contemplated the inclusion of any active mode changes in the standby and off mode test procedure NOPR and there was insufficient time to consider this option in light of the statutory deadline for that rulemaking. 73 FR 48054 (August 15, 2008).

1. Incorporation of the CEC Test Procedure

On December 3, 2008, CEC adopted version 2.2 of the test procedure developed by Ecos Consulting, EPRI Solutions, and Southern California Edison (SCE), as an optional test procedure for the measurement of battery charger energy consumption during charging (active), maintenance, no-battery (standby), and off modes. The test procedure was incorporated by reference into section 1604(w) of title 20 of the California Code of Regulations,[8] alongside the DOE test procedure from appendix Y. Details of the CEC test procedure can be found in section III.1 of the NOPR. 75 FR 16964. *See also* 20 Cal. Code 1604(w) (referring to the 2008 DOE test procedure and the California test method for battery chargers).

In both the framework document and NOPR, DOE stated its intention to amend the battery charger test procedure in appendix Y to include an active mode measurement. See 74 FR 26818 and 75 FR 16958. Commenters supported the active mode measurement, and encouraged DOE to adopt the CEC test procedure in this regard. At the NOPR public meeting and in written comments, AHAM generally supported the proposed test procedure based on the CEC procedure and noted that its inclusion of an active mode energy measurement made it an improvement over the procedure already in place. (AHAM, Pub. Mtg. Tran., No. 2 at p. 25; No. 10 at p. 2) AHAM further commented that the CEC test procedure provides a good method for testing active mode. (AHAM, Pub. Mtg. Tran., No. 2 at pp. 65–66) PTI agreed with DOE's decision to incorporate elements from the CEC test procedure into the NOPR. (PTI, Pub. Mtg. Tran., No. 2 at pp. 249–250) PG&E was supportive of DOE adopting an active mode that largely follows the CEC test procedure because that procedure, in PG&E's view, is a solid base for performing battery charger testing. (PG&E, Pub. Mtg. Tran., No. 2 at p. 14) PG&E, Delta-Q and AHAM also supported DOE's decision to drop the inactive mode procedure in favor of an active mode one. (PG&E, Pub. Mtg. Tran., No. 2 at pp. 51–52; AHAM, Pub. Mtg. Tran., No. 2 at p. 47; Delta-Q, No. 5 at p. 2)

As described in section III.B of the NOPR, DOE examined three other procedures that are used world-wide to measure battery charger energy consumption—the EPA-developed procedure used for ENERGY STAR-qualification, Canadian Standards Association (CSA) C381.2, and the CEC test procedure on which DOE based its proposal. 75 FR 16964. After examining these procedures and conducting tests using them, DOE decided that the CEC test procedure provided all of the necessary outputs with reasonably good accuracy and minimal variability. The EPA-developed procedure and the CSA test procedure both lacked a method for measuring active mode energy consumption, a measurement that DOE and interested parties believe is necessary to establish meaningful energy conservation standards. Therefore, for these reasons, and in light of the general support that interested parties gave to the prospect of incorporating a CEC-based test procedure, DOE is basing its battery charger test procedure on the methodology of the CEC procedure but with some modifications to help increase its clarity and repeatability, and minimize the testing burden. (Battery Charger Test Data, No. 18.3) These modifications are outlined in the following sections.

2. Scope

a. Battery Chargers Versus External Power Supplies

As discussed in the NOPR, the battery charger test procedure applies to: "battery chargers operating at either DC or United States AC line voltage (120V at 60Hz)." 75 FR 16958, 16979. In written and verbal comments, interested parties noted that the proposed battery charger test procedure did not clearly explain how DOE would distinguish a battery charger from an external power supply for purposes of testing requirements.

AHAM expressed numerous concerns regarding the proposal's scope. In its view, the procedure should have a scope that clearly outlines what the test procedure covers. (AHAM, Pub. Mtg. Tran., No. 2 at p. 42) AHAM also asserted that any differences between the scope of coverage of the DOE and CEC test procedures stemming from the treatment of the battery charger's wall adapter (*i.e.,* whether it is tested separately as an external power supply or as part of the battery charger) may cause problems once the DOE test procedure for battery chargers becomes effective. Manufacturers may not know which procedure to use with their particular product since the DOE and CEC definitions of battery chargers and external power supplies differ. As a result, in its view, manufacturers will be unsure how to test and label their products. (AHAM, Pub. Mtg. Tran., No. 2 at p. 228) As an example, AHAM argued that non-Class A, motor-operated or detachable battery external power supplies that use charge control circuitry should be viewed as part of a battery charging system and be tested as part of the overall battery charger. (AHAM, Pub. Mtg. Tran., No. 2 at p. 37) It also suggested that to avoid confusion and allow for greater accuracy, DOE

[6] The inactive mode energy consumption measurement consists of the energy measured over 36 hours while the battery charger is in maintenance mode, followed by 12 hours in standby (no-battery) mode, with the possibility of abbreviating the measurement to 6 hours and 1 hour, respectively under certain conditions.

[7] Environmental Protection Agency (EPA). *Test Methodology for Determining the Energy Performance of Battery Charging Systems.* December 2005. *Washington, DC. http://www.energystar.gov/ia/partners/prod_development/downloads/Battery_Chargers_Test_Method.pdf.*

[8] California Energy Commission (CEC), "2009 Appliance Efficiency Regulations," August 2009.

should specify that the battery charger test procedure should be the only test procedure used to test battery chargers and all parts of battery chargers.

DOE notes that the approach suggested by AHAM would eliminate the possibility of regulating external power supplies packaged with battery chargers under the external power supplies standard. (AHAM, No. 10 at p. 4) This approach, however, also contains some inherent problems. Because an external power supply can provide power to one or more parts of an application simultaneously, limiting the procedure in the manner suggested by AHAM would similarly limit DOE's ability to capture certain aspects of the energy consumption characteristics of these products. For certain products, such as a power tool, the external power supply might only provide power to the battery charger. However, for products such as laptops, the external power supply might simultaneously provide power to the battery charger and other functions, such as the screen and processor. If DOE were to follow AHAM's suggestion, it would be unable to capture the potential energy savings from the external power supply to parts of an application other than the battery charger.

AHAM also stated that it is difficult to comment on the test procedure without knowing how energy standards will apply to these products and believed it would be inappropriate to separate the testing of any portions of the battery recharging circuit as part of the test procedure. (AHAM, No. 10 at p. 2)

Separately, AHAM asserted that, in its view, DOE has not clearly explained how the battery charger test procedure schedule integrates with the test procedure for Class A or non-Class A external power supply devices, or any combination thereof. (AHAM, Pub. Mtg. Tran., No. 2 at p. 27) AHAM also stated that manufacturers are currently "required to report their energy usage to California to indicate by a Roman numeral ('IV' or 'V') the level of external power supply that the wall adapter may utilize." In its view, DOE has not yet clarified how a wall adapter would be treated—*i.e.,* as a separate and distinct Non-Class-A external power supply or as part of a battery charger—manufacturers would not know which energy conservation standard would apply. (AHAM, No. 10 at p. 4) Finally, AHAM commented that as a result of a recent memorandum of understanding (MOU) reached between DOE and EPA, ENERGY STAR may be obligated to use the DOE test procedure if it is available. (AHAM, Pub. Mtg. Tran., No. 2 at p. 236) [9]

Wahl recommended that DOE should have one test procedure and regulation for an individual product. Products should be classified as an external power supply or as a battery charger and regulated to one standard or the other but not both. (Wahl Clipper, No. 9, at p. 1)

DOE acknowledges that interested parties have a number of concerns about the scope of the battery charger test procedure. DOE will address these issues and explain its approach in greater detail concerning how to delineate which products are battery chargers and which are external power supplies in the standards rulemaking.

b. Input Voltage and Frequency

As proposed in the NOPR, the scope of the DOE test procedure encompasses products that use DC or AC input voltages of 115 volts (V) at 60 hertz (Hz). 75 FR 16958, 16965. This scope differs from that of the CEC test procedure, which requires, when possible, the testing of units that accept AC line-voltage input at two voltage and frequency combinations: 115 V at 60 Hz and 230 V at 50 Hz. At the NOPR public meeting, commenters expressed different opinions concerning the rulemaking's scope.

Delta-Q, AHAM, and Sony believed that the scope should be limited to cover only products that use DC or AC 115 V at 60 Hz. (Delta-Q, No. 5 at p. 1; Sony, No. 6 at p. 1; AHAM, No. 10 at p. 8) Delta-Q cautioned "against some overlap with any solar industry standards that may apply to battery chargers operating with DC input." (Delta-Q, No. 5 at p. 1) Sony further supported DOE's proposal by stating that limiting testing to a single input voltage would reduce test costs and time and would be consistent with the external power supply test procedure. (Sony, No. 6 at p. 2)

Alternatively, ASAP, PG&E and SCE encouraged DOE to allow for input voltages higher than 115 V, such as 230 V at 60 Hz, because there are some high-power consumer battery chargers that operate at 230 to 240 V at 60 Hz. These chargers include charger/inverter units that connect between the electrical grid and the battery of many consumer photovoltaic (PV) and wind energy systems, as well as rapid chargers for lead acid batteries. (ASAP, No. 11 at pp. 1–2; PG&E, No. 12 at pp. 1–2; SCE, No. 13 at pp. 1–2) These commenters indicated that power at 230 V is available in most U.S. households, and products that use this higher voltage may become more prevalent as the Federal government provides tax incentives for residential PV systems that employ these higher output voltage devices. (ASAP, No. 11 at p. 2; PG&E, No. 12 at p. 2; SCE, No. 13 at p. 2) To account for testing at either input voltage and frequency combination, ASAP, PG&E, and SCE urged DOE to adopt language indicating that if the unit under test (UUT) is intended (*i.e.,* designed) for operation on AC line voltage-input of 110 V to 125 V 60 Hz, it shall be tested at 115 V at 60 Hz. Similarly, these commenters added that if the UUT is not intended for operation at 110 V to 125 V at 60 Hz, but is intended for operation at 220 to 240 V at 60 Hz, it should be tested at 230 V at 60 Hz. In the case of a UUT that is designed for operation on AC line-voltage input but cannot be operated at either of these voltages, this unit should not be tested under the procedure. See generally, ASAP, No. 11 at p. 2; PG&E, No. 12 at p. 2; SCE, No. 13 at p. 2.

Further, these commenters argued that when testing products of the same voltage at both 50 and 60 Hz, switch mode power supplies showed negligible difference in power consumption, and products with line-frequency transformers showed higher power consumption at 50 Hz. (ASAP, No. 11 at p. 2; PG&E, No. 12 at p. 2; SCE, No. 13 at p. 2) In their view, if DOE included higher voltage products in its scope, DOE could assume that if a product tested at 230 V at 50 Hz demonstrates compliance, it would also comply at 230 V at 60 Hz because at 50 Hz, it would be, presumably, consuming more power. Therefore, DOE could accept a test result at 230 V at 50 Hz as a substitute for 230 V at 60 Hz. (ASAP, No. 11 at p. 2; PG&E, No. 12 at p. 2; SCE, No. 13 at p. 2) However, these commenters provided no data in support of these claims.

Although some interested parties were concerned with the scope of the battery charger test procedure, DOE is retaining the scope as it was presented in its NOPR. DOE acknowledges that consumer products operate at different voltage and frequency combinations. However, DOE has not encountered consumer products that operate only at input voltages other than 115 V throughout this rulemaking process. Commenters provided no evidence of such products being available. For this reason, DOE believes that, to the extent that any such products exist, these products comprise, at most, an extremely small portion of the battery

[9] 2009 EPA–DOE Memorandum of Understanding: *http://www.energystar.gov/index.cfm?c=partners.mou.*

charger market. Consequently, DOE has decided at this time not to require the use of a separate voltage in addition to 115 V. DOE does not anticipate that its decision to exclude them from this rulemaking will have a significant impact on the annual energy consumption of battery chargers as a whole. However, DOE may revisit this decision in subsequent rulemakings.

c. DC Input Battery Chargers

In this rulemaking, DOE covers both AC- (as discussed, above) and DC-input battery chargers. In its comments, AHAM questioned whether DOE has the authority to regulate DC-input battery chargers, particularly within the context of those devices that have automotive-related applications—and how the proposed regulation of such products relates to the need for reducing power demanded from utilities. (AHAM, No. 10 at p. 5) AHAM added that if this approach relates to battery charging energy consumption from other electronics sources (*i.e.* charging a cell phone from a laptop computer), it suggested that DOE explain how it will segregate the energy from the functions of the laptop to the battery charger. (AHAM, No. 10 at p. 5) AHAM also stated that DOE should not focus on DC input battery chargers, but rather focus only on non-Class A power supplies and AC input battery chargers. (AHAM, No. 10 at p. 5)

Additionally, in response to the preliminary analysis for the corresponding battery charger and external power supply energy conservation standards rulemaking, DOE received other comments regarding in-vehicle chargers.[10] CEA and Motorola both stated that DOE's test procedure should clarify its stance regarding in-vehicle chargers while also recommending that such chargers be dropped from the scope of coverage for both the test procedure and the energy conservation standards rulemakings. (CEA, No. 48 at p. 3 and Motorola, No. 50 at pp. 2–3) Motorola commented that the CEC test procedure does not have a clear stance for in-vehicle electronics because the stated scope of the test procedure excludes battery chargers that do not connect to the utility grid, yet there are stipulations for testing devices that connect to cigarette outlets in automotive equipment and USB ports. (Motorola, No. 50 at pp. 2–3). CEA commented that the "stated scope of the DOE test procedure clearly excludes in-vehicle 'DC-in, DC-out' battery charging systems which are not connected to the utility grid. However, there are instructions in the test method for testing these types of battery charging systems." (CEA, No. 48 at p. 3)

Under EPCA, DOE has the authority to cover a wide variety of consumer products, excluding those consumer products "designed solely for use in recreational vehicles and other mobile equipment". 42 U.S.C. 6292(a). In DOE's view, this exclusion does not apply to any of the DC-input devices that would likely be affected by the procedure being promulgated today. While some of these products may be designed to work in conjunction with certain mobile equipment, such as for the purpose of recharging the battery of a golf car, DOE has found that none of the products that were considered within the context of this rulemaking—or of any related standards rulemaking activities—involved products that were designed solely for use in recreational vehicles and other mobile equipment. For example, cell phone chargers that work with DC current (as would be available in a recreational vehicle) also come equipped (or are designed to work) with wall adapters. As a result, such devices are not "designed solely" for use in a recreational vehicle and other mobile equipment.

However, as a result of the aforementioned provision, DOE is modifying its procedure for determining how a product should be tested. If a manufacturer packages its product with a wall adapter or the manufacturer recommends or sells a wall adapter for use with its product, the battery charger shall be tested with that wall adapter. If this is not the case and the product, such as a GPS device, only works with a DC input through either a car charger or a USB port, that device will be tested with the 5 V DC input that corresponds to the USB port configuration.

Consistent with this view, DOE plans to proceed with the scope proposed in the NOPR, which includes testing DC-input battery chargers. While EPCA specifies the input voltage that applies to an external power supply as part of that product's statutory definition, it does not place similar limitations with respect to the input voltage of battery chargers that DOE may regulate. Further, while many DC-input battery chargers may be designed to work with a recreational vehicle or other mobile equipment, these chargers are not "designed solely for use" in these applications since many, if not all, of these chargers are designed to work in conjunction with wall adapters, USB ports, or through other electrical connections to obtain AC mains power. In light of the absence of any specific language that would otherwise prevent DOE from regulating battery chargers that operate with a DC-input, and the fact that these devices are not designed exclusively for use in recreational vehicles or other mobile equipment, DOE believes it has the authority to regulate such products. Whether DOE opts to regulate these products is a decision based on whether energy conservation standards for these products achieve the maximum energy savings, are technologically feasible, and are economically justified. See 42 U.S.C. 6295(o)(2). As part of the energy conservation standards setting process, DOE plans to separately evaluate those DC-input battery chargers and determine whether it is technically and economically feasible to set standards for them in a manner consistent with the applicable statutory requirements.

d. High-Power Battery Chargers

DOE sought comment on how it should address the treatment of high-power battery chargers. In comments, Delta-Q expressed concern with the approach contained in the current version of appendix Y, which tests all battery chargers in the same manner, irrespective of the amount of power they use. Delta-Q stated that they are very concerned about how the test procedure would measure the energy use of higher power (750–1500W) chargers on larger (>200Ah) batteries, because the potential variability in the batteries is greater than in smaller batteries. This greater variability can impact the entire system and the calculated energy efficiency. To address this issue, Delta-Q suggested the use of an electronic load to simulate a battery pack, a standard battery make/model with a certain age range or excluding batteries above a certain size from the test procedure (Delta-Q, No. 5 at p. 1).

As proposed in the NOPR, today's final rule specifies that both the battery charger and its battery shall be new products of the type and condition that would be sold to a customer (*i.e.* end-user). 75 FR 16958, 16981. DOE is aware of the potential benefit that exists from using a battery simulator and testing with an electronic load, namely, decreased variability in test results for large lead-acid batteries. However, DOE is unaware of any existing test procedures that rely on this particular method, but is aware of test procedures for battery chargers that require testing with the physical batteries that are associated with the charger being tested. The fact that there are no currently

[10] The comments listed in this paragraph come from administrative record for the parallel rulemaking on energy conservation standards for battery chargers and external power supplies. The reference docket number is EERE–2008–BT–STD–0005 (RIN: 1904–AB57).

recognized standard test procedures that rely on simulators suggests that testing with physical batteries rather than simulators is not only preferable but an appropriate and acceptable means to accurately test battery chargers, including those products that charge extremely large batteries (*i.e.* those used in forklifts or golf cars).

Additionally, because DOE is unaware of test procedures that use battery simulators, DOE would need to develop such procedures on its own, which would require considerably more testing and analysis and potentially involve additional uncertainty given the absence of any currently existing protocols. Potential concerns include determining how such a device would be used in a test procedure and how representative such a device would be of an actual battery, as well as other considerations, all of which would need to be vetted publicly. DOE is confident that today's final rule will result in repeatable test results for all battery chargers, including those that use large batteries, because of the requirements that are being added when selecting a battery to test and from DOE's experience testing various battery chargers. (Battery Charger Test Data, No. 18.3) As a result, the procedure will permit performance comparisons across all battery charger types with respect to energy usage. Upon the receipt of further information, DOE may consider using a battery simulator in a future revision to the test procedure. In the absence of this information, however, DOE is opting to incorporate its proposed method into the battery charger test procedure—*i.e.* specifying that high-powered battery chargers be tested using the same method as used to test all battery chargers; that is, by using the associated battery.

e. Consumer Motive Equipment

The CEC test procedure includes two parts: part 1 covers the energy consumption of consumer products with input power under 2 kilowatts, whereas part 2 covers the energy consumption of larger industrial chargers, which are generally larger in size and capacity. Briefly, part 1 measures the input energy to the battery charger when recharging a battery that had previously been conditioned (if necessary). Part 2 requires this same measurement but includes charger output energy measurements and tests the charger with the battery at three different depths-of-discharge. The NOPR provided a more detailed discussion of these parts. See 75 FR 16958, 16964–66 (section III.B.1 and section III.B.2).

DOE proposed testing all battery chargers, including large battery chargers for golf cars and other consumer motive equipment, according to part 1 of the CEC test procedure. PG&E, ASAP, and SCE agreed with DOE's approach for testing the battery chargers used with golf cars and other consumer motive equipment. (ASAP, No. 11 at p. 2; PG&E, No. 12 at p. 2; SCE, No. 13 at p. 2) PG&E informed DOE that golf cars can be satisfactorily tested under either part 1 or part 2 of the CEC test procedure. (PG&E, Pub. Mtg. Tran., No. 2 at p. 76) ASAP, PG&E and SCE informed DOE that the main drawback of using part 1 to test golf cars is that only the worst energy performers are identified under this approach. (ASAP, No. 11 at p. 2; PG&E, No. 12 at p. 2; SCE, No. 13 at p. 2) They suggested that when DOE revisits the test procedure, DOE should carefully consider the data on the efficiency of current golf car battery chargers, and consider amending the test procedure to use part 2 at that time. (ASAP, No. 11 at p. 2; PG&E, No. 12 at p. 2; SCE, No. 13 at p. 2)

Not all interested parties were supportive of using part 1 of the CEC test procedure to measure battery chargers for golf cars and other consumer motive equipment. In AHAM's view, DOE's proposal oversimplifies the issue because these products differ from other battery chargers in terms of battery chemistry, usage, and charging equipment. Because of these complexities, AHAM argued in favor of adopting a separate test procedure section for these products. (AHAM, Pub. Mtg. Tran., No. 2 at pp. 74–75; AHAM, No. 10 at p. 5) Delta-Q reiterated this point but did not believe that there was any reason to exclude these 750–1000W size battery chargers from efficiency standards (Delta-Q, No. 5 at p. 1).

Contrary to the comments made by AHAM, there are similarities between battery chargers for golf cars and other consumer products, such as motorized wheelchairs, since they all require lead-acid batteries and use battery chargers with similar technologies. For more information on these products and their technical similarities, please refer to chapter 3 of DOE's preliminary technical support document for energy conservation standards for battery chargers and external power supplies. See *http://www1.eere.energy.gov/buildings/appliance_standards/residential/battery_external.html.*[11]

The technical similarities between these types of products allow them to be tested in a similar fashion. DOE has also considered PG&E's experience in developing the CEC test procedure on which DOE's proposal is largely based. In developing the CEC procedure, PG&E tested golf cars using the methods that are currently prescribed in both Part 1 and Part 2 of the CEC test procedure. DOE has given careful consideration to PG&E's statement that golf cars and other consumer motive equipment can be accurately tested under either part 1 or part 2 of the test procedure.

While DOE agrees with PG&E's overall assessment regarding the potential limitations applicable to part 1 of the CEC test, the additional testing requirements and complexity of part 2, which was intended for industrial applications, suggest that the adoption of part 2 for consumer products would constitute an unnecessary testing burden that would not be likely to increase the accuracy of the test results that would otherwise be gleaned from part 1. The test procedure provisions in part 2 may be necessary to accurately measure the energy efficiency of large industrial battery chargers but for golf cars and other types of consumer motive equipment (collectively, consumer motive equipment) that fall at the low-power end of the lead-acid battery charger range, the need for a specialized test procedure is not as clear. For example, part 2 requires a series of tests under various conditions to detect any differences in energy consumption. The greater comprehensiveness to this approach is better suited to high-power industrial chargers, which are already very efficient when compared to the consumer products that could be tested under part 2. Moreover, since consumer products that could be tested under part 2 have greater variations in efficiency than industrial chargers, requiring manufacturers to test these products using the simpler test method outlined in part 1 should generate sufficiently accurate results without imposing the greater burden that would likely be posed by requiring part 2. Therefore, in consideration of this situation, today's final rule specifies that part 1 be used for these products.

3. Definitions

DOE proposed to make a number of changes to the definitions in the battery charger test procedure contained in 10 CFR, subpart B, appendix Y. Specifically, DOE proposed to delete

[11] Chapter 3 of the technical support document contains the Market and technology Assessment, which includes additional details on all products that may be affected by DOE's energy conservation standards rulemaking effort. The docket number for this parallel rulemaking is EERE–2008–BT–STD–0005 (RIN: 1904–AB57).

two definitions from the current battery charger test procedure, modify four definitions, and add 15 new definitions to appendix Y. 75 FR 16966. After reviewing the comments submitted in response to this proposal, DOE has decided to apply certain terms used in the CEC procedure as part of the revised set of battery charger-related definitions. To implement these changes, DOE is amending section 2 of appendix Y by amending, deleting, and incorporating new definitions to make appendix Y consistent with the CEC procedure. DOE is also removing definitions used only in section 4(a) of appendix Y (inactive mode energy consumption measurement), which DOE is removing with today's final rule (see section 5.a of this final rule).

a. Deleting Existing Definitions

The specific changes in today's final rule consist of a series of deletions, amendments, and additions. These changes include removing the definitions of "accumulated nonactive energy" and "energy ratio or nonactive energy ratio" from the regulations, as they are relevant only to the nonactive mode measurement of the procedure. That portion of the procedure is being removed as part of this final rule. Details of these deletions can be found in section III.B.3.a of the NOPR. 75 FR 16958, 16966. Commenters did not oppose the proposed deletions.

DOE received comments suggesting the removal of two definitions from its current test procedure. ASAP, PG&E, and SCE recommended the removal of definitions of "detachable" and "integral" batteries, which are contained within the definition of "battery or battery pack" in the current DOE test procedure. These commenters argued that these particular definitions are not required when carrying out the test procedure and that their inclusion within the regulation could create confusion since some batteries are neither detachable nor integral. Commenters cited as an example products that use AA or AAA rechargeable batteries to power a device, but recharge those batteries in a device external to the product. They also added that some lead-acid batteries for automotive and marine applications may also not meet either definition. (ASAP, No. 11 at pp. 10–11; PG&E, No. 12 at pp. 10–11; SCE, No. 13 at pp. 10–11) These commenters further stated that the terms are only used for the battery selection process, and "[t]he key element is not whether the batteries are integral or detachable, but rather whether or not they are packaged with the charger and therefore constitute 'typical' batteries." (ASAP, No. 11 at p. 11; PG&E, No. 12 at p. 11; SCE, No. 13 at p. 11)

DOE's test procedure will continue to define detachable and integral batteries. Although commenters indicated that these terms are only used for the battery selection process, they are also used in the standby and off mode tests, which remain as part of the amended test procedure. Both of these tests require the disconnection of the battery from the end use product except in cases where an integral battery, which, by definition, cannot be disconnected from the end use product, is used. See 10 CFR part 430, subpart B, appendix Y. The continued use of these terms and their definitions helps provide clarity to these procedures.

b. Revising Existing Definitions

DOE had also proposed to modify the definitions of "active mode," "multi-port charger," "multi-voltage à la carte charger," and "standby mode" found in appendix Y. The proposed changes were minor and designed to clarify the wording of those definitions. DOE received no comments regarding these definitions in response to the NOPR. For "active mode" and "standby mode," DOE is clarifying that these terms can be used interchangeably with the terms "charge mode" and "no-battery mode" respectively. Additionally, the terms "multi-port charger" and "multi-voltage à la carte charger" are being revised to be consistent with the corresponding CEC definitions and are expanded to encompass a batch charger. Details of these proposed revisions can be found in section III.B.3.b. of the NOPR. 75 FR 16958, 16966.

c. Adding New Definitions

Finally, because DOE proposed adding procedures to measure energy consumption in active mode for a battery charger, DOE also proposed the inclusion of a number of new corresponding definitions. In particular, DOE proposed to add definitions for "active power or real power (P)," "ambient temperature," "apparent power (S)," "batch charger," "battery rest period," "rated energy capacity," "C-rate," "equalization," "instructions or manufacturer's instructions," "measured charge capacity," "rated battery voltage," "rated charge capacity," "total harmonic distortion (THD)," and "unit under test (UUT)." See 75 FR 16958, 16967.

Commenters provided feedback on DOE's proposed definitions for "instructions or manufacturer's instructions," "power factor," "rated charge capacity," and "total harmonic distortion," as discussed in the sections, below. No other comments were provided regarding the other proposed definitions.

Instructions or Manufacturer's Instructions

DOE proposed to define the term "manufacturer's instructions" as "the documentation packaged with the product in printed or electronic form and any information about the product listed on a Web site maintained by the manufacturer and accessible by the general public at the time of the test." 75 FR 16958, 16967. Commenters expressed concern with the proposed definition for manufacturer's instructions.

PG&E referred DOE to the CEC test procedure, which defines the term "manufacturing instructions" broadly to permit testing labs to use information that is unavailable to consumers. (PG&E, Pub. Mtg. Tran., No. 2 at p. 23) PG&E also supported DOE's decision to expand the definition of manufacturer instructions to include information provided on manufacturers' Web sites. However, it stated that service instructions should be included to enable manufacturers to provide information not generally available to consumers. Service instructions may include detailed information to technicians that explain how to disassemble the product to gain access to an integral battery or a battery that has protective circuitry. (PG&E, Pub. Mtg. Tran., No. 2 at pp. 246–247) PTI indicated that such information would not ordinarily be provided to consumers in light of the potential safety hazard posed by the disassembly of the product by an untrained individual. (PTI, Pub. Mtg. Tran., No. 2 at pp. 247). PTI supported the inclusion of service instructions as part of the definition so long as the testing is carried out by professional technicians and those detailed instructions do not become public. (PTI, Pub. Mtg. Tran., No. 2 at pp. 248–249) ASAP, PG&E, and SCE encouraged DOE "to expand the definition of 'manufacturer's instructions' to include both consumer instructions and service instructions." (ASAP, No. 11 at p. 3; PG&E, No. 12 at p. 3; SCE, No. 13 at p. 3) They recommended that DOE should take one of the following approaches: (1) utilize the original CEC language or (2) adopt alternative language in which DOE would define "manufacturer's service instructions to consumers" separately from "manufacturer's service instructions." By defining them separately, DOE can specify that only the consumer instructions should be used when setting up a product in

preparation for the charge test, but either can be used to access the battery for the discharge test, since disassembly to reach the battery will never be needed for the charge test but may be necessary for the discharge test. (ASAP, No. 11 at p. 3; SCE, No. 13 at p. 3; PG&E, No. 12 at p. 3) Finally, AHAM commented that the test procedure should not encourage a test technician to open a sealed battery pack or compartment. (AHAM, No. 10 at p. 7)

PG&E and PTI both suggested that service instructions should be included in the definition of manufacturer instructions, and permit these documents to be used to perform testing, according to the CEC definition. The CEC defines that term to include "any service manuals or data sheets that the manufacturer offers for sale to independent service technicians, whether printed or in electronic form." [12]

After considering these comments, DOE has decided to modify its initial proposal and to adopt the CEC definition for manufacturer's instructions, which includes service instructions in its definition. DOE is taking this step to ensure that testing technicians have adequate information on how to access the battery. DOE will also specify that if service instructions are used to perform testing, it should clearly be stated in the certification report to avoid potential confusion if the particular product is subjected to verification testing. A copy of the instructions should be provided to DOE for verification purposes.

Power Factor and Crest Factor

DOE proposed to include definitions for both power factor and crest factor as part of the battery charger test procedure. 75 FR 16958, 16967. The term "power factor" denotes the ratio of the power consumed by a device relative to the power drawn by a device from mains. The term "crest factor" refers to the ratio of the instantaneous peak voltage relative to the root-mean-square value, measured when charging a device. These definitions are not currently used as part of the test procedure. DOE received comments both in favor and against these proposed definitions.

ASAP, PG&E and SCE supported DOE's inclusion of power factor and crest factor. In their view, the inclusion of these terms in the test procedure would broaden its scope and applicability. These commenters also believed that even though DOE may not be using these measurements and definitions within the context of the current rulemaking activities to set energy efficiency standards for battery chargers, their inclusion in this test procedure will allow other agencies, such as the U.S. Environmental Protection Agency (EPA), to reference this test procedure and develop future policies regarding energy efficiency related performance features. (ASAP, No. 11 at p. 13; PG&E, No. 12 at p. 13; SCE, No. 13 at p. 13)

AHAM disagreed with these proposed definitions as well as the proposed method by which to measure them. (AHAM, Pub. Mtg. Tran., No. 2 at p. 85; AHAM, No. 10 at p. 4) It argued that measuring power factor for the purpose of regulation represents a significant departure from most other DOE appliance energy efficiency standards. (AHAM, Pub. Mtg. Tran., No. 2 at pp. 85–86; AHAM, No. 10 at pp. 4) AHAM continued, stating that the test procedure provides no method for taking a power factor measurement and that part of the problem is that the procedure lacks a definition of source impedance. The source impedance is an important factor because its definition affects the accurateness of the real world losses that would stem from power factor in a consumer product. (AHAM, Pub. Mtg. Tran., No. 2 at pp. 86–87; AHAM, No. 10 at pp. 4–5) For consumer products, like those that use battery chargers covered by this rulemaking, the source impedance is an electrical description of the wiring within a house that has a direct impact on apparent power and thus, constitutes the power factor measured for a device. AHAM also suggested that DOE should conduct studies to establish the range of impedance and the possible impacts of power factor. (AHAM, No. 10 at pp. 4–5)

Additionally, PTI was concerned that DOE has not provided any details on how to measure power factor. PTI, like AHAM, argued that to obtain consistent and meaningful results, DOE must define the source impedance and provide a method for how the measurement is taken. (PTI, No. 8 at p. 3) PTI also stated that DOE should not include the power factor and crest factor test procedure measurements and definitions in its final rule. PTI also commented that including these definitions and measurement methods in the test procedure would imply that DOE has evaluated the merit of measuring power factor and crest factor, which it has not; therefore PTI believes that DOE should not define or require the measurement of power factor and crest factor. (PTI, No. 8 at p. 3)

In today's final rule, DOE has decided to drop its proposal regarding power factor and crest factor. At this time, DOE has not conducted an analysis on the benefits that could be gained from regulating power factor or crest factor for consumer products that use battery chargers and commenters offered no data in support of such an approach. Although DOE acknowledges that other agencies, such as EPA, may have an interest in using these measurements, DOE currently has no plans to incorporate either of them for compliance purposes. Accordingly, although DOE may revisit this issue at a later date, DOE is declining to incorporate power factor and crest factor into today's final rule.

Rated Charge Capacity

DOE proposed to define "rated charge capacity" in its regulations. Specifically, DOE proposed to define this term as "the capacity the manufacturer declares the battery can store under specified test conditions, usually given in ampere-hours (Ah) or milliampere-hours (mAh) and typically printed on the label of the battery itself * * *" 75 FR 16958, 16968. The proposed definition was consistent with the CEC test procedure's definition.[13]

DOE received a single response to this proposal. Sony recommended that DOE adopt the current CEC definition for rated charge capacity, which allows the option of using a rated charge capacity unit of either milliampere-hours (mAh) or ampere-hours (Ah). Sony opposed what it believed was a proposal by DOE to use only Ah. (Sony, No. 6 at p. 2) DOE notes that its proposed definition includes the use of both Ah and mAh. 75 FR 16958, 16980.

In light of the absence of any objections to its proposed approach, DOE will adopt its proposed definition for rated charge capacity.

Total Harmonic Distortion

In its NOPR, DOE defined "total harmonic distortion" as:

"the root-mean-square (RMS) value of an AC signal after the fundamental component is removed and inter-harmonic components are ignored, divided by the RMS value of the fundamental component." 75 FR 16980.

Responding to this proposal, AHAM suggested that DOE consider the language of International

[12] Pacific Gas and Electric, California Energy Commision-Pulic Interest Energy Research (PIER) Program, and Southern California Edison *Energy Efficiency Battery Charger System Test Procedure.* Version 2.2, November 12, 2008, page 6.

[13] Pacific Gas and Electric, California Energy Commission-Pulic Interest Energy Research (PIER) Program, and Southern California Edison *Energy Efficiency Battery Charger System Test Procedure.* Version 2.2, November 12, 2008, page 8.

Electrotechnical Commission (IEC) Standard 62301, section 1.1.1 "Supply voltage waveform" with respect to total harmonic distortion, but did not provide reasoning for this recommendation. (AHAM, No. 10 at p. 7)

DOE is adopting the proposed definition. DOE notes that this language is based on those definitions that are already in use by the Institute of Electrical and Electronics Engineers (IEEE) through standard 1515–2000—as well as DOE's own regulations for external power supplies. See 10 CFR part 430, subpart B, appendix Z. As a result, the industry already follows this definition. Adopting a different definition would conflict with DOE's intent to harmonize the approaches contained in the battery charger and external power supply test procedures, as well as with the industry standard currently in place. Therefore, DOE is adopting its proposed definition for this term.

4. Test Apparatus and General Instructions

a. Confidence Intervals

DOE proposed incorporating confidence qualifiers to the confidence intervals in its test procedure. The proposed confidence intervals were different from the CEC intervals in that they added a 95% confidence qualifier to the CEC intervals. As a result DOE's proposal provided for a margin of ≤ 2% at the 95% confidence level for active power measurements of 0.5 W or greater and a margin of ≤ 0.01 W at the 95% confidence level for active power measurements of 0.5 W or less.

AHAM supported adding the 95% confidence qualifier to the confidence intervals, stating that it is "an important addition to the standard." (AHAM, Pub. Mtg. Tran., No. 2 at p. 91) PTI left the use of a confidence level for error analysis to DOE by stating that "[s]ince the Department alone is aware of their intention with respect to future use of the data provided by the test procedure, they should evaluate, through an error analysis, the impact of the error in the test data, particularly in the case of battery capacity." (PTI, No. 8 at p. 3) AHAM recommended that DOE consider the IEC 62301 Second Edition FDIS document for methods of dealing with uncertainty, specifically for measurements under 1 watt. (AHAM, Pub. Mtg. Tran., No. 2 at pp. 91–92; AHAM, No. 10 at p. 6) AHAM also suggested that the Department consider the language in section 4.2 "Measuring equipment" of the Canadian Standards Association's (CSA) test method for battery chargers for confidence limits. (AHAM, No. 10 at p. 6) Additionally, AHAM recommended that DOE add a requirement that laboratories publish the error analysis for their automated equipment because manufacturers may obtain different results than verification laboratories as a result of different sampling rates and instrument accuracy. (AHAM, No. 10 at pp. 5–6)

PTI also supported DOE's proposal, noting that DOE was correct to address the uncertainty of the measurements rather than the equipment, as the test equipment may not be able to deliver the same uncertainty with different UUTs. (PTI, No. 8 at p. 4) PTI recommended that DOE include requirements that test laboratories, particularly in the case of verification testing, provide a suitable error analysis that demonstrates that they have met the uncertainty requirements of the test procedure. (PTI, No. 8 at p. 4) PTI also stated that DOE should establish overall error requirements rather than only equipment requirements because elements other than equipment introduce error. (PTI, Pub. Mtg. Tran., No. 2 at pp. 95–96)

PTI added that DOE should consider the sampling rate and sampling interval during the measurement of the energy use of a charger that performs pulse charging—which is when a unit that sends periodic bursts of current to the battery rather than a continual stream of current—because these factors will affect the overall uncertainty of the measurement (PTI, Pub. Mtg. Tran., No. 2 at p. 94).

After taking into account these comments, which generally expressed support for DOE's proposed inclusion of the specified confidence intervals into the test procedure, DOE decided to adopt its proposed approach. Regarding these specific intervals and the various recommendations offered by AHAM, DOE notes that its proposal matches the requirements set out in IEC 62301 and, although the language is not identical to what appears in the CSA test method, its requirements are similar. As for PTI's concerns with respect to pulse charging, DOE is not persuaded that any extra consideration or change is needed. By specifying a 95% confidence level for the measurement, the technician must ensure that the sampling rate is fast enough to capture any pulses in order to maintain the specified statistical accuracy of his measurement. Thus, the requirements that DOE is incorporating are aligned with the commenters' recommendations. They also will result in a more robust and repeatable test procedure because all results must be expressed with a high level of confidence, which will permit less variance in the measurements recorded for a tested device.

b. Test Laboratory Temperature

DOE proposed raising the ambient temperature during testing from 20 degrees to 25 degrees plus or minus 5 degrees Celsius in its NOPR. DOE proposed this change because it believed 25 degrees Celsius was more easily achievable across diverse climates and more typical of testing environments. 75 FR 16968–69. Several commenters responded to this aspect of the proposal.

PG&E recommended leaving the temperature range as it was. The basis for the CEC temperature range, which has already gained industry acceptance, stems from the applicable IEC standards for batteries. If DOE were to alter the temperature range, it would need to conduct additional testing to verify that the end-of-discharge voltages are still appropriate at the high end of the range of temperatures because the higher temperatures will have unknown effects on the chemistries of batteries. (PG&E, Pub. Mtg. Tran., No. 2 at p. 97). AHAM agreed with PG&E and, in its view, raising the ambient temperature during testing would be acceptable only if DOE had first considered the end-of-discharge voltages when making the change. (AHAM, Pub. Mtg. Tran., No. 2 at p. 98) ASAP, PG&E, and SCE urged DOE to adopt the industry standard room temperature of 15 to 25 degrees Celsius. (ASAP, No. 11 at p. 3; PG&E, No. 12 at p. 3; SCE, No. 13 at p. 3). These commenters noted that the 15 to 25 degrees Celsius temperature range is the industry standard and because the chemical reactions taking place in batteries are temperature sensitive and the end-of-discharge voltages are based on this range, DOE should not change the temperature range. Altering the temperature range could have unintended and unknown consequences on the end-of-discharge voltage. It is possible that changing the temperature range could increase or decrease the end-of-discharge voltage, so doing so would require testing to determine if the end-of-discharge voltages for various battery chemistries are still appropriate at the higher temperature range. (ASAP, No. 11 at p. 3; PG&E, No. 12 at p. 3; SCE, No. 13 at p. 3)

AHAM alternatively recommended in its written comments that DOE consider incorporating the IEC 62301 requirement that "[t]he ambient temperature shall be maintained at (23±5)° C through the test." (AHAM, No. 10 at p. 7) Although this was a departure from its statements at the NOPR public meeting, AHAM stated

that it believed this value had support in the International Standards community and would be very attainable. (AHAM, No. 10 at p. 7)

After evaluating the comments received on this issue, DOE has decided not to increase the temperature range and to continue requiring an ambient temperature of 20 degrees plus or minus 5 degrees Celsius. This approach is consistent with the CEC test procedure. The lower temperature range is widely accepted and currently used by the industry. Adopting this approach, based on information presented to DOE, should not impose a new burden on manufacturers to alter their testing laboratories since the appropriate operating temperature range remains the same. Additionally, this temperature range, which served as the basis for the development of the end-of-discharge voltages specified, ensures that consistency and the validity of those voltages is maintained. For these reasons, DOE is incorporating this range into the final rule. DOE notes that while AHAM suggested DOE consider the IEC 62301 range of 23 degrees plus or minus 5 degrees Celsius, all other commenters—including AHAM—indicated that a departure from the original temperature range, 20 degrees plus or minus 5 degrees Celsius has the potential to invalidate the end-of-discharge voltages that have been established for the various battery chemistries used in battery chargers. Accordingly, DOE is opting not to make such a change and will harmonize its test procedure with other industry standards to the extent feasible to help ensure the validity of all measured end-of-discharge voltages.

c. Charge Rate Selection

DOE proposed to require that when testing a battery charger equipped with user controls that enable the user to select from two or more charge rates that the test be conducted using the fastest charge rate that is recommended by the manufacturer for everyday use. 75 FR 16958, 16969. Commenters had varying opinions on this approach.

Delta-Q "mildly disagreed" with DOE's proposal for selecting the charge rate for testing, as a charger could be significantly less efficient at lower power levels, but they did not provide data or other support for their reasoning. (Delta-Q, No. 5 at p. 1) Alternatively, ASAP, PG&E, and SCE supported DOE's proposed approach. (ASAP, No. 11 at p. 10; PG&E, No. 12 at p. 10; SCE, No. 13 at p. 10) No other pertinent comments were submitted on this issue.

In light of these comments, and the absence of any supporting data or information that would support Delta Q's assertion that a charger would operate less efficiently at lower power levels, DOE is adopting its proposed approach. DOE believes that, given a choice, users are more likely to opt for the fastest charge that does not impact the battery's long-term health, as evidenced by the popularity of successively faster chargers in the market. (Battery Charger Test Data, No. 18.3) DOE presented this view during the NOPR public meeting and received no comments disputing this view. Consequently, DOE is requiring that testing occur at the fastest charge rate that is recommended by the manufacturer for everyday use. Doing so will reduce the test procedure burden on manufacturers while producing representative measurements of energy use.

d. Battery Selection

DOE proposed to require testing with a battery or combination of batteries, depending on the charger type—*i.e.* multi-voltage, multi-port, or multi-capacity. This approach is consistent with the CEC test procedure. 75 FR 16958, 16969. For those battery chargers that come either with no batteries or multiple batteries, DOE also sought comment on an alternative approach that would require the testing of only the configuration of batteries most commonly used with the device, but no comments or data were received on this approach. 75 FR 16969, 16979.

AHAM commented that if the manufacturer recommends a battery for use with the product, the Department should consider using only that battery, and not any others, for measuring energy consumption during testing. (AHAM, Pub. Mtg. Tran., No. 2 at pp. 112–113) ASAP, PG&E, and SCE supported DOE's proposal to test the battery charger with only the typical battery configuration but suggested a change to improve the repeatability of the battery selection process. (ASAP, No. 11 at p. 10; PG&E, No. 12 at p. 10; SCE, No. 13 at p. 10) Specifically, these commenters suggested changing section 4.3 (3) of appendix Y to be more restrictive than the proposed "any [battery] suitable for use with the charger"-approach set forth in the NOPR. These commenters suggested that DOE's test procedure recommend searching within brand name batteries that are readily available in the region where the product is sold or being tested. (ASAP, No. 11 at p. 10; PG&E, No. 12 at p. 10; SCE, No. 13 at p. 10)

DOE is incorporating its proposed approach because it received no comments suggesting alternative approaches that would allow a battery charger to be tested with a single battery that would generate a result that is "a representative average use cycle." See 42 U.S.C. 6293(b)(3). Under this approach, if the battery is packaged with the charger, then the charger is tested with only this battery. Alternatively, if the charger is not packaged with a battery, and is multi-port, multi-capacity, or multi-voltage in configuration, testing with a single battery, as recommended by interested parties, may not be a representative average use cycle and more than one test is needed to accurately assess the average use of that product. Although DOE's proposed approach can require up to three tests, which is potentially burdensome, it ensures that the test procedure fulfills this statutory requirement. See 42 U.S.C. 6293(b)(3). This approach should also enable DOE to account for all possible battery combinations that can be used in the charger rather than just the most typical configurations.

In response to the preliminary analysis for energy conservation standards for battery chargers and external power supplies, DOE received related comments. Motorola commented that the CEC test procedure, upon which DOE based its test procedure, is not completely clear in defining how to select batteries for testing and that DOE should clearly define how to select batteries for testing. They added that DOE should define the terms "lowest voltage" and "highest voltage." (Motorola, No. 50 at p. 2) [14]

As mentioned, DOE is incorporating its proposed approach for selecting batteries with which a technician should test a unit under test. Although the procedure does not define the terms "highest voltage" and "lowest voltage," DOE believes that these terms clearly refer to the rated battery voltage because that is the pertinent information that manufacturers will provide when they package or recommend batteries to use with their devices. The other voltages that Motorola references in its comment (*e.g.* desired end-of-discharge battery voltage) are voltages that must be monitored after the testing has commenced and are not pertinent for selecting batteries to test. Accordingly, DOE is declining to define these particular terms at this time.

[14] The comments listed in this paragraph come from administrative record for the parallel rulemaking on energy conservation standards for battery chargers and external power supplies. The reference docket number is EERE–2008–BT–STD–0005 (RIN: 1904–AB57).

e. Non-Battery Charging Functions

DOE proposed to implement a procedure for testing battery chargers with non-battery charging functions that would be consistent with the CEC approach. The CEC method requires the tester to turn off any user-controlled functions and disconnect all auxiliary electrical connections to the battery charger. 75 FR 16958, 16969.

Commenters had mixed views regarding non-battery charging functions. PG&E, Delta-Q, ASAP and SCE agreed with DOE's approach. PG&E stated that it agreed that the test procedure should not provide any energy allowances for battery chargers with extra functionality and agreed that any such functionality should be turned off during testing. (PG&E, Pub. Mtg. Tran., No. 2 at p. 15) Delta-Q agreed with DOE's approach for non-battery charging functions. (Delta-Q, No. 5 at p. 2) ASAP, PG&E, and SCE stated that testing conducted for the development of the CEC test procedure found that turning off or disconnecting additional functions is the only approach that results in accurate measurements of standby power while providing a means to compare the energy consumption of products with and without additional functionality against each other. (ASAP, No. 11 at p. 3; PG&E, No. 12 at pp. 3–4; SCE, No. 13 at p. 4) Sony asked for clarification on how the additional functionality section in the proposal would pertain to video products (Sony, No. 6 at p. 2).

In contrast, PTI commented that since battery charging is often secondary to the main function of the product, requiring the non-battery charging functionality to be turned off during testing would be inconsistent with the general approach of trying to satisfy the user's requirements. (PTI, Pub. Mtg. Tran., No. 2 at p. 119) In response, PG&E offered a solution to manufacturers and stated that manufacturers could design additional functionality into their products to ensure that the additional functionality will not consume enough power to prevent a battery charger from meeting any energy conservation standards that DOE might set. (PG&E, Pub. Mtg. Tran., No. 2 at p. 120)

PTI suggested an alternative method to account for non-battery charging functions. It suggested conducting the battery charger test with and without the battery; the difference between the two measurements would be the energy used to charge the battery. Although this method excludes the standby component, PTI believed that the error associated with its exclusion is less significant than the error that would result from treating all of the products as if they were augmented battery chargers. (PTI, Pub. Mtg. Tran., No. 2 at pp. 123–124)

When developing its test procedure, DOE considered how to isolate the energy consumption of the battery charging circuitry in cases where the charger is embedded inside another product that provides additional functionality, such as video products and notebook computers. The test procedure must ensure that measurement of energy use for these types of products accounts for the energy used by this additional functionality. DOE believes that its proposed method is best suited to capture these measurements compared with the other methods suggested by commenters because it does not discount power consumption in other modes of operation, as the suggested approach by PTI would do.

The method in this final rule is consistent with that of the generally accepted CEC test procedure, which applies equally to all products, including video products. By requiring that any switches controlling the additional functionality be turned off, and any auxiliary cables or connections be disconnected, this method provides manufacturers with a cue to shut down the additional functionality. As a result, only the battery charging portion of the battery charger is measured during testing. DOE notes that if a manufacturer does not equip its product with a switch to shut off non-battery charger functions, it may continue to do so. During testing, the energy consumption of these functions would still be calculated as part of a given product's total energy consumption. For this reason, DOE believes that it is likely that manufacturers of these types of products, in order to continue to maintain the added functionality, would be encouraged to minimize the energy consumed by these non-battery charger functions when designing their products.

f. Battery Chargers With Protective Circuitry

DOE proposed to incorporate text from the CEC test procedure related to protective circuitry. 75 FR 16958, 16982. Incorporating this change would allow technicians to accurately measure the discharge energy of a battery without including energy from the protective circuitry. This measurement is important for the test procedure because it is equivalent to the useful, or non-lost, energy consumed during a charge cycle. The text was proposed for incorporation as part of DOE's overall adoption of the CEC test procedure. DOE did not propose to change the language of the CEC test procedure pertaining to protective circuitry in its NOPR. However, commenters provided feedback on the language in the CEC test procedure, stating that it contained an error.

Commenters asserted that the language that DOE proposed to incorporate from the CEC-based test procedure contained an error that the CEC has not yet corrected. These commenters recommended that DOE adopt the language that the CEC had apparently intended to use in its procedure when testing battery chargers equipped with protective circuitry, rather than the language that CEC ultimately adopted.[15] In the view of these commenters, the procedure should have stated that when protective circuitry is present, the technician should take the measurement at the leads of the battery cells after the protective circuitry rather than at the terminals of the test battery to ensure that the energy consumption of the protective circuitry is accurately measured. (PG&E, Pub. Mtg. Tran., No. 2 at p. 23, 181–184) ASAP, PG&E and SCE also recommended incorporating language that matched the language that CEC had intended to incorporate into its test procedure. (ASAP, No. 11 at p. 11; PG&E, No. 12 at p. 11; SCE, No. 13 at p. 11) PTI also agreed with the suggested revision. (PTI, Pub. Mtg. Tran., No. 2 at p. 184) ASAP, PG&E and SCE indicated that their collective belief is that CEC will adopt the corrected language in their next test procedure revision, although this revision has yet to occur. (ASAP, No. 11 at p. 11; PG&E, No. 12 at p. 11; SCE, No. 13 at p. 11) PG&E and SCE are two of the primary consulting firms that helped develop the CEC test procedure. DOE received no comments opposing the revision recommended by ASAP, PG&E, and SCE. Additionally, commenters mentioned how the new methodology will increase safety in the test labs because technicians will not be required to dismantle battery packs and create connections between the battery and its protective circuitry. (ASAP, No. 11 at p.

[15] The language adopted in the CEC test procedure states: "Some products may include protective circuitry between the battery cells and the remainder of the device. In some cases, it is possible that the test battery cannot be discharged without activating protective control circuitry. If the manufacturer provides a description for accessing connections at the output of the protective circuitry, the energy measurements shall be made at the terminals of the test battery, so as not to include energy used by the protective control circuitry." See part 1, section II.F of CEC test procedure.

11; PG&E, No. 12 at p. 11; SCE, No. 13 at p. 11)

In light of the new information presented by PG&E regarding the CEC test procedure and the noted safety benefits, DOE is altering its proposal to incorporate language that will require testing to occur at the output of the protective circuitry, rather than at the test battery terminals. As noted, the primary benefit of this approach is increased safety within the testing laboratory. The protective circuitry that is used in battery chargers is usually found in cases where a battery charger works with a lithium-ion chemistry battery. Due to their chemistry, these batteries can be unstable, which is why the protective circuitry is used. Consequently, DOE believes it is prudent that such circuitry should be used, and not dismantled, when measurements are taken for this test procedure.

g. Charge Capacity of Batteries With No Rating

The battery charger test procedure currently requires the use of a battery capacity rating in order to determine the rate at which the discharge test is performed. This section describes how DOE decided to address batteries that have no rating. DOE proposed a method for determining the capacity of batteries with no ratings. That method was an iterative process requiring the use of an initial 0.5 amp (A) trial current (hereafter referred to as the 0.5 A test method). 75 FR 16970. The proposed process would require that the user iteratively adjust the initial 0.5 A, until he or she reaches a discharge current that could discharge that battery at a 0.2 C rate ("C rate" refers to the amount of time in hours it would take to discharge the battery relative to its capacity), which corresponds to an approximately 5-hour discharge. DOE proposed that so long as the battery was discharged within 4.5 to 5.5 hours, or an hour-long window of time, the result of the discharge test could be accepted as valid. 75 FR 16983. Commenters had mixed opinions on both the time frame acceptance window and the 0.5 A test method. These comments are addressed below.

Acceptance Window

An acceptance window is the time frame in which a measurement of battery energy can be taken and considered appropriate for the UUT. It is critical for testing purposes because it ensures consistency and repeatability. Commenters generally urged DOE to decrease its acceptance window to a range of 4.5 to 5 hours, which would decrease the proposed acceptance window of 1-hour down to 30 minutes. (ASAP, No. 11 at p. 4; PG&E, No. 12 at p. 4; SCE, No. 13 at p. 4) PG&E claimed that the proposed 1 hour window causes unacceptable errors and recommended a half-hour maximum window to decrease the likelihood of measurement errors. (PG&E, No. 2 at p. 20) It explained that a half-hour time window for the discharge time of unrated batteries introduces a 2-percent error in the energy use measurement, while a 1-hour time window introduces an error of about 4 to 5 percent. However, a 15-minute time window would, in its view, be preferable. (PG&E, No. 2 at p. 106; ASAP, No. 11 at p. 6; PG&E, No. 12 at p. 6; SCE, No. 13 at p. 6) Manufacturers provided no comments regarding the proposed time window.

Commenters agreed that a shorter acceptance window of 4.5 to 5 hours is more appropriate than the 4- to 5-hour time window that DOE proposed. DOE believes that a 15-minute window would be unduly burdensome since it reduces the originally proposed time period by one-fourth and will require more iterations to accomplish. DOE recognizes, however, the merit of using a shorter acceptance window and is adjusting this element in its procedure to cover a 30-minute window as suggested by the commenters. The tighter acceptance window will produce more precise results than what the proposed 1-hour window would have yielded and will not be unduly burdensome to perform.

Method for Determining the Capacity of Batteries With No Rating

As mentioned above, DOE proposed using the 0.5 A test method to determine the capacity of batteries with no ratings as a method to achieve a current that would discharge the battery within the time acceptance window. Properly discharging a battery is necessary to ensure that the useful energy that was transferred from the battery charger to the battery is accurately measured and not misconstrued as lost energy. However, commenters were generally critical of DOE's proposal.

ASAP, PG&E, and SCE strongly encouraged DOE to remove its proposed instructions for determining the discharge current for batteries without capacity labels. (ASAP, No. 11 at p. 4; PG&E, No. 12 at p. 4; SCE, No. 13 at p. 4) They commented that for batteries with no rated capacity, the 0.5 A initial trial current is not always appropriate. Specifically, in their view, a current of 0.5 A works well primarily for batteries with capacities from about 0.5 Ah to 4 Ah. However, for products that cannot accept currents of 0.5 A (*i.e.* smaller batteries with lower capacities, such as those used with Bluetooth headset batteries) or that have large capacities (*i.e.* batteries with capacities in the range of 35 to 50 Ah, such as those used with electric scooters), a 0.5 A current would either not be possible or require an amount of time well in excess of the 5 hour maximum proposed by DOE—potentially, multiple days in duration. (PG&E, No. 2 at p. 20; ASAP, No. 11 at p. 7; PG&E, No. 12 at p. 7; SCE, No. 13 at p. 7) PTI also stated that it believed the 0.5 A starting current may be inappropriate and they believed that better results may come from trial and error as is suggested in the CEC test procedure. (PTI, Pub. Mtg. Tran., No. 2 at p. 102) ASAP, PG&E, and SCE added that DOE's proposed method does not always produce repeatable results, particularly when the results of the protocol for determining discharge time push the discharge time near the boundaries of the acceptance discharge time window. (ASAP, No. 11 at p. 4; PG&E, No. 12 at p. 4; SCE, No. 13 at p. 4)

ASAP, PG&E, and SCE proposed an alternative to the 0.5 A test method. Their method bases the initial discharge current on battery weight. (ASAP, No. 11 at pp.18–19; PG&E, No. 12 at pp. 18–19; SCE, No. 13 at pp. 18–19) ASAP, PG&E, and SCE suggested that if DOE considers it necessary to include instructions regarding the determination of the capacity of unrated batteries, DOE should consider adding the following steps:

1. Pick an initial trial current which is deliberately too low. A reasonable step is to weigh or measure the battery and divide the number of cells to obtain grams per cell or cm^3 per cell.

2. Be sure the battery is fully charged and discharged at the current selected in step 1 for up to 2 hours. If the end-of-discharge voltage is reached before 2 hours, stop the discharge and go to step 5. If not, after 2 hours of discharge go to step 3.

3. Double the current.

4. Discharge the battery at the new current for up to 1 hour. If the end of discharge voltage is reached before 1 hour, stop the discharge and go to step 5. If not, after 1 hour of discharge, repeat steps 3 and 4.

5. For the first discharge, compute the total charge capacity as the sum of the capacities of each step to discharge. For each step, the partial capacity is the product of the current and the time for which that current was drawn. (The total charge is defined as the integral of

the current over time.) Call this [value the] total charge capacity Q_0.

6. The last discharge current is called I_0 and let T_m be the center of the acceptable time window, (perhaps 4.75 hours). Calculate the next trial current as:

$$I_1=(Q_0/T_m) * (1.0 + 0.2 * 1n (I_0 * T_m/Q_0))$$

where ln() is the natural logarithm function.

7. Discharge at this current I_1 until the end-of-discharge voltage is reached. Call the time required for this discharge T_1. If T_1 is within the acceptable window, use I_1 as the discharge current. If not, continue with step 8.

8. Compute the next trial current I_2:

a. $I_2=(I_1*T_1/T_m) * (1.0 + 0.2 * 1n (T_m/T_1))$

b. Repeat step 7.

(ASAP, No. 11 at pp. 18–19; PG&E, No. 12 at pp. 18–19;; SCE, No. 13 at pp. 18–19;)

Adopting such a method would address the concern raised by Delta-Q, who requested that a provision be included for batteries with no rated capacity that allows (1) a larger starting current and (2) current steps to be estimated based on the battery size and weight. (Delta-Q, No. 5 at p. 2)

ASAP, PG&E, and SCE added that the instructions in DOE's proposal, or any instructions generally, would not improve the repeatability or accuracy of the CEC method to select a discharge current, but would instead complicate the details of the test method and limit the flexibility of test labs and manufacturers to determine their own discharge rate by requiring that they obtain that rate using the specific DOE instructions. (ASAP, No. 11 at p. 4; PG&E, No. 12 at p. 4; SCE, No. 13 at p. 4) ASAP, PG&E, and SCE urged DOE to not require steps to determine discharge current and instead to require only that the discharge current satisfy the time acceptance window. (ASAP, No. 11 at p. 5; PG&E, No. 12 at p. 5; SCE, No. 13 at p. 5)

After carefully considering all of the comments, DOE is modifying the approach it proposed. In particular, DOE will incorporate a specific time acceptance window but not specify at this time the method for manufacturers to follow when discharging an unrated battery. By adopting this new approach, the measured efficiency of the battery charger will not be affected because technicians will have the freedom to rely on their expertise and will not be required to use a method that may be inappropriate for very large or very small batteries contained within a battery charger. DOE is declining to incorporate the suggested battery weight method offered by ASAP, PG&E, and SCE. In evaluating this method, which included conducting actual tests using this suggested approach, DOE found that it took many iterations—as many as eight in some cases—to obtain the proper discharge current. (Battery Charger Test Data, No. 18.3) DOE believes that sufficiently accurate testing can occur because the test procedure requires that the discharge test be completed within a half an hour acceptance window. This requirement will ensure that technicians discharge their battery at a rate close to the 0.5 C-rate that is required when the charge capacity of the battery is known.

Battery Capacity Listings

The final comment pertaining to unrated batteries related to the manner in which manufacturers communicate to end users and technicians the charge capacity specifications of a battery. DOE had proposed that the technician refer to a manufacturer's instructions to obtain a rated charge capacity. 75 FR 16982. Subsequently, AHAM commented that Web pages are an effective way to allow the manufacturer to communicate this information. (AHAM, No. 2 at p. 126) DOE notes that its proposal already permits manufacturers to communicate the specifications in this manner because its definition of "instructions or manufacturer's instructions" includes Web page information. 75 FR 16958, 16980. Accordingly, in the absence of any objections to its proposal, DOE is adopting its proposed approach to refer technicians to manufacturer's instructions for information regarding battery capacity.

h. Battery Conditioning

DOE proposed to require conditioning of the battery by performing two charges and two discharges, resulting in two conditioning cycles. Battery conditioning is the process by which the battery is cycled several times prior to testing in order to permit the battery to reach its specified capacity. DOE proposed these conditioning cycles to prepare the battery for testing while ending on a discharge of the battery. This step was necessary within the context of the proposed testing order. The proposal reversed the testing order from the one currently prescribed under the CEC testing provisions. 75 FR 16958, 16971.

Responding to this proposal, ASAP, PG&E, and SCE collectively recommended that DOE require three cycles of battery conditioning to maintain repeatability. (ASAP, No. 11 at p. 8; PG&E, No. 12 at p. 8; SCE, No. 13 at p. 8) Although nickel-based batteries (*e.g.* NiCd or NiMH) can take between 5 and 100 cycles to "develop their full capacity," these commenters pointed out that interested parties reached a consensus during the CEC rulemaking that 3 cycles is an acceptable compromise between accuracy and repeatability. (PG&E, Pub. Mtg. Tran., No. 2 at p. 22; ASAP, No. 11 at p. 8; PG&E, No. 12 at p. 8; SCE, No. 13 at p. 8) In golf cars and similarly-sized applications with large battery packs, Delta-Q noted that testing for several cycles could take several weeks if different manufacturers and models are considered. (Delta-Q, No. 5 at p. 2)

The CEC test procedure requires that the batteries requiring conditioning be prepared by performing three charges and two discharges. DOE proposed to remove the final preparatory charge and replace it with a measured charge as would have been required by the proposed reversed testing order. However, because of the concerns raised by commenters in response to DOE's proposal, and the potential risk identified by the commenters that such an approach may decrease the accuracy of the test, DOE is dropping its proposed testing order and is adding a final preparatory charge as suggested by interested parties. Although PG&E, ASAP, and SCE commented that some nickel-based batteries need 5 to 100 cycles to develop their full capacity, they also stated that the three cycles specified in the CEC method was an acceptable compromise between accuracy and repeatability. Other commenters did not dispute the sufficiency of using three cycles.

A battery must be stable during testing to ensure the repeatability of measurements related to capacity. Because the battery becomes more stable as additional charge-discharge cycles are performed, more than one cycle must be used. Adopting a requirement that provides for three cycles should be sufficient to ensure the stability of the battery because most battery chemistries will reach a relatively steady state at this point and three tests will not impose an excessive testing burden. Accordingly, DOE is adopting a three cycle approach to ensure battery stability is achieved during testing.

Additionally, DOE is incorporating a conditioning section into the test procedure, as requested by ASAP, PG&E, SCE, and Sony. Commenters had noted that the proposed regulatory text did not include a section regarding battery conditioning. (ASAP, No. 11 at p. 8; PG&E, No. 13 at p. 8; SCE, No. 12 at p. 8; Sony, No. 6 at p. 2). To address this issue, DOE is incorporating a

conditioning section that is consistent with the approach followed by the CEC. This new requirement will be inserted into 5.3 of amended appendix Y of subpart B of part 430 and will help ensure the completeness of the test procedure.

i. Rest Period

DOE proposed to permit a rest period for both charged and discharged batteries from 1 to 24 hours. 75 FR 16958, 16984. A rest period is the period between the preparation of a battery and the battery discharge test. It also includes the period between the battery discharge test and the charge and maintenance mode tests. 75 FR 16958, 16967. A rest period is required to enable the battery to return to the ambient temperature, which is a necessary prerequisite to ensure consistent testing conditions. This proposal differed from the rest period in the CEC test procedure, which prescribes a period of 1 to 4 hours for charged batteries and 1 to 24 hours for discharged batteries. See III.C and III.E of part 1 of the CEC test procedure.

ASAP, PG&E, and SCE asserted that the proposed rest period "is inconsistent with the CEC-adopted test procedure as well as industry standards." (ASAP, No. 11 at p. 14; PG&E, No. 12 at p. 14; SCE, No. 13 at p. 14) The interested parties further commented that "regardless of the test order, the rest periods should be 1 to 4 hours for charged batteries and 1 to 24 hours for discharged batteries." The shorter rest period for charged batteries would minimize the self-discharge effect that occurs in NiCd and NiMH batteries. (ASAP, No. 11 at p. 14; PG&E, No. 12 at p. 14; SCE, No. 13 at p. 14)

In this final rule, DOE is adopting the language from the CEC test procedure, in part to maintain consistency with industry testing protocols. Providing a shorter rest period for charged batteries also ensures that certain types of batteries (such as the NiCd and NiMH batteries discussed above) do not self-discharge, making the test results more consistent. Incorporating a 1 to 4 hour rest period for charged batteries will help harmonize the DOE test procedure with these widely accepted industry standards, as well as minimize the possibility of self-discharging of batteries with NiCd or NiMH chemistries.

Additionally, in its NOPR, DOE also proposed that "for batteries with flooded cells, the electrolyte temperature shall be less than 33 degrees Celsius before charging." 75 FR 16958, 16984. DOE had intended to adopt the language from the CEC test procedure, which specifies an under 30 degree Celsius requirement. No comments were received regarding this issue. In this final rule, DOE is incorporating the corrected temperature requirement, which is consistent with that retained in the CEC test procedure. See part 1, sections II.C and II.E of the CEC test procedure.

5. Test Measurement

a. Removing Inactive Mode Energy Consumption Test Apparatus and Measurement

DOE proposed removing its inactive mode energy consumption test. 75 FR 16958, 16970. The inactive mode energy consumption measurement in section 4(a) of appendix Y prior to today's final rule prescribed a method for calculating a nonactive energy ratio. Both industry and non-industry commenters responded to this proposed change.

PG&E, Delta-Q and AHAM supported DOE's proposal to drop its inactive mode procedure and to replace it with one that measures active mode energy consumption. (PG&E, Pub. Mtg. Tran., No. 2 at p. 51; AHAM, Pub. Mtg. Tran., No. 2 at p. 47; Delta-Q, No. 5 at p. 2) However, PTI did not agree with removing the nonactive mode metric because, in its view, the removal of this metric would remove an aggregate measure of the energy use of the product in a variety of modes. (PTI, No. 8 at p. 1) Commenters also raised concerns related to usage profiles, noting in particular that they are necessary to determine how a product is truly used and what energy savings potential actually exists. (AHAM, Pub. Mtg. Tran., No. 2 at p. 48, PTI, Pub. Mtg. Tran., No. 2 at p. 49) (Usage profiles are assumptions, based on a variety of sources, including manufacturers, surveys, and other publicly available data, about the amount of time products spend in each mode of operation. These assumptions represent the manner and frequency with which a product is used. Usage profiles are valuable in that they help show how a product is used, which can be helpful in determining its energy consumption during typical consumer usage in all modes of operation.)

Performing the inactive mode test procedure requires integrating the input power of the battery charger in maintenance mode and no battery mode. That value is divided by the battery energy measured during discharge, resulting in a nonactive energy ratio. However, today's final rule incorporates an active mode test, which will, collectively, with the other portions of the amended test procedure, result in a battery charger test procedure that measures battery charger energy in all four modes (*i.e.,* active, maintenance, standby, and off). Consequently, there is no need for the continued use of a nonactive mode metric since the energy that was previously captured by this metric will be captured by these other modes. As for concerns about aggregation and usage profiles, DOE notes that it will address these issues in greater detail in the related standards rulemaking that is currently underway. See 75 FR 56021 (Sept. 15, 2010).

b. Charge Test Duration

Charge test duration issues involved two primary areas. First, commenters provided feedback on DOE's proposal to shorten the procedure for certain products. Second, commenters also provided feedback on DOE's proposal to have indicators to help provide some means for a tester to determine the appropriate duration of a test. These issues are discussed in greater detail below.

Shortened Test Procedure

In the NOPR, DOE considered permitting a shortened test procedure for those products that stabilized (*i.e.* reached steady-state in maintenance mode) in less than 24 hours. This approach would have modified the procedure contained in the CEC test procedure. See part 1, section II.E of the CEC test procedure. Shortening the active mode test by terminating it once the charger has entered steady state operation could result in decreased testing time and decreased burden on manufacturers. DOE proposed this approach to reduce the testing burden faced by at least some manufacturers from the 24-hour charge test. 75 FR 16958, 16970.

PG&E stated that the 24-hour test is not more burdensome than the proposed shortened test. Under the longer 24-hour test, technicians would be able to leave the test setup over night and begin a new test the next day, which is likely to be the same even if the test is shortened. (PG&E, Pub. Mtg. Tran., No. 2 at pp. 167–168) PTI commented that while it may be convenient for DOE to offer a shortened test procedure, the full test procedure will need to be used for verification purposes. (PTI, Pub. Mtg. Tran., No. 2 at p. 162) ASAP, PG&E, and SCE argued that a 24-hour active and maintenance mode test is the shortest permissible period that should be employed because it will allow the technician to see additional shifts in battery charger behavior that may have otherwise been missed because the charger entered a steady-state that was not necessarily maintenance mode early on during the test period. (ASAP, No. 11

at p. 7; PG&E, No. 12 at p. 7; SCE, No. 13 at p. 7)

Alternatively, some interested parties supported the shortened test method approach. AHAM argued that the shortened test is acceptable if the test record shows that it was used, and manufacturers understand that the 24-hour test will be used for verification. (AHAM, Pub. Mtg. Tran., No. 2 at pp. 169–170) AHAM further stated that if a manufacturer knows that the shortened test procedure will accurately test their product, it should be able to use it so long as the manufacturer clearly states in the test record that it was used. (AHAM, Pub. Mtg. Tran., No. 2 at pp. 164–165) For manufacturers with products that have short charge times, the shortened test can provide value by enabling a tester to complete multiple testing cycles within a normal testing day. (AHAM, Pub. Mtg. Tran., No. 2 at pp. 168–169) AHAM noted that if the shortened test procedure yields the same results as the 24-hour test procedure, manufacturers should be permitted to use that procedure so long as the 24-hour test procedure will be used for verification purposes. (AHAM, No. 10 at pp. 6–7) AHAM emphasized that it is crucial that the test procedures be accurate, and that there be no opportunity for a certifying laboratory to conduct a test one way, and a verifying laboratory to conduct it a different way, with the two laboratories obtaining different results. (AHAM, Pub. Mtg. Tran., No. 2 at p. 26) Delta-Q, in general, agreed with the proposed shortened test procedure. It noted that more advanced chargers may be programmed to pass the shortened test by inhibiting any energy-consuming modes for the duration of the test. (Delta-Q, No. 11 at p. 2). Sony opposed the 24-hour charge test duration, stating that it is neither cost effective nor efficient. It suggested adding the following statement: "If the battery charger has an indicator to show that the battery is fully charged, [the discharge] test can begin as soon as the indicator shows that the battery is fully charged." Alternatively, Sony recommended that DOE shorten the charge test duration from 24 hours to 12 hours. (Sony, No. 6 at p. 2)

DOE is dropping its initial proposal for a shortened test period.

As indicated by the submitted comments, manufacturers were wary of the proposal since it could cause issues with verification testing of products. In particular, not all battery chargers behave the same way in maintenance mode. Some chargers may "wake up" and have periods of high input current to top off the battery's charge level if the battery has self-discharged after sitting without being used for an extended period of time. Measuring the energy consumption of products employing this type of feature under these conditions could miss these "wake up" periods if a shortened test duration is used. When DOE conducted testing according to the shortened test procedure, it also found that it can be difficult to determine when the product reaches steady state, which serves as the point at which the test should end. (Battery Charger Test Data, No. 18.3) Furthermore, adopting the shortened test procedure could lead to complications due to the necessity of reconciling two differing measurement results. Therefore, to ensure there are no potential discrepancies or confusion, and in light of the reliability and accuracy of a test with a longer duration, DOE is declining to incorporate a shortened test procedure in this final rule.

Indicators

DOE proposed to have indicators, if present, to serve as a means to help determine the length of the charge test. DOE proposed this approach because it is consistent with the CEC test procedure (see section II.E of part 1 of the CEC test procedure) and provides a clear means for technicians to determine when the battery has been fully charged. In using this approach, DOE proposed that if the indicator shows that the battery is fully charged after 19 hours of charging, the test shall terminate once 24 hours have elapsed. Conversely, if the full-charge indicator does not indicate that a full charge has been reached after 19 hours of charging, the test shall continue up until 5 hours after the indicator has illuminated or otherwise indicates that the battery has been fully charged. 75 FR 16958, 16983.

ASAP, PG&E, and SCE commented that charger indicator lights are not reliable and consistent sources of information about the state of charge of the battery. They added, though, that these lights are useful for general guidance on the state of charge for the purpose of determining a charger's active mode test length. (ASAP, No. 11 at p. 13; PG&E, No. 12 at p. 13; SCE, No. 13 at p. 13) Despite their collective objection to DOE's proposed approach, these interested parties did not suggest changing the proposed test duration selection process. (ASAP, No. 11 at p. 13; PG&E, No. 12 at p. 13; SCE, No. 13 at p. 13)

After considering these comments, DOE is adopting its proposed approach to permit the use of indicators to help determine a battery's state of charge. DOE notes that a testing technician is not restricted to the use of indicator lights, but may rely on any indicator that is a part of the UUT that would help in determining a battery's state of charge. DOE believes that indicators are sufficiently informative to determine the charge test duration of a battery because, as commenters conceded, they are useful in providing information regarding the general state of a battery's charge. Because the charge and maintenance mode test will not be shortened, DOE believes that the information conveyed by an indicator about the general state of a battery's charge is all that is necessary for the purposes of testing. Furthermore, the vast majority of battery chargers currently available on the market will likely finish charging well before the 19 hour mark that must be met in order to complete the test within 24 hours. (Battery Charger Test Data, No. 18.3) Therefore, up-to-the-minute precision regarding when the battery has reached its full charge state is not necessary for the vast majority of products. This change will not only provide testers with a straight-forward guide when determining a battery's state of charge, but will also help to ensure consistency with the established CEC test procedure that the industry is already following.

c. Testing Order

The CEC test procedure requires that the test be conducted by performing first a preparatory discharge followed by a measured charge and then a measured discharge. See section III of part 1 of the CEC test procedure. DOE proposed to reverse this testing order by requiring a preparatory charge first, followed by a measured discharge and measured charge. 75 FR 16971. As explained below, interested parties generally opposed this proposed approach.

PG&E stated that if DOE adopts its proposal to reverse the CEC testing order, the procedure will not accurately measure the energy consumption of battery chargers that take longer than 24 hours to charge. If the battery is discharged completely during the 5 hour discharge test, and then is not fully charged within 24 hours, the test does not account for a complete "round-trip" (*i.e.,* a complete charge-discharge or discharge-charge cycle). PG&E recommended that DOE either prove a round-trip has been accomplished under its proposed approach or adopt the CEC method. (PG&E, Pub. Mtg. Tran., No. 2 at pp. 16–18; PG&E, Pub. Mtg. Tran., No. 2 at pp. 135–136)

PG&E further stated that reversing the testing order creates a loophole that can encourage manufacturers to make slow charging products that will appear more

efficient than they actually are since the reversed testing order will account for a full discharge but only a partial charge for these products. PG&E encouraged DOE to ensure that its final procedure includes a valid method to measure the energy consumption of battery chargers that take longer than 24 hours to charge. (PG&E, Pub. Mtg. Tran., No. 2 at pp. 140–141; PG&E, Pub. Mtg. Tran., No. 2 at pp. 143–144). ASAP objected to reversing the charge/discharge order detailed in the CEC procedure. (ASAP, No. 11 at p. 8; PG&E, No. 12 at p. 8; SCE, No. 13 at p. 8) ASAP, PG&E, and SCE added that the reversed testing order was found to give inaccurate and inconsistent results for a significant number of products that were tested. (ASAP, No. 11 at p. 8; PG&E, No. 12 at p. 8; SCE, No. 13 at p. 8) In their view, the reversed testing order does not accurately test batteries that take longer than 24 hours to charge, which includes batteries used with emergency systems (*e.g.* computer uninterruptible power supplies, security systems, exit lighting, and other power backup applications), small automotive type chargers, and many universal chargers for C-size of D-size batteries. (ASAP, No. 11 at p. 8; PG&E, No. 12 at p. 8; SCE, No. 13 at p. 8) These commenters also contended that retaining the proposed reversed CEC testing order may create an incentive for manufacturers to redesign their products to charge for longer periods of time rather than making the product more efficient, since the test procedure will record a full discharge, and only a partial charge. (ASAP, No. 11 at p. 9; PG&E, No. 12 at p. 9; SCE, No. 13 at p. 9) By doing so, manufacturers could inflate the efficiency of their products and effectively circumvent any energy conservation standards that DOE may establish.

Similarly, AHAM commented that if reversing the testing cycle causes errors with accuracy, the Department should consider alternatives. (AHAM, Pub. Mtg. Tran., No. 2 at p. 139) However, AHAM also commented that DOE's proposal to reverse the CEC testing order will result in some time savings without any loss of accuracy. (AHAM, No. 10 at p. 5) Delta-Q expressed support for incorporating a reversed order from the CEC procedure and noted that it follows this reversed-order approach when conducting all battery cycle test measurements. (Delta-Q, No. 5 at p. 2).

Euro-Pro made an alternative suggestion, requesting that DOE consider modifying its proposal to permit the tester to monitor the battery voltage either during charging or at the end of the charge, and terminate the test when the battery is discharged, regardless of the time needed for a complete discharge to occur. (Euro-Pro, Pub. Mtg. Tran., No. 2 at pp. 142–143)

Sony sought clarification on whether the proposed reversing of the CEC test procedure would impact the testing duration or burden. (Sony, No. 6 at p. 2)

DOE made its proposal to allow the preparatory step to be a charge rather than a discharge. By permitting this step, preparation could be conducted within the UUT, rather than using a battery analyzer, which would in turn reduce the amount of required testing equipment time that a manufacturer would need to allocate while testing. DOE had believed that following this approach would reduce the overall testing burden without impacting accuracy. 75 FR 16958, 16971.

However, after considering the comments submitted on this issue, DOE recognizes the merits of the concerns expressed by interested parties that the proposed test procedure may not capture a full round-trip for some battery chargers. Completing a full round trip is critical to accurately measuring the energy consumption of a battery charger because it prevents the possibility of obtaining results that suggest that more energy came out of the battery then went into the battery, a physical impossibility with a full charge and discharge. As mentioned above, commenters indicated that this problem may be prevalent with numerous products such as an uninterruptible power supply or universal battery charger that takes longer than 24 hours to charge its battery. (ASAP, No. 11 at p. 8; PG&E, No. 12 at p. 8; SCE, No. 13 at p. 8) Furthermore, the potential measurement error caused by the proposed change could be exploited by some manufacturers as a loophole, which could occur if the 5-hour discharge test recovered all energy from the battery and the subsequent charge test captured only the energy flowing into the battery during the first 24 hours. Under this scenario, the test would capture only a portion of the energy consumed by the charger. Finally, DOE believes that preserving the proposed testing order while adding steps to ensure that a battery is not overcharged, like the steps suggested by Euro-Pro, would increase test procedure complexity and burden since it would require a technician to continuously monitor the battery for 24 hours or longer to determine when the battery has reached a fully charged state. For these reasons, DOE is modifying the approach presented in its proposal and adopting the order prescribed in the CEC test procedure—*i.e.* preparatory discharge, measured charge, measured discharge.

d. End-of-Discharge Voltages

DOE proposed end-of-discharge voltages for both popular and novel battery chemistries. 75 FR 16958, 16984. In its notice, DOE proposed that the test procedure incorporate an end-of-discharge voltage of 2.5 volts per battery cell. DOE made this proposal in order to provide guidance on the recommended voltage to stop the discharging process to avoid damaging the battery. Responses to this aspect of the proposal were mixed.

ASAP, PG&E and SCE offered support for "DOE's effort to include battery charger systems with novel chemistries in the test procedure," as well as "DOE's effort to identify batteries that are in the lab now and might become commercialized over the coming years." (ASAP, No. 11 at p. 9; PG&E, No. 12 at p. 9; SCE, No. 13 at p. 9)

On the other hand, AHAM commented that the proposed end-of-discharge voltages were not consistent with manufacturer specifications, noting in particular that most lithium ion battery manufacturers do not recommend discharging below 3.0 volts per cell. (AHAM, Pub. Mtg. Tran., No. 2 at p. 147) AHAM further stated that some manufacturers do not design the battery with protective circuitry and discharging to too low of a level will damage the battery. (AHAM, Pub. Mtg. Tran., No. 2 at p. 151) Euro-Pro agreed with AHAM and noted that some products stop operating after a certain amount of time and do not reach the end-of-discharge voltage level. (Euro-Pro, Pub. Mtg. Tran., No. 2 at p. 150) PTI's main concern was that if the test is terminated at a predetermined voltage, even if that predetermined voltage is set by surrounding circuitry, as long as the battery is returned back to that same voltage, this method would complete a round trip. (PTI, Pub. Mtg. Tran., No. 2 sheet at p. 181)

On the issue of novel battery chemistries, commenters stated that because the test procedure would likely be reviewed on a seven-year cycle, DOE should have an approach to address those battery cells that had not been previously contemplated. (PTI, Pub. Mtg. Tran., No. 2 at p. 152) PTI urged DOE to consider accepting "cell manufacturer published values for recommended cutoff voltages" and "permitting future chemistries to be considered under the test procedure without having to revise it." (PTI, Pub. Mtg. Tran., No. 2 at p. 154). AHAM also commented that the proposed end-of-discharge voltages only apply to units

without electronic cycle termination and that new battery chemistries were not included as part of the end-of-discharge table. AHAM asserted that DOE's proposed end-of-discharge voltage table should only be used as a guide and that testing should use the manufacturer's stated end-of-discharge values, which usually stem from recommendations received from the battery manufacturer. Alternatively, AHAM also suggested that relevant IEC cell standards could be used as a reference. For example, it asserted that DOE should allow manufacturers to place battery capacity information on their Web sites, specification sheets, or instructions shipped with the product. In AHAM's view, this flexibility would help better handle situations where new battery chemistries are introduced and appropriate end-of-discharge voltages are not known, without which, damage could be done to the battery during testing. (AHAM, No. 10 at p. 6; AHAM, Pub. Mtg. Tran., No. 2 at p. 156)

In today's final rule, DOE is opting to maintain its end-of-discharge voltage table as proposed in the NOPR. 75 FR 16984. DOE believes that it is prudent to have a consistent cut-off voltage across chemistries because this voltage will affect the amount of energy that is measured coming out of the battery. This energy represents a fundamental measurement and key output of the test procedure. Given the outlined approach, deferring to a manufacturer's stated end-of-discharge values that are provided on an individual product basis may not provide this type of consistency. Accordingly, today's final rule adopts the end of discharge voltages from the CEC test procedure, since they are widely accepted and already in use by the industry. In addition to the chemistries listed in the CEC table, DOE specified end-of-discharge voltages for two novel chemistries (Nanophosphate Lithium Ion and Silver Zinc). DOE is aware of the existence of these particular chemistries and their potential for more widespread use. DOE is including these two chemistries to ensure that its test procedure can adequately address products that employ batteries that rely on these chemistries.

With respect to discharging, AHAM and Euro-Pro commented that manufacturers often do not discharge their products to the IEC specified end-of-discharge voltage, which were used in the proposed test procedure. AHAM further commented that the test procedure should allow manufacturers to specify their own end-of discharge voltages during testing.

DOE believes that adopting this approach would lead to inconsistent testing between similar batteries, since manufacturers will be more likely to specify different voltages of batteries that are of similar make and chemistry. Because of the potential problems that could result from having inconsistent testing methods between similar batteries, such as measuring vastly different amounts of energy coming from similar batteries, DOE is declining to adopt the particular measures suggested by AHAM.

DOE notes, however, that some batteries, particularly those using the more unstable lithium-ion chemistry (compared to nickel-based batteries), should not be discharged past a certain voltage for safety reasons. (Discharging of these types of batteries beyond a certain point may result in the risk of fire.) For most products using these types of batteries, manufacturers will provide protection circuitry within the lithium-ion battery pack that will stop the discharge at a safe voltage, regardless of the end-of-discharge voltage, to ensure a safe discharge. DOE is aware that since these mechanisms are bypassed during the test procedure, an overly low end-of-discharge voltage could present a safety risk in this case.

AHAM commented that most manufacturers do not recommend discharging lithium batteries below 3.0 V. It identified Sony and Black & Decker as examples of manufacturers who make this recommendation. However, DOE has consulted with subject matter experts regarding this issue who believe that lithium-ion batteries will not experience safety issues if discharged to the end-of-discharge voltage of 2.5 V. (Comment pertaining to batteries being used as a part of the test equipment to test a charger, No. 18.1) While conducting tests on lithium-ion batteries over the years, including the tests done for the Department, DOE's subject matter expert has not experienced any safety issues when discharging lithium-ion batteries to 2.5 V. (Battery Charger Test Data, No. 18.3) Additionally, AHAM did not provide any data to support its claim. Consequently, DOE will adopt the 2.5 V end-of-discharge voltage, consistent with that proposed in its NOPR, in this final rule. This end-of-discharge voltage is accepted in industry and should not create any appreciable testing burden for manufacturers.

e. E24 Measurement

DOE proposed measuring only the energy consumed during the first 24 hours of charging, even if the test lasts longer than 24 hours. 75 FR 16958, 16984. DOE proposed this approach because it believed that most products could be charged within the 24-hour time period, and for those products that took longer to charge, most of the energy consumption would likely have been accounted for within the first 24 hours. However, most commenters opposed this approach. PG&E commented that the proposal only accounts for the energy used during the first 24 hours of charging, which does not capture a full round-trip for batteries with charge times that exceed 24 hours. (PG&E, Pub. Mtg. Tran., No. 2 at p. 22; PG&E, Pub. Mtg. Tran., No. 2 at p. 144) Instead, PG&E strongly urged DOE to modify its test procedure to be consistent with the CEC procedure by including (1) total charger input energy (Charge and Maintenance Energy) accumulated over the entire duration of the test, reported in watt-hours (Wh) and (2) total time duration of the charging test (at least 24 hours)." (ASAP, No. 11 at pp. 12–13; PG&E, No. 12 at pp. 12–13; SCE, No. 13 at pp. 12–13) ASAP, PG&E, and SCE supported this view by commenting that batteries that take longer than 24 hours to charge will not reach a fully charged state during the 24-hour charge test, which will result in energy use measurements that significantly underestimate the energy required to charge the battery and can result in inflated efficiency levels exceeding 100 percent. (ASAP, No. 11 at p. 9; PG&E, No. 12 at p. 9; SCE, No. 13 at p. 9)

AHAM supported the proposed E_{24} measurement. (AHAM, No. 10 at p. 5) No other comments were received on this issue.

DOE's proposed test method would have required measuring a full discharge and the energy consumed during the first 24 hours of the charge. As interested parties noted, if the test procedure only accounts for the energy to charge the battery over the first 24 hours, it would not capture a full "round-trip" for those battery chargers taking longer than 24 hours to charge.

Even though the most common products that require more than 24 hours to charge do not account for a large portion of shipments, these products will not be accurately tested and may result in reporting efficiencies greater than 100 percent if the measurement period is only 24 hours. While DOE acknowledges that varying the test duration may create a less than uniform approach as well as a potentially increased testing burden, the need to obtain accurate results is critical to ensure the viability of not only the procedure that DOE adopts for all manufacturers to use, but also to help ensure the integrity of whatever energy

conservation standards that DOE may set for these products. Therefore, to make certain that accurate results are obtained, DOE is modifying its proposal by requiring that the full round-trip be accounted during testing and that the measurements are taken over the entire duration of the charge test, even if that time period exceeds 24 hours.

C. Review of Battery Charger and External Power Supply Standby and Off Mode Test Procedures

1. Battery Charger Test Procedure Off Mode Definition

DOE sought comments on the existing standby and off mode test procedures for battery chargers. 75 FR 16958, 16962. Section 2.k. of appendix Y defines off mode as: "The condition, applicable only to units with manual on-off switches, in which the battery charger is (1) connected to the main electricity supply; (2) is not connected to the battery; and (3) all manual on-off switches are turned off."

DOE received comments with regard to this proposed definition and how it applies to integral batteries in the off mode test procedure. PG&E suggested that the off-mode definition should be rewritten to allow off mode to be measured even if the battery is internal and cannot be removed. (PG&E, Pub. Mtg. Tran., No. 2 at pp. 23–24) PG&E added that a large number of battery chargers can have an off mode even if the battery is still connected, noting that battery chargers can be equipped with an on/off switch. ASAP, PG&E, and SCE cited a computer UPS as an example of a such charger in which the battery is not usually removed, but is equipped with an on-off switch. (ASAP, No. 11 at p. 13; PG&E, No. 12 at p. 13; SCE, No. 13 at p. 13) PG&E added that the off mode of these types of chargers should be tested even if the battery cannot be disconnected. (PG&E, Pub. Mtg. Tran., No. 2 at p. 188) Therefore, ASAP, PG&E, and SCE all recommended that off mode be tested for all battery chargers with an on-off switch. (ASAP, No. 11 at p. 13; PG&E, No. 12 at p. 13; SCE, No. 13 at p. 13).

Section 310 of EISA 2007 defined "off mode" as "the condition in which an energy-using product–(I) is connected to a main power source; and (II) is not providing any standby or active mode function." (42 U.S.C. 6295 (gg)(1)(A)(ii)) For the purposes of this test procedure, the "energy-using product" is the battery charger itself and not the end-use product into which that battery charger is integrated. This distinction is important to note because on-off switches are frequently used for the end-use product and not the battery charger. Therefore, to be completely unambiguous and ensure that only off mode power for the battery charger. and not the end-use product, is being measured, DOE believes it is necessary that the battery must be detachable from the end-use product. By removing the battery from the battery charger, the technician can be certain that any power consumed by the battery charger is not attributable to any standby or active mode function that the battery charger may have otherwise still been providing despite turning off the end-use product. Consequently, DOE is declining to expand its definition of off mode to encompass products with non-detachable batteries.

2. Test Duration

DOE proposed to shorten the current warm-up period from one hour to 30 minutes used in the standby and off mode test procedures. Compare 10 CFR part 430, subpart B, appendix Y, sec. (c)(1) with 75 FR 16985 (proposed sections 5.11 and 5.12). Additionally, DOE proposed to have this 30-minute warm-up period followed by a 10-minute measurement period. DOE proposed this approach, in part, to help harmonize DOE's standby and off mode measurement procedures with sections IV.B and IV.C in part 1 of the CEC test procedure and to reduce testing burden while maintaining accuracy. 75 FR 16958, 16962.

Commenters had varying opinions on the issue. Delta-Q "mildly agreed" with the proposed changes to standby and off mode duration and believed that there would be no significant impact from the proposed change. (Delta-Q, No. 5 at p. 2) Alternatively, AHAM suggested that the warm-up period should last an hour to maintain the accuracy of the data. (AHAM, No. 10 at p. 7)

As stated in the NOPR, abbreviating the measurement period from 1 hour to 10 minutes will not affect the accuracy of the test because the amended test procedures would retain a 30-minute warm up period. Variations in component efficiency due to temperature are the most common reason for changes in battery charger energy consumption in standby and off modes, and the 30-minute warm-up period will remain sufficient to permit the input power of most battery chargers to stabilize. 75 FR 16958, 16962. DOE recognizes that further instabilities (pulses) in energy consumption in standby and off modes may be caused by periodic operation of certain battery charger functions, as when a battery charger occasionally checks its output for the presence of the battery. In general, there is always a potential for a time-limited test procedure to fail to capture a behavior occurring at an arbitrary time. DOE has conducted numerous tests to analyze this issue and has not encountered any cases where the product does not stabilize within the allotted 30-minute time period. (Battery Charger Standby Tests, No. 18.2) Accordingly, DOE believes that the 30-minute warm-up period is sufficient for testing battery chargers and is adopting its proposed approach in today's final rule.

D. Review of the Single-Voltage External Power Supply Test Procedure

1. External Power Supplies That Communicate With Their Loads

DOE requested comments on testing external power supplies that communicate with their loads, specifically with regard to allowing manufacturers to supply test jigs (*i.e.,* physical connection adapters to permit testers to help identify which electrical leads to use when taking a measurement) to properly measure these products. 75 FR 16973 and 16979. ASAP, PG&E, and SCE recommended that DOE create a standard test jig for external power supplies that communicate with their loads via USB protocol and that manufacturers supply test jigs for non-standard protocols. (ASAP, No. 11 at p. 14; PG&E, No. 12 at p. 14; SCE, No. 13 at p. 14) They also recommended that for proprietary or custom communication protocols, manufacturers should submit an external power supply test jig so that the product can be tested and will not be exempt from the standard because it cannot be tested. In their view, if the jig is not supplied, the efficiency value should be zero, and the external power supply would not meet the standard. (ASAP, No. 11 at p. 14; PG&E, No. 12 at p. 14; SCE, No. 13 at p. 14). Alternatively, Sony recommended excluding USBs from the external power supply test procedure because including them would result in additional burden and increased testing costs to manufacturers. (Sony, No. 6 at p. 2).

DOE notes that to the extent that a particular product cannot be tested under the prescribed procedure, a manufacturer would be able to seek a test procedure waiver in order to be able to test and rate that product. See 10 CFR 430.27. Without such a rating, a manufacturer would be unable to sell that product in the United States. 42 U.S.C. 6302(a)(5). With respect to the final rule DOE is adopting today, the test procedure will permit manufacturers to supply test jigs that

can accurately measure the energy consumption of their external power supplies. It is DOE's understanding that these jigs are straightforward adapters that would allow technicians to determine which output connectors from the external power supply are providing output power. These jigs would also allow the technician to simulate normal operating conditions if any communication with the device is necessary. DOE does not believe that the allowance of such devices will lead to gaming of the test procedure because the jig should be a simple, non-powered device. This approach is preferable to the approach suggested by Sony because it avoids the exclusion of products from coverage. This approach will also ensure that DOE obtains accurate and consistent test results and allows products to be tested that otherwise might have required waivers.

2. External Power Supplies With Output Current Limiting

DOE sought comment regarding the treatment of external power supplies with an output current limiting capability. "Output current limiting" is a mode of operation where an external power supply significantly lowers its output voltage once an internal output limit has been exceeded. These external power supplies cannot be loaded at 100 percent of rated nameplate output current. 75 FR 16958, 16962.

PTI offered two recommendations on this issue. First, it recommended that DOE require that the measurement be made and recorded at a 100 percent load. (PTI, Pub. Mtg. Tran., No. 2 at p. 196) Second, PTI recommended that if the external power supply cannot be loaded at the 100 percent load point then it should not be tested at that load point. (PTI, Pub. Mtg. Tran., No. 2 at p. 204) PTI did not offer an appropriate load point under that scenario. ASAP, PG&E and SCE recommended that DOE alter its proposal and require testing of external power supplies with lower than expected output current limiting levels at three standard load points (25, 50, and 75 percent) and include an option to modify the 100 percent load point to 95 percent. These commenters believe that the 95 percent option will account for some manufacturer variation that might exist because of current limiting circuitry that is occasionally present in external power supplies to prevent a short circuit. (ASAP, No. 11 at p. 15; PG&E, No. 12 at p. 15; SCE, No. 13 at p. 15)

SAP, PG&E and SCE recommended that the following approach should be used (ASAP, No. 11 at p. 15; SCE, No. 13 at p. 15; PG&E, No. 12 at p. 15):

(1) After the warm-up, load the product at 100 percent of rated output current.

(2) If the external power supply will not supply 100 percent of the nameplate output current (assumed because of the current limiting function), then the external power supply shall be tested at 95 percent rated output current.

(3) If the external power supply supplies current at 95 percent rated output current, then the efficiency at the 100 percent loading point shall be recorded as the efficiency at the 95 percent loading point to permit some variation.

(4) If the external power supply will not supply 100 percent or 95 percent of the rated output current, then the efficiency measured at 100 percent shall be recorded as 0.

(5) Move on to other loading points (75, 50, and 25) in the procedure. If the external power supply cannot supply current at the other loading points, they should all be marked 0.

PTI commented that external power supplies that do not reach 100 percent load are likely designed to ensure that they are not affected by the early cutoff of the wall adapter. They likely only make excursions at those current levels on a transitory basis. (PTI, Pub. Mtg. Tran., No. 2 at p. 203) PTI added that it is possible that wall adapters that are unable to meet 100 percent of nameplate output power had charge control and were not external power supplies. (PTI, Pub. Mtg. Tran., No. 2 at. 199) Alternatively, AHAM informed DOE that some external power supplies will not reach 100 percent because the manufacturer rates them higher to reach a maximum value for temperature purposes such that the product will never reach the value under the worst situations. (AHAM, Pub. Mtg. Tran., No. 2 at p. 201) AHAM further commented that nameplate ratings are not used for energy efficiency purposes, but for safety certification. (AHAM, Pub. Mtg. Tran., No. 2 at pp. 200–201)

If an external power supply cannot sustain output current at 100 percent load during testing, then it will not operate at 100 percent load with its associated application. Incorporating the 100 percent loading point into the metric for these units would be inconsistent with how they are used in consumer environments. Therefore, DOE is not requiring an efficiency measurement at that loading point as part of the average efficiency metric. Instead, the average efficiency of products that cannot maintain 100 percent output load will be the average of the efficiencies at 25 percent, 50 percent, and 75 percent of full load only. Appropriate changes to section 4(a)(i) of appendix Z to subpart B of part 430 have been made for today's final rule.

3. High-Power External Power Supplies

As mentioned above, the current external power supply test procedure in appendix Z requires the nameplate output current to be used to calculate the loading points for efficiency measurements. See section 4(a)(i) of Appendix Z to subpart B of part 430 (referencing CEC's "Test Method for Calculating the Energy Efficiency of Single-Voltage External Ac-Dc and Ac-Ac Power supplies"). DOE sought comments on what should be done in those instances where a manufacturer lists more than one maximum output power for a given high-power external power supply. In particular, DOE sought comment on whether it should modify the definition of "output power" to specify that the continuous output current should be used when more than one maximum output is provided.

ASAP, PG&E, and SCE recommended that DOE test both intermittent and continuous load conditions for high power external power supplies. They commented that when ham radios (amateur wireless radios) are transmitting, the higher (intermittent) rating is more applicable, and when the radio is receiving, the lower (continuous) rating is more applicable. They believe that the intermittent portion of the external power supply may be used from 20 percent to 50 percent of the time, which, in their view, constitutes a significant portion of operating time. (ASAP, No. 11 at p. 16; PG&E, No. 12 at p. 16; SCE, No. 13 at p. 16)

DOE notes that testing a high-power external power supply at its advertised intermittent output power would be inconsistent with its typical use, since the external power supply test procedure requires operating the external power supply at full load for 30 minutes, whereas the high-power external power supply only operates at intermittent output power for substantially shorter periods of time. Further, DOE believes that operating the external power supply for 30 minutes at its intermittent output power might damage the external power supply due to overheating, because the external power supply is only designed to operate at the higher level for brief intermittent intervals. Therefore, in the case where more than one output current is listed, DOE is requiring that the external power supply be tested at only the continuous loading conditions.

4. Active Power

DOE proposed to incorporate a definition for battery charger "active power" into section 2 of appendix Y. 75 FR 16958, 16973. This definition would provide that "active power" as meaning "the average power consumed by a unit." Id. at 16980. DOE proposed this definition because of related proposals to measure the power consumption of a battery charger during active mode. DOE did not receive any comments on the definition it proposed in its NOPR. Therefore, in the absence of any comments, and to ensure the viability and completeness of the active mode procedure, DOE is incorporating its proposed definition into its regulations.

E. Multiple-Voltage External Power Supply Test Procedure

In 2008, DOE first proposed a test procedure for multiple-voltage external power supplies as part of its NOPR test procedure for standby and off modes for single-voltage external power supplies. See 73 FR 48054. That proposal detailed an approach that would have required measuring efficiency levels at no-load, 25 percent, 50 percent, 75 percent, and 100 percent of nameplate output, but result in a single average efficiency measurement. Id. at 48082. In 2009, DOE finalized its test procedure for standby and off modes, but in light of substantial concerns raised by commenters, it did not incorporate a procedure to accommodate multiple-voltage external power supplies. See 74 FR 13318, 13322. DOE re-proposed the incorporation of a multiple-voltage external power supply procedure as part of this rulemaking proposal. This more recent proposal specified an approach that would require measurements at each loading point. 75 FR 16958, 16974.

PG&E supported the creation of a separate multi-voltage external power supply test procedure so long as it would not impact the current single-voltage external power supply test procedure already in use. (PG&E, No. 2 at p. 15) ASAP, SCE, and PG&E also accepted DOE's proposed measurement and reporting method for multiple-voltage output external power supplies, but encouraged DOE to evenly weight the 25-percent, 50-percent, 75-percent, and 100-percent loading conditions in any forthcoming standards. (ASAP, No. 11 at p. 16; SCE, No. 13 at p. 16; PG&E, No. 12 at p. 16)

AHAM objected to DOE's proposal to report five efficiency metrics for external power supplies without aggregating them. (AHAM, No. 2 at p. 211) AHAM further commented "* * * 'a test procedure for covered products should measure energy efficiency,' " and that this action is inconsistent with the direction of section 323 of EPCA. (AHAM, No. 2 at p. 219). AHAM also commented that it may make more sense to measure multiple-voltage external power supplies at values representative of typical loading rather than 25, 50, 75, and 100 percent of full load. (AHAM, No. 2 at pp. 212–213)

Although AHAM expressed concern over the multiple-voltage test procedure, outputting separate metrics creates a method similar to that for battery chargers. Adopting an approach that parallels the battery charger method is preferable because of the similar nature of these two products and the potential variation of use from consumer to consumer that can be expected. Again, as with the battery charger test procedure (see section III.B.5.a), DOE may combine them for purposes of determining compliance with any energy conservation standard that may be set.

F. Test Procedure Amendments Not Incorporated in this Final Rule

1. Incorporating Usage Profiles

DOE proposed to amend the battery charger test procedure to measure energy consumption in each mode, which would more readily permit comparisons between a greater number of test results. 75 FR 16958, 16974.

PG&E supported this approach and stated that DOE is moving in the right direction by outputting multiple measures rather than a single one because this allows the different usage of products to be taken into account. (PG&E, Pub. Mtg. Tran., No. 2 at p. 51). PG&E also commented that having multiple outputs may create a test procedure that can easily be harmonized across jurisdictions. (PG&E, Pub. Mtg. Tran., No. 2 at pp. 14–15) Similarly, ASAP, PG&E, and SCE supported DOE's approach. (ASAP, No. 11 at p. 13; PG&E, No. 12 at p. 13; SCE, No. 13 at p. 13)

Other commenters preferred that the test procedure combine all measurements into a single metric. AHAM stated that DOE should integrate energy consumption from active, maintenance, and no-battery mode through usage factors required by law. (AHAM, Pub. Mtg. Tran., No. 2 at p. 48) AHAM also supported incorporating usage profiles, stating that having one value will help a consumer to choose between product A and product B based on energy efficiency. (AHAM, Pub. Mtg. Tran., No. 2 at p. 56) AHAM commented that "it is incumbent upon DOE to make available an aggregate energy use number of the energy use or energy efficiency of a battery charger that is '* * * representative of typical use.' " (AHAM, No. 10 at p. 3) AHAM noted that, in reference to the periodic (seven-year) review of a given test procedure that DOE must conduct in accordance with 42 U.S.C. 6293(b), the procedure should include usage factors in order to improve the current procedure and to allow the test procedure to stand for seven more years. (AHAM, No. 10 at p. 3) "All energy from active, maintenance, and no-battery modes should have factors of usage applied to them and then aggregated to arrive at one value." (AHAM, No. 10 at p. 3)

PTI commented that the disaggregated data do not represent the typical use of the product as accurately as a combined metric would. (PTI, Pub. Mtg. Tran., No. 2 at p. 48) PTI preferred that the test procedure result in a metric that tells the consumer something about the overall efficiency of the product, because, when it becomes effective, representations of energy use based on other test procedures will become invalid. (PTI, Pub. Mtg. Tran., No. 2 at p. 50) PTI commented that "[w]hile active mode must be included in the test procedure, it should be included in a manner that generates a proportioned, aggregated value, consistent with the philosophy expressed in the existing test procedure, and [be] in line with the Department's obligation to produce a procedure that reflects typical use." (PTI, No. 8 at p. 2) PTI further stated that an aggregation "will not reflect every particular user, but would rather represent an average of use. This [approach] would not be consistent with the requirement to have the test procedure reflect 'typical' use." (PTI, No. 8 at p. 2) PTI suggested that DOE should "have a series of ratios, by product category, that can be used to aggregate the quantities in the proposed test procedure." (PTI, No. 8 at p. 2) "By DOE issuing the current [proposed] test procedure as a national test, it permits entities to use a test procedure in a manner that does not reflect typical use or DOE's intent." (PTI, No. 8 at p. 2)

Phillips stated that the "only way for the test procedure to be representative of typical use is to have the test procedure utilize use patterns of representative classes of battery chargers." (Phillips, No. 7 at p. 2) Phillips also commented that it is essential that the test procedure require the typical energy use factors established by the Department for particular categories of products. (Phillips, No. 7 at p. 2) Phillips supported "AHAM's position to have the test procedure aggregate energy use

data." (Phillips, No. 7 at p. 3) According to Phillips, the ENERGY STAR specifications for battery charger do not require measuring output energy use in each mode, which it believes demonstrates that these measurements are not of significant interest to consumers. (Phillips, No. 7 at p. 3)

Wahl Clipper stated that the test procedure should measure the energy consumption of products representative of typical use. This measurement, in its view, should be an aggregated number of the active, standby, and maintenance modes, which is representative of the typical use for that product category. (Wahl Clipper, No. 9, at p. 1)

AHAM cited other test procedures and commented that for a number of appliances, the usage factors are in the test procedure such that they output one metric. Usage factors are used in this way in test procedures for washing machines and refrigeration cycling, and are being proposed for clothes dryers. (AHAM, Pub. Mtg. Tran., No. 2 at p. 58) AHAM specifically cited the clothes washer test procedure, from which a single MEF (modified energy factor) value is derived that is based on choices of cycles and percentage of wash loads going to a dryer. The standard is then set against the MEF value. (AHAM, No. 10 at p. 3)

PTI stated that the test procedure should indicate that it is intended to be used with usage profiles in the standard to ensure that the data are not misused. (PTI, Pub. Mtg. Tran., No. 2 at p. 172) Phillips suggested that the battery charger usage profiles should either be in the test procedure or the test procedure should include a reference explaining that the usage factors are in the standard. (Phillips, Pub. Mtg. Tran., No. 2 at p. 240) PTI added that DOE should "indicate clearly that the test procedure is only intended to be used with the suggested ratios and shall not be used until they become available. As soon as the ratios are developed, DOE should update its test procedure and reissue it with the ratios incorporated." (PTI, No. 8 at p. 2)

Commenters also expressed a variety of views regarding the disseminating of product usage information. PG&E commented that consumers know how they use their products. If the test procedure outputs a separate metric for each mode, consumers will know which number they should check when comparing energy consumption levels among products. (PG&E, Pub. Mtg. Tran., No. 2 at p. 54) AHAM was concerned that consumers may not know how their products are used and argued that DOE should give the consumer a single value representing a product's average, or approximate average, usage pattern. (AHAM, Pub. Mtg. Tran., No. 2 at p. 55) Usage factors applied against an aggregated value will give the consumer accurate information on how the product is used. (AHAM, Pub. Mtg. Tran., No. 2 at p. 53) PG&E similarly stated that manufacturers may not be able to give accurate estimates of how much time their product spends in each mode annually. (PG&E, Pub. Mtg. Tran., No. 2 at p. 54) An aggregation based on calculated averages does not, in its view, help the consumer determine what amount of energy their particular usage pattern will consume. (PG&E, Pub. Mtg. Tran., No. 2 at p. 54) AHAM emphasized that consumers need a single piece of information on energy efficiency so that products can be compared. (AHAM, No. 10 at p. 3)

Phillips cited section 6 of the draft technical report that accompanied the battery charger and external power supply framework document and described the usage of its own products. Phillips generally supported the approach taken by DOE to examine usage patterns. It noted, in reference to its own products (notably, electric shavers), that there cannot be a meaningful energy reduction for products that "have limited usage patterns [that spend] most, if not close to all of their time in unplugged mode." (Phillips, No. 7 at p. 2)

DOE notes that the relevant statute permits DOE to promulgate a test procedure that either produces measurements of energy use or efficiency (neither of which would require usage profile data) or the estimated annual operating cost of a product (which would require usage profile data). Specifically, test procedures should "be reasonably designed to produce test results which measure energy efficiency, energy use, water use (in the case of showerheads, faucets, water closets, or urinals), or estimated annual operating cost of a covered product under a representative average use cycle or period of use * * *" 42 U.S.C. 6293(b)(3) The procedure DOE is promulgating today satisfies this requirement by producing a measurement of energy usage. Accordingly, energy usage profiles, as suggested by some commenters, are unnecessary for DOE to use in developing this test procedure.

2. Measuring Charger Output Energy

During the framework document public meeting, DOE suggested the possible approach of including a procedure that would require measuring the charger output energy rather than the battery output energy in order to calculate the total energy consumed by the battery charger during charging [16] (Pub. Mtg. Tr., No. 14 at pp. 162–164). (DOE believed at the time that measuring energy consumption at the charger output, thereby bypassing the battery, could remove some of the variability from the measurement. Commenters were unified in opposition to this change and it was not proposed in the NOPR. During the NOPR public meeting, AHAM agreed with DOE's decision to drop this approach. (AHAM, No. 10 at p. 7)

3. Alternative Depth-of-Discharge Measurement

In its NOPR, DOE discussed the possibility of requiring that battery chargers be tested with batteries at the 100 percent depth-of-discharge level. 75 FR 16958, 16975. DOE proposed this approach in response to comments that critiqued the initial approach DOE had considered using, which DOE described during the framework document public meeting (Pub. Mtg. Tr., No. 14 at pp. 162–164).[17] During that stage, DOE discussed the possibility of testing battery chargers with batteries at 40 percent depth-of-discharge, meaning that they would contain a 60 percent charge. Commenters opposed this earlier approach because it would unnecessarily complicate the test procedure and be an assumption of typical use that would be hard to substantiate. 75 FR 16958, 16975. See also Pub. Mtg. Tr., No. 14 at pp. 195–196, 199–200, 201, 206; PG&E *et al.,* No. 20 at p. 16.[18]

AHAM agreed with DOE's removal of the 40 percent depth-of-discharge measurement, saying that DOE should not require measurements at multiple depths of discharge. (AHAM, No. 2 at p. 175; AHAM, No. 10 at p. 7)

Alternatively, Euro-Pro noted that if batteries are only measured at 100

[16] A notation in the form "Pub. Mtg. Tr., No. 14 at pp. 162–164" identifies DOE's explanation of this issue during the July 16, 2009, framework document public meeting. This explanation and comments received were recorded in the public meeting transcript in the docket of the BC and EPS energy conservation standards rulemaking (Docket No. EERE–2008–BT– STD–0005, RIN 1904–AB57), maintained in the Resource Room of the Building Technologies Program and available at *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/bceps_standards_meeting_transcript.pdf.*

[17] U.S. Department of Energy–Office of Energy Efficiency and Renewable Energy. Energy Conservation Program for Consumer Products *Energy Conservation Standards Rulemaking for Battery Chargers and External Power Supplies.* May 2009. Washington, DC. Available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/bceps_frameworkdocument.pdf.*

[18] *See id.*

percent depth-of-discharge, the energy use of batteries with protective circuitry that prevents them from reaching that depth may not be able to be accurately measured. (Euro-Pro, No. 2 at p. 177) They also commented that products that will not permit a 100-percent depth-of-discharge level when being used by consumers may achieve better energy use ratings than they deserve. This is because they will never be able to reach a 100-percent depth-of-discharge level, yet the test procedure will test them at this level. As a result, the test will measure the presence of more energy to be recovered from the battery than can be used by the consumer. (Euro-Pro, Pub. Mtg. Tran., No. 2 at p. 179)

DOE acknowledges the comments from interested parties. DOE believes that by following the outlined test procedure, including the preparatory discharge step, products will not inadvertently achieve better energy use ratings than what they are capable of achieving when in actual use in the field. The UUT will be taken from a known state of discharge, charged, and then discharged back to the known state, which ensures that a product's energy consumption will be appropriate for its design and capabilities. By following this procedure, it should be physically impossible to get more energy out of the battery during the measured discharge than what was put in during the measured charge and maintenance mode test. Therefore, as discussed in the NOPR, DOE will not incorporate testing at alternative levels of depths-of-discharge. Requiring testing at only 100 percent depth-of-discharge also promotes consistent testing across products, making it easy to compare products and reducing the testing burden on manufacturers.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires preparation of an initial regulatory flexibility analysis for any rule that, by law, must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, as required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impact of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE made its procedures and policies available on the Office of the General Counsel's Web site at *http://www.gc.doe.gov.*

DOE identified producers of products covered by this rulemaking that have manufacturing facilities located within the United States and could be considered small entities by searching the SBA Web site to identify manufacturers within the applicable NAICS code. After examining this information, DOE ascertained that many of the companies that manufacture these products are large multinational corporations with more than 500 employees. DOE also identified some small businesses that could potentially be manufacturers of covered products. DOE notes that with respect to battery charger and multiple-voltage external power supply manufacturers, there are currently no standards in place for these products for manufacturers to meet. Accordingly, manufacturers are under no obligation to use these procedures until DOE prescribes standards for them. As for the changes to the single-voltage external power supply procedure, these proposed amendments will reduce the overall burden to manufacturers and provide a means to test more complex devices.

After reviewing its proposal, DOE had tentatively concluded that two aspects of the proposal may result in some increased testing burden for manufacturers generally: the revision of the battery charger test procedure to include a test for battery chargers operating in active mode and the addition of a test procedure for multiple-voltage external power supplies.

DOE anticipates, however, that adding an active mode battery charger test procedure will not be likely to cause a significant burden to small manufacturers because the steps in the active mode test procedure that DOE is promulgating in this rule already exist in the current DOE test procedure. The additional step that this rule will require will be the recording of certain values during one of those steps. Additionally, this rule is based largely on procedures already implemented by the State of California that are already followed by the industry. By basing its rule on these established procedures, DOE anticipates little, if any, incremental increase in testing cost or burden from this rulemaking. Manufacturers are familiar with the steps detailed in the procedure being adopted today and should already have the necessary equipment to conduct these tests.

Similarly, the addition of a multiple-voltage external power supply test procedure will not have a significant impact on small businesses since these devices are manufactured almost exclusively by businesses that exceed the small business size threshold for this category. Further, the multiple-voltage external power supply test procedure being adopted today is nearly identical to the single-voltage external power supply procedure already in place that manufacturers must follow. This procedure was not noted by interested parties as being burdensome by small businesses.

In addition to the relatively modest changes introduced by today's rule to the existing test procedure that manufacturers are already using, manufacturers will only be required to test products that are subject to energy conservation standards. Currently, there are no standards in place for battery chargers or multiple-voltage external power supplies. Until energy conservation standards are adopted, no entities, small or large, would be required to comply with the proposed battery charger and external power supply test procedures. As a result, in light of all of the above factors, DOE believes that today's rule would not have a "significant economic impact on a substantial number of small entities."

The amendments discussed in this final rule affecting Class A external power supplies, which are covered by statutorily-set standards, do not significantly change the existing test procedure used to measure the energy output of these devices. DOE does not expect these amendments to impose a significant new testing and compliance burden. Therefore, these amendments also would be unlikely to have significant impact on a substantial number of small entities.

Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE has provided its

certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

Manufacturers of battery chargers and external power supplies must certify to DOE that their products comply with any applicable energy conservation standard. In certifying compliance, manufacturers must test their equipment according to the applicable DOE test procedure, including any amendments adopted for that test procedure. DOE has adopted regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including battery chargers and external power supplies. 76 FR 12442 (March 7, 2011). The collection-of-information requirement for the certification and recordkeeping has been approved by OMB under control number 1910–1400. The public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act

In this final rule, DOE amends its test procedures for battery chargers and external power supplies. These amendments will enable manufacturers to test the energy consumption of battery chargers while charging batteries and reduce the amount of testing time during standby and off mode testing. The amendments also provide a method by which to test those external power supplies that are equipped with USB outputs as well as those power supplies that are of the multi-voltage type. These amendments, where applicable, will also be used to develop and implement future energy conservation standards for battery chargers and external power supplies. After carefully considering the nature and impacts of this rule, DOE has determined that this final rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without changing its environmental effect, and, therefore, is covered by the categorical exclusion contained in 10 CFR part 1021, subpart D, paragraph A5. The exclusion applies because this rule establishes revisions to existing test procedures that will not affect the amount, quality, or distribution of energy usage, and, therefore, will not result in any environmental impacts. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this rule and has determined that it 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. EPCA governs and prescribes Federal preemption of state regulations as to energy conservation for the products that are the subject of today's rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the rule meets the relevant standards of Executive Order 12988.

G. Review Under Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For proposed regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) UMRA also requires Federal agencies to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate." In addition, UMRA requires an agency plan for giving notice and opportunity for timely input to small governments that may be affected before establishing a requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (This policy is also available at *http://www.gc.doe.gov*). Today's rule contains neither an intergovernmental mandate, nor a

mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. Today's rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is unnecessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 15, 1988), DOE has determined that this rule will not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (Pub. L. 106–554; 44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101, *et seq.*), DOE must comply with section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). (15 U.S.C. 788) Section 32 provides that, where a proposed rule authorizes or requires use of commercial standards, the rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Federal Trade Commission (FTC) about the effect of the commercial or industry standards on competition.

DOE has evaluated these revised standards, which are based on testing protocols developed and adopted by the State of California. The specific sections from the CEC procedure that today's rule incorporates into the test procedure are from Part 1 of the test procedure, with some modifications for clarity. After examining the public record related to the promulgation of these requirements by the CEC, DOE believes that these procedures were developed in a manner that fully provided for public participation, comment, and review from all interested parties. Additionally, DOE has consulted with the Attorney General and the Chairman of the FTC concerning the affect on competition of requiring manufacturers to use the test methods contained in these standards, and neither objected to the incorporation of these standards.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule before its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Reporting and recordkeeping requirements.

Issued in Washington, DC, on May 3, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE amends part 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. In § 430.23 revise paragraph (aa) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(aa) *Battery Chargers.* Upon the effective date of any energy conservation standard for battery chargers governing active and maintenance mode energy consumption, the 24-hour energy consumption of a battery charger in active and maintenance modes, expressed in watt-hours, and the power consumption of a battery charger in maintenance mode, expressed in watts, shall be measured in accordance with section 5.10 of appendix Y of this subpart. The power consumption of a battery charger in standby mode and off mode, expressed in watts, shall be measured in accordance with sections 5.11 and 5.12, respectively, of appendix Y of this subpart.

* * * * *

■ 3. Appendix Y to Subpart B of Part 430 is revised to read as follows:

Appendix Y to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Battery Chargers

The provisions of this appendix are effective on the compliance date of any energy conservation standard for battery chargers.

1. Scope

This appendix covers the test requirements used to measure battery charger energy consumption for battery chargers operating at either DC or United States AC line voltage (115V at 60Hz).

2. Definitions

The following definitions are for the purposes of explaining the terminology associated with the test method for measuring battery charger energy consumption.[1]

2.1. *Active mode* or *charge mode* is the state in which the battery charger system is connected to the main electricity supply, and the battery charger is delivering current, equalizing the cells, and performing other one-time or limited-time functions in order to bring the battery to a fully charged state.

2.2. *Active power* or *real power* (P) means the average power consumed by a unit. For a two terminal device with current and voltage waveforms i(t) and v(t), which are periodic with period T, the real or active power P is:

$$P = \frac{1}{T}\int_0^T v(t)i(t)dt$$

2.3. *Ambient temperature* is the temperature of the ambient air immediately surrounding the unit under test.

2.4. *Apparent power* (S) is the product of root-mean-square (RMS) voltage and RMS current in volt-amperes (VA).

2.5. *Batch charger* is a battery charger that charges two or more identical batteries simultaneously in a series, parallel, series-parallel, or parallel-series configuration. A batch charger does not have separate voltage or current regulation, nor does it have any separate indicators for each battery in the batch. When testing a batch charger, the term "battery" is understood to mean, collectively, all the batteries in the batch that are charged together. A charger can be both a batch charger and a multi-port charger or multi-voltage charger.

2.6. *Battery* or *battery pack* is an assembly of one or more rechargeable cells and any integral protective circuitry intended to provide electrical energy to a consumer product, and may be in one of the following forms: (a) Detachable battery (a battery that is contained in a separate enclosure from the consumer product and is intended to be removed or disconnected from the consumer product for recharging); or (b) integral battery (a battery that is contained within the consumer product and is not removed from the consumer product for charging purposes). The word "intended" in this context refers to the whether a battery has been designed in such a way as to permit its removal or disconnection from its associated consumer product.

2.7. *Battery energy* is the energy, in watt-hours, delivered by the battery under the specified discharge conditions in the test procedure.

2.8. *Battery maintenance mode* or *maintenance mode* is the mode of operation when the battery charger is connected to the main electricity supply and the battery is fully charged, but is still connected to the charger.

2.9. *Battery rest period* is a period of time between discharge and charge or between charge and discharge, during which the battery is resting in an open-circuit state in ambient air.

2.10. *C-rate* is the rate of charge or discharge, calculated by dividing the charge or discharge current by the rated charge capacity of the battery.

2.11. *Cradle* is an electrical interface between an integral battery product and the rest of the battery charger designed to hold the product between uses.

2.12. *Equalization* is a process whereby a battery is overcharged, beyond what would be considered "normal" charge return, so that cells can be balanced, electrolyte mixed, and plate sulfation removed.

2.13. *Instructions* or *manufacturer's instructions* means the documentation packaged with a product in printed or electronic form and any information about the product listed on a Web site maintained by the manufacturer and accessible by the general public at the time of the test. It also includes any information on the packaging or on the product itself. "Instructions" also includes any service manuals or data sheets that the manufacturer offers to independent service technicians, whether printed or in electronic form.

2.14. *Measured charge capacity* of a battery is the product of the discharge current in amperes and the time in decimal hours required to reach the specified end-of-discharge voltage.

2.15. *Manual on-off switch* is a switch activated by the user to control power reaching the battery charger. This term does not apply to any mechanical, optical, or electronic switches that automatically disconnect mains power from the battery charger when a battery is removed from a cradle or charging base, or for products with non-detachable batteries that control power to the product itself.

2.16. *Multi-port charger* means a battery charger that charges two or more batteries (which may be identical or different) simultaneously. The batteries are not connected in series or in parallel but with each port having separate voltage and/or current regulation. If the charger has status indicators, each port has its own indicator(s). A charger can be both a batch charger and a multi-port charger if it is capable of charging two or more batches of batteries simultaneously and each batch has separate regulation and/or indicator(s).

2.17. *Multi-voltage charger* is a battery charger that, by design, can charge a variety of batteries (or batches of batteries, if also a batch charger) that are of different rated battery voltages. A multi-voltage charger can also be a multi-port charger if it can charge two or more batteries simultaneously with independent voltage and/or current regulation.

2.18. *Off mode* is the condition, applicable only to units with manual on-off switches, in which the battery charger:

(1) Is connected to the main electricity supply;

(2) Is not connected to the battery; and

(3) All manual on-off switches are turned off.

2.19. *Rated battery voltage* is specified by the manufacturer and typically printed on the label of the battery itself. If there are multiple batteries that are connected in series, the rated battery voltage of the batteries is the total voltage of the series configuration—that is, the rated voltage of each battery multiplied by the number of batteries connected in series. Connecting multiple batteries in parallel does not affect the rated battery voltage.

2.20. *Rated charge capacity* is the capacity claimed by a manufacturer, on a label or in instructions, the battery can store under specified test conditions, usually given in ampere-hours (Ah) or milliampere-hours (mAh) and typically printed on the label of the battery itself. If there are multiple batteries that are connected in parallel, the rated charge capacity of the batteries is the total charge capacity of the parallel configuration, that is, the rated charge capacity of each battery multiplied by the number of batteries connected in parallel. Connecting multiple batteries in series does not affect the rated charge capacity.

2.21. *Rated energy capacity* means the product (in watt-hours) of the rated battery voltage and the rated charge capacity.

2.22. *Standby mode* or *no-battery mode* means the condition in which:

(1) The battery charger is connected to the main electricity supply;

(2) The battery is not connected to the charger; and

(3) For battery chargers with manual on-off switches, all such switches are turned on.

2.23. *Total harmonic distortion* (THD), expressed as a percent, is the root mean square (RMS) value of an AC signal after the fundamental component is removed and interharmonic components are ignored, divided by the RMS value of the fundamental component.

2.24. *Unit under test* (UUT) in this appendix refers to the combination of the battery charger and battery being tested.

3. Standard Test Conditions

3.1. General

The values that may be measured or calculated during the conduct of this test procedure have been summarized for easy reference in Table 3.1.

[1] For clarity on any other terminology used in the test method, please refer to IEEE Standard 1515–2000.

TABLE 3.1— LIST OF MEASURED OR CALCULATED VALUES

Name of measured or calculated value	Reference	Value
1. Duration of the charge and maintenance mode test	Section 5.2	
2. Battery Discharge Energy	Section 4.6	
3. Initial time and power (W) of the input current of connected battery	Section 5.8	
4. Active and Maintenance Mode Energy Consumption	Section 5.8	
5. Maintenance Mode Power	Section 5.9	
6. 24 Hour Energy Consumption	Section 5.10	
7. Standby Mode Power	Section 5.11	
8. Off Mode Power	Section 5.12	

3.2. Verifying Accuracy and Precision of Measuring Equipment

a. Measurements of active power of 0.5 W or greater shall be made with an uncertainty of ≤ 2 percent at the 95 percent confidence level. Measurements of active power of less than 0.5 W shall be made with an uncertainty of ≤ 0.01 W at the 95 percent confidence level. The power measurement instrument shall, as applicable, have a resolution of:

(1) 0.01 W or better for measurements up to 10 W;

(2) 0.1 W or better for measurements of 10 to 100 W; or

(3) 1 W or better for measurements over 100 W.

b. Measurements of energy (Wh) shall be made with an uncertainty of ≤ 2 percent at the 95 percent confidence level. Measurements of voltage and current shall be made with an uncertainty of ≤ 1 percent at the 95 percent confidence level. Measurements of temperature shall be made with an uncertainty of ≤ 2 °C at the 95 percent confidence level.

c. All equipment used to conduct the tests must be selected and calibrated to ensure that measurements will meet the above uncertainty requirements. For suggestions on measuring low power levels, see IEC 62301, (Reference for guidance only, see § 430.4) especially Section 5.3.2 and Annexes B and D.

3.3. Setting Up the Test Room

All tests, battery conditioning, and battery rest periods shall be carried out in a room with an air speed immediately surrounding the UUT of ≤ 0.5 m/s. The ambient temperature shall be maintained at 20 °C ± 5 °C throughout the test. There shall be no intentional cooling of the UUT such as by use of separately powered fans, air conditioners, or heat sinks. The UUT shall be conditioned, rested, and tested on a thermally non-conductive surface. When not undergoing active testing, batteries shall be stored at 20 °C ± 5 °C.

3.4. Verifying the UUT's Input Voltage and Input Frequency

a. If the UUT is intended for operation on AC line-voltage input in the United States, it shall be tested at 115 V at 60 Hz. If the UUT is intended for operation on AC line-voltage input but cannot be operated at 115 V at 60 Hz, it shall not be tested.

b. If a charger is powered by a low-voltage DC or AC input, and the manufacturer packages the charger with a wall adapter, sells, or recommends an optional wall adapter capable of providing that low voltage input, then the charger shall be tested using that wall adapter and the input reference source shall be 115 V at 60 Hz. If the wall adapter cannot be operated with AC input voltage at 115 V at 60 Hz, the charger shall not be tested.

c. If the UUT is designed for operation only on DC input voltage and the provisions of paragraph 3.4 (b) above do not apply, it shall be tested with one of the following input voltages: 5.0 V DC for products drawing power from a computer USB port or the midpoint of the rated input voltage range for all other products. The input voltage shall be within ± 1 percent of the above specified voltage.

d. If the input voltage is AC, the input frequency shall be within ± 1 percent of the specified frequency. The THD of the input voltage shall be ≤ 2 percent, up to and including the 13th harmonic. The crest factor of the input voltage shall be between 1.34 and 1.49.

e. If the input voltage is DC, the AC ripple voltage (RMS) shall be:

(1) ≤ 0.2 V for DC voltages up to 10 V; or

(2) ≤ 2 percent of the DC voltage for DC voltages over 10 V.

Unit Under Test Setup Requirements

4.1. General Setup

a. The battery charger system shall be prepared and set up in accordance with the manufacturer's instructions, except where those instructions conflict with the requirements of this test procedure. If no instructions are given, then factory or "default" settings shall be used, or where there are no indications of such settings, the UUT shall be tested in the condition as it would be supplied to an end user.

b. If the battery charger has user controls to select from two or more charge rates (such as regular or fast charge) or different charge currents, the test shall be conducted at the fastest charge rate that is recommended by the manufacturer for everyday use, or, failing any explicit recommendation, the factory-default charge rate. If the charger has user controls for selecting special charge cycles that are recommended only for occasional use to preserve battery health, such as equalization charge, removing memory, or battery conditioning, these modes are not required to be tested. The settings of the controls shall be listed in the report for each test.

4.2. Selection and Treatment of the Battery Charger

The UUT, including the battery charger and its associated battery, shall be new products of the type and condition that would be sold to a customer. If the battery is lead-acid chemistry and the battery is to be stored for more than 24 hours between its initial acquisition and testing, the battery shall be charged before such storage.

4.3. Selection of Batteries To Use for Testing

a. For chargers with integral batteries, the battery packaged with the charger shall be used for testing. For chargers with detachable batteries, the battery or batteries to be used for testing will vary depending on whether there are any batteries packaged with the battery charger.

(1) If batteries are packaged with the charger, batteries for testing shall be selected from the batteries packaged with the battery charger, according to the procedure in section 4.3.b.

(2) If no batteries are packaged with the charger, but the instructions specify or recommend batteries for use with the charger, batteries for testing shall be selected from those recommended or specified in the instructions, according to the procedure in section 4.3.b.

(3) If no batteries are packaged with the charger and the instructions do not specify or recommend batteries for use with the charger, batteries for testing shall be selected from any that are suitable for use with the charger, according to the procedure in section 4.3.b.

b. From the detachable batteries specified above, the technician shall use Table 4.1 to select the batteries to be used for testing depending on the type of charger being tested. Each row in the table represents a mutually exclusive charger type. The technician shall find the single applicable row for the UUT, and test according to those requirements.

c. A charger is considered as:

(1) Single-capacity if all associated batteries have the same rated charge capacity (see definition) and, if it is a batch charger, all configurations of the batteries have the same rated charge capacity.

(2) Multi-capacity if there are associated batteries or configurations of batteries that have different rated charge capacities.

d. The selected battery or batteries will be referred to as the "test battery" and will be used through the remainder of this test procedure.

TABLE 4.1—BATTERY SELECTION FOR TESTING

Type of charger			Tests to perform	
Multi-voltage	Multi-port	Multi-capacity	Number of tests	Battery selection (from all configurations of all associated batteries)
No	No	No	1	Any associated battery.
No	No	Yes	2	Lowest charge capacity battery. Highest charge capacity battery.
No	Yes	Yes or No	2	Use only one port and use the minimum number of batteries with the lowest rated charge capacity that the charger can charge. Use all ports and use the maximum number of identical batteries of the highest rated charge capacity the charger can accommodate.
Yes	No	No	2	Lowest voltage battery. Highest voltage battery.
Yes	Yes to either or both		3	Of the batteries with the lowest voltage, use the one with the lowest charge capacity. Use only one port. Of the batteries with the highest voltage, use the one with the lowest charge capacity. Use only one port. Use all ports and use the battery or the configuration of batteries with the highest total rated energy capacity.

4.4. Limiting Other Non-Battery-Charger Functions

a. If the battery charger or product containing the battery charger does not have any additional functions unrelated to battery charging, this subsection may be skipped.

b. Any optional functions controlled by the user and not associated with the battery charging process (*e.g.,* the answering machine in a cordless telephone charging base) shall be switched off. If it is not possible to switch such functions off, they shall be set to their lowest power-consuming mode during the test.

c. If the battery charger takes any physically separate connectors or cables not required for battery charging but associated with its other functionality (such as phone lines, serial or USB connections, Ethernet, cable TV lines, *etc.*), these connectors or cables shall be left disconnected during the testing.

d. Any manual on-off switches specifically associated with the battery charging process shall be switched on for the duration of the charge, maintenance, and no-battery mode tests, and switched off for the off mode test.

4.5. Accessing the Battery for the Test

a. The technician may need to disassemble the end-use product or battery charger to gain access to the battery terminals for the Battery Discharge Energy Test in section 5.6. If the battery terminals are not clearly labeled, the technician shall use a voltmeter to identify the positive and negative terminals. These terminals will be the ones that give the largest voltage difference and are able to deliver significant current (0.2 C or 1/hr) into a load.

b. All conductors used for contacting the battery must be cleaned and burnished prior to connecting in order to decrease voltage drops and achieve consistent results.

c. Manufacturer's instructions for disassembly shall be followed, except those instructions that:

(1) Lead to any permanent alteration of the battery charger circuitry or function;

(2) Could alter the energy consumption of the battery charger compared to that experienced by a user during typical use, *e.g.,* due to changes in the airflow through the enclosure of the UUT; or

(3) Conflict requirements of this test procedure.

d. Care shall be taken by the technician during disassembly to follow appropriate safety precautions. If the functionality of the device or its safety features is compromised, the product shall be discarded after testing.

e. Some products may include protective circuitry between the battery cells and the remainder of the device. If the manufacturer provides a description for accessing the connections at the output of the protective circuitry, these connections shall be used to discharge the battery and measure the discharge energy. The energy consumed by the protective circuitry during discharge shall not be measured or credited as battery energy.

f. If the technician, despite diligent effort and use of the manufacturer's instructions, encounters any of the following conditions noted immediately below, the Battery Discharge Energy and the Charging and Maintenance Mode Energy shall be reported as "Not Applicable":

(1) Inability to access the battery terminals;

(2) Access to the battery terminals destroys charger functionality; or

(3) Inability to draw current from the test battery.

4.6. Determining Charge Capacity for Batteries With No Rating

If there is no rating for the battery charge capacity on the battery or in the instructions, then the technician shall determine a discharge current that meets the following requirements. The battery shall be fully charged and then discharged at this constant-current rate until it reaches the end-of-discharge voltage specified in Table 5.2. The discharge time must be not less than 4.5 hours nor more than 5 hours. In addition, the discharge test (Section 5.6) (which may not be starting with a fully-charged battery) shall reach the end-of-discharge voltage within 5 hours. The same discharge current shall be used for both the preparations step (Section 5.4) and the discharge test (Section 5.6). The test report shall include the discharge current used and the resulting discharge times for both a fully-charged battery and for the discharge test.

For this section, the battery is considered as "fully charged" when either (a) it has been charged by the UUT until an indicator on the UUT shows that the charge is complete, or (b) it has been charged by a battery analyzer at a current not greater than the discharge current until the battery analyzer indicates that the battery is fully charged.

When there is no capacity rating, a suitable discharge current must generally be determined by trial and error. Since the conditioning step does not require constant-current discharges, the trials themselves may also be counted as part of battery conditioning.

5. Test Measurement

The test sequence to measure the battery charger energy consumption is summarized in Table 5.1, and explained in detail below. Measurements shall be made under test conditions and with the equipment specified in Sections 3 and 4.

TABLE 5.1—TEST SEQUENCE

Step	Description	Data taken?	Equipment needed				
			Test battery	Charger	Battery analyzer or constant-current load	AC power meter	Thermometer (for flooded lead-acid battery chargers only)
1	Record general data on UUT; Section 5.1	Yes	X	X			
2	Determine test duration; Section 5.2	No					
3	Battery conditioning; Section 5.3	No	X	X	X		
4	Prepare battery for charge test; Section 5.4	No	X	X			
5	Battery rest period; Section 5.5	No	X				X
6	Conduct Charge Mode and Battery Maintenance Mode Test; Section 5.6.	Yes	X	X		X	
7	Battery Rest Period; Section 5.7	No	X				X
8	Battery Discharge Energy Test; Section 5.8	Yes	X		X		
9	Determining the Maintenance Mode Power; Section 5.9.	Yes	X	X		X	
10	Calculating the 24–Hour Energy Consumption; Section 5.10.	No					
11	Standby Mode Test; Section 5.11	Yes		X		X	
12	Off Mode Test; Section 5.12	Yes		X		X	

5.1. Recording General Data on the UUT

The technician shall record:

(1) The manufacturer and model of the battery charger;

(2) The presence and status of any additional functions unrelated to battery charging;

(3) The manufacturer, model, and number of batteries in the test battery;

(4) The rated battery voltage of the test battery;

(5) The rated charge capacity of the test battery; and

(6) The rated charge energy of the test battery.

(7) The settings of the controls, if battery charger has user controls to select from two or more charge rates

5.2. Determining the Duration of the Charge and Maintenance Mode Test

a. The charging and maintenance mode test, described in detail in section 5.8, shall be 24 hours in length or longer, as determined by the items below. Proceed in order until a test duration is determined.

(1) If the battery charger has an indicator to show that the battery is fully charged, that indicator shall be used as follows: If the indicator shows that the battery is charged after 19 hours of charging, the test shall be terminated at 24 hours. Conversely, if the full-charge indication is not yet present after 19 hours of charging, the test shall continue until 5 hours after the indication is present.

(2) If there is no indicator, but the manufacturer's instructions indicate that charging this battery or this capacity of battery should be complete within 19 hours, the test shall be for 24 hours. If the instructions indicate that charging may take longer than 19 hours, the test shall be run for the longest estimated charge time plus 5 hours.

(3) If there is no indicator and no time estimate in the instructions, but the charging current is stated on the charger or in the instructions, calculate the test duration as the longer of 24 hours or:

$$Duration = 1.4 \cdot \frac{RatedChargeCapacity\,(\mathrm{Ah})}{ChargeCurrent\,(\mathrm{A})} + 5\mathrm{h}$$

b. If none of the above applies, the duration of the test shall be 24 hours.

5.3. Battery Conditioning

a. No conditioning is to be done on lead-acid or lithium-ion batteries. The test technician shall proceed directly to battery preparation, section 5.4, when testing chargers for these batteries.

b. Products with integral batteries will have to be disassembled per the instructions in section 4.5, and the battery disconnected from the charger for discharging.

c. Batteries of other chemistries that have not been previously cycled are to be conditioned by performing two charges and two discharges, followed by a charge, as below. No data need be recorded during battery conditioning.

(1) The test battery shall be fully charged for the duration specified in section 5.2 or longer using the UUT.

(2) The test battery shall then be fully discharged using either:

(i) A battery analyzer at a rate not to exceed 1 C, until its average cell voltage under load reaches the end-of-discharge voltage specified in Table 5.2 for the relevant battery chemistry; or

(ii) The UUT, until the UUT ceases operation due to low battery voltage.

(3) The test battery shall again be fully charged as in step c.(1) of this section.

(4) The test battery shall again be fully discharged as per step c.(2) of this section.

(5) The test battery shall be again fully charged as in step c.(1) of this section.

d. Batteries of chemistries other than lead-acid or lithium-ion that are known to have been through at least two previous full charge/discharge cycles shall only be charged once per step c.(5), of this section.

5.4. Preparing the Battery for Charge Testing

Following any conditioning prior to beginning the battery charge test (section 5.6), the test battery shall be fully discharged for the duration specified in section 5.2 or longer using a battery analyzer.

5.5. Resting the Battery

The test battery shall be rested between preparation and the battery charge test. The rest period shall be at least one hour and not exceed 24 hours. For batteries with flooded cells, the electrolyte temperature shall be less than 30 °C before charging, even if the rest period must be extended longer than 24 hours.

5.6. Testing Charge Mode and Battery Maintenance Mode

a. The Charge and Battery Maintenance Mode test measures the energy consumed during charge mode and some time spent in the maintenance mode of the UUT. Functions required for battery conditioning that happen only with some user-selected switch or other control shall not be included in this measurement. (The technician shall manually turn off any battery conditioning cycle or setting.) Regularly occurring battery conditioning or maintenance functions that are not controlled by the user will, by

default, be incorporated into this measurement.

b. During the measurement period, input power values to the UUT shall be recorded at least once every minute.

(1) If possible, the technician shall set the data logging system to record the average power during the sample interval. The total energy is computed as the sum of power samples (in watts) multiplied by the sample interval (in hours).

(2) If this setting is not possible, then the power analyzer shall be set to integrate or accumulate the input power over the measurement period and this result shall be used as the total energy.

c. The technician shall follow these steps:

(1) Ensure that the user-controllable device functionality not associated with battery charging and any battery conditioning cycle or setting are turned off, as instructed in section 4.4;

(2) Ensure that the test battery used in this test has been conditioned, prepared, discharged, and rested as described in sections 5.3 through 5.7;

(3) Connect the data logging equipment to the battery charger;

(4) Record the start time of the measurement period, and begin logging the input power;

(5) Connect the test battery to the battery charger within 3 minutes of beginning logging. For integral battery products, connect the product to a cradle or wall adapter within 3 minutes of beginning logging;

(6) After the test battery is connected, record the initial time and power (W) of the input current to the UUT. These measurements shall be taken within the first 10 minutes of active charging;

(7) Record the input power for the duration of the "Charging and Maintenance Mode Test" period, as determined by section 5.2. The actual time that power is connected to the UUT shall be within ±5 minutes of the specified period; and

(8) Disconnect power to the UUT, terminate data logging, and record the final time.

5.7. Resting the Battery

The test battery shall be rested between charging and discharging. The rest period shall be at least 1 hour and not more than 4 hours, with an exception for flooded cells. For batteries with flooded cells, the electrolyte temperature shall be less than 30 °C before charging, even if the rest period must be extended beyond 4 hours.

5.8. Battery Discharge Energy Test

a. If multiple batteries were charged simultaneously, the discharge energy is the sum of the discharge energies of all the batteries.

(1) For a multi-port charger, batteries that were charged in separate ports shall be discharged independently.

(2) For a batch charger, batteries that were charged as a group may be discharged individually, as a group, or in sub-groups connected in series and/or parallel. The position of each battery with respect to the other batteries need not be maintained.

b. During discharge, the battery voltage and discharge current shall be sampled and recorded at least once per minute. The values recorded may be average or instantaneous values.

c. For this test, the technician shall follow these steps:

(1) Ensure that the test battery has been charged by the UUT and rested according to the procedures above.

(2) Set the battery analyzer for a constant discharge current of 0.2 °C and the end-of-discharge voltage in Table 5.2 for the relevant battery chemistry.

(3) Connect the test battery to the analyzer and begin recording the voltage, current, and wattage, if available from the battery analyzer. When the end-of-discharge voltage is reached or the UUT circuitry terminates the discharge, the test battery shall be returned to an open-circuit condition. If current continues to be drawn from the test battery after the end-of-discharge condition is first reached, this additional energy is not to be counted in the battery discharge energy.

d. If not available from the battery analyzer, the battery discharge energy (in watt-hours) is calculated by multiplying the voltage (in volts), current (in amperes), and sample period (in hours) for each sample, and then summing over all sample periods until the end-of-discharge voltage is reached.

5.9. Determining the Maintenance Mode Power

After the measurement period is complete, the technician shall determine the average maintenance mode power consumption by examining the power-versus-time data from the charge and maintenance test and:

(1) If the maintenance mode power is cyclic or shows periodic pulses, compute the average power over a time period that spans a whole number of cycles and includes at least the last 4 hours.

(2) Otherwise, calculate the average power value over the last 4 hours.

5.10. Determining the 24-Hour Energy Consumption

The accumulated energy or the average input power, integrated over the test period from the charge and maintenance mode test, shall be used to calculate 24-hour energy consumption.

TABLE 5.2—REQUIRED BATTERY DISCHARGE RATES AND END-OF-DISCHARGE BATTERY VOLTAGES

Battery chemistry	Discharge rate *C*	End-of-discharge voltage *volts per cell*
Valve-Regulated Lead Acid (VRLA)	0.2	1.75
Flooded Lead Acid	0.2	1.70
Nickel Cadmium (NiCd)	0.2	1.0
Nickel Metal Hydride (NiMH)	0.2	1.0
Lithium Ion (Li-Ion)	0.2	2.5
Lithium Polymer	0.2	2.5
Rechargeable Alkaline	0.2	0.9
Nanophosphate Lithium Ion	0.2	2.0
Silver Zinc	0.2	1.2

5.11. Standby Mode Energy Consumption Measurement

The standby mode measurement depends on the configuration of the battery charger, as follows.

a. Conduct a measurement of standby power consumption while the battery charger is connected to the power source. Disconnect the battery from the charger, allow the charger to operate for at least 30 minutes, and record the power (*i.e.,* watts) consumed as the time series integral of the power consumed over a 10-minute test period, divided by the period of measurement. If the battery charger has manual on-off switches, all must be turned on for the duration of the standby mode test.

b. Standby mode may also apply to products with integral batteries. If the product uses a cradle and/or adapter for power conversion and charging, then "disconnecting the battery from the charger" will require disconnection of the end-use product, which contains the batteries. The other enclosures of the battery charging system will remain connected to the main electricity supply, and standby mode power consumption will equal that of the cradle and/or adapter alone.

c. If the product is powered through a detachable AC power cord and contains integrated power conversion and charging circuitry, then only the cord will remain connected to mains, and standby mode power consumption will equal that of the AC power cord (*i.e.,* zero watts).

d. Finally, if the product contains integrated power conversion and charging circuitry but is powered through a non-detachable AC power cord or plug blades, then no part of the system will remain connected to mains, and standby mode measurement is not applicable.

5.12. Off Mode Energy Consumption Measurement

The off mode measurement depends on the configuration of the battery charger, as follows.

a. If the battery charger has manual on-off switches, record a measurement of off mode energy consumption while the battery charger is connected to the power source. Remove the battery from the charger, allow the charger to operate for at least 30 minutes, and record the power (*i.e.,* watts) consumed as the time series integral of the power consumed over a 10-minute test period, divided by the period of measurement, with all manual on-off switches turned off. If the battery charger does not have manual on-off switches, record that the off mode measurement is not applicable to this product.

b. Off mode may also apply to products with integral batteries. If the product uses a cradle and/or adapter for power conversion and charging, then "disconnecting the battery from the charger" will require disconnection of the end-use product, which contains the batteries. The other enclosures of the battery charging system will remain connected to the main electricity supply, and off mode power consumption will equal that of the cradle and/or adapter alone.

c. If the product is powered through a detachable AC power cord and contains integrated power conversion and charging circuitry, then only the cord will remain connected to mains, and off mode power consumption will equal that of the AC power cord (*i.e.,* zero watts).

d. Finally, if the product contains integrated power conversion and charging circuitry but is powered through a non-detachable AC power cord or plug blades, then no part of the system will remain connected to mains, and off mode measurement is not applicable.

4. Amend Appendix Z to Subpart B of Part 430 by revising paragraphs 2(c), 3(b), 4(a)(i) and 4(b) to read as follows:

Appendix Z to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of External Power Supplies

* * * * *

2. * * *

c. *Active power (P)* (also *real power*) means the average power consumed by a unit. For a two terminal device with current and voltage waveforms i(t) and v(t) which are periodic with period T, the real or active power P is:

$$P = \frac{1}{T}\int_0^T v(t)i(t)dt$$

* * * * *

3. * * *

(b) Multiple-Voltage External Power Supply. Unless otherwise specified, measurements shall be made under test conditions and with equipment specified below.

(i) Verifying Accuracy and Precision of Measuring Equipment

(A) Measurements of power 0.5 W or greater shall be made with an uncertainty of ≤ 2 percent at the 95 percent confidence level. Measurements of power less than 0.5 W shall be made with an uncertainty of ≤ 0.01 W at the 95 percent confidence level. The power measurement instrument shall have a resolution of:

(1) 0.01 W or better for measurements up to 10 W;

(2) 0.1 W or better for measurements of 10 to 100 W; or

(3) 1 W or better for measurements over 100 W.

(B) Measurements of energy (Wh) shall be made with an uncertainty of ≤ 2 percent at the 95 percent confidence level. Measurements of voltage and current shall be made with an uncertainty of ≤ 1 percent at the 95 percent confidence level. Measurements of temperature shall be made with an uncertainty of ≤ 2 °C at the 95 percent confidence level.

(C) All equipment used to conduct the tests must be selected and calibrated to ensure that measurements will meet the above uncertainty requirements. For guidance on measuring low power levels, see IEC 62301, Section 5.3.2 and Annexes B and D (Reference for guidance only, see § 430.4).

(ii) Setting Up the Test Room

All tests shall be carried out in a room with an air speed immediately surrounding the UUT of ≤ 0.5 m/s. The ambient temperature shall be maintained at 20 °C ± 5 °C throughout the test. There shall be no intentional cooling of the UUT such as by use of separately powered fans, air conditioners, or heat sinks. The UUT shall be conditioned, rested, and tested on a thermally non-conductive surface. A readily available material such as Styrofoam will be sufficient.

(iii) Verifying the UUT's Input Voltage and Input Frequency

(A) If the UUT is intended for operation on AC line-voltage input in the United States, it shall be tested at 115 V at 60 Hz. If the UUT is intended for operation on AC line-voltage input but cannot be operated at 115 V at 60 Hz, it shall not be tested. The input voltage shall be within ± 1 percent of the above specified voltage.

(B) If the input voltage is AC, the input frequency shall be within ± 1 percent of the specified frequency. The THD of the input voltage shall be ≤ 2 percent, up to and including the 13th harmonic. The crest factor of the input voltage shall be between 1.34 and 1.49.

4. * * *

(a) * * *

(i) Standby Mode and Active Mode Measurement—The measurement of standby mode (also no-load mode) energy consumption and active mode efficiency shall conform to the requirements specified in section 5, "Measurement Approach" of the CEC's "Test Method for Calculating the Energy Efficiency of Single-Voltage External Ac-Dc and Ac-Ac Power Supplies," August 11, 2004, (incorporated by reference, see § 430.3). Switch-selectable single-voltage external power supplies shall be tested twice—once at the highest nameplate output voltage and once at the lowest.

(A) If the product has more than two output wires, including those that are necessary for controlling the product, the manufacturer shall supply a connection diagram or test fixture that will allow the testing laboratory to put the unit under test into active mode.

(B) For those external power supplies that cannot sustain output at 100 percent loading condition, this efficiency metric shall not be included. For these external power supplies, the average efficiency is the average of the efficiencies measured at 25 percent, 50 percent, and 75 percent of maximum load.

(C) In the case where the external power supply lists both an instantaneous and continuous output current, it shall be tested at the continuous condition only.

* * * * *

(b) Multiple-Voltage External Power Supply—Power supplies must be tested with the output cord packaged with the unit for sale to the consumer, as it is considered part of the unit under test. There are two options for connecting metering equipment to the output of this type of power supply: cut the cord immediately adjacent to the output connector or attach leads and measure the efficiency from the output connector itself. If the power supply is attached directly to the product that it is powering, cut the cord immediately adjacent to the powered product and connect output measurement probes at that point. The tests should be conducted on the sets of output wires that constitute the output busses. If the product has additional wires, these should be left electrically disconnected unless they are necessary for controlling the product. In this case, the manufacturer shall supply a connection diagram or test fixture that will allow the testing laboratory to put the unit under test into active mode.

(i) Standby-Mode and Active-Mode Measurement—The measurement of the multiple-voltage external power supply standby mode (also no-load-mode) energy consumption and active-mode efficiency shall be as follows:

(A) Loading conditions and testing sequence. (1) If the unit under test has on-off switches, all switches shall be placed in the "on" position. Loading criteria for multiple-voltage external power supplies shall be based on nameplate output current and not on nameplate output power because output voltage might not remain constant.

(2) The unit under test shall operate at 100 percent of nameplate current output for at least 30 minutes immediately before conducting efficiency measurements.

(3) After this warm-up period, the technician shall monitor AC input power for a period of 5 minutes to assess the stability of the unit under test. If the power level does not drift by more than 1 percent from the maximum value observed, the unit under test can be considered stable and measurements can be recorded at the end of the 5-minute

period. Measurements at subsequent loading conditions, listed in Table 1, can then be conducted under the same 5-minute stability guidelines. Only one warm-up period of 30 minutes is required for each unit under test at the beginning of the test procedure.

(4) If AC input power is not stable over a 5-minute period, the technician shall follow the guidelines established by IEC Standard 62301 for measuring average power or accumulated energy over time for both input and output. (Reference for guidance only, see § 430.4).

(5) The unit under test shall be tested at the loading conditions listed in Table 1, derated per the proportional allocation method presented in the following section.

TABLE 1—LOADING CONDITIONS FOR UNIT UNDER TEST

Loading Condition 1	100% of Derated Nameplate Output Current ± 2%.
Loading Condition 2	75% of Derated Nameplate Output Current ± 2%.
Loading Condition 3	50% of Derated Nameplate Output Current ± 2%.
Loading Condition 4	25% of Derated Nameplate Output Current ± 2%.
Loading Condition 5	0%.

(6) Input and output power measurements shall be conducted in sequence from Loading Condition 1 to Loading Condition 4, as indicated in Table 1. For Loading Condition 5, the unit under test shall be placed in no-load mode, any additional signal connections to the unit under test shall be disconnected, and input power shall be measured.

(B) Proportional allocation method for loading multiple-voltage external power supplies. For power supplies with multiple voltage busses, defining consistent loading criteria is difficult because each bus has its own nameplate output current. The sum of the power dissipated by each bus loaded to its nameplate output current may exceed the overall nameplate output power of the power supply. The following proportional allocation method must be used to provide consistent loading conditions for multiple-voltage external power supplies. For additional explanation, please refer to section 6.1.1 of the California Energy Commission's "Proposed Test Protocol for Calculating the Energy Efficiency of Internal Ac-Dc Power Supplies Revision 6.2," November 2007.

(1) Consider a multiple-voltage power supply with N output busses, and nameplate output voltages $V_1, * * *, V_N$, corresponding output current ratings $I_1, * * *, I_N$, and a nameplate output power P. Calculate the derating factor D by dividing the power supply nameplate output power P by the sum of the nameplate output powers of the individual output busses, equal to the product of bus nameplate output voltage and current I_iV_i, as follows:

$$D = \frac{P}{\sum_{i=1}^{N} V_i I_i},$$

(2) If $D \geq 1$, then loading every bus to its nameplate output current does not exceed the overall nameplate output power for the power supply. In this case, each output bus will simply be loaded to the percentages of its nameplate output current listed in Table 1. However, if $D < 1$, it is an indication that loading each bus to its nameplate output current will exceed the overall nameplate output power for the power supply. In this case, and at each loading condition, each output bus will be loaded to the appropriate percentage of its nameplate output current listed in Table 1, multiplied by the derating factor D.

(C) Minimum output current requirements. Depending on their application, some multiple-voltage power supplies may require a minimum output current for each output bus of the power supply for correct operation. In these cases, ensure that the load current for each output at Loading Condition 4 in Table 1 is greater than the minimum output current requirement. Thus, if the test method's calculated load current for a given voltage bus is smaller than the minimum output current requirement, the minimum output current must be used to load the bus. This load current shall be properly recorded in any test report.

(D) Test loads. Active loads such as electronic loads or passive loads such as rheostats used for efficiency testing of the unit under test shall be able to maintain the required current loading set point for each output voltage within an accuracy of ± 0.5 percent. If electronic load banks are used, their settings should be adjusted such that they provide a constant current load to the unit under test.

(E) Efficiency calculation. Efficiency shall be calculated by dividing the measured active output power of the unit under test at a given loading condition by the active AC input power measured at that loading condition. Efficiency shall be calculated at each Loading Condition (1, 2, 3, and 4, in Table 1) and be recorded separately.

(F) Power consumption calculation. Power consumption of the unit under test at Loading Conditions 1, 2, 3, and 4 is the difference between the active output power at that Loading Condition and the active AC input power at that Loading Condition. The power consumption of Loading Condition 5 (no-load) is equal to the AC active input power at that Loading Condition.

(ii) Off Mode Measurement—If the multiple-voltage external power supply unit under test incorporates any on-off switches, the unit under test shall be placed in off mode and its power consumption in off mode measured and recorded. The measurement of the off mode energy consumption shall conform to the requirements specified in paragraph (4)(b)(i) of this appendix. Note that the only loading condition that will be measured for off mode is "Loading Condition 5" in paragraph (A), "Loading conditions and testing sequence", except that all manual on-off switches shall be placed in the off position for the measurement.

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H.R. 1308/P.L. 112–13
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June 9	Jun 24	Jun 30	Jul 11	Jul 14	Jul 25	Aug 8	Sep 7
June 10	Jun 27	Jul 1	Jul 11	Jul 15	Jul 25	Aug 9	Sep 8
June 13	Jun 28	Jul 5	Jul 13	Jul 18	Jul 28	Aug 12	Sep 12
June 14	Jun 29	Jul 5	Jul 14	Jul 19	Jul 29	Aug 15	Sep 12
June 15	Jun 30	Jul 6	Jul 15	Jul 20	Aug 1	Aug 15	Sep 13
June 16	Jul 1	Jul 7	Jul 18	Jul 21	Aug 1	Aug 15	Sep 14
June 17	Jul 5	Jul 8	Jul 18	Jul 22	Aug 1	Aug 16	Sep 15
June 20	Jul 5	Jul 11	Jul 20	Jul 25	Aug 4	Aug 19	Sep 19
June 21	Jul 6	Jul 12	Jul 21	Jul 26	Aug 5	Aug 22	Sep 19
June 22	Jul 7	Jul 13	Jul 22	Jul 27	Aug 8	Aug 22	Sep 20
June 23	Jul 8	Jul 14	Jul 25	Jul 28	Aug 8	Aug 22	Sep 21
June 24	Jul 11	Jul 15	Jul 25	Jul 29	Aug 8	Aug 23	Sep 22
June 27	Jul 12	Jul 18	Jul 27	Aug 1	Aug 11	Aug 26	Sep 26
June 28	Jul 13	Jul 19	Jul 28	Aug 2	Aug 12	Aug 29	Sep 26
June 29	Jul 14	Jul 20	Jul 29	Aug 3	Aug 15	Aug 29	Sep 27
June 30	Jul 15	Jul 21	Aug 1	Aug 4	Aug 15	Aug 29	Sep 28