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Federal Register

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0570; Directorate Identifier 2011–NM–014–AD; Amendment 39–16822; AD 2011–20–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A300 series airplanes; Model A310 series airplanes; and Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600 series airplanes). 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:

* * * * *

A recent analysis conducted by the manufacturer showed a particular risk for explosive failure of the * * * hydraulic accumulator.

This condition, if not detected and corrected, might, for some aeroplane installations, lead to damage to all three hydraulic circuits, possibly resulting in loss of control of the aeroplane or could, for certain other aeroplane installations, lead to an undetected fire in the wheel bay.

* * * * *

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

DATES: This AD becomes effective November 9, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 9, 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; 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 June 22, 2011 (76 FR 36387). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Since 1984, the design of the hydraulic accumulator installed on all the affected Airbus types has changed. The Part Number (P/N) remained the same, but the manufacturer did not record the serial number of the part that was the first to be manufactured to the changed design specification.

The new design hydraulic accumulator is manufactured with 2 pieces unit welded, instead of 4 pieces unit with 3 welds (old design) as pictured in Appendix 1 of this [EASA] AD. The welding process of the new design hydraulic accumulator provides a higher strength shell material and more reliability.

A recent analysis conducted by the manufacturer showed a particular risk for explosive failure of the old design hydraulic accumulator.

This condition, if not detected and corrected, might, for some aeroplane installations, lead to damage to all three hydraulic circuits, possibly resulting in loss of control of the aeroplane or could, for certain other aeroplane installations, lead to an undetected fire in the wheel bay.

For the reasons explained above, this [EASA] AD requires a one time detailed visual inspection to identify the old designed accumulators installed on certain hydraulic systems, the replacement of those accumulators by new designed accumulators and, irrespective of findings, the installation of warning placards to avoid installation of old designed accumulators on the affected hydraulic systems.

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 (76 FR 36387, June 22, 2011) 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 about 184 products of U.S. registry. We also estimate that it will take about 7 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $197 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $145,728, or $792 per product.

In addition, we estimate that any necessary follow-on actions would take about 5 work-hours and require parts costing $10,700, for a cost of $11,125 per product. We have no way of

determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 (76 FR 36387, June 22, 2011), 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 adding the following new AD:

2011–20–09 Airbus: Amendment 39–16822. Docket No. FAA–2011–0570; Directorate Identifier 2011–NM–014–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 9, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the products identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes.

(2) Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.

(3) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; A300 B4–605R and B4–622R airplanes; A300 F4–605R and F4–622R airplanes; and A300 C4–605R Variant F airplanes.

Subject

(d) Air Transport Association (ATA) of America Code 29: Hydraulic power.

Reason

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

* * * * *

A recent analysis conducted by the manufacturer showed a particular risk for explosive failure of the * * * hydraulic accumulator.

This condition, if not detected and corrected, might, for some aeroplane installations, lead to damage to all three hydraulic circuits, possibly resulting in loss of control of the aeroplane or could, for certain other aeroplane installations, lead to an undetected fire in the wheel bay.

* * * * *

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, Replacement, and Placard Installation

(g) Within 30 months or 6,000 flight hours after the effective date of this AD, whichever occurs first: Do a detailed inspection of each type 5 hydraulic accumulator, part number (P/N) 3059103–1, P/N 3059103–2, P/N 3059103–8, and P/N 3059103–9, to determine if an old design accumulator (*i.e.,* pre-1984) is installed on any affected hydraulic circuit indicated in table 1 of this AD, as applicable, in accordance with the Accomplishment Instructions of the applicable Airbus mandatory service bulletin identified in table 2 of this AD.

TABLE 1—APPLICABLE HYDRAULIC CIRCUITS

Airbus model	Hydraulic circuit
A300 airplanes pre-modification 02447	Blue and Green.
A300 airplanes post-modification 02447	Blue.
A300–600 airplanes	Blue.
A310 airplanes	Green.

TABLE 2—APPLICABLE SERVICE INFORMATION

Airbus Mandatory Service Bulletin—	Revision—	Dated—
A300–29–0126 (for Model A300 airplanes)	01	October 12, 2010.
A300–29–6063 (for Model A300–600 airplanes)	.....	August 12, 2010.

TABLE 2—APPLICABLE SERVICE INFORMATION—Continued

Airbus Mandatory Service Bulletin—	Revision—	Dated—
A310–29–2099 (for Model A310 airplanes)		August 12, 2010.

(h) If, during any detailed inspection required by paragraph (g) of this AD, an old design hydraulic accumulator (*i.e.,* pre-1984) is found installed on any affected hydraulic circuit as indicated in table 1 of this AD, as applicable to airplane model, before further flight replace each affected old design accumulator with a new design accumulator, in accordance with the Accomplishment Instructions of the applicable Airbus mandatory service bulletin identified in table 2 of this AD.

(i) Before further flight after accomplishing the inspection required by paragraph (g) of this AD: Install a placard at the designated location of any affected hydraulic circuit indicated in table 1 of this AD, as applicable to airplane model, in accordance with the Accomplishment Instructions of the applicable Airbus mandatory service bulletin identified in table 3 of this AD.

TABLE 3—OTHER APPLICABLE SERVICE INFORMATION

Airbus Mandatory Service Bulletin—	Revision—	Dated—
A300–29–0127 (for Model A300 airplanes)		August 12, 2010.
A300–29–6064 (for Model A300–600 airplanes)		August 12, 2010.
A310–29–2100 (for Model A310 airplanes)		August 12, 2010.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(j) 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. 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:* Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; 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.

Related Information

(k) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2011–0006, dated January 17, 2011; and the Airbus mandatory service bulletins identified in table 4 of this AD; for related information.

TABLE 4—RELATED SERVICE INFORMATION

Airbus Mandatory Service Bulletin—	Revision—	Dated—
A300–29–0126	01	October 12, 2010.
A300–29–0127		August 12, 2010.
A300–29–6063		August 12, 2010.
A300–29–6064		August 12, 2010.
A310–29–2099		August 12, 2010.
A310–29–2100		August 12, 2010.

Material Incorporated by Reference

(l) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 of the following service information on the date specified:

(1) Airbus Mandatory Service Bulletin A300–29–0126, excluding Appendices 01 and 02, Revision 01, dated October 12, 2010, approved for IBR November 9, 2011.

(2) Airbus Mandatory Service Bulletin A300–29–0127, excluding Appendix 01, dated August 12, 2010, approved for IBR November 9, 2011.

(3) Airbus Mandatory Service Bulletin A300–29–6063, dated August 12, 2010, approved for IBR November 9, 2011.

(4) Airbus Mandatory Service Bulletin A300–29–6064, dated August 12, 2010, approved for IBR November 9, 2011.

(5) Airbus Mandatory Service Bulletin A310–29–2099, excluding Appendix 01, dated August 12, 2010, approved for IBR November 9, 2011.

(6) Airbus Mandatory Service Bulletin A310–29–2100, dated August 12, 2010, approved for IBR November 9, 2011.

(7) For service information identified in this AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; *e-mail: account.airworth-eas@airbus.com; Internet http://www.airbus.com.*

(8) 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.

(9) 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 September 22, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–25308 Filed 10–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0735; Directorate Identifier 2011–NE–01–AD; Amendment 39–16807; AD 2011–19–02]

RIN 2120–AA64

Airworthiness Directives; Dowty Propellers Type R212/4–30–4/22 and R251/4–30–4/49 Propeller Assemblies

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD 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:

Reports have been received from a small number of HS.748 operators of finding cracks in the propeller hub port buttress threads of R212 and R251 propellers. The affected hubs had accumulated in excess of 6,000 flight hours. This condition, if not detected and corrected, could lead to propeller blade separation, possibly resulting in damage to the aeroplane and/or injury to persons on the ground.

We are issuing this AD to prevent propeller hub failure due to cracks in the hub, which could result in damage to the airplane.

DATES: This AD becomes effective November 9, 2011. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 9, 2011.

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

FOR FURTHER INFORMATION CONTACT: Michael Schwetz, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *phone:* 781–238–7761; *fax:* 781–238–7170; *e-mail: michael.schwetz@faa.gov.*

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 May 11, 2011 (76 FR 27281). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

Reports have been received from a small number of HS.748 operators of finding cracks in the propeller hub port buttress threads of R212 and R251 propellers. The affected hubs had accumulated in excess of 6,000 flight hours. This condition, if not detected and corrected, could lead to propeller blade separation, possibly resulting in damage to the aeroplane and/or injury to persons on the ground.

The cracks originating from the root of the buttress threads in the blade ports are caused by high-cycle fatigue.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM published in the **Federal Register** on May 11, 2011 (76 FR 27281) or on the determination of the cost to the public.

Since we published the NPRM in the **Federal Register** on May 11, 2011 (76 FR 27281), we changed the AD Docket No. from FAA–2011–0033, to FAA–2011–0735. The original number was inadvertently used both by the FAA Engine & Propeller Directorate, and the FAA Transport Airplane Directorate.

Also since we published the NPRM in the **Federal Register** on May 11, 2011 (76 FR 27281), we became aware that Dowty Propellers made minor changes to Alert Service Bulletin (ASB) No. 61–1043, Revision 6, and issued Revision 7, dated March 1, 2011. Revision 6 of the ASB had an incorrect Non-Destructive Testing (NDT) reference in Effectivity paragraph 1.D. We do not reference that paragraph in this AD, however, we changed the AD to reference the most current ASB, which is Revision 7.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 2 propellers installed on one airplane of U.S. registry. We also estimate that it will take about 1 work-hour per propeller to comply with this AD. The average labor rate is $85 per work-hour. Required parts will cost about $20,000 per propeller. Based on these figures, we estimate the cost of the AD on U.S. operators to be $40,170.

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 this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (phone: (800) 647–5527) is provided 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:

2011–19–02 Dowty Propellers (formerly Dowty Aerospace; Dowty Rotol Limited; and Dowty Rotol): Amendment 39–16807. Docket No. FAA–2011–0735; Directorate Identifier 2011–NE–01–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 9, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dowty Propellers type R212/4–30–4/22 propeller assemblies with hub and driving center assembly part number (P/N) 601022105, 601022211, 601022294, 601021426, 601021858, or 601021859 installed, and type R251/4–30–4/49 propeller assemblies with hub and driving center assembly P/N 660207202 or P/N 660207203 installed.

Reason

(d) 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. We are issuing this AD to prevent propeller hub failure due to cracks in the hub, which could result in damage to the airplane.

Actions and Compliance

(e) Unless already done, do the following:

(1) Within 500 flight hours after the effective date of this AD, and thereafter at intervals not exceeding 500 flight hours, inspect the buttress threads in the propeller hub and driving center assembly for cracks.

(2) Use paragraphs 2.A.(1) through 2.A.(4)(a) of Accomplishment Instructions of Dowty Propellers Alert Service Bulletin No. 61–1043, Revision 7, dated March 1, 2011, and NDT Technique NDT 175U (Appendix A of Dowty Propellers Alert Service Bulletin No. 61–1043, Revision 7, dated March 1, 2011), to do the inspection.

(3) If a crack is found, remove the propeller assembly from service before further flight.

(4) After the effective date of this AD, do not install this propeller on any airplane unless the propeller hub and driving center has passed the inspections required by this AD.

FAA AD Differences

(f) This AD differs from the service information as follows:

(1) Although the service bulletin tells you to return the affected parts to the manufacturer, this AD does not require that action.

(2) Although the service bulletin tells you to submit information to the manufacturer, this AD does not require that action.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency AD 2011–0012, dated January 20, 2011, for related information.

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

Material Incorporated by Reference

(j) You must use Dowty Propellers Alert Service Bulletin No. 61–1043, Revision 7, dated March 1, 2011, to do the actions required by this AD, unless the AD specifies otherwise.

(k) 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.

(l) For service information identified in this AD, contact Dowty Propellers, 114 Powers Court, Sterling, VA 20166, *phone:* 703–421–4434; *fax:* 703–450–0087.

(m) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or 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/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on September 7, 2011.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–25653 Filed 10–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0392; Directorate Identifier 2011–NE–12–AD; Amendment 39–16808; AD 2011–19–03]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CT7–8, CT7–8A, CT7–8A1, CT7–8E, and CT7–8F5 Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD was prompted by four reports of unrecoverable engine stalls, during hover in a left-roll attitude. This AD requires the installation of an accessory gearbox (AGB) axis-A oil slinger nut to the axis-A shaft assembly. We are issuing this AD to prevent an unrecoverable engine stall, leading to a helicopter forced landing or accident.

DATES: This AD is effective November 9, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 9, 2011.

ADDRESSES: For service information identified in this AD, contact GE–Aviation, M/D Rm. 285, One Neumann Way, Cincinnati, OH 45215; *phone:* 513–552–3272; *e-mail: geaeaoc@ge.com.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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: Walter Meibaum, Aerospace Engineer,

Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; *phone:* 781–238–7119; *fax:* 781–238–7199; *e-mail: walter.meibaum@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We received four reports of GE CT7–8 series turboshaft helicopter engines experiencing unrecoverable engine stalls, during hover in a left-roll attitude. Investigation revealed that during a prolonged left roll, excessive return oil from the AGB may return to the A-sump and exceed the sump's scavenging capability. The sump then floods, leading to over-heated oil, which preheats the air entering the engine's compressor. This preheated air causes inlet thermal distortion. This condition, if not corrected, could result in an unrecoverable engine stall, leading to a helicopter forced landing or accident. 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 published in the **Federal Register** on May 2, 2011 (76 FR 24407). That NPRM proposed to require the installation of an AGB axis-A oil slinger nut to the axis-A shaft assembly.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM published in the **Federal Register** on May 2, 2011 (76 FR 24407).

Since we issued the NPRM published in the **Federal Register** on May 2, 2011 (76 FR 24407), GE issued a revision to the service bulletin we are incorporating by reference in this AD. The revision includes new information in the procedure required to torque the oil slinger nut. This AD incorporates by reference, GE Aircraft Engines CT7–8 Turboshaft Engine Service Bulletin No. CT7–8 S/B 72–0033, Revision 1, dated April 28, 2011.

Also since we issued the NPRM published in the **Federal Register** on May 2, 2011 (76 FR 24407), we discovered that in the applicability paragraph, we inadvertently omitted engine serial number 953071. We corrected that omission in paragraph (c) (4) by changing ''CT7–8E, engine S/Ns 953068 and below, and S/Ns 953070 and 953072'' to ''CT7–8E, engine S/Ns 953068 and below, and S/Ns 953070 through 953072''.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes are consistent with the intent that was proposed in the NPRM published in the **Federal Register** on May 2, 2011 (76 FR 24407) for correcting the unsafe condition.

Costs of Compliance

We estimate that this AD will affect 80 engines installed on helicopters of U.S. registry. We also estimate that it will take about one work-hour per engine to perform the actions required by this AD, and that the average labor rate is $85 per work-hour. Required parts will cost about $700 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $62,800.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 airworthiness directive (AD):

2011–19–03 General Electric Company: Amendment 39–16808; Docket No. FAA–2011–0392; Directorate Identifier 2011–NE–12–AD.

Effective Date

(a) This AD is effective November 9, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following General Electric Company (GE) turboshaft engines:

(1) CT7–8, all engine serial numbers (S/Ns).

(2) CT7–8A, engine S/Ns 947565 and below.

(3) CT7–8A1, engine S/Ns 530017 and below.

(4) CT7–8E, engine S/Ns 953068 and below, and S/Ns 953070 through 953072.

(5) CT7–8F5, engine S/Ns 731005 and below, and S/Ns 731007, 731008, 817021, and 817022.

Unsafe Condition

(d) This AD was prompted by four reports of unrecoverable engine stalls, during hover in a left-roll attitude. We are issuing this AD to prevent an unrecoverable engine stall, leading to a helicopter forced landing or accident.

Compliance

(e) Comply with this AD at the next engine shop visit, the next 1,500-hour helicopter inspection, or before operation after next engine installation, whichever occurs first.

Installation of Accessory Gearbox (AGB) Axis-A Oil Slinger Nut

(f) Install the AGB axis-A oil slinger nut to the axis-A shaft assembly. Use Accomplishment Instructions, paragraphs 3.A. through 3.C. of GE Aircraft Engines CT7–8 Turboshaft Engine Service Bulletin No. CT7–8 S/B 72–0033, Revision 1, dated April 28, 2011, to do the installation.

Previous Credit

(g) An oil slinger nut installation performed before the effective date of this AD using GE Aircraft Engines CT7–8 Turboshaft Engine Service Bulletin No. CT7–8 S/B 72–0033, dated February 11, 2011, satisfies the installation requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(i) For more information about this AD, contact Walter Meibaum, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; *phone:* 781–238–7119; *fax:* 781–238–7199; *e-mail: walter.meibaum@faa.gov.*

Material Incorporated by Reference

(j) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 of the following service information on the date specified:

(1) GE Aircraft Engines CT7–8 Turboshaft Engine Service Bulletin No. CT7–8 S/B 72–0033, Revision 1, dated April 28, 2011, approved for IBR November 9, 2011.

(2) For service information identified in this AD, contact GE–Aviation, M/D Rm. 285, One Neumann Way, Cincinnati, OH 45215; *phone:* 513–552–3272; *e-mail: geaeaoc@ge.com.*

(3) You may review copies of the service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(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 Burlington, Massachusetts, on September 8, 2011.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–25654 Filed 10–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1313; Directorate Identifier 2010–NM–158–AD; Amendment 39–16823; AD 2011–20–10]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires inspecting to determine the clearance and any wire bundle damage between wire bundle W443 and the left forward rudder quadrant, followed by adjusting the minimum clearance between the wire bundle and the left forward rudder quadrant, and repairing any wire bundle damage. This AD was prompted by reports of contact between wire bundle W443 and the left forward rudder quadrant. We are issuing this AD to detect and correct contact between the wire bundle and the left forward rudder quadrant. Damage to the wire bundle from contact between the wire bundle and the left forward rudder quadrant could result in uncommanded stabilizer trim and autopilot disconnects due to shorted wires, potentially affecting the capability of the flightcrew during high work load and consequently reducing control of the airplane. Restricted movement of the rudder quadrant at full right rudder travel would reduce controllability of the airplane.

DATES: This AD is effective November 9, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 9, 2011.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, *Attention:* Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* 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: Dean Thompson, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6409; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM was published in the **Federal Register** on January 18, 2011 (76 FR 2840). That NPRM proposed to require inspecting to determine the clearance and any wire bundle damage between wire bundle W443 and the left forward rudder quadrant, followed by adjusting the minimum clearance between the wire bundle and the left forward rudder quadrant, and repairing any wire bundle damage.

Comments

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

Support for the NPRM

American Airlines, Delta Air Lines, and Continental Airlines (CAL) support the NPRM (76 FR 2840, January 18, 2011), and stated that they have been inspecting the affected airplanes in accordance with the original issue and revision 1 of the service information cited in the NPRM.

Request for Boeing To Add Instructions for Continued Airworthiness (ICAs)

CAL requested that the FAA ask Boeing to add the appropriate ICAs to

the Boeing 737NG Aircraft Maintenance Manual (AMM), because CAL is concerned about inadvertently undoing the corrective actions proposed in the NPRM (76 FR 2840, January 18, 2011) during future maintenance.

We disagree with the request to ask Boeing for ICAs. Current maintenance procedures and inspections ensure that the unsafe condition corrected in accordance with the AD will not be undone during future maintenance. A maintenance task exists to do a general visual inspection (GVI) of the area above the outboard nose wheel well, an inspection derived from the enhanced zonal analysis procedure (EZAP). This GVI of the area includes inspecting the wire bundles for damage and ensures no interference (riding) condition exists. Also, the rudder travel test provided in the AMM already includes steps to verify that wire bundle W443 has a minimum clearance of 0.5 inch from the left forward rudder quadrant at full travel motion while someone operates the rudder pedals, which captures the intent of this AD action. Boeing has updated the 737NG AMM to Revision 45, dated June 15, 2011, to include minimum clearance of 0.5 inch for the rudder travel test. We have not changed the AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD will affect 870 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

TABLE—ESTIMATED COSTS

Action	Work-hours	Average labor rate per hour	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Inspection	2	$85	$170	870	$147,900

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 airworthiness directive (AD):

2011–20–10 The Boeing Company: Amendment 39–16823; Docket No. FAA–2010–1313; Directorate Identifier 2010–NM–158–AD.

Effective Date

(a) This AD is effective November 9, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 737–27–1282, Revision 1, dated June 14, 2010.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight controls.

Unsafe Condition

(e) This AD was prompted by reports of contact between wire bundle W443 and the left forward rudder quadrant. We are issuing this AD to detect and correct contact between the wire bundle and the left forward rudder quadrant. Damage to the wire bundle from contact between the wire bundle and the left forward rudder quadrant could result in uncommanded stabilizer trim and autopilot disconnects due to shorted wires, potentially affecting the capability of the flightcrew during high work load and consequently reducing control of the airplane. Restricted movement of the rudder quadrant at full right rudder travel would reduce controllability 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.

Wire Bundle W443 Inspection and Clearance Measurement

(g) Within 60 months after the effective date of this AD: Do a detailed inspection of wire bundle W443 for damage and measure for sufficient clearance, in accordance with Part 1 of the Work Instructions of Boeing Special Attention Service Bulletin 737–27–1282, Revision 1, dated June 14, 2010. If the wire bundle is undamaged, and sufficient clearance exists, no further action is required by this AD.

Wire Bundle W443 Undamaged: Clearance Adjustment

(h) If the clearance of wire bundle W443 in the inspection required by paragraph (g) of this AD is found to be insufficient, before further flight, adjust the wire bundle clearance, in accordance with Part 2 of the Work Instructions of Boeing Special Attention Service Bulletin 737–27–1282, Revision 1, dated June 14, 2010.

Wire Bundle W443 Damaged: Repair, and Clearance Adjustment

(i) If wire bundle W443 is found to be damaged in the inspection required by paragraph (g) of this AD, before further flight, repair the damaged wire bundle and adjust the wire bundle clearance, in accordance with Part 3 of the Work Instructions of Boeing Special Attention Service Bulletin 737–27–1282, Revision 1, dated June 14, 2010.

Credit for Actions Accomplished in Accordance With Previous Service Information

(j) Actions accomplished before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 737–27–1282, dated March 15, 2007, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. 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 manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@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.

Related Information

(l) For more information about this AD, contact Dean Thompson, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *telephone:* (425) 917–6409; *fax:* (425) 917–6590; *e-mail: Dean.R.Thompson@faa.gov.*

Material Incorporated by Reference

(m) You must use Boeing Special Attention Service Bulletin 737–27–1282, Revision 1, dated June 14, 2010, 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 Boeing Special Attention Service Bulletin 737–27–1282, Revision 1, dated June 14, 2010, under 5 U.S.C. 552(a) and 1 CFR part 51.

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

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

(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 September 22, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–25313 Filed 10–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1309

[Docket No. DEA–304F]

RIN 1117–AB27

Voluntary Surrender of Certificate of Registration

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Final rule.

SUMMARY: DEA is amending its regulations to clarify the registration status of a registrant who voluntarily surrenders a Certificate of Registration. These changes clarify that a voluntary surrender of a registration signed by a registrant using any format has the legal effect of immediately terminating the registrant's registration without any further action by DEA.

DATES: This rule becomes effective November 4, 2011.

FOR FURTHER INFORMATION CONTACT: Imelda L. Paredes, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone (202) 307–7165.

SUPPLEMENTARY INFORMATION:

Background

Under current regulations, the DEA registration of any person terminates ''if and when such person dies, ceases legal existence, or discontinues business or professional practice * * *.'' 21 CFR 1301.52(a) and 1309.62(a). Under these provisions, no further action by DEA is needed to terminate a DEA Certificate of Registration after one of the specified events occurs. However, these regulations are silent about whether the automatic termination provisions apply upon a registrant's voluntary surrender of a DEA registration. Moreover, DEA Forms 104 (for controlled substance registrations) and 104c (for listed chemical registrations), which may be used by registrants to effectuate voluntary surrenders, state that submission of the forms ''shall be authority for the Administrator of the Drug Enforcement Administration to terminate * * * my registration without an order to show cause, a hearing, or any other proceedings * * *.'' Thus, the forms have led some registrants to believe that DEA must issue a final order revoking the registration after submission of the forms in order to terminate a DEA registration.

DEA regulations, however, do not require further action by DEA's Administrator to terminate a DEA registration after submission of a voluntary surrender and, in practice, DEA treats the submission of a voluntary surrender as an immediate termination of the DEA registration at issue. The only additional action taken by DEA in such cases is the entry of the surrender into DEA's registration database. Further, DEA regulations do not require a registrant to use any particular format to submit a voluntary surrender. DEA accepts voluntary surrenders as long as the registrant submits a signed statement expressing the desire to surrender a registration.

DEA Forms 104 and 104c are internal DEA documents that are available for registrant use. These forms will be revised consistent with this final rule to clarify that a signed voluntary surrender of a registration has the legal effect of immediately terminating the registrant's registration upon delivery of such statement to any DEA employee. No further action by DEA is required.

Notice of Proposed Rulemaking and Comments Received

To address the circumstances described above, DEA published a NPRM proposing the amendment of its regulations to clarify that a DEA registration terminates when DEA, through any employee, receives notice

of a voluntary surrender of a DEA registration. 75 FR 32140, June 7, 2010. DEA did not receive any comments regarding the NPRM and is thus finalizing the rule as proposed.

Action Taken by This Rule

To ensure that there is no confusion as to actions necessary to effectuate the voluntary surrender of a DEA registration, DEA is revising the relevant regulations to state that a DEA registration terminates when DEA, through any employee, receives notice of a voluntary surrender of a DEA registration. Any format may be used as long as the registrant submits a signed statement expressing the desire to surrender a registration.

Regulatory Analyses

Executive Orders 12866 and 13563

This regulation has been developed in accordance with the principles of Executive Orders 12866 and 13563. It has been determined that this is not a ''significant regulatory action'' that requires review by the Office of Management and Budget.

Regulatory Flexibility Act

The Deputy Assistant Administrator, Office of Diversion Control, has reviewed this regulation and hereby certifies that it has been drafted in accordance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601–612), and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities. This rulemaking merely clarifies the circumstances under which DEA registrations may be surrendered.

Paperwork Reduction Act

This action does not impose a new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521. The forms discussed in this rulemaking are available to be utilized by registrants on a voluntary basis under specific law enforcement circumstances and are otherwise internal to DEA.

Executive Order 12988

This proposed regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform to eliminate ambiguity, minimize litigation, establish clear legal standards and reduce burden.

Executive Order 13132

This proposed rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Executive Order 13175

This proposed rule will not have tribal implications and will not impose substantial direct compliance costs on Indian tribal governments.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $136,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532.

Congressional Review Act

This rulemaking is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act) (5 U.S.C. 801–808). This rule will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

21 CFR Part 1309

Administrative practice and procedure, Drug traffic control, Exports, Imports, Security measures.

For the reasons set out above, 21 CFR parts 1301 and 1309 are amended as follows:

PART 1301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 831, 871(b), 875, 877, 886a, 951, 952, 953, 956, 957, 958.

■ 2. In § 1301.52, paragraph (a) is revised to read as follows:

§ 1301.52 Termination of registration; transfer of registration; distribution upon discontinuance of business.

(a) Except as provided in paragraph (b) of this section, the registration of any person, and any modifications of that registration, shall terminate, without any further action by the Administration, if and when such person dies, ceases legal existence, discontinues business or professional practice, or surrenders a registration. Any registrant who ceases legal existence or discontinues business or professional practice shall notify the Administrator promptly of such fact. In the case of a surrender, termination shall occur upon receipt by any employee of the Administration of a duly executed DEA form 104 or any signed writing indicating the desire to surrender a registration.

* * * * *

PART 1309—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, IMPORTERS, AND EXPORTERS OF LIST I CHEMICALS

■ 3. The authority citation for part 1309 continues to read as follows:

Authority: 21 U.S.C. 802, 821, 822, 823, 824, 830, 871(b), 875, 877, 886a, 952, 958.

■ 4. In § 1309.62, paragraph (a) is revised to read as follows:

§ 1309.62 Termination of registration.

(a) The registration of any person shall terminate, without any further action by the Administration, if and when such person dies, ceases legal existence, discontinues business or professional practice, or surrenders a registration. In the case of a surrender, termination shall occur upon receipt by any employee of the Administration of a duly executed DEA form 104c or any signed writing indicating the desire to surrender a registration. Any registrant who ceases legal existence or discontinues business or professional practice or wishes to surrender a registration shall notify the Special Agent in Charge of the Administration in the area in which the person is located of such fact and seek authority and instructions to dispose of any List I chemicals obtained under the authority of that registration.

* * * * *

Dated: September 27, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 2011–25596 Filed 10–4–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. FDA–2011–N–0527]

Preemption Review

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of preemption review.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has determined, after conducting a review of its existing regulations issued within the past 10 years that contain statements in regulatory preambles or codified provisions intended by the Agency to preempt State law, that three FDA regulatory preambles contain or refer to statements about preemption that are not legally justified. FDA conducted this review in response to the President's May 20, 2009, ''Memorandum for the Heads of Executive Departments and Agencies,'' which outlined the Administration's policy on preemption, in keeping with the principles in Executive Order 13132 on Federalism. The President's memorandum included a directive that such a review be conducted. FDA is also taking this opportunity to clarify certain preamble statements related to preemption resulting from express preemption provisions in the Federal Food, Drug, and Cosmetic Act (FD&C Act) concerning nonprescription drugs and food labeling.

DATES: Effective October 5, 2011.

FOR FURTHER INFORMATION CONTACT: Catherine Lorraine, Office of Policy, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 4258, Silver Spring, MD 20993, 301–796–4830.

SUPPLEMENTARY INFORMATION: On January 24, 2006 (71 FR 3922), FDA published a final rule entitled ''Requirements on Content and Format of Labeling for Human Prescription Drug and Biological Products'' (physician labeling rule). In the preamble to the physician labeling rule, FDA discussed its views on the preemptive effect of both the regulation's codified provisions and, more generally, the FD&C Act. In addition, FDA subsequently published two final rules with preambles that referenced the preemption discussion in the physician labeling rule. *See* ''Exceptions or Alternatives to Labeling Requirements for Products Held by the Strategic National Stockpile'' (72 FR 73589, 73595, December 28, 2007); ''Supplemental Applications Proposing Labeling Changes for Approved Drugs, Biologics, and Medical Devices'' (73 FR 49603, 49605–49606, August 22, 2008).

In its decision in *Wyeth* v. *Levine,* the Supreme Court addressed the preamble to the physician labeling rule and provided additional guidance in evaluating the preemptive effect of the FD&C Act and FDA regulations. 129 S. Ct. 1187 (2009). In this case, the Court upheld a State tort claim that was based on the manufacturer's failure to provide adequate warnings on the labeling of one of its prescription drug products. The Court held that the State claim was not preempted by the FD&C Act or FDA's labeling requirements, despite the Agency's position in the preamble to the physician labeling rule that such claims frustrate its statutory mandate.

According to the Court, FDA's position ''does not merit deference,'' in part, because it is ''at odds with what evidence we have of Congress' purposes.'' *Id.* at 1201. The Court found that Congress's ''silence on the [preemption] issue, coupled with its certain awareness of the prevalence of state tort litigation, is powerful evidence that Congress did not intend FDA oversight to be the exclusive means of ensuring drug safety and effectiveness.'' *Id.* at 1200. While the Court acknowledged that ''some state-law claims might well frustrate the achievement of congressional objectives,'' it found that ''failure-to-warn claims'' such as the one at issue do not ''obstruct the federal regulation of drug labeling.'' *Id.* at 1204. The Court also noted that the manufacturer did not avail itself of FDA regulations that permit changes to a drug's labeling. *Id.* at 1996–97. And ''absent clear evidence that the FDA would not have approved'' the type of warning deemed necessary by the State claim, the Court was not willing to ''conclude that it was impossible'' for the manufacturer ''to comply with both federal and state requirements.'' *Id.* at 1198.

In light of the Supreme Court's decision in *Wyeth,* FDA has concluded that the position on preemption articulated in the preamble to the physician labeling rule, and subsequently referred to in the preambles of the other two rules cited previously in this document, cannot be justified under legal principles governing preemption. The codified provisions in these rules, however, do not include any statements about preemption and would not preempt State law beyond governing principles of preemption. FDA's conclusion about the regulatory preambles, therefore, does not affect the validity or operation of the codified provisions in these three final rules.

FDA also would like to clarify past preamble statements related to preemption resulting from certain express preemption provisions in the FD&C Act concerning nonprescription drugs and food labeling. Some preamble statements in regulations on nonprescription drugs contain the following language: ''Currently, [Section 751(a) of the FD&C Act (21 U.S.C. 379r(a))] operates to preempt States from imposing requirements related to the regulation of nonprescription drug products (See section 751(b) through (e) of the act for the scope of the express preemption provision, the exemption procedures, and the exceptions to the provision) * * *. Although this final rule would have a preemptive effect, in that it would preclude States from issuing requirements related to these OTC * * * drug products that are different from or in addition to, or not otherwise identical with a requirement in the final rule, this preemptive effect is consistent with what Congress set forth in section 751 of the act. Section 751(a) of the act displaces both State legislative requirements and State common law duties * * *.''

(See, e.g., 74 FR 9759, March 6, 2009; 73 FR 6015, February 1, 2008; 72 FR 71769, December 19, 2007; 72 FR 14669, March 29, 2007; 72 FR 9849, March 6, 2007; 71 FR 43358, August 1, 2006). This language could be read to suggest that FDA does not read section 751 of the FD&C Act as a whole and gives more significance to some provisions, e.g., subsection 751(a), than others, e.g., subsection 751(e) (which makes clear that section 751 does not affect any action under a state's product liability law). FDA now clarifies that it does read section 751 of the FD&C Act as a whole, in that each subsection must be read together with the other subsections.

In addition, FDA is now clarifying preamble statements in regulations on food labeling that contain the following language: ''Although this rule has a pre-emptive effect, in that it would preclude states from issuing any * * * requirements * * * that are not identical to those required by the final rule, this pre-emptive effect is consistent with what Congress set forth in Section 403A of the Act [21 U.S.C. 343–1].'' (See, *e.g.,* 74 FR 2443, January 15, 2009). Although this language reflects the statutory language in section 403A of the FD&C Act, as codified at 21 U.S.C. 343–1, it does not acknowledge

the applicability limitation set forth in section 6(c)(2) of the Nutrition Labeling and Education Act (NLEA), which was not codified. Section 6(c)(2) of the NLEA provided that section 403A of the FD&C Act ''shall not be construed to apply to any requirement respecting a statement on the labeling of food that provides for a warning concerning the safety of the food or component of the food'' (Pub. L. 101–535, section 6, 104 Stat. 2353 (1990)). FDA clarifies that its past discussions of section 403A of the FD&C Act should have included the language of section 6(c)(2) of the NLEA.

Dated: September 28, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–25479 Filed 10–4–11; 8:45 am]

BILLING CODE 4160–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2010–1075; FRL–8880–2]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 36 chemical substances which were the subject of premanufacture notices (PMNs). Four of these chemical substances are subject to TSCA section 5(e) consent orders issued by EPA. This action requires persons who intend to manufacture, import, or process any of these 36 chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification will provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

DATES: This rule is effective on December 5, 2011. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (E.S.T.) on October 19, 2011.

Written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs must be received on or before November 4, 2011 (see Unit VI. of the **SUPPLEMENTARY INFORMATION**).

For additional information on related reporting requirement dates, see Units I.A., VI., and VII. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2010–1075, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. *Attention:* Docket ID Number EPA–HQ–OPPT–2010–1075. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2010–1075. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (202) 564–9232; *e-mail address: moss.kenneth@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; *telephone number:* (202) 554–1404; *e-mail address: TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this rule. Potentially affected entities may include, but are not limited to:

- Manufacturers, importers, or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

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. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in § 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to these SNURs must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this rule on or after November 4, 2011 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Background

A. What action is the agency taking?

EPA is promulgating these SNURs using direct final procedures. These SNURs will require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of a chemical substance for any activity designated by these SNURs as a significant new use. Receipt of such notices allows EPA to assess risks that may be presented by the intended uses and, if appropriate, to regulate the proposed use before it occurs. Additional rationale and background to these rules are more fully set out in the preamble to EPA's first direct final SNUR published in the **Federal Register** of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for SNURs and on the basis for significant new use designations, including provisions for developing test data.

B. What is the agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four bulleted TSCA section 5(a)(2) factors listed in Unit III. Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Persons who must report are described in § 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. According to § 721.1(c), persons subject to these SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

III. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorized EPA to consider any other relevant factors.

To determine what would constitute a significant new use for the 36 chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, taking into consideration the four bulleted

TSCA section 5(a)(2) factors listed in this unit.

IV. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for 36 chemical substances in 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) number (if assigned for non-confidential chemical identities).
- Basis for the TSCA section 5(e) consent order or, for non-section 5(e) SNURs, the basis for the SNUR (*i.e.,* SNURs without TSCA section 5(e) consent orders).
- Toxicity concerns.
- Tests recommended by EPA to provide sufficient information to evaluate the chemical substance (see Unit VIII. for more information).
- CFR citation assigned in the regulatory text section of this rule.

The regulatory text section of this rule specifies the activities designated as significant new uses. Certain new uses, including production volume limits (*i.e.,* limits on manufacture and importation volume) and other uses designated in this rule may be claimed as CBI. Unit IX. discusses a procedure companies may use to ascertain whether a proposed use constitutes a significant new use.

This rule includes 4 PMN substances (P–06–36, P–06–37, P–09–146 and P–09–147) for which EPA determined, pursuant to TSCA section 5(e), that uncontrolled manufacture, import, processing, distribution in commerce, use, and disposal may present an unreasonable risk of injury to human health or the environment. Accordingly, these substances are subject to ''risk-based'' consent orders under TSCA section 5(e)(1)(A)(ii)(I). Those consent orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The so-called ''5(e) SNURs'' on these PMN substances are promulgated pursuant to § 721.160, and are based on and consistent with the provisions in the underlying consent orders. The 5(e) SNURs designate as a ''significant new use'' the absence of the protective measures required in the corresponding consent orders.

Where EPA determined that the PMN substance may present an unreasonable risk of injury to human health via inhalation exposure, the underlying TSCA section 5(e) consent order usually requires, among other things, that potentially exposed employees wear specified respirators unless actual measurements of the workplace air show that air-borne concentrations of the PMN substance are below a New Chemical Exposure Limit (NCEL) that is established by EPA to provide adequate protection to human health. In addition to the actual NCEL concentration, the comprehensive NCELs provisions in TSCA section 5(e) consent orders, which are modeled after Occupational Safety and Health Administration (OSHA) Permissible Exposure Limits (PELs) provisions, include requirements addressing performance criteria for sampling and analytical methods, periodic monitoring, respiratory protection, and recordkeeping. However, no comparable NCEL provisions currently exist in 40 CFR part 721, subpart B, for SNURs. Therefore, for these cases, the individual SNURs in 40 CFR part 721, subpart E, will state that persons subject to the SNUR who wish to pursue NCELs as an alternative to the § 721.63 respirator requirements may request to do so under § 721.30. EPA expects that persons whose § 721.30 requests to use the NCELs approach for SNURs are approved by EPA will be required to comply with NCELs provisions that are comparable to those contained in the corresponding TSCA section 5(e) consent order for the same chemical substance.

This rule also includes SNURs on 32 PMN substances that are not subject to consent orders under TSCA section 5(e). In these cases, for a variety of reasons, EPA did not find that the use scenario described in the PMN triggered the determinations set forth under TSCA section 5(e). However, EPA does believe that certain changes from the use scenario described in the PMN could result in increased exposures, thereby constituting a ''significant new use.'' These so-called ''non-5(e) SNURs'' are promulgated pursuant to § 721.170. EPA has determined that every activity designated as a ''significant new use'' in all non-5(e) SNURs issued under § 721.170 satisfies the two requirements stipulated in § 721.170(c)(2), *i.e.,* these significant new use activities, ''(i) Are different from those described in the premanufacture notice for the substance, including any amendments, deletions, and additions of activities to the premanufacture notice, and (ii) may be accompanied by changes in exposure or release levels that are significant in relation to the health or environmental concerns identified'' for the PMN substance.

PMN Numbers P–06–36 and P–06–37

Chemical names: (P–06–36) Rutile, tin zinc, calcium-doped and (P–06–37) Rutile, tin zinc, sodium-doped.

CAS numbers: (P–06–36) 389623–01–2 and (P–06–37) 389623–07–8.

Effective date of TSCA section 5(e) consent order: February 17, 2009.

Basis for TSCA section 5(e) consent order: The PMN states that the substances will be used as colorants for polymers and industrial coatings. The order was issued under TSCA sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) based on a finding that the substances may present an unreasonable risk of injury to human health. To protect against these risks, the consent order requires: Use of personal respiratory equipment, including a National Institute for Occupational Safety and Health (NIOSH)-certified respirator with an Assigned Protection Factor (APF) of at least 10, or compliance with a NCEL of 1.5 mg/m^3 as an 8-hour time weighted average; establishment of a hazard communication program; and restricts the company from manufacturing the PMN substances with a d10 particle size less than 100 nanometers, where d10 particle size presents the particle size, as determined by laser light scattering, at which 10 percent by weight of the substance measured is smaller; and corresponding recordkeeping. The SNUR designates as a ''significant new use'' the absence of these protective measures.

Toxicity concern: Based on structural activity relationship analysis derived from test data on structurally similar respirable, poorly soluble particulates, the PMN substances may cause lung overload and fibrosis in workers exposed to the PMN substances by the inhalation route.

Recommended testing: EPA has determined that the following test would help characterize the human health effects of the PMN substances: A 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) in rats. The testing should include a 60-day recovery period to assess the progression or regression of any lesions; and include special attention to histopathology (inflammation and cell proliferation) of the lung tissues and to various parameters of the bronchoalveolar lavage fluid (BALF), *e.g.,* marker enzyme activities, total protein content, total cell count, cell differential, and cell viability. The order does not require submission of the aforementioned information at any specified time or production volume. However, the order's restrictions on manufacturing, import, processing, distribution in

commerce, use, and disposal of the PMN substances will remain in effect until the order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citations: 40 CFR 721.10230 (P–06–36) and 40 CFR 721.10231 (P–06–37).

PMN Number P–08–694

Chemical name: N-arylamino-phenol-formaldehyde condensate (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) uses of the substance will be as a curative to be used with epoxy resin; a curative to be used with isocyanates in urethane systems; and an intermediate for synthesis of epoxy resins. Based on ecological structure-activity relationship (EcoSAR) analysis of test data on analogous phenols, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 part per billion (ppb) of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance. Fish and daphnid testing should be performed using the flow-through method with measured concentrations. Algal testing should be performed using the static method with measured concentrations. EPA recommends that the special considerations for conducting laboratory studies (OPPTS Test Guideline 850.1000) be followed to facilitate solubility in the test media, because of the PMN's low water solubility. Test reports should include protocols approved by EPA, certificate of analysis for the test substance, raw data, and results.

CFR citation: 40 CFR 721.10232.

PMN Number P–08–704

Chemical name: Linear alkyl epoxide (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) uses of the substance will be as site-limited intermediates for personal care ingredients and foam control agents. Based on EcoSAR analysis of test data on analogous epoxides, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, releases of the PMN substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance. Fish and daphnid testing should be performed using the flow-through method with measured concentrations. Algal testing should be performed using the static method with measured concentrations. Test reports should include protocols approved by EPA, certificate of analysis for the test substance, raw data, and results.

CFR citation: 40 CFR 721.10233.

PMN Number P–09–61

Chemical name: Hydroxy-chloro-cyclopropyl-heteromonocyclic carboxylic acid (generic).

CAS number: Not available.

Basis for action: The PMN states that the substance will be used as an industrial intermediate. Based on test data on the PMN substance, and EcoSAR analysis of test data on analogous phenols, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 6 ppb of the PMN substance in surface waters. As described in the PMN, releases of the PMN substance are not expected to result in surface water concentrations that exceed 6 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 6 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help characterize the environmental effects of the PMN substance. Testing should be performed using the flow-through method with measured concentrations. Test reports should include protocols approved by EPA, certificate of analysis for the test substance, raw data, and results.

CFR citation: 40 CFR 721.10234.

PMN Number P–09–72

Chemical name: Phenol, 2-ethoxy-4-(ethoxymethyl)-.

CAS number: 71119–07–8.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a perfumery ingredient. Based on EcoSAR analysis of test data on analogous phenols, EPA predicts that toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, releases of the PMN substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the PMN substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance. Fish and daphnid testing should be performed using the flow-through method with

measured concentrations. Algal testing should be performed using the static method with measured concentrations. Test reports should include protocols approved by EPA, certificate of analysis for the test substance, raw data, and results.

CFR citation: 40 CFR 721.10235.

PMN Number P–09–139

Chemical name: 1-Propanamine, 3-[2-(2-methoxyethoxy)ethoxy]-.

CAS number: 91933–40–3.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a dispersant. Based on test data on an analogous substance submitted under TSCA section 8(e), EPA identified the following toxicity concerns from exposure to the PMN substance: Irritation to eyes; sensitization and corrosion to skin; and irritation to mucous membranes, lungs, and the gastrointestinal tract. For the uses described in the PMN, worker exposure and general population exposure are limited. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. However, EPA has determined that use of the substance other than as described in the PMN, or use of the substance in a consumer product, may result in significant human exposures. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of an acute oral toxicity test (OPPTS Test Guideline 870.1100 or Organisation for Economic Co-operation and Development (OECD) Test Guideline 425); a bacterial reverse mutation test (OPPTS Test Guideline 870.5100); a mammalian erythrocyte micronucleus test (OPPTS Test Guideline 870.5395) via the intraperitoneal route; and a repeated dose 28-day oral toxicity study in rodents (OPPTS Test Guideline 870.3050 or OECD Test Guideline 407) would help characterize the human health effects of the PMN substance. Testing should be performed on the neutralized PMN substance. Test reports should include protocols approved by EPA, certificate of analysis for the test substance, raw data, and results.

CFR citation: 40 CFR 721.10236.

PMN Numbers P–09–146 and P–09–147

Chemical names: (P–09–146) Formaldehyde, polymers with acetone-phenol reaction products and phenol, sodium salts and (P–09–147) Formaldehyde, polymers with acetone-phenol reaction products and phenol, potassium sodium salts.

CAS numbers: (P–09–146) 1065544–88–8 and (P–09–147) 1072227–60–1.

Effective date of TSCA section 5(e) consent order: May 26, 2010.

Basis for TSCA section 5(e) consent order: The PMNs state that the generic (non-confidential) use of the substances will be as adhesives. The order was issued under TSCA sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) based on a finding that the substances may present an unreasonable risk of injury to human health. To protect against these risks, the consent order requires: Restrictions on formaldehyde residuals and polymer composition in the PMN substances; testing of representative samples at new manufacturing facilities; development and implementation of a written control plan for analysis and compliance with specified chemical composition limits; use only as listed in the consent order; no processing or distribution of the PMNs except when processed under specified conditions, where the PMNs are irreversibly cured into a thermoset polymer matrix; and maintaining certain records. The SNUR designates as a ''significant new use'' the absence of these protective measures.

Toxicity concern: Based on physical-chemical properties, the PMN substances are expected to be absorbed from the lung and low molecular weight fractions are expected to be poorly absorbed from the gastrointestinal tract. Further, the PMN substances are not expected to be absorbed through the skin. EPA identified concerns for respiratory tract irritation, coughing; skin irritation and redness; eye irritation, watering, and redness; sensitization and severe allergic reactions. Further, based on test data on formaldehyde, a component of the PMN substances and regarded by EPA and International Agency for Research on Cancer (IARC) to be a carcinogen, EPA predicts human carcinogenicity.

Recommended testing: EPA has determined that the following test would help characterize the human health effects of the PMN substances: Determining formaldehyde concentration in air from wood products, using a large scale chamber (American Society for Testing and Materials International (ASTM) Test Guideline E1333–10 or its equivalent) to demonstrate that formaldehyde emissions are equal to or less than 0.04 parts per million (ppm). The order does not require submission of the aforementioned information at any specified time or production volume. However, the order's restrictions on manufacturing, import, processing, distribution in commerce, use, and disposal of the PMN substances will remain in effect until the order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citations: 40 CFR 721.10237 (P–09–146) and 40 CFR 721.10238 (P–09–147).

PMN Numbers P–09–152 and P–09–153

Chemical names: Trivalent chromium complexes of a substituted beta-naphthol amine azo dye (generic).

CAS numbers: Not available.

Basis for action: The PMNs state that the use of the substances will be as acid dyes for coloring anodized aluminum. Based on test data on analogous substances including Beta-naphthylamine and chromium, EPA determined that the PMN substances may cause blood toxicity (methemoglobinemia), male reproductive toxicity, developmental toxicity, mutagenicity, and oncogenicity to workers and the general public exposed to the PMN substances via the lung or gastrointestinal tract. For the use described in the PMNs, worker inhalation exposure is unlikely, as the substances are imported, processed, and used as a wet press cake (greater than 30 percent water). Significant general population exposure is unlikely, as significant inhalation and drinking water exposures are not expected. Therefore, EPA has not determined that the proposed import, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that domestic manufacture, use of the substances other than as described in the PMNs, or the import, processing, or use of the substances in a powder or solid form (other than as a wet press cake that is comprised of greater than 30 percent water), may cause serious health effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(1)(i)(C) and (b)(3)(ii).

Recommended testing: EPA has determined that the results of a bacterial reverse mutation test (OPPTS Test Guideline 870.5100) with the prival modification with a concurrent positive control; and an unscheduled DNA synthesis in mammalian cells in culture (OPPTS Test Guideline 870.5550) in rat hepatocytes on the Beta-naphthylamine reduction product would help characterize the human health effects of the PMN substances. Test reports should include protocols approved by EPA, certificate of analysis for the test substance, raw data, and results.

CFR citation: 40 CFR 721.10239.

PMN Numbers P–09–154, P–09–155, and P–09–156

Chemical names: (P–09–154) Olefinic carbocycle, reaction products with alkoxysilane (generic); (P–09–155) olefinic carbocycle, reaction products with alkoxysilane, sulfurized (generic); and (P–09–156) olefinic carbocycle, reaction products with alkoxysilane, polysulfurized (generic).

CAS numbers: (P–09–154) Not available; (P–09–155) not available; and (P–09–156) not available.

Basis for action: The PMNs state that the generic (non-confidential) uses of the substances will be as a processing additive intermediate (P–09–154 and P–09–155) and as a processing additive (P–09–156). Based on EcoSAR analysis of test data on analogous alkoxysilanes, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance (P–09–154) and 6 ppb of the PMN substance (P–09–156) in surface waters. Based on test data on analogous alkoxysilanes and thiols, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance (P–09–155) in surface waters. As described in the PMNs, the substances will not be released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that any use of the substances resulting in release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a ready biodegradability—CO_2 in sealed vessels test (OPPTS Test Guideline 835.3140); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance. Fish and daphnid testing should be performed using the flow-through method with measured concentrations. Algal testing should be performed using the static method with measured concentrations. EPA recommends that the fate testing be performed first as the results may mitigate the need for further toxicity testing or change the testing recommendations. Testing should be performed on P–09–155. Test reports should include protocols approved by EPA, certificate of analysis for the test substance, raw data, and results.

CFR citations: 40 CFR 721.10240 (P–09–154); 40 CFR 721.10241 (P–09–155); and 40 CFR 721.10242 (P–09–156).

PMN Numbers P–09–193 and P–09–195

Chemical names: (P–09–193) Phosphonic acid, P-[2-[bis(2-hydroxyethyl)amino]ethyl]-, bis(2-chloroethyl) ester and (P–09–195) Phosphonic acid, P-[2-[bis(2-hydroxyethyl)amino]ethyl]-, 2-[bis(2-chloroethoxy)phosphinyl]ethyl 2-chloroethyl ester.

CAS numbers: (P–09–193) 55088–28–3 and (P–09–195) 1094213–37–2.

Basis for action: The PMNs state that the substances will be used as intermediates in the manufacture of a polyurethane flame retardant. Based on the alkylating activity of the PMN substances, EPA has concerns for oncogenicity, mutagenicity, developmental toxicity, dermal and respiratory sensitization, and irritation to all tissues. Additionally, the Agency has concern for liver toxicity, kidney toxicity, heart toxicity, developmental toxicity, and neurotoxicity based on test data for analog substances submitted to the Agency under TSCA section 8(e). Based on EcoSAR analysis of test data on structurally similar aliphatic amines, EPA predicts toxicity to aquatic organisms at concentrations that exceed 8 ppb in surface waters. As described in the PMN, significant worker dermal and inhalation exposure is unlikely for the use described in the PMN due to the use of personal protective equipment and engineering controls. Further, significant general population and environmental exposure is unlikely as the substances are not released to water. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of these substances may present an unreasonable risk. EPA has determined, however, that use of the substances other than as intermediates in the manufacture of a polyurethane flame retardant, use of the substances without the use of impervious gloves where there is potential for dermal exposure, or any use of the substances resulting in release to surface waters may cause significant adverse health or environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(1)(i)(C), (b)(3)(ii), and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate, acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the human health and environmental effects of the PMN substances. Fish and daphnid testing should be performed using the flow-through method with measured concentrations. Algal testing should be performed using the static method with measured concentration. Testing should be performed on P–09–193. Test reports should include protocols approved by EPA, certificate of analysis for the test substance, raw data, and results.

CFR citations: 40 CFR 721.10243 (P–09–193) and 40 CFR 721.10244 (P–09–195).

PMN Number P–09–207

Chemical name: Branched and linear fatty alcohol ethoxylate (generic).

CAS number: Not available.

Basis for action: The PMN states that the substance will be used as an intermediate in the manufacture of nonionic surfactants. Based on EcoSAR analysis of test data on analogous nonionic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 14 ppb of the PMN substance in surface waters. For the use described in the PMN, releases of the PMN substance are not expected to result in surface water concentrations that exceed 14 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as an intermediate in the manufacture of nonionic surfactants may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance. Fish and daphnid testing should be performed using the flow-through method with measured concentrations. Algal testing should be performed using the static method with measured concentrations. EPA recommends that the special considerations for conducting laboratory

studies (OPPTS Test Guideline 850.1000) be followed to facilitate solubility in the test media, because of the PMN's low water solubility. Test reports should include protocols approved by EPA, certificate of analysis for the test substance, raw data, and results.

CFR citation: 40 CFR 721.10245.

PMN Number P–09–234

Chemical name: Alkylpolyhydroxy polymer (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a drilling fluid additive. Based on EcoSAR analysis of test data on analogous alkyl ethoxylate nonionic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 56 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance. Fish and daphnid testing should be performed using the flow-through method with measured concentrations. Algal testing should be performed using the static method with measured concentrations. Test reports should include protocols approved by EPA, certificate of analysis for the test substance, raw data, and results.

CFR citation: 40 CFR 721.10246.

PMN Number P–09–258

Chemical name: Bis-phenoxyethanol fluorene diacrylate (generic).

CAS number: Not available.

Basis for action: The PMN states that the substance will be used as a raw material in ultra violet (UV) curable inks and coatings. EPA identified health and environmental concerns because the substance may be a persistent, bio-accumulative, and toxic (PBT) chemical, based on physical/chemical properties of the PMN substance, as described in the New Chemical Program's PBT category (64 FR 60194; November 4, 1999) (FRL–6097–7). EPA estimates that the PMN substance will persist in the environment for more than two months and estimates a bioaccumulation factor of greater than or equal to 5,000. Also, based on test data on analogous acrylates, EPA believes exposure to the PMN substance may cause systemic human health effects and predicts toxicity to aquatic organisms. As described in the PMN, significant worker exposure is unlikely and the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any predictable or purposeful release containing the PMN substance into the waters of the United States may cause serious health effects and significant environmental effects, since the PMN substance has been characterized by EPA as a PBT. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii), (b)(4)(ii), and (b)(4)(iii).

Recommended testing: EPA has determined that the results of the tiered testing described in the New Chemicals Program's PBT Category would help characterize the PBT attributes of the PMN substance. Test reports should include protocols approved by EPA, certificate of analysis for the test substance, raw data, and results.

CFR citation: 40 CFR 721.10247.

PMN Number P–09–259

Chemical name: Aromatic bromide (generic).

CAS number: Not available.

Basis for action: The PMN states that the substance will be used as a synthetic intermediate. EPA identified health and environmental concerns because the substance may be a PBT chemical, based on physical/chemical properties of the PMN substance, as described in the New Chemical Program's PBT category (64 FR 60194; November 4, 1999). EPA estimates that the PMN substance will persist in the environment more than six months and estimates a bioaccumulation factor of greater than or equal to 5,000. Also, based on test data on analogous brominated aromatics and neutral organics (aryl halides), EPA believes exposure to the PMN substance may cause systemic human health effects and predicts toxicity to aquatic organisms. As described in the PMN, significant worker exposure is unlikely and the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN or any predictable or purposeful release containing the PMN substance into the waters of the United States may cause serious health effects and significant environmental effects, since the PMN substance has been characterized by EPA as a PBT. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii), (b)(4)(ii), and (b)(4)(iii).

Recommended testing: EPA has determined that the results of the tiered testing described in the New Chemicals Program's PBT Category would help characterize the PBT attributes of the PMN substance. Test reports should include protocols approved by EPA, certificate of analysis for the test substance, raw data, and results.

CFR citation: 40 CFR 721.10248.

PMN Number P–09–316

Chemical name: Disubstituted phenol (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a chemical intermediate. Based on test data on analogous anilines and phenols, as well as on test data submitted to the Agency under TSCA section 8(e), EPA identified concerns for liver toxicity, mutagenicity, carcinogenicity, developmental toxicity, neurotoxicity, and male reproductive system toxicity to workers from inhalation exposure to the PMN substance. Additionally, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 6 ppb of the PMN substance in surface waters. For the use described in the PMN, significant worker exposure is unlikely due to the use of personal protective equipment. Furthermore, significant environmental exposure is unlikely as the substance is not released to surface water resulting in surface water concentrations that exceed 6 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use other than as a chemical intermediate, or exceedance of the manufacture and import limit of 100 kg per year may cause serious health effects and significant adverse environmental effects. Based on this information, the PMN substance meets the concern

criteria at § 721.170(b)(1)(i)(C), (b)(3)(ii), and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a combined chronic toxicity/carcinogenicity test (OPPTS Test Guideline 870.4300); a bacterial reverse mutation test (OPPTS Test Guideline 870.5100); a mammalian erythrocyte micronucleus test (OPPTS Test Guideline 870.5395); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) prolonged exposure; a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) using rainbow trout and a 60-day minimum duration; and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the human health and environmental effects of the PMN substance. Fish and daphnid testing should be performed using the flow-through method with measured concentrations. Algal testing should be performed using the static method with measured concentrations. Test reports should include protocols approved by EPA, certificate of analysis for the test substance, raw data, and results.

CFR citation: 40 CFR 721.10249.

PMN Number P–09–356

Chemical name: Zirconium lysine complex (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an adhesion promoter and corrosion inhibitor. Based on EcoSAR analysis of test data on analogous inorganic zirconium compounds, EPA predicts toxicity to aquatic organisms at concentrations that exceed 120 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 120 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 120 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance. Fish and daphnid testing should be performed using the flow-through method with measured concentrations. Algal testing should be performed using the static method with measured concentrations. Test reports should include protocols approved by EPA, certificate of analysis for the test substance, raw data, and results.

CFR citation: 40 CFR 721.10250.

PMN Number P–09–366

Chemical name: Fatty acids, reaction products with alkanolamine (generic).

CAS number: Not available.

Basis for action: The PMN states that the substance will be used as an intermediate for a product used as a component of a multipurpose additive in gasoline. Based on test data on the PMN substance, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 400 ppb of the PMN substance in surface waters. As described in the PMN, releases of the PMN substance are not expected to result in surface water concentrations that exceed 400 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as an intermediate could result in exposures which may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i).

Recommended testing: EPA has determined that the results of an aerobic and anaerobic transformation in aquatic sediment systems (OECD Test Guideline 308); a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help characterize the environmental effects of the PMN substance. Fish and daphnid testing should be performed using the flow-through method with measured concentrations. EPA recommends that the special considerations for conducting laboratory studies (OPPTS Test Guideline 850.1000) be followed to facilitate solubility in the test media, because of the PMN's low water solubility. EPA also recommends performing the fate testing first as the results may mitigate the need for further toxicity testing or change the testing requirements. Test reports should include protocols approved by EPA, certificate of analysis for the test substance, raw data, and results.

CFR citation: 40 CFR 721.10251.

PMN Number P–09–373

Chemical name: Thiosulfuric acid ($H_2S_2O_3$), manganese(2+) salt (1:1).

CAS number: 1033050–53–1.

Basis for action: The PMN states that the substance will be used as a micronutrient manganese source for selected agricultural crops. Based on EcoSAR analysis of test data on analogous manganese salts, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 400 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 400 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 400 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance. Fish and daphnid testing should be performed using the flow-through method with mean measured concentrations. Algal testing should be performed using the static method with mean measured concentrations. Test reports should include protocols approved by EPA, certificate of analysis for the test substance, raw data, and results.

CFR citation: 40 CFR 721.10252.

PMN Number P–09–388

Chemical name: Butanedioic acid, 2-methylene-, polymer with 2,5 furanedione, copper(2+) manganese(2+) sodium zinc salt, hydrogen peroxide-initiated.

CAS number: 1134078–27–5.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a seed coating to provide micronutrients. Based on EcoSAR analysis of test data on analogous soluble complexes of zinc, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 34 ppb of the PMN substance in surface waters. As described in the PMN, releases of the

substance are not expected to result in surface water concentrations that exceed 34 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 34 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a ready biodegradability-CO_2 in sealed vessels (headspace test) (OECD Test Guideline 310); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance. Fish and daphnid testing should be performed using the flow-through method with measured concentrations. Algal testing should be performed using the static method with measured concentrations. EPA recommends performing the fate testing first as the results may mitigate the need for further toxicity testing or change the testing requirements. Test reports should include protocols approved by EPA, certificate of analysis for the test substance, raw data, and results.

CFR citation: 40 CFR 721.10253.

PMN Number P–09–390

Chemical name: Substituted acrylamide (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a raw material. Based on test data on the PMN substance and EcoSAR analysis of test data on analogous amides and acrylamides, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 21 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 21 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 21 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075) using the flow-through method with measured concentrations, and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) using the static method with measured concentrations would help characterize the environmental effects of the PMN substance. Test reports should include protocols approved by EPA, certificate of analysis for the test substance, raw data, and results.

CFR citation: 40 CFR 721.10254.

PMN Number P–09–400

Chemical name: Vinyl carboxylic acid ester (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a monomer. Based on test data on the PMN substance and analogous vinyl esters, EPA identified concerns for dermal sensitization; dermal irritation; mutagenicity; neurotoxicity; and blood, liver, kidney, spleen, brain, testes, developmental, and reproductive toxicity to the general population if exposed to the PMN substance. In addition, based on test data on the PMN substance, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 15 ppb of the PMN substance in surface waters. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii) and (b)(4)(i). At the production volume stated in the PMN, general population exposure is limited. Further, as described in the PMN, releases of the PMN substance are not expected to result in surface water concentrations that exceed 15 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk under TSCA section 5(e). However, EPA has determined that annual manufacture (including importation) of this PMN substance at volumes greater than 100,000 kilograms per year may result in significant human exposures. Further, EPA has determined that any use of the substance resulting in surface water concentrations exceeding 15 ppb may cause significant adverse environmental effects.

Recommended testing: EPA has determined that the results of a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465); a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help characterize the human health and environmental effects of the PMN substance. Aquatic toxicity testing should be performed using the flow-through method with measured concentrations. Test reports should include protocols approved by EPA, certificate of analysis for the test substance, raw data, and results.

CFR citation: 40 CFR 721.10255.

PMN Number P–09–479

Chemical name: Benzoic acid, 4-(dimethylamino)-, 1,1′-[(methylimino)di-2,I-ethanediyl] ester.

CAS number: 925246–00–0.

Basis for action: The PMN states that the substance will be used as a co-photoinitiator for UV-curable pigmentation inks; co-photoinitiator for photoresists, optical fibers, and printed plates; co-photoinitiator for UV-curable coatings; and co-photoinitiator for UV-curable adhesives and other coatings. Based on test data on the PMN substance and EcoSAR analysis of test data on analogous aliphatic amines and esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 2 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a ready biodegradability test (OPPTS Test Guideline 835.3100); a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help characterize the environmental effects of the PMN substance. Testing should be performed using the flow-through method with mean measured concentrations. EPA recommends that the special considerations for conducting laboratory studies (OPPTS Test Guideline 850.1000) be followed to facilitate solubility in the test media, because of the PMN's low water solubility. EPA also recommends that the fate testing be performed first as the results may mitigate the need for further toxicity testing or change the testing recommendations. Test reports should

include protocols approved by EPA, certificate of analysis for the test substance, raw data, and results.

CFR citation: 40 CFR 721.10256.

PMN Number P–09–532

Chemical name: Butyl aromatic bisurea (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a sealant. Based on EcoSAR analysis of test data on analogous substituted urea, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance will not be released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance. Fish and daphnid testing should be performed using the flow-through method with measured concentrations. Algal testing should be performed using the static method with measured concentrations. EPA recommends that the special considerations for conducting laboratory studies (OPPTS Test Guideline 850.1000) be followed to facilitate solubility in the test media, because of the PMN's low water solubility. Test reports should include protocols approved by EPA, certificate of analysis for the test substance, raw data, and results.

CFR citation: 40 CFR 721.10257.

PMN Numbers P–09–535 and P–09–540

Chemical names: (P–09–535) Aromatic hydrocarbon (generic) and (P–09–540) Halogenated aromatic hydrocarbon (generic).

CAS numbers: (P–09–535) Not available and (P–09–540) not available.

Basis for action: The PMNs state that the substances will be used as synthetic intermediates. EPA has identified health and environmental concerns because the substances may be PBT chemicals, based on physical/chemical properties of the PMN substances, as described in the New Chemicals Program's PBT Category (64 FR 60194; November 4, 1999). EPA estimates that the PMN substances will persist in the environment more than two months and estimates bioaccumulation factors that are greater than or equal to 5,000. Also, based on test data on analogous poly-aromatic hydrocarbons, EPA predicts chronic adverse human health effects. As described in the PMNs, significant worker exposure is unlikely and the substances are not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that any predictable or purposeful release containing the PMN substances into the waters of the United States may cause serious health effects and significant adverse environmental effects, since the PMN substances have been characterized by EPA as PBT. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(3)(ii) and (b)(4)(iii).

Recommended testing: EPA has determined that the results of the tiered testing described in the New Chemicals Program's PBT Category would help characterize the PBT attributes of the PMN substances. Test reports should include protocols approved by EPA, certificate of analysis for the test substance, raw data, and results.

CFR citations: 40 CFR 721.10258 (P–09–535) and 40 CFR 721.10259 (P–09–540).

PMN Number P–09–552

Chemical name: Benzene, 1,3-bis(1-chloro-1-methylethyl)-.

CAS number: 37133–18–9.

Basis for action: The PMN states that the substance will be used as a site-limited starting material in novel polymer synthesis reactions. EPA has identified health and environmental concerns because the substance may be a PBT chemical, based on physical/chemical properties of the PMN substance, as described in the New Chemical Program's PBT category (64 FR 60194; November 4, 1999). EPA estimates that the PMN substance will persist in the environment more than two months and estimates a bioaccumulation factor of greater than or equal to 1,000. In addition, based on the potential for the PMN to be an alkylating agent, EPA identified concerns for oncogenicity, developmental toxicity, sensitivity, and corrosion to all tissues from dermal and respiratory exposure. Further, based on EcoSAR analysis of test data on analogous benzyl halides, EPA predicts toxicity to aquatic organisms at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, significant worker exposure is unlikely due to the use of adequate dermal and respiratory protection and the substance is not expected to be released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any predictable or purposeful release containing the PMN substance into the waters of the United States may cause serious health effects and significant adverse environmental effects, since the PMN substance has been characterized by EPA as a PBT. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(C), (b)(3)(ii), (b)(4)(ii), and (b)(4)(iii).

Recommended testing: EPA has determined that the results of the tiered testing described in the New Chemicals Program's PBT Category (64 FR 60914; November 4, 1999) should help characterize the PBT attributes of the PMN substance. Test reports should include protocols approved by EPA, certificate of analysis for the test substance, raw data, and results.

CFR citation: 40 CFR 721.10260.

PMN Numbers P–09–589 and P–09–590

Chemical names: (P–09–589) Oxime, di-Me silane (generic) and (P–09–590) Oxime, Me vinyl silane (generic).

CAS numbers: (P–09–589) Not available and (P–09–590) not available.

Basis for action: The PMNs state that the generic (non-confidential) use of the substances will be as chain extenders. Based on test data on the PMN substances and the expected hydrolysis product, EPA identified concerns for carcinogenicity, dermal sensitization, blood effects, reproductive toxicity, and neurotoxicity to workers and the general population exposed dermally or by inhalation to the PMN substances. In addition, based on EcoSAR analysis of test data on analogous aliphatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 2 ppb of the PMN substances in surface waters. As described in the PMNs, worker exposure will be minimal due to the use of adequate personal protective equipment, general population inhalation and dermal exposure is not expected, and the substances are not released to surface waters. Therefore,

EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that any use of the substances without the use of impervious gloves where there is potential for dermal exposure, annual manufacture (including importation) of each of the PMN substances at volumes greater than 20,000 kilograms, or any use of the substances resulting in release to surface waters may cause serious health effects and/or significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(1)(i)(C), (b)(3)(i), (b)(3)(ii), and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a two-generation reproduction toxicity test (OECD Test Guideline 416); a ready biodegradability test (OPPTS Test Guideline 835.3110); a porous pot test (OPPTS Test Guideline 835.3220); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); a fish acute toxicity mitigated by humic acid test (OPPTS Test Guideline 850.1085); an aquatic invertebrate acute toxicity test; freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the human health and environmental effects of the PMN substances. Fish and daphnid testing should be performed using the flow-through method with measured concentrations. Algal testing should be performed using the static method with measured concentrations. Testing should be performed on P–09–589. EPA recommends that the fate testing be performed first as the results may mitigate the need for further testing or change the testing requirements. Test reports should include protocols approved by EPA, certificate of analysis for the test substance, raw data, and results.

CFR citations: 40 CFR 721.10261 (P–09–589) and 40 CFR 721.10262 (P–09–590).

PMN Number P–09–634

Chemical name: Phenol, 4-(1,1-dimethylethyl)-2-nitro-.

CAS number: 3279–07–0.

Basis for action: The PMN states that the substance will be used as a raw material (reactant) for production of intermediate for a photographic chemical. Based on test data on the PMN substance, and test data submitted under TSCA section 8(e) on analogous aminophenols, EPA identified concerns for irritation to the eye and skin, mutagenicity, neurotoxicity, developmental, liver, blood, and reproductive toxicities to workers and members of the general population if exposed to the PMN substance. In addition, based on EcoSAR analysis of test data on analogous phenols, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. For the uses described in the PMN, significant worker exposure is unlikely, as dermal/inhalation exposure is not expected; the substance is not released to surface waters; and the substance is not expected to result in significant exposure to the general population. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN or any use of the substance resulting in release to surface waters may cause serious health effects and significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i), (b)(3)(ii), and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a combined repeated dose toxicity with the reproduction/development toxicity screening test (OPPTS Test Guideline 870.3650); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test; freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the human health and environmental effects of the PMN substance. Fish and daphnid testing should be performed using the flow-through method with measured concentrations. Algal testing should be performed using the static method with measured concentrations. Test reports should include protocols approved by EPA, certificate of analysis for the test substance, raw data, and results.

CFR citation: 40 CFR 721.10263.

PMN Number P–10–343

Chemical name: Polycarbocyclic methacrylate (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a polymeric component. Based on EcoSAR analysis of test data on analogous methacrylates, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 8 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a ready biodegradability test (OPPTS Test Guidelines 835.3110); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance. Fish and daphnid testing should be performed using the flow-through method with measured concentrations. Algal testing should be performed using the static method with measured concentrations. EPA recommends that the special considerations for conducting laboratory studies (OPPTS Test Guideline 850.1000) be followed to facilitate solubility in the test media, because of the PMN's low water solubility. Test reports should include protocols approved by EPA, certificate of analysis for the test substance, raw data, and results.

CFR citation: 40 CFR 721.10264.

V. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these SNURs, EPA concluded that for 4 of the 36 chemical substances, regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit IV. Based on these findings, TSCA section 5(e) consent orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters. The SNUR provisions for these chemical substances are consistent with the provisions of the TSCA section 5(e) consent orders. These SNURs are promulgated pursuant to § 721.160 (see Unit II.).

In the other 32 cases, where the uses are not regulated under a TSCA section

5(e) consent order, EPA determined that one or more of the criteria of concern established at § 721.170 were met, as discussed in Unit IV.

B. Objectives

EPA is issuing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this rule:

- EPA will receive notice of any person's intent to manufacture, import, or process a listed chemical substance for the described significant new use before that activity begins.
- EPA will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for the described significant new use.
- EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before the described significant new use of that chemical substance occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6, or 7.
- EPA will ensure that all manufacturers, importers, and processors of the same chemical substance that is subject to a TSCA section 5(e) consent order are subject to similar requirements.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the Internet at *http://www.epa.gov/opptintr/newchems/pubs/invntory.htm.*

VI. Direct Final Procedures

EPA is issuing these SNURs as a direct final rule, as described in § 721.160(c)(3) and § 721.170(d)(4). In accordance with § 721.160(c)(3)(ii) and § 721.170(d)(4)(i)(B), the effective date of this rule is December 5, 2011 without further notice, unless EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments before November 4, 2011.

If EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs before November 4, 2011, EPA will withdraw the relevant sections of this direct final rule before its effective date. EPA will then issue a proposed SNUR for the chemical substance(s) on which adverse or critical comments were received, providing a 30-day period for public comment.

This rule establishes SNURs for a number of chemical substances. Any person who submits adverse or critical comments, or notice of intent to submit adverse or critical comments, must identify the chemical substance and the new use to which it applies. EPA will not withdraw a SNUR for a chemical substance not identified in the comment.

VII. Applicability of Rule to Uses Occurring Before Effective Date of the Rule

Significant new use designations for a chemical substance are legally established as of the date of publication of this direct final rule, October 5, 2011.

To establish a significant ''new'' use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. TSCA section 5(e) consent orders have been issued for 4 chemical substances and the PMN submitters are prohibited by the TSCA section 5(e) consent orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no other person may commence such activities without first submitting a PMN. For chemical substances for which an NOC has not been submitted at this time, EPA concludes that the uses are not ongoing. However, EPA recognizes that prior to the effective date of the rule, when chemical substances identified in this SNUR are added to the TSCA Inventory, other persons may engage in a significant new use as defined in this rule before the effective date of the rule. However, 23 of the 36 chemical substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-PMN *bona fide* submissions (per §§ 720.25 and 721.11), the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this rule are ongoing.

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA has decided that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication of this direct final rule rather than as of the effective date of the rule. If uses begun after publication were considered ongoing rather than new, it would be difficult for EPA to establish SNUR notice requirements because a person could defeat the SNUR by initiating the significant new use before the rule became effective, and then argue that the use was ongoing before the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the chemical substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person meets the conditions of advance compliance under § 721.45(h), the person is considered exempt from the requirements of the SNUR.

VIII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN. The two exceptions are:

1. Development of test data is required where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)(1)).
2. Development of test data may be necessary where the chemical substance has been listed under TSCA section 5(b)(4) (see TSCA section 5(b)(2)).

In the absence of a TSCA section 4 test rule or a TSCA section 5(b)(4) listing covering the chemical substance, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (see § 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. In cases where EPA issued a TSCA section 5(e) consent order that requires or recommends certain testing, Unit IV. lists those tests. Unit IV. also lists recommended testing for non-5(e) SNURs. Descriptions of tests are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. 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.'' The Organisation for Economic Co-operation and Development (OECD) test guidelines are available from the OECD Bookshop at *http://www.oecdbookshop.org* or SourceOECD at *http://www.sourceoecd.org.* The American Society for Testing and

Materials International (ASTM) standards are available at *http://www.astm.org/Standard/index.shtml.*

In the TSCA section 5(e) consent orders for four of the chemical substances regulated under this rule, EPA has established restrictions in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These restrictions will not be removed until EPA determines that the unrestricted use will not present an unreasonable risk of injury or result in significant or substantial exposure or environmental release. This determination is usually made based on the results of the required or recommended toxicity tests.

The recommended tests specified in Unit IV. may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior PMN or SNUN submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Potential benefits of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

IX. Procedural Determinations

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at 40 CFR 721.1725(b)(1). Today's rules cross-reference § 721.1725(b)(1) (which is similar to the procedure in § 721.11, for situations where the chemical identity of the chemical substance subject to a SNUR is CBI) in each SNUR that includes specific significant new uses that are CBI.

Under these procedures a manufacturer, importer, or processor may request that EPA determine whether a proposed use would be a significant new use under the rule. The manufacturer, importer, or processor must show that it has a *bona fide* intent to manufacture, import, or process the chemical substance and must identify the specific use for which it intends to manufacture, import, or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture, import, or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers, importers, and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, *i.e.,* the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture, import, or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

X. SNUN Submissions

According to § 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in § 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in §§ 721.25 and 720.40. E-PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

XI. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2010–1075.

XII. Statutory and Executive Order Reviews

A. Executive Order 12866

This rule establishes SNURs for several new chemical substances that were the subject of PMNs. 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).

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and 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**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this rule. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), to amend this table without further notice and comment.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data

needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR will not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use.'' Because these uses are ''new,'' based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a handful of notices per year. For example, the number of SNUNs was four in Federal fiscal year 2005, eight in FY2006, six in FY2007, eight in FY2008, and seven in FY2009. During this five-year period, three small entities submitted a SNUN. In addition, the estimated reporting cost for submission of a SNUN (*see* Unit XI.) is minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impacts of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this rule. As such, EPA has determined that this rule does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

E. Executive Order 13132

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This rule does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This rule does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), do not apply to this rule.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This action 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), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

In addition, since this action does not involve any technical standards, 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), does not apply to this action.

J. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

XIII. 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, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 23, 2011.

Wendy C. Hamnett,

Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241,

242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. The table in § 9.1 is amended by adding the following sections in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.10230	2070–0012
721.10231	2070–0012
721.10232	2070–0012
721.10233	2070–0012
721.10234	2070–0012
721.10235	2070–0012
721.10236	2070–0012
721.10237	2070–0012
721.10238	2070–0012
721.10239	2070–0012
721.10240	2070–0012
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721.10246	2070–0012
721.10247	2070–0012
721.10248	2070–0012
721.10249	2070–0012
721.10250	2070–0012
721.10251	2070–0012
721.10252	2070–0012
721.10253	2070–0012
721.10254	2070–0012
721.10255	2070–0012
721.10256	2070–0012
721.10257	2070–0012
721.10258	2070–0012
721.10259	2070–0012
721.10260	2070–0012
721.10261	2070–0012
721.10262	2070–0012
721.10263	2070–0012
721.10264	2070–0012
* * * * *	

* * * * *

PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add § 721.10230 to subpart E to read as follows:

§ 721.10230 Rutile, tin zinc, calcium-doped.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as rutile, tin zinc, calcium-doped (PMN P–06–36; CAS No. 389623–01–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substance that have been incorporated into a polymer, glass, dispersion, cementitious matrix, or a similar incorporation.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(5), (a)(6)(i), (b) (concentration set at 1.0 percent), and (c). The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of 10 meet the minimum requirements for § 721.63(a)(5):

(A) NIOSH-certified air-purifying, tight-fitting half-face respirator equipped with N100 (if oil aerosols absent), R100, or P100 filters;

(B) NIOSH-certified air-purifying, tight-fitting full-face respirator equipped with N100 (if oil aerosols absent), R100, or P100 filters;

(C) NIOSH-certified powered air-purifying respirator equipped with a loose- fitting hood or helmet and high efficiency particulate air (HEPA) filters;

(D) NIOSH-certified powered air-purifying respirator equipped with a tight-fitting facepiece (either half-face or full-face) and HEPA filters; or

(E) NIOSH-certified supplied-air respirator operated in pressure demand or continuous flow mode and equipped with a hood or helmet, or tight-fitting facepiece (either half-face or full-face).

(*1*) As an alternative to the respiratory requirements listed in paragraph (a)(2)(i), a manufacturer, importer, or processor may choose to follow the new chemical exposure limit (NCEL) provisions listed in the TSCA section 5(e) consent order for these substances. The NCEL is 1.5 mg/m^3 as an 8-hour time-weighted-average for both chemical substances combined. Persons who wish to pursue NCELs as an alternative to the § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will receive NCELs provisions comparable to those contained in the corresponding section 5(e) consent order.

(*2*) [Reserved]

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(ii), (g)(2)(ii), (g)(2)(iv) (use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 1.5 mg/m^3), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (manufacture of the substances with a particle size less than 100 nanometers, where d10 particle size presents the particle size, as determined by laser light scattering, at which 10 perecent by weight of the substance measured is smaller).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 5. Add § 721.10231 to subpart E to read as follows:

§ 721.10231 Rutile, tin zinc, sodium-doped.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as rutile, tin zinc, sodium-doped (PMN P–06–37; CAS No. 389623–07–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substance that have been incorporated into a polymer, glass, dispersion, cementitious matrix, or a similar incorporation.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(5), (a)(6)(i), (b) (concentration set at 1.0 percent), and (c). The following National Institute for Occupational Safety and Health (NIOSH)-certified respirators with an assigned protection factor (APF) of 10 meet the minimum requirements for § 721.63(a)(5):

(A) NIOSH-certified air-purifying, tight-fitting half-face respirator equipped with N100 (if oil aerosols absent), R100, or P100 filters;

(B) NIOSH-certified air-purifying, tight-fitting full-face respirator equipped with N100 (if oil aerosols absent), R100, or P100 filters;

(C) NIOSH-certified powered air-purifying respirator equipped with a

loose-fitting hood or helmet and high efficiency particulate air (HEPA) filters;

(D) NIOSH-certified powered air-purifying respirator equipped with a tight-fitting facepiece (either half-face or full-face) and HEPA filters; or

(E) NIOSH-certified supplied-air respirator operated in pressure demand or continuous flow mode and equipped with a hood or helmet, or tight-fitting facepiece (either half-face or full-face).

(*1*) As an alternative to the respiratory requirements listed in paragraph (a)(2)(i), a manufacturer, importer, or processor may choose to follow the new chemical exposure limit (NCEL) provisions listed in the TSCA section 5(e) consent order for these substances. The NCEL is 1.5 mg/m^3 as an 8-hour time-weighted-average for both chemical substances combined. Persons who wish to pursue NCELs as an alternative to the § 721.63 respirator requirements may request to do so under § 721.30. Persons whose § 721.30 requests to use the NCELs approach are approved by EPA will receive NCELs provisions comparable to those contained in the corresponding section 5(e) consent order.

(*2*) [Reserved]

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(ii), (g)(2)(ii), (g)(2)(iv) (use respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 1.5 mg/m^3), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (manufacture of the substances with a particle size less than 100 nanometers, where d10 particle size presents the particle size, as determined by laser light scattering, at which 10 percent by weight of the substance measured is smaller).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 6. Add § 721.10232 to subpart E to read as follows:

§ 721.10232 N-arylamino-phenol-formaldehyde condensate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as n-arylamino-phenol-formaldehyde condensate (PMN P–08–694) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 7. Add § 721.10233 to subpart E to read as follows:

§ 721.10233 Linear alkyl epoxide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as linear alkyl epoxide (PMN P–08–704) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 8. Add § 721.10234 to subpart E to read as follows:

§ 721.10234 Hydroxy-chloro-cyclopropyl-heteromonocyclic carboxylic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as hydroxy-chloro-cyclopropyl-heteromonocyclic carboxylic acid (PMN P–09–61) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 6).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 9. Add § 721.10235 to subpart E to read as follows:

§ 721.10235 Phenol, 2-ethoxy-4-(ethoxymethyl)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as phenol, 2-ethoxy-4-(ethoxymethyl)- (PMN P–09–72; CAS No. 71119–07–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 10. Add § 721.10236 to subpart E to read as follows:

§ 721.10236 1-Propanamine, 3-[2-(2-methoxyethoxy)ethoxy]-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1-propanamine, 3-[2-(2-methoxyethoxy)ethoxy]- (PMN P–09–139; CAS No. 91933–40–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) and (o).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 11. Add § 721.10237 to subpart E to read as follows:

§ 721.10237 Formaldehyde, polymers with acetone-phenol reaction products and phenol, sodium salts.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as formaldehyde, polymers with acetone-phenol reaction products and phenol, sodium salts (PMN P–09–146; CAS No. 1065544–88–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substance that have been completely reacted (cured).

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) including:

(A) Manufacture or import of the PMN substance only where the maximum unbound formaldehyde residual levels and typical polymer weight to weight composition ratios are as specified in the TSCA section 5(e) consent order.

(B) Upon start-up of manufacture of the PMN at any new facility, conduct the American Society for Testing and Materials International (ASTM) E1333–10 test or its equivalent on a representative sample of the finished cured resin product, demonstrating that formaldehyde emissions are less than or equal to 0.04 ppm.

(C) Development and implementation of a written control plan that includes analysis of representative samples to ensure compliance with (a)(2)(i)(A) and (a)(2)(i)(B) of this section.

(D) Manufacturing, processing, distribution, or use of the PMN substance only as described in the TSCA section 5(e) consent order.

(E) Processing or distribution for processing only under the conditions described in the TSCA section 5(e) consent order and which are capable of irreversibly curing the PMN substance into a thermoset polymer matrix.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 12. Add § 721.10238 to subpart E to read as follows:

§ 721.10238 Formaldehyde, polymers with acetone-phenol reaction products and phenol, potassium sodium salts.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as formaldehyde, polymers with acetone-phenol reaction products and phenol, potassium sodium salts (PMN P–09–147; CAS No. 1072227–60–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substance that have been completely reacted (cured).

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) including:

(A) Manufacture or import of the PMN substance only where the maximum unbound formaldehyde residual levels and typical polymer weight to weight composition ratios are as specified in the TSCA section 5(e) consent order.

(B) Upon start-up of manufacture of the PMN at any new facility, conduct the American Society for Testing and Materials International (ASTM) E1333–10 test or its equivalent on a representative sample of the finished cured resin product, demonstrating that formaldehyde emissions are less than or equal to 0.04 ppm.

(C) Development and implementation of a written control plan that includes analysis of representative samples to ensure compliance with (a)(2)(i)(A) and (a)(2)(i)(B) of this section.

(D) Manufacturing, processing, distribution, or use of the PMN substance only as described in the TSCA section 5(e) consent order.

(E) Processing or distribution for processing only under the conditions described in the TSCA section 5(e) consent order and which are capable of irreversibly curing the PMN substance into a thermoset polymer matrix.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 13. Add § 721.10239 to subpart E to read as follows:

§ 721.10239 Trivalent chromium complexes of a substituted beta-naphthol amine azo dye (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as trivalent chromium complexes of a substituted beta-naphthol amine azo dye (PMNs P–09–152 and P–09–153) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (j) (acid dye for coloring anodized aluminum). Also, requirements as specified in § 721.80(v)(1), (v)(2), (w)(1), (w)(2), (x)(1), and (x)(2), except that importing, processing, and use of the PMN substance in the form of a wet press cake containing greater than 30 percent water does not require submission of a SNUN.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 14. Add § 721.10240 to subpart E to read as follows:

§ 721.10240 Olefinic carbocycle, reaction products with alkoxysilane (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as olefinic carbocycle, reaction products with alkoxysilane (PMN P–09–154) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 15. Add § 721.10241 to subpart E to read as follows:

§ 721.10241 Olefinic carbocycle, reaction products with alkoxysilane, sulfurized (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as olefinic carbocycle, reaction products with alkoxysilane, sulfurized (PMN P–09–155) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 16. Add § 721.10242 to subpart E to read as follows:

§ 721.10242 Olefinic carbocycle, reaction products with alkoxysilane, polysulfurized (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as olefinic carbocycle, reaction products with alkoxysilane, polysulfurized (PMN P–09–156) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 17. Add § 721.10243 to subpart E to read as follows:

§ 721.10243 Phosphonic acid, P-[2-[bis(2-hydroxyethyl)amino]ethyl]-, bis(2-chloroethyl) ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as phosphonic acid, P-[2-[bis(2-hydroxyethyl)amino]ethyl]-, bis(2-chloroethyl) ester (PMN P–09–193; CAS No. 55088–28–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (intermediate in the manufacture of a polyurethane flame retardant).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 18. Add § 721.10244 to subpart E to read as follows:

§ 721.10244 Phosphonic acid, P-[2-[bis(2-hydroxyethyl)amino]ethyl]-, 2-[bis(2-chloroethoxy)phosphinyl]ethyl 2-chloroethyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as phosphonic acid, P-[2-[bis(2-hydroxyethyl)amino]ethyl]-, 2-[bis(2-chloroethoxy)phosphinyl]ethyl 2-chloroethyl ester (PMN P–09–195; CAS No. 1094213–37–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (intermediate in the manufacture of a polyurethane flame retardant).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 19. Add § 721.10245 to subpart E to read as follows:

§ 721.10245 Branched and linear fatty alcohol ethoxylate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as branched and linear fatty alcohol ethoxylate (PMN P–09–207) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (site-limited, isolated, chemical intermediate).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 20. Add § 721.10246 to subpart E to read as follows:

§ 721.10246 Alkylpolyhydroxy polymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkylpolyhydroxy polymer (PMN P–09–234) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 21. Add § 721.10247 to subpart E to read as follows:

§ 721.10247 Bis-phenoxyethanol fluorene diacrylate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as bis-phenoxyethanol fluorene diacrylate (PMN P–09–258) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 22. Add § 721.10248 to subpart E to read as follows:

§ 721.10248 Aromatic bromide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as aromatic bromide (PMN P–09–259) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (synthetic intermediate).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 23. Add § 721.10249 to subpart E to read as follows:

§ 721.10249 Disubstituted phenol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as disubstituted phenol (PMN P–09–316) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (g) and (s) (100 kilograms).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 24. Add § 721.10250 to subpart E to read as follows:

§ 721.10250 Zirconium lysine complex (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as zirconium lysine complex (PMN P–09–356) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 120).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 25. Add § 721.10251 to subpart E to read as follows:

§ 721.10251 Fatty acids, reaction products with alkanolamine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as fatty acids, reaction products with alkanolamine (PMN P–09–366) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 26. Add § 721.10252 to subpart E to read as follows:

§ 721.10252 Thiosulfuric acid ($H_2S_2O_3$), manganese(2+) salt (1:1).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as thiosulfuric acid ($H_2S_2O_3$), manganese(2+) salt (1:1) (PMN P–09–373; CAS No. 1033050–53–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 400).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 27. Add § 721.10253 to subpart E to read as follows:

§ 721.10253 Butanedioic acid, 2-methylene-, polymer with 2,5 furanedione, copper(2+) manganese(2+) sodium zinc salt, hydrogen peroxide-initiated.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as butanedioic acid, 2-methylene-, polymer with 2,5 furanedione, copper(2+) manganese(2+) sodium zinc salt, hydrogen peroxide-initiated (PMN P–09–388; CAS No. 1134078–27–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 34).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 28. Add § 721.10254 to subpart E to read as follows:

§ 721.10254 Substituted acrylamide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted acrylamide (PMN P–09–390) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 21).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 29. Add § 721.10255 to subpart E to read as follows:

§ 721.10255 Vinyl carboxylic acid ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as vinyl carboxylic acid ester (PMN P–09–400) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(s) (100,000 kilograms).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N = 15).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 30. Add § 721.10256 to subpart E to read as follows:

§ 721.10256 Benzoic acid, 4-(dimethylamino)-, 1,1′-[(methylimino)di-2,1-ethanediyl] ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzoic acid, 4-(dimethylamino)-, 1,1′-[(methylimino)di-2,l-ethanediyl] ester (PMN P–09–479; CAS No. 925246–00–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 31. Add § 721.10257 to subpart E to read as follows:

§ 721.10257 Butyl aromatic bisurea (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as butyl aromatic bisurea (PMN P–09–532) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 32. Add § 721.10258 to subpart E to read as follows:

§ 721.10258 Aromatic hydrocarbon (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as aromatic hydrocarbon (PMN P–09–535) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 33. Add § 721.10259 to subpart E to read as follows:

§ 721.10259 Halogenated aromatic hydrocarbon (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated aromatic hydrocarbon (PMN P–09–540) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 34. Add § 721.10260 to subpart E to read as follows:

§ 721.10260 Benzene, 1,3-bis(1-chloro-1-methylethyl)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzene, 1,3-bis(1-chloro-1-methylethyl)- (PMN P–09–552; CAS No. 37133–18–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 35. Add § 721.10261 to subpart E to read as follows:

§ 721.10261 Oxime, di-Me silane (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as oxime, di-Me silane (PMN P–09–589) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(s) (20,000 kilograms).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 36. Add § 721.10262 to subpart E to read as follows:

§ 721.10262 Oxime, Me vinyl silane (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as oxime, Me vinyl silane (PMN P–09–590) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(s) (20,000 kilograms).

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 37. Add § 721.10263 to subpart E to read as follows:

§ 721.10263 Phenol, 4-(1,1-dimethylethyl)-2-nitro-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as phenol, 4-(1,1-dimethylethyl)-2-nitro- (PMN P–09–634; CAS No. 3279–07–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (raw material (reactant) for production of intermediate for a photographic chemical).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 38. Add § 721.10264 to subpart E to read as follows:

§ 721.10264 Polycarbocyclic methacrylate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polycarbocyclic methacrylate (PMN P–10–343) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0053; FRL–8884–2]

Prothioconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

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

DATES: This regulation is effective October 5, 2011. Objections and requests for hearings must be received on or before December 5, 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–2011–0053. 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: Tawanda Maignan, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 308–8050; *e-mail address: maignan.tawanda@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://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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–2011–0053 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 December 5, 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–2011–0053, 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 March 29, 2011 (76 FR 17375) (FRL–8867–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PPs 0F7714 and 0F7715) by Bayer CropScience, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.626 be amended by establishing tolerances for residues of the fungicide prothioconazole, 2-[2-(1-chlorocyclopropyl)-3-(2-chlorophenyl-2-hydroxypropyl]-1,2-dihydro-3*H*-1,2,4-triazole-3-thione and its desthio metabolite, in or on the raw or processed agricultural commodity rice,

grain at 0.25 parts per million (ppm); rice, hulls at 1.0 ppm; alfalfa, forage and alfalfa, hay at 0.02 ppm and potato, tuber at 0.02 ppm (PP 0F7714). In a separate petition (PP 0F7715) Bayer CropScience also proposed use of the currently established tolerances for residues of prothioconazole, 2-[2-(1-chlorocyclopropyl)-3-(2-chlorophenyl-2-hydroxypropyl]-1,2-dihydro-3*H*-1,2,4-triazole-3-thione and its desthio metabolite, in or on the raw agricultural commodities pea and bean, dried shelled, except soybean, subgroup 6C; soybean, forage; soybean, hay; soybean, seed; rice, seed to support the use of prothioconazole as a seed treatment on these crops. That notice referenced a summary of the petitions prepared by Bayer CropScience, 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 it is appropriate to modify the existing grain crop groups rather than establish separate rice grain and rice straw tolerances. The rice grain tolerance will now be covered by the modified tolerance of 0.35 ppm for grain, cereal group 15, except sweet corn and sorghum. Likewise, the rice straw tolerance will now be covered by the modified tolerance of 5.0 ppm for grain, cereal, forage, fodder, and straw, group 16, except sorghum; straw. Also, the EPA is establishing a tolerance for rice hulls at 0.90 ppm, instead of the proposed tolerance of 1.0 ppm. The reasons for these changes are 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 prothioconazole including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with prothioconazole 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.

Prothioconazole has low acute toxicity by oral, dermal, and inhalation routes. It is not a dermal sensitizer, or a skin or eye irritant. Prothioconazole's metabolite, prothioconazole-desthio, also has low acute toxicity by oral, dermal, and inhalation routes. It is not a dermal sensitizer, or a skin irritant, but it is a slight eye irritant. The subchronic and chronic studies show that the target organs at the lowest observable adverse effects level (LOAEL) include the liver, kidney, urinary bladder, thyroid and blood. In addition, the chronic studies showed body weight and food consumption changes, and toxicity to the lymphatic and GI systems.

Prothioconazole and its metabolites may be developmental toxicants, producing effects including malformations in the conceptus at levels equal to or below maternally toxic levels in some studies; particularly those studies conducted using prothioconazole-desthio. Reproduction studies in the rat with prothioconazole and prothioconazole-desthio suggest that these chemicals may not be reproductive toxicants. Acute and subchronic neurotoxicity studies were conducted in the rat using prothioconazole. A developmental neurotoxicity study was conducted in the rat using prothioconazole-desthio.

The available data show that the prothioconazole-desthio metabolite produces toxicity at lower dose levels in subchronic, developmental, reproductive, and neurotoxicity studies as compared with prothioconazole and the two additional metabolites that were tested.

The available carcinogenicity and/or chronic studies in the mouse and rat, using both prothioconazole and prothioconazole-desthio, show no increase in tumor incidence. Therefore, EPA has concluded that prothioconazole and its metabolites are not carcinogenic, and are classified as ''Not likely to be Carcinogenic to Humans'' according to the 2005 Cancer Guidelines.

Specific information on the studies received and the nature of the adverse effects caused by prothioconazole as well as the no-observed-adverse-effect-level (NOAEL) and the LOAEL from the toxicity studies are discussed in the final rule published in the **Federal Register** of May 28, 2010 (75 FR 29910) (FRL–8828–6).

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 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 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 prothioconazole used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of May 28, 2010 (75 FR 29910) (FRL–8828–6).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to prothioconazole and its metabolites and/or degradates, EPA considered exposure under the petitioned-for tolerances as well as all existing prothioconazole tolerances in 40 CFR 180.626. EPA assessed dietary exposures from prothioconazole 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.

In estimating acute dietary exposure, 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, EPA conducted a moderately refined acute dietary exposure assessment. Empirical processing factors, average field trial residues (since all of the plant commodities included in this assessment are blended food forms, except sweet corn), and livestock commodity residues derived from feeding studies and a reasonably balanced dietary burden (RBDB) were incorporated into the moderately refined acute assessment. The assessment also assumed 100 percent crop treated (PCT). Since no observed effects would be attributable to a single dose exposure for the general U.S. population (including infants and children), females 13–49 years of age was the only population subgroup included in the acute assessment.

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 conducted a moderately refined chronic dietary exposure assessment. Empirical processing factors, average field trial residues, and livestock commodity residues derived from feeding studies and a reasonably balanced dietary burden (RBDB) were incorporated into the chronic assessment; 100 PCT was assumed.

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. Cancer risk is quantified using a linear or non-linear 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 non-cancer 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 prothioconazole is ''Not Likely to be Carcinogenic to Humans.'' Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

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. Average residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for prothioconazole in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of prothioconazole. 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 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 prothioconazole for the acute dietary risk assessment, the estimated surface water concentration value of 94.7 parts per million (ppb) was used to assess the contribution to drinking water. For the chronic dietary risk assessment, the estimated surface water concentration value of 84.3 ppb was used to assess the contribution to drinking water. Modeled estimates of drinking water concentrations 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.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Prothioconazole 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.''

Prothioconazole is a member of the triazole-containing class of pesticides. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biochemical events. In conazoles, however, a variable pattern of toxicological responses is found. Some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

Prothioconazole is a triazole-derived pesticide. Triazole-derived pesticides can form the common metabolite, 1,2,4-triazole and three triazole conjugates (triazole alanine, triazole acetic acid, and triazolylpyruvic acid). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, including prothioconazole, EPA conducted a human health risk

assessment for exposure to 1,2,4-triazole, triazole alanine, and triazole acetic acid resulting from the use of all current and pending uses of any triazole-derived fungicide. The risk assessment is a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (*e.g.,* use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (*i.e.,* high end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the additional 10X FQPA safety factor (SF) for the protection of infants and children. The assessment included evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's risk assessment can be found in the propiconazole reregistration docket at *http://www.regulations.gov,* docket ID number EPA–HQ–OPP– 2005–0497 and an update to assess the addition of the commodities included in this action may be found in docket ID number EPA–HQ–OPP–2010–0621 in the document titled ''Common Triazole Metabolites: Updated Aggregate Human Health Risk Assessment to Address Tolerance Petitions for Metconazole.''

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 Food Quality Protection Act Safety Factor (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.* There is evidence of increased susceptibility following prenatal/or postnatal exposure in:

i. Rat developmental toxicity studies with prothioconazole as well as its prothioconazole-desthio and sulfonic acid K salt metabolites.

ii. Rabbit developmental toxicity studies with prothioconazole-desthio.

iii. A rat developmental neurotoxicity study with prothioconazole-desthio; and

iv. Multi-generation reproduction studies in the rat with prothioconazole-desthio. Effects include skeletal structural abnormalities, such as cleft palate, deviated snout, malocclusion, extra ribs, and developmental delays. Available data also show that the skeletal effects such as extra ribs are not completely reversible after birth in the rat, but persist as development continues.

Although increased susceptibility was seen in these studies, the Agency concluded that there is a low concern and no residual uncertainties for prenatal and/or postnatal toxicity effects of prothioconazole because:

- Developmental toxicity NOAELs and LOAELs from prenatal exposure are well characterized after oral and dermal exposure;
- The off-spring toxicity NOAELs and LOAELs from postnatal exposures are well characterized; and
- The NOAEL for the fetal effect malformed vertebral body and ribs is used for assessing acute risk of females 13 years and older and, because it is lower than the NOAELs in other developmental studies, is protective of all potential developmental effects.

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 prothioconazole is complete, including required functional immunotoxicity testing. The EPA began requiring functional immunotoxicity testing of all food and non-food use pesticides on December 26, 2007.

ii. There is an acceptable battery of neurotoxicity studies including a developmental neurotoxicity study. Although offspring neurotoxicity was found, characterized by peripheral nerve lesions in the developmental neurotoxicity studies on prothioconazole-desthio, the increase was seen only in the highest dose group at 105 mg/kg/day, was not considered treatment related, and a clear NOAEL was established for this study.

iii. Although increased susceptibility was seen in the developmental and reproduction studies, the Agency concluded that there is a low concern and no residual uncertainties for prenatal and/or postnatal toxicity effects of prothioconazole for the reasons explained in Unit III.D.2.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessment is moderately refined utilizing empirical processing factors, 100 PCT, average crop field trial residue levels, and livestock maximum residues. Results from ruminant feeding studies and poultry metabolism studies were used to determine the maximum residue levels for livestock commodities. The crop field trials were performed using maximum application rates and minimum pre-harvest intervals. Although the Agency is requiring extended confirmatory storage stability data; interim storage stability data do not indicate that residue concentrations decline and therefore the assessment should not underestimate risk from dietary exposure. EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to prothioconazole in drinking water. These assessments will not underestimate the exposure and risks posed by prothioconazole.

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.

Based on the proposed and existing crop uses for prothioconazole, dietary aggregate exposures (*i.e.,* food plus drinking water) are anticipated. There are no residential uses for prothioconazole and, therefore, no residential exposures are anticipated. Consequently, only dietary (food plus drinking water) exposures were aggregated for this assessment.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and drinking water to prothioconazole will occupy 24% of the aPAD for females 13–49 years of age, the only population group at risk for acute effects.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to prothioconazole from food and drinking water will utilize 21% of the cPAD for the general U.S. population and 62% of the cPAD for all infants <1 year old, the population group receiving the greatest exposure.

3. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies,

prothioconazole is not expected to pose a cancer risk to humans.

4. *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 prothioconazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate liquid chromatography methods with tandem mass spectrometry detection (LC/MS/MS) are 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 established MRLs for residues of desthio-prothioconazole in barley at 0.2 ppm; oats, rye, and wheat at 0.05 ppm each; in the fodder (dry) of cereal grains at 5 ppm; and in the straw (dry) of cereal grains at 4 ppm. There are currently no established Mexican MRLs for prothioconazole. Canadian MRLs have been established for prothioconazole *per se* in/on several commodities, including barley (0.35 ppm), wheat (0.07 ppm). Harmonization of the proposed tolerances with the existing Codex for prothioconazole is not possible at this time because of differences in tolerance expression and use patterns. The MRL expression for Codex is prothioconazole-desthio and is thus not compatible with the U.S. tolerance definition, the sum of prothiocoanzole and prothioconazole-desthio. EPA generally includes the parent in all residue definitions for tolerance enforcement, whereas Codex routinely excludes the parent if it is shown to be a small part of the actual total residue. Prothioconazole is a minor component of the total residue on the crops tested. Much of the Codex cereal grain supervised field trial data are from Europe, where the use pattern is different resulting in lower measured residues.

The tolerance definition for plant commodities in Canada was recently changed and is now harmonized with the U.S. residue definition. The barley tolerance of Canada agrees with the U.S. tolerance for cereal grains (except sweet corn, sorghum, and rice) of 0.35 ppm. However, the Canada tolerance for wheat is lower (0.07 ppm) than the existing U.S. group tolerance. EPA establishes crop group tolerances, as opposed to individual commodity tolerances, whenever there are adequate data for the representative commodities of that group and proposed use. There must be an acceptable range of residues over all the representative commodities. Wheat falls under this crop group practice in this case. Canada does not routinely establish animal feed commodity tolerances, and therefore there are no harmonization issues with forage, stover, hay, and straw.

C. Revisions to Petitioned-For Tolerances

The proposed rice grain tolerance level of 0.25 ppm is lower than the existing tolerance level (0.35 ppm) for grain, cereal group 15, except rice and sweet corn and sorghum. The existing cereal grain group 15 tolerance excludes rice, but the present evaluation of rice field trial data allows expansion of that group to include rice. Therefore, in this action, EPA is revising the existing cereal group to read grain, cereal group 15 (except sweet corn and sorghum). Likewise, the rice straw tolerance level is lower than the existing tolerance level (5.0 ppm) for grain, cereal, forage, fodder, and straw, group 16, except sorghum and rice straw, and therefore this crop group is being revised to include rice straw. Also, the submitted data support a tolerance of 0.90 ppm for rice hulls as determined from the rice to hull processing factor (from the rice processing study) applied to the highest average field trial residue, or 4.4×0.19 ppm, or 0.9 ppm instead of the proposed tolerance of 1.0 ppm.

V. Conclusion

Therefore, tolerances are established for residues of prothioconazole (2-[2-(1-chlorocylcopropyl)-3-(2-chlorophenyl)-2-hydroxypropyl]-1,2-dihydro-3*H*-1,2,4-triazole-3-thion) and its metabolite prothioconazole-desthio (α-(1-chlorocyclopropyl)-α-[(2-chlorophenyl)methyl]-1*H*-1,2,4-triazole-1-ethanol), in or on alfalfa, forage at 0.02 ppm; alfalfa, hay at 0.02 ppm, potato at 0.02 ppm and rice, hulls at 0.90 ppm. The existing tolerance for Grain, cereal, group 15, except sweet corn, sorghum, and rice is changed to Grain, cereal, group 15, except sweet corn and sorghum and the existing tolerance for Grain, cereal, forage, fodder and straw, group 16, except sorghum and rice; straw is changed to Grain, cereal, forage, fodder and straw, group 16, except sorghum, straw.

Further, seed treatment uses on soybean, dried shelled pea and bean (except soybean) subgroup 6C and rice are covered by existing and currently established tolerances for these commodities.

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 (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).

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: September 26, 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 180.626 is amended by revising the table in paragraph (a)(1) to read as follows:

§ 180.626 Prothioconazole; tolerances for residues.

(a) * * * (1) * * *

Commodity	Parts per million
Alfalfa, forage	0.02
Alfalfa, hay	0.02
Beet, sugar, roots	0.25
Corn, sweet kernel plus cob with husks removed	0.04
Grain, aspirated grain fractions	11
Grain, cereal, forage, fodder and straw, group 16, except sorghum, and rice; forage	8.0
Grain, cereal, forage, fodder and straw, group 16, except sorghum, and rice; hay	7.0
Grain, cereal, forage, fodder and straw, group 16, except sorghum, and rice; stover	10
Grain, cereal, forage, fodder and straw, group 16, except sorghum, straw	5.0
Grain, cereal, group 15, except sweet corn and sorghum	0.35
Pea and bean, dried shelled, except soybean, subgroup 6C	0.9
Peanut	0.02
Potato	0.02
Rapeseed, seed	0.15
Rice, hulls	0.90
Soybean, forage	4.5
Soybean, hay	17
Soybean, seed	0.15

* * * * *

[FR Doc. 2011–25704 Filed 10–4–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0906; FRL–8874–6]

Isopyrazam; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of isopyrazam in or on banana. Syngenta Crop Protection, Inc., requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective October 5, 2011. Objections and requests for hearings must be received on or before December 5, 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–2009–0906. 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: Shaunta Hill, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 347–8961; *e-mail address: hill.shaunta@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–2009–0906 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 December 5, 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–2009–0906, 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 February 4, 2010 (75 FR 5790) (FRL–8807–5), 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 9E7606) by Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300. The petition requested that 40 CFR part 180 be amended by establishing a tolerance for residues of the fungicide isopyrazam, in or on banana at 0.05 ppm parts per million (ppm). That notice referenced a summary of the petition prepared by Syngenta Crop Protection, 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.

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 isopyrazam including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with isopyrazam 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. Isopyrazam is of low acute toxicity by the oral, dermal and inhalation routes, and is not a skin or eye irritant. The primary target organ for isopyrazam toxicity is the liver based on subchronic and chronic oral studies in the rat, mouse rabbit and dog. The principal effects observed in these studies are increased organ weight and centrilobular hepatocyte hypertrophy. Liver toxicity is usually accompanied by reductions in body weight and food consumption. Isopyrazam does not cause reproductive toxicity. Developmental effects (eye abnormalities) were observed in the absence of maternal toxicity in two range finding developmental toxicity studies in rabbits providing some evidence of sensitivity/susceptibility following pre- and/or postnatal exposure. Developmental studies in rats produced developmental effects but only at doses that were also maternally toxic. Acute and subchronic oral neurotoxicity studies in rats show no evidence of neurotoxicity. Effects characteristic of neurotoxicity (side-to-side head wobble, ataxia, reduced stability) were observed on day 2 in one subchronic oral study in dogs and at week 4 in a second subchronic dog study. These effects were not observed in the chronic dog study. However, EPA concluded for the following reasons that it is unlikely that there was a neurotoxic basis for these effects. First, the effects were seen only in a study not specifically conducted to identify neurotoxic potential and where detailed clinical and histopathological analyses for neurotoxic effects were not performed whereas isopyrazam showed no evidence of neurotoxicity in the available acute and subchronic neurotoxicity studies. Second, isopyrazam is not structurally similar to known neurotoxicants or neurotoxic classes of chemicals. Finally, its pesticidal mode of action does not demonstrate potential for neurotoxicity. Based on these findings, a developmental neurotoxicity study for isopyrazam is not required.

There is no evidence of immunotoxicity based on a 28-day dietary immunotoxicity study in rats. The lowest observed adverse effect level

(LOAEL) for immunotoxicity was not identified and the no observed adverse effect level (NOAEL) for immunotoxicity is 1,356 milligrams/kilograms (mg/kg). The study NOAEL was 127 mg/kg/day, based on transient body weight loss and high liver weights at both 608 and 1,356 mg/kg/day. The toxicology database for isopyrazam does not show any evidence of treatment-related effects on the immune system. The overall weight of evidence suggests that this chemical does not directly target the immune system.

Isopyrazam is classified as ''Likely to be Carcinogenic to Humans'' based on tumors in male and female rats. Specific information on the studies received and the nature of the adverse effects caused by isopyrazam as well as the NOAEL and the LOAEL from the toxicity studies can be found at *http://www.regulations.gov* in document ''Isopyrazam Human Health Risk Assessment for the Establishment of a Tolerance for isopyrazam (SYN52043) Fungicide in/on Imported Banana,'' on pp. 8–12 in docket ID number EPA–HQ–OPP–2009–0906.

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 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.*

PODs for incidental oral, dermal and inhalation exposure are not needed to assess risk for the requested tolerance on bananas because use of isopyrazam will only lead to dietary exposure, and have therefore not been selected for this risk assessment.

The acute POD of 30 mg/kg/day (NOAEL) was selected based on the NOAEL from a subchronic toxicity study in dogs. In that study, clinical signs of toxicity (side-to-side head wobble) were observed beginning on day 2 and continuing throughout the study in 1 of 4 male dogs at the LOAEL of 100 mg/kg/day. Transient clinical signs (side-to-side head wobble, ataxia, reduced stability) were also observed at 300 mg/kg/day in 3 of 4 male dogs on days 2 and 3 only. An uncertainty factor of 100x (10x to account for interspecies extrapolation and 10x for intraspecies variation) was applied to the NOAEL to obtain an aRfD of 0.30 mg/kg/day. This endpoint is considered to occur following a single dose and is applicable to the population of concern (general population, including infants and children). It is considered to be a very conservative endpoint since it is based on observations in 1/4 dogs and these acute clinical signs were not reproduced in a second 90-day study in dogs or in the chronic dog study. This endpoint is also protective of the effects seen at the limit dose (2,000 mg/kg/day) in the acute neurotoxicity study in rats (decreased rearing and locomotor activity) and the developmental effect (bilateral microphthalmia) in the developmental rabbit studies (at doses ≥400 mg/kg/day). Therefore, a separate acute dietary endpoint for females of reproductive age is not necessary. As discussed in this unit, EPA has reduced the Food Quality Protection Act (FQPA) Safety Factor (SF) to 1x, and thus the acute Population Adjusted Dose (aPAD) is equivalent to the acute Reference Dose (aRfD).

The chronic POD of 5.5 mg/kg/day was selected based on the NOAEL in a chronic toxicity/carcinogenicity feeding study in rats. The LOAEL in that study was 27.6 mg/kg/day based on decreased body weight and body weight gain in females; increased incidences of hepatocellular hypertrophy, pigment in centrilobular hepatocytes, eosinophilic foci of altered hepatocytes, vacuolation of centrilobular hepatocytes, bile duct hyperplasia, and bile duct fibrosis in both sexes; and brown pigment in the kidney in females. An uncertainty factor of 100x (10x to account for interspecies extrapolation and 10x for intraspecies variation) was applied to the dose to obtain the chronic reference dose (cRfD) of 0.055 mg/kg/day. As discussed in this unit, EPA has reduced the FQPA SF to 1x, and thus, the chronic population adjusted dose (cPAD) is equivalent to the cRfD.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to isopyrazam, EPA considered exposure under the petitioned-for tolerances. EPA assessed dietary exposures from isopyrazam 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.

A conservative acute dietary (food only) exposure analysis was performed for the general U.S. population and various population subgroups. Tolerance level residues and 100 percent crop treated (PCT) assumptions were used. Dietary Exposure Evaluation Model (DEEM) default processing factors were used for processed commodities, since separate tolerances are not considered necessary for processed banana commodities.

ii. Chronic *exposure.* Conservative chronic and cancer dietary (food only) exposure analyses were performed for the general U.S. population and various population subgroups. Tolerance level residues and 100 PCT assumptions were used. DEEM default and empirical processing factors were used for banana processed commodities, since separate tolerances for these commodities were not considered necessary.

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 isopyrazam should be classified as ''Likely to be Carcinogenic to Humans''.

A linear quantification of carcinogenic potential was required for isopyrazam based on rat tumors. A cancer slope factor or Q1* of 0.00629 $(mg/kg/day)^{-1}$ was calculated based on

an increase in liver adenomas and/or carcinomas in female rats. The resulting cancer aggregate (food) exposure estimate was less than the level of concern. Cancer risk was 1.3×10^{-7} for the general U.S. population. Cancer risk was quantified using the same estimates as discussed in Unit III.C.1.ii.

2. *Dietary exposure from drinking water.* An assessment of residues in drinking water is not needed because there is no drinking water exposure associated with the establishment of a tolerance on imported crops.

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). Isopyrazam 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 isopyrazam to share a common mechanism of toxicity with any other substances, and isopyrazam does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that isopyrazam 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.* There is some evidence for increased susceptibility following pre- and or postnatal exposures based on effects seen in range finding developmental toxicity studies in rabbits. Developmental effects (eye abnormalities) were observed in two preliminary developmental studies in Himalayan rabbits in the absence of maternal toxicity. These effects occurred at relatively high doses (200–400 mg/kg/day). There was no evidence of increased susceptibility in the main study in New Zealand white rabbits. In range finding and definitive developmental toxicity studies in rats, neither quantitative nor qualitative evidence of increased susceptibility of fetuses to *in utero* exposure to isopyrazam was observed. There was no evidence of increased susceptibility in a 2-generation reproduction study following pre- or postnatal exposure to isopyrazam. There is no evidence of neuropathology or abnormalities in the development of the fetal nervous system from the available toxicity studies conducted with isopyrazam. Clear NOAELs/LOAELs were established for the developmental effects seen in rats and rabbits as well as for the offspring effects seen in the 2-generation reproduction study and a dose-response relationship for the effects of concern is well characterized. The dose used for the acute dietary risk assessment (30 mg/kg/day), based on effects seen in the subchronic dog study, is protective of the developmental and offspring effects seen in rabbits at 200–400 mg/kg/day. Based on these considerations, there are no residual uncertainties for pre-and/or postnatal susceptibility.

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 isopyrazam is complete and adequate for assessing increased susceptibility under FQPA;

ii. There is no indication of increased susceptibility of fetuses to *in utero* and/or postnatal exposure in the developmental and reproductive toxicity studies in rats;

There is some evidence for increased susceptibility following pre- and or postnatal exposures based on effects seen in range finding developmental toxicity studies in rabbits. However, based on the discussion above, EPA has concluded that there are no residual uncertainties for pre-and/or postnatal susceptibility.

iii. The dietary risk assessment is based on parent plus metabolite residues in/on banana, and will not underestimate dietary exposure to isopyrazam. For the acute, chronic and cancer dietary analyses, tolerance level residues of parent plus metabolite and 100 PCT assumptions were used for all treated commodities. There are no residual uncertainties identified in the exposure databases.

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 margin of exposure (MOE) exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to isopyrazam will occupy less than 1% of the aPAD for all populations.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to isopyrazam from food will utilize less than 1% of the cPAD for all populations receiving the greatest exposure. There are no residential uses for isopyrazam.

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). Isopyrazam is not registered in the U.S. Short-term risk is assessed based on short-term residential exposure plus chronic dietary exposure. Because there is no short-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-term risk), no further assessment of short-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short-term risk for isopyrazam.

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). Isopyrazam is not registered in the U.S. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no 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 intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for isopyrazam.

5. *Aggregate cancer risk for U.S. population.* The Cancer Assessment Review Committee (CARC) classified isopyrazam as Likely to be Carcinogenic to Humans. This classification was based on the presence of thyroid follicular cell tumors in male rats, and liver and uterine tumors in female rats at doses that were adequate to evaluate the carcinogenic potential of isopyrazam. No treatment-related tumors were seen in mice. There is no mutagenic concern for isopyrazam.

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 isopyrazam residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (Method GRM006.01B) 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 isopyrazam on banana.

V. Conclusion

Therefore, a tolerance is established for residues of isopyrazam, in or on banana at 0.05 ppm.

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 (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).

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: September 27, 2011.

Steven Bradbury,

Director, 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 180.654 is added to read as follows:

§ 180.654 Isopyrazam; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide isopyrazam, including its metabolites and degradates, in or on the commodity

listed below. Compliance with the tolerance levels specified below is to be determined by measuring only isopyrazam, 3-difluoromethyl-1-methyl-1H-pyrazole-4-carboxylic acid (9-isopropyl-1,2,3,4-tetrahydro-1,4-methano-naphthalen-5-yl)-amide, in or on the following commodity.

Commodity	Parts per million
Banana[1]	0.05

[1] There is no U.S. registration for use of isopyrazam on banana.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 2011–25707 Filed 10–4–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Parts 18 and 19

RIN 2105–AD60

Grants and Cooperative Agreements to State and Local Governments: DOT Amendments on Regulations on Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations

AGENCY: Department of Transportation (DOT), Office of the Secretary (OST).

ACTION: Final rule.

SUMMARY: The Department of Transportation (DOT) is adopting a public proposal on Grants and Cooperative Agreements to State and Local Governments; Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations. The rule amends Department of Transportation regulations on uniform administrative requirements for grants and agreements with Institutions of Higher Education, Hospitals and other Non-profit Organizations. Specifically, the DOT is making requirements for these grants and agreements consistent with the uniform administrative requirements for grants and cooperative agreements to State and Local governments. In addition, this rule updates references to applicable cost principles for grants and cooperative agreements with State and Local Governments that appear in current Department of Transportation regulations.

DATES: This rule is effective November 4, 2011.

FOR FURTHER INFORMATION CONTACT: Ellen Shields, Office of the Senior Procurement Executive, Office of Administration (M–61), (202) 366–4268, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

Background

Regulations governing two types of U.S. Department of Transportation grant and cooperative agreements recipients are found in Parts 18 and 19 of Title 49 of the Code of Federal Regulations:

1. *49 CFR part 18:* Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

2. *49 CFR part 19:* Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.

Both of these parts contain a provision that governs allowable costs. However, 49 CFR 18.22 imposes specific limitations on the use of grant funds while 49 CFR 19.27 merely lists cost principles applicable to each kind of grant and agreement recipient. Specifically, under 49 CFR 18.22(a), grant funds may only be used for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

Public comments on this matter were solicited in a **Federal Register** notice dated May 2, 2008. Only one comment was received, from Robert Taylor, regarding the Office of Management and Budget (OMB) cost principle circulars as well as revisions prohibiting the payment of profit or fee to grantees and subgrantee covered by 49 CFR part 19. This comment did not pertain to the content of the proposed rule. Therefore, we are adopting the proposed rule without change.

This rule imposes the same limitation on the use of funds used for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations as there are on the use of funds used for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

In addition, this rule updates references to applicable cost principles for grants and cooperative agreements with State and Local Governments that appear in 49 CFR 18.22(b) and include comparable updates references in 49 CFR 19.27(b). These updated references are necessary in light of the establishment of title 2 of the Code of Federal Regulations in 2004. Subtitle A of title 2 of the Code of Federal Regulations consists of government-wide guidance from the Office of Management and Budget (OMB) to Federal agencies for grants and other financial assistance and nonprocurement agreements that previously had been contained in seven separate OMB circulars and other OMB policy documents. Currently, 49 CFR 18.22(b) references three specific OMB circulars that are now codified in several Parts in chapter II, subtitle A of title 2 of the Code of Federal Regulations. This rule amends 49 CFR 18.22(b) by replacing the citations to these former OMB circulars with the appropriate references in title 2 of the Code of Federal Regulations and would reflect these same changes in 49 CFR 19.27(b).

The rule also makes minor referencing revisions to the Office of Management and Budget (OMB) cost principle circulars and, consistent with OMB materials, revises prohibitions on payment of profit or fee to grantees and subgrantees covered by 49 CFR part 19. The revised referencing is needed as the OMB cost circulars have been published in Title II of the Code of Federal Regulations since August 2005. However, these OMB circulars are only published as guidance (see 2 CFR 1.105(a)). Also, the OMB circular number has been retained in the title of each circular, for example, 2 CFR part 225, Cost Principles for State and Local Governments (OMB Circular A–87).

The title for the CFR part 19, which includes the OMB Circular number in the title, is included in the reference for all three cost principles. In addition, this makes the formatting of all titles in 49 CFR sections 18.22 and 18.27 consistent.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The DOT has determined that this document does not constitute a significant rule within the meaning of Executive Order 12866 or within the meaning of Department of Transportation regulatory policies and procedures. DOT anticipates that the

economic impact of this rule will be minimal because the effect of the rule is simply to make similar provisions consistent with each other. These changes do not adversely affect, in a material way, any sector of the economy. In addition, the change does not interfere with any action taken or planned by another agency and does not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 60l–612) the Department has evaluated the effects of this proposed action on small entities. This ruledoes not have any economic effects, let alone significant effects, on anyone. This rulemaking establishes the same limitation on the use of funds for both Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations and Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. The amendment does not change or limit the potential eligibility of any small entity. For these reasons, the DOT certifies that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). Indeed, it does not impose any mandates. This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism Assessment)

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the DOT has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism assessment. The DOT has also determined that this rule does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number [Insert number], [Insert Program Name]. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities [apply/do not apply] to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The DOT has determined that this rule does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The agency has analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and has determined that this rule does not have any effect on the quality of the environment.

List of Subjects in 49 CFR Parts 18 and 29

Administrative practice and procedure, Grant programs, Allowable costs, Cooperative agreements.

Issued this 21st day of September 2011, at Washington, DC.

Ray LaHood,

Secretary of Transportation.

In consideration of the foregoing, the DOT amends, title 49, Code of Federal Regulations, Parts 18 and 19, as set forth below:

PART 18—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

■ 1. The authority citation for 49 CFR part 18 continues to read as follows.

Authority: 49 U.S.C. 322(a).

■ 2. In § 18.22, revise the table in paragraph (b) to read as follows:

§ 18.22 Allowable costs.

* * * * *

(b) * * *

For the costs of a	Use the principles in—
State, local or federal-recognized Indian tribal government	2 CFR part 225.
Private nonprofit organization other than an (1) Institution of higher education, (2) hospital, or (3) organization named in 2 CFR part 230, Appendix C, as not subject to that part.	2 CFR part 230.
Institutions of Higher Education	2 CFR part 220.
For-profit organizations other than a hospital, commercial organization or a non-profit organization listed in 2 CFR part 230, Appendix C, as not subject to that part.	48 CFR part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

PART 19—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

■ 3. The authority citation for 49 CFR part 19 continues to read as follows:

Authority: 49 U.S.C. 322(a).

■ 4. Revise § 19.27 to read as follows:

§ 19.27 Allowable Costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined according to the cost principles applicable to the entity organization incurring the costs. The following chart lists the kinds of organization and the applicable cost principles:

For the costs of a	Use the principles in—
State, local or federal-recognized Indian tribal government	2 CFR part 225.
Private nonprofit organization other than an (1) Institution of higher education, (2) hospital, or (3) organization named in 2 CFR part 230, Appendix C, as not subject to that circular.	2 CFR part 230.
Institutions of Higher Education	2 CFR part 220.
Hospitals	45 CFR part 74, Appendix E, ''Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals.''
For-profit organizations other than a hospital, commercial organization or a non-profit organization listed in 2 CFR part 230, Appendix C, as not subject to that part.	48 CFR part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

[FR Doc. 2011–25416 Filed 10–4–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2008–0079; 92210–1117–0000–FY08–B4]

RIN 1018–AW84

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Marbled Murrelet

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are revising designated critical habitat for marbled murrelet (*Brachyramphus marmoratus marmoratus*) pursuant to the Endangered Species Act of 1973, as amended (Act). On May 24, 1996, we designated 3,887,800 ac (ac) (1,573,340 hectares (ha)) as critical habitat for the marbled murrelet in Washington, Oregon, and California. We are revising the designated critical habitat for the marbled murrelet by removing approximately 189,671 ac (76,757 ha) in northern California and southern Oregon from the 1996 designation, based on new information indicating that these areas do not meet the definition of critical habitat. The areas being removed from the 1996 designation in northern California are within Inland Zone 2, where we have no historical or current survey records documenting marbled murrelet presence. Intensive surveys in southern Oregon indicate the inland distribution of the marbled murrelet is strongly associated with the hemlock/tanoak habitat zone, rather than distance from the coast. Accordingly, the areas being removed in southern Oregon are limited to those areas not associated with the hemlock/tanoak zone. The areas being removed are not considered essential for the conservation of the species. Approximately 3,698,100 ac (1,497,000 ha) of critical habitat is now designated for the marbled murrelet. In this rule, we are also finalizing the taxonomic revision of the scientific name of the marbled murrelet from *Brachyramphus marmoratus marmoratus* to *Brachyramphus marmoratus.*

DATES: This rule becomes effective on November 4, 2011.

ADDRESSES: The final rule and map of critical habitat will be available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/wafwo/.* Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available at *http://www.regulations.gov* or for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive SE, Suite 102, Lacey, WA 98503–1273, telephone 360–753–9440, facsimile 360–753–9008.

FOR FURTHER INFORMATION CONTACT: Ken Berg, Field Supervisor, U.S. Fish and Wildlife Service, at the above address, (telephone 360–753–9440, facsimile 360–753–9008); Paul Henson, Field Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266, telephone 503–231–6179, facsimile 503–231–6195; or Nancy Finley, Field Supervisor, U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, CA 95521, telephone 707–822–7201, facsimile 707–822–8411. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

A final rule designating critical habitat for the marbled murrelet was published in the **Federal Register** on May 24, 1996 (61 FR 26256), and is available under the ''Supporting Documents'' section for this docket in the Federal eRulemaking Portal: *http://www.regulations.gov* at Docket Number FWS–R1–ES–2008–0079. It is our intent to discuss only those topics directly relevant to the revised designation of critical habitat for the marbled murrelet in this final rule.

Species Description, Life History, Distribution, Ecology, and Habitat

The marbled murrelet is a small seabird of the Alcidae family. The marbled murrelet's breeding range extends from Bristol Bay, Alaska, south to the Aleutian Archipelago; northeast to Cook Inlet, Kodiak Island, Kenai Peninsula, and Prince William Sound; south along the coast through the Alexander Archipelago of Alaska, British Columbia, Washington, and Oregon; to northern Monterey Bay in central California. Birds winter throughout the breeding range and occur in small numbers off southern California. Marbled murrelets spend most of their lives in the marine environment where they forage in near-shore areas and consume a diversity of prey species, including small fish and invertebrates. In their terrestrial environment, the presence of platforms (large branches or deformities) used for nesting in trees is the most important characteristic of their nesting habitat. Marbled murrelet habitat use during the breeding season is positively associated with the presence and abundance of mature and old-growth forests, large core areas of old-growth, low amounts of edge habitat, reduced habitat fragmentation, proximity to the marine environment, and forests that are increasing in stand age and height.

Taxonomy

Two subspecies of the marbled murrelet were previously recognized, the North American murrelet (*Brachyramphus marmoratus marmoratus*) and the Asiatic murrelet (*B. marmoratus perdix*). New published information suggests that the Asiatic murrelet is a distinct species (Friesen *et*

al. 1996, 2005), and the American Ornithologists' Union officially recognized the long-billed murrelet (*B. perdix*) and the marbled murrelet (*B. marmoratus*) as distinct species in the ''Forty-first Supplement to the Checklist of North American Birds'' (American Ornithologists' Union 1997). Therefore, in this rule we are revising 50 CFR 17.11 to adopt the taxonomic clarification for the marbled murrelet to reflect the change from *Brachyramphus marmoratus marmoratus* to *Brachyramphus marmoratus.*

Previous Federal Actions

For additional information on previous Federal actions concerning the marbled murrelet, refer to the final listing rule published in the **Federal Register** on October 1, 1992 (57 FR 45328), the final rule designating critical habitat published in the **Federal Register** on May 24, 1996 (61 FR 26256), and the proposed rule published in the **Federal Register** on July 31, 2008 (73 FR 44678). In the 1996 final critical habitat rule, we designated 3,887,800 ac (1,573,340 ha) of critical habitat in 32 units on Federal and non-Federal lands. On September 24, 1997, we completed a Recovery Plan for the marbled murrelet in Washington, Oregon, and California (Service 1997). On January 13, 2003, we entered into a settlement agreement with the American Forest Resource Council and the Western Council of Industrial Workers, whereby we agreed to review the marbled murrelet critical habitat designation and make any revisions deemed appropriate after a revised consideration of economic and any other relevant impacts of designation. On April 21, 2003, we published a notice initiating a 5-year review of the marbled murrelet (68 FR 19569), and published a second information request for the 5-year review on July 25, 2003 (68 FR 44093). The 5-year review evaluation report was finished in March 2004 (McShane *et al.* 2004), and the 5-year review was completed on August 31, 2004.

On September 12, 2006, we published a proposed revision to critical habitat for the marbled murrelet, which included adjustments to the original designation and proposed several exclusions under section 4(b)(2) of the Act (71 FR 53838). On June 26, 2007, we published a notice of availability of a draft economic analysis (72 FR 35025) related to the September 12, 2006, proposed critical habitat revision (71 FR 53838). On March 6, 2008, we published a notice in the **Federal Register** (73 FR 12067) stating that the critical habitat for marbled murrelet should not be revised due to uncertainties regarding Bureau of Land Management (BLM) revisions to its District Resource Management Plans in western Oregon, and this notice fulfilled our obligations under the settlement agreement.

On July 31, 2008, we published a proposed rule to revise currently designated critical habitat for the marbled murrelet by removing approximately 254,070 acres (ac) (102,820 hectares (ha)) in northern California and Oregon from the 1996 designation (73 FR 44678). A revised 5-year review was completed on June 12, 2009. On January 21, 2010, in response to a petition to delist the marbled murrelet, we published a notice in the **Federal Register** (75 FR 3424) determining that removing the murrelet from the Endangered Species List was not warranted. We also found that the Washington/Oregon/California population of the murrelet is a valid distinct population segment (DPS) in accordance with the discreteness and significance criteria in our 1996 DPS policy (61 FR 4722; February 7, 1996) and concluded that the species continues to meet the definition of a threatened species under the ESA.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed revised designation of critical habitat for the marbled murrelet in a proposed rule published on July 31, 2008 (73 FR 44678). During the comment period, which closed on August 30, 2008, we received 42 comments from organizations or individuals directly addressing the proposed critical habitat designation. Through template campaigns sponsored by The Wildlife Society and Conservation Northwest, we received an additional 2,825 comments.

The comment period was reopened on February 11, 2009 (74 FR 6852), and closed on March 13, 2009, during which we received 14 comments, which included 4 peer reviewers, 1 Federal agency, and 9 organizations or individuals. Nearly all commenters opposed the revision or reduction of some aspects of the designation of critical habitat for the marbled murrelet.

Several comments we received were outside the scope of the proposed rule, which was limited to (1) The proposed removal of approximately 191,000 ac (77,295 ha) of critical habitat in northern California and southern Oregon based on the very low likelihood of marbled murrelet occurrence as is discussed in further detail below; (2) the proposed removal of approximately 63,000 ac (25,495 ha) of critical habitat in Douglas and Lane Counties, Oregon, that were designated farther than 35 miles inland, based on criteria identified in the 1997 Recovery Plan for the Marbled Murrelet (Washington, Oregon, and California Populations); and (3) the proposed taxonomic revision of the scientific name of the marbled murrelet. Examples of comments outside of the scope of the proposed rule included:

(a) Requests that we remove approximately 1,840 ac (744.6 ha) of existing critical habitat designated at Naval Radio Station Jim Creek in Washington pursuant to section 4(a)(3)(B)(i) of the Act;

(b) Requests that we designate additional critical habitat in certain areas (*e.g.,* southwestern Washington, northwestern Oregon, Olympic Adaptive Management Area, Siskiyou and Six Rivers National Forests, Redwood National Park, and other areas);

(c) Requests that we designate marine areas as critical habitat;

(d) Claims of inconsistency with statutory requirements (*e.g.,* occupancy at the time of listing, definition of occupied habitat, reliance on 1996 primary constituent elements (PCEs));

(e) Disagreement with the suitable marbled murrelet habitat acreage estimates in Oregon, Washington, and California;

(f) Recommendations to exclude critical habitat from all Federal lands including Wilderness areas and Congressionally withdrawn lands in general based on the conservation adequacy of existing management plans;

(g) Requests for the exclusion of Federal lands in northern California based on approved management plans;

(h) Requests that we eliminate overlapping protections for Wilderness Designations and Congressional Withdrawal areas in northern California; and

(i) Requests that we update land status records related to critical habitat boundaries.

These comments are beyond the scope of the proposed rule, and some would require separate rulemaking to be considered. Accordingly, we have not specifically responded to these comments in this final rule.

Comments within the scope of the proposed rule have been addressed in the following summary and have been incorporated into the final rule as appropriate. We did not receive any requests for a public hearing.

Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994, (59 FR 34270), we solicited

opinions from nine knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from four of the peer reviewers who were solicited. We reviewed all comments received from the peer reviewers for substantive issues and new information regarding murrelet critical habitat. We have addressed peer review comments in the following summary and have incorporated them into this final rule as appropriate.

Several comments refer to inland zone 1 and inland zone 2, which are based on the Forest Ecosystem Management Assessment Team (FEMAT) murrelet zone lines. For clarification, inland zone 1 extends 10–40 miles (mi) (16–64 kilometers (km)) inland from the marine environment, depending on the particular geographic area involved. The majority of murrelet occupied sites and sightings occur in this zone. Inland zone 2 includes areas further inland from the eastern boundary of inland zone 1, and is characterized by relatively low numbers of murrelet sightings, which is partially a function of few inventories. Specific distances for inland zone 2 vary by geographic area (Thomas *et al.* 1993 (FEMAT), pp. IV–23–24).

Peer Reviewer Comments

Comment 1: Each of the four peer reviewers concurred with the proposed reclassification of the marbled murrelet to full species status. They stated the reclassification of the marbled murrelet to full species status is supported by the literature, and that the American Ornithologists' Union (the authoritative source for taxonomy and nomenclature of birds in North America) recognizes the marbled murrelet as a distinct species.

Our Response: We agree and note there is no disagreement in the literature or by the experts on the reclassification of marbled murrelet to full species status. We are finalizing the taxonomic revision of the scientific name of the marbled murrelet from *Brachyramphus marmoratus marmoratus* to *Brachyramphus marmoratus* in this rule.

Comment 2: One reviewer stated that the surveys used to determine occupancy in the areas proposed for revision were conducted under earlier survey protocols requiring fewer visits than the currently recognized protocol (Mack *et al.* 2003, pp. 12–16). Accordingly, the results contain a level of uncertainty that, although not egregious, should be recognized before a final decision is made. In areas of low detections it is difficult for audio/visual surveys to detect single birds, whereas the current protocol may have detected additional murrelets.

Our Response: The 2003 Marbled Murrelet Inland Survey Protocol (Mack *et al.* 2003) recommends five survey visits in each of 2 years to determine occupancy with an 85.3 percent probability of detecting occupancy in a given year. The 2-year intensive survey protocol accounts for years where breeding effort is low, resulting in fewer or no detections in otherwise occupied stands (Mack *et al.* 2003, p. 13). The probability of detecting occupancy decreases from 85.3 percent to 79.2 percent in any given year when conducting one less site visit per year, which increases the level of uncertainty associated with the survey results by approximately 6.1 percent (Mack *et al.* 2003, p.13). The studies we relied on in the areas proposed for revision in California, Hunter *et al.* (1998) and Schmidt *et al.* (2000), reported on surveys conducted across large landscapes in northern California's inland zone 2, using the Ralph *et al.* (1994) murrelet survey protocol. This protocol recommended only four survey visits in each of 2 years to determine occupancy. We acknowledge the studies we relied on used a survey protocol requiring fewer visits than is the current standard. However, given the large combined number of surveys (2,218) conducted in these studies, the additional/associated project-level surveys that have occurred since with no detections, the absence of historical records of murrelet presence in inland zone 2 in California based on U.S. Forest Service (USFS) and BLM records, and the apparent climatic differences between inland zone 2 areas and the closest known occupied murrelet sites within inland zone 1, we conclude from the best available scientific information that there is a very low likelihood of murrelet occupancy within inland zone 2 in California.

In southern Oregon, Federal agencies undertook a comparable evaluation of the probability of marbled murrelet inland habitat use as forest types shift from the hemlock/tanoak vegetation zone to the mixed-conifer/evergreen vegetation zone (Alegria *et al.* 2002, pp. 1–44). This evaluation was based on survey results from the Medford District BLM, and the Siskiyou and Rogue River National Forests from 1988 to 2001 that documented the inland distribution of marbled murrelets to be strongly associated with the hemlock/tanoak habitat zone, which ranges from 13 to 37 mi (20.9 to 59.5 km) inland from the Pacific Ocean. The distribution of survey sites with murrelet presence or occupancy occur farther inland where the hemlock/tanoak zone extends farther inland, which suggests that forest type influences murrelet occurrence, rather than absolute distance from the coast (Alegria *et al.* 2002, p. 15).

For the purposes of the analysis, marbled murrelet survey areas were categorized as western hemlock-tanoak (the primary range of the marbled murrelet), a 6.5-mile transition zone east of the primary range, and the far inland zones. The statistical modeling evaluated the hypothesis that marbled murrelets would be present on no more than 3 percent (95 percent confidence) of the habitat in the far inland zones. The final analyses concluded, with 95 percent confidence, that an even smaller proportion (1.2 percent) of the landscape may have murrelet presence that was not actually detected. The analysis of 9,795 survey visits suggests that murrelets are not present in more than 98 percent of the sampled units in the far inland zones (Alegria *et al.,* 2002, pp. 13–15). Only one distant auditory detection in 4,634 survey visits occurred within the area more than 6.5 mi (10.4 km) inland of the hemlock/tanoak vegetation type (Alegria *et al.,* 2002, p. 16). Accordingly, our interpretation of the most recent data supports a determination that, in southern Oregon, murrelet use is strongly associated with tanoak/hemlock forest, rather than a 35 miles (56 kilometers) distance from the Pacific Ocean. The 35-mile (56-km) distance identified in the 1997 Marbled Murrelet Recovery Plan was based on the best available information before the Service at that time. Therefore, based on the best available scientific information, we conclude that there is a very low likelihood of murrelet occurrence in the area we are removing from critical habitat designation in southern Oregon, and, accordingly, impacts to the species in this area would be negligible.

Comment 3: One reviewer asked if radar studies were conducted and if so, suggested that we document the results.

Our Response: We are unaware of any ornithological radar surveys conducted in or near the areas proposed for revision in Oregon. In California, Schmidt *et al.* (2000), used ornithological radar instruments to survey for murrelets at three sites beyond their study area where murrelets had been previously detected far inland. These sites include Onion Mountain and Notice Creek within the eastern portion of inland zone 1, and Indian Creek within inland zone 2. However, murrelets were detected only at the Notice Creek site using this method.

Previous audio-visual detections at Indian Creek have not been validated using either audio-visual surveys or ornithological radar. Cooper and Blaha (2005, 2006) used ornithological radar to survey five sites along Pine Creek on the western boundary of the Hoopa Valley Indian Reservation in California (inland zone 1), to confirm murrelet presence that had been documented in previous audio-visual surveys. Marbled murrelets were detected at two of the sites, approximately 7 miles west of the inland zone 2 boundary. Although the number of ornithological radar surveys in California in or near inland zone 2 is limited, the available data are consistent with the results of other surveys. Those surveys failed to detect murrelet presence within inland zone 2 or the easternmost portion of inland zone 1.

Comment 4: Two of the four reviewers who commented on the proposed removal of critical habitat in Douglas and Lane Counties in Oregon considered the rationale behind the revisions to be unsupported by the literature or information presented in the proposed rule. One reviewer suggested that a more thorough analysis of existing surveys be conducted before revising the inland boundary of critical habitat in these areas. Another reviewer requested more documentation that a majority of occupied sites occur within inland zone 1, and recommended that the critical habitat designation in Douglas and Lane Counties in Oregon not be revised until all of the existing data are thoroughly analyzed and additional systematic surveys have been conducted.

Our Response: Based on peer review and public comments, we have concluded that the proposed revision of critical habitat in Douglas and Lane Counties, Oregon, is not adequately supported by the literature and that currently available scientific information is inadequate to support a revision of critical habitat in this area. Accordingly, critical habitat in Lane and Douglas Counties, Oregon, remains designated as critical habitat, based on the best available scientific information.

Comment 5: One peer reviewer questioned whether the areas proposed for removal are within or outside of the currently occupied area, and stated that the failure to detect murrelets does not mean that they do not use an area, given the difficulty of surveying this secretive species.

Our Response: See response to peer reviewer Comment 2. Based on the detailed statistical analysis of the survey data, and the similarity of the areas not surveyed to the areas surveyed immediately to the north and south, there is low likelihood that murrelets occupy the areas proposed for removal from critical habitat designation in southern Oregon and northern California.

Comment 6: One reviewer pointed out that the habitat proposed for removal from critical habitat designation may act as a buffer of sorts for currently occupied habitat, particularly where it abuts the eastern edge of obviously occupied habitat. Increases in timber harvest or recreation in these areas would potentially bring edge effects (especially increased numbers of nest predators) closer to occupied habitat, and may reduce the suitability of the currently occupied habitat. The reviewer stated that maintenance of a buffer is essential to the conservation of murrelets in currently occupied habitat.

Our Response: In northern California, critical habitat remains designated over an area that ranges from 15 mi (24 km) to 20 mi (32 km) wide, between the west side of inland zone 1 within the redwood vegetation type (which contains more than 95 percent of the known occupied murrelet sites), and the revised eastern boundary of inland zone 1 within the Douglas-fir/tanoak vegetation type. In southern Oregon, critical habitat remains designated within a 6.5-mi-wide (10.5-km-wide) area between large amounts of known occupied murrelet habitat within the hemlock/tanoak vegetation type west of inland zone 1, and the break in vegetation to the mixed-conifer/evergreen vegetation type to the east. On a large landscape scale, these areas are generally managed to protect the PCEs of murrelet critical habitat (see Primary Constituent Elements below), although they have not been intensively surveyed. As a result, there is a significant distance between the eastern-most known occupied murrelet sites and the areas being removed from critical habitat designation in northern California and southern Oregon. These areas, while not ''buffers,'' may help maintain the suitability of known nesting habitat by decreasing the potential for indirect impacts related to timber harvest activities or increased predation.

Comment 7: One reviewer stated that it is essential to conserve a wide range of habitat to increase the chances that a species will be able to adapt to dynamic changes in the habitat. In his view, the areas proposed for removal from critical habitat represent small and large habitat remnants that may provide future refuges from warm temperatures, violent coastal storms, disease, invasive competitive species or predators, or extensive fire. He stated that both large and small fragments of mature, structurally complex forest located away from human activity may provide useful nesting habitat that is essential to conservation.

Our Response: On May 24, 1996, we designated 3,887,800 ac (1,573.340 ha) of critical habitat on Federal and non-Federal lands in Washington, Oregon, and California (61 FR 26256). While this revision will remove approximately 189,671 acres (76,760 ha) from the designation in Oregon and California, it only affects areas that are not essential to the conservation of the species based on the best scientific information available (see response to peer review comment 2). Accordingly, we do not believe the areas that are being removed would provide future nesting habitat, refuges from warm temperatures, violent coastal storms, disease, invasive competitive species or predators, or extensive fire, since these areas are not likely to be used by murrelets. The remaining critical habitat designation encompasses a wide range of habitat distributed throughout the range of the marbled murrelet from the Canadian border through California, and inland from the coast, which represents large and small fragments of mature, structurally complex forest that are located away from human disturbance.

Comment 8: One reviewer noted that, if critical habitat designation is removed, it is likely the areas affected will be harvested for timber or receive greater recreational use, either of which will reduce the suitability as nesting habitat. Another reviewer commented that there is a strong correlation between murrelet population size and the amount of nesting habitat adjacent to the birds, and there is reason to believe that further loss of adjacent habitat could result in population decline.

Our Response: The critical habitat areas being removed in southern Oregon and northern California are outside of known nesting habitat, not likely to be occupied by murrelets, and not essential to the conservation of the species (see response to Peer Review *Comment 2*).

Comment 9: One reviewer commented that there appeared to be little reason to revise the critical habitat designation, which in the reviewer's view would limit the conservation options for murrelets. The reviewer noted that the proposal did not articulate any economic or security issues, and suggested that, in uncertain times, it is prudent to be conservative and ''hedge your bets when the consequences of loss are high, especially when the costs are low.''

Our Response: We disagree that future conservation options will be limited by this revision. Marbled murrelets remain protected as a listed species wherever they occur, regardless of a critical habitat designation. Federal agencies have an independent responsibility under section 7(a)(1) of the Act to use their authorities to carry out programs for the conservation of endangered and threatened species, and a requirement under section 7(a)(2) of the Act to ensure that their actions do not jeopardize listed species. The take of listed species is prohibited by section 9 of the Act without a permit under sections 10(a)(1)(A) or 10(a)(1)(B) of the Act, or an incidental take statement under section 7(b)(4)(C) of the Act.

The Marbled Murrelet Recovery Plan states that recovery actions in southern Oregon and northern California should be focused on preventing the loss of occupied nesting habitat, minimizing the loss of unoccupied but suitable habitat, and decreasing the time for development of new suitable habitat (Service 1997, p. 128). Recovery task 4.1.4 in the Recovery Plan states: (1) A definition of suitable marbled murrelet habitat should be developed for each Conservation Zone to better determine and map appropriate areas for murrelet recovery; (2) the components of suitable marbled murrelet habitat are generally known but a description of suitable marbled murrelet habitat for each zone is lacking; and (3) once definitions are developed, mapping marbled murrelet habitat can be accomplished with greater accuracy (Service 1997, p. 149). Recovery task 4.1.6 states that intensive surveys should be conducted to identify nesting areas and delineate the inland boundary of nesting habitat (Service 1997, p. 150).

Intensive surveys to determine murrelet presence in southern Oregon indicate that the inland distribution of marbled murrelets is strongly associated with the hemlock/tanoak habitat zone, and not the distance from the coast. This is probably due to the maritime climate that provides milder, wetter conditions that favor development of larger trees and more abundant moss cover. The hemlock/tanoak zone transitions relatively rapidly to the mixed-conifer/mixed-evergreen zone that has hotter, drier climate. This rapid transition to less favorable conditions for murrelets may explain why they aren't detected beyond the hemlock/tanoak vegetation zone (Alegria *et al.,* 2002, pp. 15–16).

There are no historical or current survey records documenting murrelet presence in inland zone 2 in California (Hunter *et al.,* 1998; Schmidt *et al.,* 2000). Studies conducted by Hunter *et al.* (1997, p. 20), indicate that the northern Inner North Coast Ranges of California are not within the current range of the marbled murrelet, which could be influenced by several factors, including habitat structure, elevation, predator abundance, distance inland, and climatic conditions. Daily maximum summer temperatures were significantly higher within the zone 2 study area than at inland sites documented with murrelets closer to the coast (Hunter *et al.,* 1998); summer temperature is often inversely correlated with humidity and cloud cover (Anthes *et al.,* 1975); in California, the vast majority of murrelet records are from redwood-dominated stands (E. Burkett, pers. com); and the historical inland extent of redwood forests in California closely matches the inland extent of marine air influences and summer fog (Major 1977) (in Schmidt *et al.,* 2000, pp. 21–22). This evidence, combined with the distance from the closest known occupied murrelet sites within inland zone 1 (9 mi (14 km) west and 15 mi (25 km) west; Schmidt *et al.* 2000, p. 11; Hunter *et al.,* 1997, p. 7) indicates a very low likelihood of murrelet occupancy within inland zone 2 in California. Accordingly, the areas designated as critical habitat in 1996 in southern Oregon that are not within the hemlock/tanoak habitat zone, and the areas within inland zone 2 in California, are not considered suitable habitat for marbled murrelet recovery.

The biological criteria used to identify critical habitat in the final rule (61 FR 26265; May 24, 1996) include suitable nesting habitat, survey data, proximity to marine foraging habitat, large contiguous blocks of nesting habitat, and rangewide distribution. Based on the best available information, there is no biological rationale to support retaining marbled murrelet critical habitat in areas that are neither presently used (*i.e.,* unoccupied), nor likely to be used in the future by the species (*i.e.,* unsuitable). Consequently, we believe the removal of critical habitat from areas that are not essential to the conservation of the species in southern Oregon and northern California is appropriate. Removing critical habitat from these areas will allow Federal agencies to focus their conservation efforts on the areas that currently provide murrelet habitat and have a greater likelihood of providing habitat into the future. The designation of critical habitat in Douglas and Lane Counties in Oregon is not affected by this revision, and these lands will continue to provide a conservation benefit to the species.

Public Comments

Comment 10: Commenters stated the murrelet recovery plan identifies the Northwest Forest Plan (NWFP) reserves as the backbone of the recovery effort, but Late-Successional Reserves (LSRs) are administrative designations that can be removed. In addition, the Evaluation Report for the 5-Year Status Review for the Marbled Murrelet (McShane *et al.,* 2004; p 4–76) indicates there are problems with placing too much reliance on the NWFP. Commenters also stated that if the NWFP remains in effect and is not altered substantially from its current form, the projected acreage of USFS and BLM lands in the Pacific Northwest that support stands older than 200 years (200 years defines the lower limit of old-growth forest) is expected to increase substantially by the year 2050. They also commented that the Recovery Plan for the Marbled Murrelet states ''it will take 50 to 100 years or more to develop new suitable nesting habitat within most reserve areas,'' however, the NWFP is being dismantled before it has had a chance to succeed. Other commenters stated that the LSRs need critical habitat designation to ensure they are managed for long-term recovery of the species.

Our Response: Based on the best available scientific information related to survey data, there is a very low likelihood that murrelets occupy the areas being removed from critical habitat designation in southern Oregon and northern California (see responses under *Peer Reviewer Comments* above). The areas being removed are no longer considered suitable habitat. Accordingly, these areas are not essential to the conservation of the species, and murrelet recovery would not be affected by the management of these specific areas. This revision of critical habitat will help Federal agencies focus their conservation efforts on the areas that currently provide habitat for murrelets, and areas that have a greater likelihood of providing habitat into the future. Based on the best available scientific information, the areas that were designated as critical habitat in Lane and Douglas Counties, Oregon, in 1996 have been determined to contain the physical or biological features essential to the conservation of the species and are not being revised.

Comment 11: One commenter stated that the Service must present a balanced economic analysis, including benefits of old-growth habitat conservation and restoration, and that an economic analysis must be prepared if BLM lands

are designated in order to address consequences to communities and counties.

Our Response: Section 4(b)(2) of the Act requires that the Service consider economic impacts when ''specifying any particular area as critical habitat.'' Characterizing the potential economic benefits of critical habitat designation can provide context to the potential economic cost estimates, where that information is available. However, since this final rule removes critical habitat that was previously ''specified,'' and we are not removing these areas under Section 4(b)(2) on economic grounds, we have determined that a new economic analysis is not required.

Comment 12: Some commenters stated that the proposal to revise critical habitat should be withdrawn and replaced with a delisting proposal, and the Service should not designate critical habitat for a species that no longer warrants ESA protection.

Our Response: We disagree. The marbled murrelet DPS in Washington, Oregon, and California continues to warrant protection under the Act, for the reasons described in the *12-month Finding on a Petition to Remove the Marbled Murrelet from the List of Endangered and Threatened Wildlife,* published in the **Federal Register** on January 21, 2010 (75 FR 3424). That finding determined that the DPS continues to meet the definition of a threatened species based on the species' population size and trajectory, in light of the scope and magnitude of existing threats.

Comment 13: Commenters stated there is no need to modify critical habitat in areas that are currently designated as LSRs, and there is little or no incremental cost to conserve marbled murrelet critical habitat in LSRs and riparian reserves, because these areas are already established for the purpose of conserving late successional wildlife.

Our Response: Section 3(5)(A) of the Act defines critical habitat as (1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with section 4 of this 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 the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination that such areas are essential for the conservation of the species. The survey data for southern Oregon and northern California, along with the quality and quantity of habitat in this area, indicate there is a very low likelihood that murrelets occupy the LSRs or the other areas being removed from the 1996 critical habitat designation, and are unlikely to occupy these areas in the future (see responses under *Peer Reviewer Comments*). Accordingly, based on the best available scientific information, we have determined that these areas are not essential to the conservation of the species; therefore, requiring Federal agencies to enter into section 7 consultation with the Service on effects to critical habitat in these areas would be inconsistent with the Act. However, critical habitat in Lane and Douglas Counties, Oregon, will remain as designated in 1996, since those areas are occupied and essential to the conservation of the species.

Federal Agency Comments

Comment 14: The BLM suggested (a) Adding language to the final rule that clearly articulates that the PCEs must be present on the lands within the mapped critical habitat units for the area to meet the statutory definition of critical habitat; (b) that the final rule clarify that activities proposed to occur on lands that do not contain PCEs within the mapped critical habitat units will not be subject to a destruction or adverse modification determination because such lands, by definition, are not critical habitat; and that (c) the proposed rule provide better guidance in regard to the functionality of forest stands in support of a critical habitat designation, particularly as related to the issue of fragmentation. BLM also expressed a concern that outdated land status information was used to prepare the proposed rule in northern California. They indicated that this is problematic in two key areas: Lacks Creek west of and adjacent to the Hoopa Reservation; and Gilman Butte east of the King Range National Conservation Area and south of Humboldt Redwoods State Park. The BLM also requested that we remove critical habitat from all areas not in the western hemlock/tanoak vegetation on the Grants Pass and Glendale Resource Areas of the Medford District. The agency commented that this area lacks murrelet recovery habitat, and historical observations and recent protocol surveys have not documented murrelet occupancy. The areas described include the southeasternmost 2 square miles of CHU OR–07–g, and the northeasternmost 24 square miles of CHU OR–07–f.

Our Response: (a) Areas outside of the geographical area occupied by a species at the time it is listed under the Act (*i.e.,* unoccupied habitat) can be designated as critical habitat if the areas are essential to the conservation of the species; unoccupied areas considered essential may not necessarily contain the PCEs of physical or biological features. However, for the marbled murrelet, each of the areas designated as critical habitat is within the geographical area occupied by the species at the time it was listed under the Act, and contains those physical or biological features essential to the conservation of the species, which may require special management considerations or protection. Accordingly, each of the areas delineated and mapped in this final rule meet the definition of critical habitat.

(b) The marbled murrelet PCEs include individual trees with potential nest platforms and forest lands of at least one half site-potential tree height regardless of contiguity, within 0.8 km (0.5 mi) of individual trees with potential nesting platforms and that are used or potentially used by the marbled murrelet for nesting or breeding. Activities that occur within or adjacent to lands designated as critical habitat may still have an effect on PCEs, depending on the particular aspects of the Federal action involved. The preamble to the 1996 final critical habitat rule (61 FR 26265; May 24, 1996), states that ''within the boundaries of designated critical habitat, only those areas that contain one or more primary constituent elements are, by definition, critical habitat. Areas without any primary constituent elements are excluded by definition.'' However, this language is not in the final critical habitat rule itself and is no longer accurate. The potential effects of Federal actions that may affect any area within the boundaries of designated critical habitat will need to be evaluated on a project-specific basis during the section 7(a)(2) consultation process.

(c) The removal, modification, or fragmentation of forested areas can directly impact nesting structures, nesting substrate, and the vertical and horizontal cover provided by the surrounding forest. Fragmentation of forested areas can result in habitat isolation and increased edge, which can negatively impact the quality of the remaining nesting habitat primarily through increased predation, modification of the microclimate, and potential windthrow of nest trees. Examples of Federal actions that may affect marbled murrelet nesting habitat include timber harvest, salvage logging, hazard tree removal, road construction, recreational or other developments,

fuels reduction projects, and indirect harvest-related effects such as windthrow. The key factor related to an adverse modification determination is whether, with implementation of a proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or retain those physical or biological features that relate to the ability of the area to periodically support the species. The role of critical habitat is to support the life-history needs of the species and provide for conservation. Activities that may destroy or adversely modify critical habitat are those that would alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for the marbled murrelet.

The areas referred to by BLM within CHU OR–07–g and CHU OR–07–f occur within the 6.5-mile area designed to support murrelets that might use the area between the western hemlock/tanoak and mixed-conifer/evergreen vegetation zones. These areas were not considered for removal because of their proximity to occupied habitat (see response to Comment 6 under *Peer Reviewer Comments*).

Comments From States

We did not receive any comments from any State in response to the proposed rule.

Summary of Changes From the Proposed Rule

In preparing this final rule, we reviewed and fully considered comments from the public and peer reviewers that we received in response to the proposed rule published in the **Federal Register** on July 31, 2008 (73 FR 44678).

Based on the comments received, we have determined that the proposed removal of 63,000 ac (25,495 ha) of critical habitat designated in Douglas and Lane Counties in Oregon is not supported by the best available scientific information and would not be appropriate. Based on the best available scientific information, these areas contain the physical or biological features essential to the conservation of the species, and will continue to be designated as critical habitat. Therefore, we have removed instructions to remove the following critical habitat units from this final rule: OR–03–c, OR–03–e, OR–04–f, OR–04–g, OR–04–i, OR–04–j, and OR–06–d.

Systematic surveys such as those conducted by Hunter *et al.* (1998), Schmidt *et al.* (2000), and Alegria *et al.* (2002) were not conducted in a relatively small area (approximately 71,000 ac) in northern California located between the Klamath River and the Oregon border, and between the much larger areas surveyed by Hunter *et al.* (1998), Schmidt *et al.* (2000), and Alegria *et al.* (2002). However, based on the similarity of mixed-conifer habitat surveyed to the north and south, the lack of detections from the areas immediately north and south, and the lack of historical detections, we believe there is a very low likelihood that murrelets occur within inland zone 2 and the far eastern portions of inland zone 1 located between the Klamath River and the Oregon border in northern California. In light of what the current data indicate regarding the forest types that murrelets use for nesting (see response to Comment 9), we conclude that it is unlikely that murrelets will occupy these areas in the future. Accordingly, we have revised the critical habitat boundary in this area.

The critical habitat revision in southern Oregon and northern California is appropriate, based on the best available scientific information, which indicates the likely distribution of nesting birds is not as far inland as was delineated in 1996. We have no historical or current survey records documenting murrelet presence in the areas being removed in northern California, and the best available information indicates the inland range of the murrelet from the Pacific Ocean is delimited by the hemlock/tanoak habitat zone, rather than specific distance from the coast. Accordingly, we are revising the designation of critical habitat for the marbled murrelet from the 1996 critical habitat designation (61 FR 26254; May 24, 1996) to reflect the removal of approximately 189,700 ac (76,700 ha) of area from critical habitat designation in 8 units in southern Oregon and northern California. The critical habitat units affected by the revision are depicted in Table 1 and Table 2. The remaining critical habitat units that were designated in the May 24, 1996, final rule are not affected by this revision. Approximately 3,698,100 ac (1,497,000 ha) of critical habitat is now designated for the marbled murrelet.

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an 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) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and 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, habitat within the geographical area occupied by the species at the time of listing must contain the physical or biological features which are essential to the conservation of the species and which may require special management considerations or protection. Critical habitat designations identify, to the

extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat), focusing on the principal biological or physical constituent elements (primary constituent elements, or PCEs) within an area that are essential to the conservation of the species (such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type). PCEs are the elements of physical and biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential for the conservation of the species.

Under the Act, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species. When the best available scientific data do not demonstrate that the conservation needs of the species require such additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species. An area currently occupied by the species but that was not occupied at the time of listing may, however, be essential 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 and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. Substantive comments received in response to proposed critical habitat designations are also considered. A five-year review summarizing the biological, ecological, and population information on the marbled murrelet was completed on June 12, 2009 (Service 2009). That report also evaluated current threats and how they may have changed since the species was listed. This information was considered in the completion of this revised designation, as was information from the 12-month Finding on a Petition to Remove the Marbled Murrelet from the List of Endangered and Threatened Wildlife (75 FR 3424; January 21, 2010). We also reviewed the scientific data and other information used to finalize the 1996 critical habitat designation, which included research published in peer-reviewed articles, agency reports, unpublished data, and various Geographic Information System (GIS) data layers (*e.g.,* land cover type information, land ownership information, topographic information). We reviewed the conservation needs of the marbled murrelet described in the recovery plan (Service 1997), and considered new scientific information and data available from State, Federal, and tribal agencies, as well as academia and private organizations.

Habitat is dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not promote the recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to designate as critical habitat, we consider those physical or biological features 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, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific elements of physical or biological features required for the marbled murrelet from its biological needs as described in the ''Background'' section of the final rule designating critical habitat for the marbled murrelet. The PCEs identified in the May 24, 1996, final critical habitat designation (61 FR 26254) have not been revised and remain applicable to this final revision of critical habitat for the marbled murrelet.

Criteria Used To Identify Critical Habitat

The criteria used to identify critical habitat areas described in the May 24, 1996, **Federal Register** remain applicable to this final revision of critical habitat for the marbled murrelet. These include suitable nesting habitat, information on presence/absence and occupancy, proximity to marine

foraging habitat, large contiguous blocks of nesting habitat, rangewide distribution, and adequacy of existing protection and management (61 FR 26265).

Final Revised Critical Habitat Designation

In our 1996 designation of marbled murrelet critical habitat, we considered several factors in determining whether particular units met the definition of critical habitat, including available survey data, the proximity to marine foraging habitat, and the presence of large contiguous blocks of suitable nesting habitat. The physical or biological features associated with marbled murrelet critical habitat focused on individual trees with potential nesting platforms, and forested areas within 0.8 kilometers (0.5 miles) of individual trees with potential nesting platforms that had a canopy height of at least one-half the site potential tree height (SPTH) (the average maximum height for trees given local growing conditions). We determined that these features were essential because they provided suitable nesting habitat for successful reproduction. On a landscape basis, we believed that forests with canopy height of at least one-half the SPTH were more likely to be occupied, and hence were more likely to contribute to the conservation of the marbled murrelet (61 FR 26264; May 24, 1996).

For the 1996 critical habitat designation, we used survey results (including those showing the lack of detections) as indicators of the presence or absence of marbled murrelets in specific areas. However, survey efforts were minimal in many areas, coverage of areas surveyed was discontinuous, and information was of limited use in designating critical habitat in some portions of the range (61 FR 26274; May 24, 1996). The original delineation of zone 2 was based on relatively few far-inland marbled murrelet records, and considered the lack of comprehensive inland surveys throughout its range. Because of this paucity of survey data, the actual inland range and distribution of this species were unknown (Hunter *et al.* 1998, p. 93). We stated in the 1996 final rule that we would continue to monitor and collect new information, and may revise the critical habitat designation in the future if new information supports a change (61 FR 26272; May 24, 1996).

We have reassessed the 1996 critical habitat designation in southern Oregon and northern California, after considering the results of extensive surveys in these areas. Although the best available information in 1996 indicated a high probability of occupancy after applying the critical habitat methodology, new information collected from site-specific surveys has since confirmed that marbled murrelets do not use these areas. Recovery task 4.1.4 in the 1997 Marbled Murrelet Recovery Plan recommends that a definition of suitable marbled murrelet habitat be developed for each conservation zone to determine and map appropriate areas for marbled murrelet recovery with greater accuracy (Service 1997, p. 149), and task 4.1.6 recommends intensive surveys to identify nesting areas and delineate the inland boundary of murrelet nesting habitat (Service 1997, p. 150). Intensive surveys that have been conducted since 1997 have given us a more comprehensive understanding of the species biological needs, and the specific areas that are essential for the recovery of the species. Those are the areas that should be the focus of collective recovery efforts, rather than areas that may experience infrequent or occasional use at low levels.

Accordingly, we have determined that the areas being removed are not essential to the conservation of the species and do not meet the definition of critical habitat. Zone 2 includes areas from 35 mi (56.3 km) to 50 mi (80.5 km) from marine environments, depending on geographic location (Thomas 1993 (FEMAT), p. IV–24). In zone 2 in northern California and southern Oregon, 189,671 ac (76,757 ha) are being removed where extensive surveys have demonstrated marbled murrelets are very unlikely to be found (Hunter *et al.* 1997, pp. 16–25; Schmidt *et al.* 2000, pp. 16–22). Both of these studies acknowledge that it is possible that marbled murrelets may occasionally use some portion of the study areas; however, if the species does occur, the number of individuals is probably very low. Accordingly, the habitat in these areas does not contain elements of the physical or biological features in an appropriate quantity and spatial arrangement that are essential for the conservation of the species.

We are, therefore, revising the 1996 final designation of critical habitat for the marbled murrelet to reflect the removal of three critical habitat units (CA–10–a, CA–11–c, and CA–11–d) and the revision of five critical habitat units (CA–01–d, CA–01–e, CA–11–b, OR–07–d, and OR–07–f) in northern California and southern Oregon. No other critical habitat units designated in the May 24, 1996, final rule are affected by this revision. Each of the designated areas are within the geographical area occupied by the species at the time of listing, contain the physical or biological features essential to the conservation of the species, and may require special management considerations or protection.

The critical habitat areas described below reflect the best available scientific information regarding areas that no longer meet the definition of critical habitat for the marbled murrelet in Zone 2, because they are not essential to the conservation of the species.

TABLE 1—CRITICAL HABITAT FOR THE MARBLED MURRELET DESIGNATED IN 1996 AND REMOVED IN 2011 BY STATE

State	Areas removed from designated critical habitat	
	Acres	Hectares
California	143,487	58,068
Oregon	46,184	18,690
Washington	0	0
Total	189,671	76,758

TABLE 2—CRITICAL HABITAT FOR THE MARBLED MURRELET DESIGNATED IN 1996 AND REMOVED IN 2011 BY UNIT AND OWNERSHIP

Critical habitat unit	Ownership	Acres removed	Hectares removed
CA–01–d	USFS	19,363	7,836
CA–01–e	USFS	28,168	11,400
CA–10–a	USFS	35,935	14,543
CA–11–b	USFS	8,540	3,456
CA–11–c	BLM	2,644	1,070
CA–11–d	USFS	61,558	24,912
OR–07–d	USFS	26,528	10,736
OR–07–f	BLM	2,109	853
OR–07–f	USFS	4,825	1,953
OR–07–f	State [1]	1	< 1
Totals		189,671	76,758

[1] Small linear strip through BLM lands.

California: The units or portions thereof that are not essential to the conservation of the marbled murrelet (*i.e.,* they no longer meet the definition of critical habitat) include CA–01–d (portion), CA–01–e (portion), CA–10–a (entire), CA–11–b (portion), CA–11–c (entire), and CA–11–d (entire).

Oregon: The units or portions thereof that are not essential to the conservation of the marbled murrelet (*i.e.,* they no longer meet the definition of critical habitat), where they extend into Oregon include CA–01–e (entire), CA–10–a (entire), OR–07–d (portion), and OR–07–f (portion).

Washington: No revisions to the 1996 critical habitat designation.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the Fifth and Ninth Circuit Courts of 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, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we 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 and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary

involvement or control may affect subsequently listed species or designated critical habitat.

Application of the Adverse Modification Standards

The analytical framework described in the Director's December 9, 2004, memorandum regarding application of the ''destruction or adverse modification'' standard is used to complete section 7(a)(2) analysis for Federal actions affecting marbled murrelet critical habitat. The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species or retain those PCEs that relate to the ability of the area to support the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for the marbled murrelet.

Generally, the conservation role of marbled murrelet critical habitat units is to support nesting, roosting, and other normal behaviors (61 FR 26256). To recover the species, it is also necessary to produce and maintain viable marbled murrelet populations that are well distributed throughout the respective Conservation Zones (Service 1997 p. 116). The range of the marbled murrelet has been subdivided by the Recovery Plan into six Marbled Murrelet Conservation Zones (Service 1997, pp. 125–130), based on the need for potentially different recovery actions in various portions of the marbled murrelet's range, and the need to maintain well-distributed populations. These zones include Puget Sound (Zone 1), Western Washington Coast Range (Zone 2), Oregon Coast Range (Zone 3), Siskiyou Coast Range (Zone 4), Mendocino (Zone 5), and the Santa Cruz Mountains (Zone 6). Marbled murrelets within the conservation zones are likely to interact across zone boundaries at some level.

Specific goals are described in the Recovery Plan, but generally include maintaining occupied sites and suitable nesting habitat for marbled murrelets. Because it will take 50 or more years to develop new nesting habitat, the short-term focus is on retaining and/or increasing terrestrial habitat (Service 1997 p. vi). For a wide-ranging species such as the marbled murrelet, where multiple critical habitat units are designated, each unit has a Conservation Zone role and range-wide role in contributing to the conservation of the species. The basis for an adverse modification opinion would be whether a proposed action appreciably reduces the ability of critical habitat to remain functional to serve its identified conservation role at the Conservation Zone and range-wide levels. In evaluating the effect of a proposed action, the Service will analyze the impacts to individual units in light of their overall contribution to the conservation of murrelets in the conservation zone described previously, and the overall range of the marbled murrelet in Washington, Oregon, and California. Thus, an adverse modification determination would be based upon a broader inquiry than an assessment of adverse effects at the local unit level.

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 critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the marbled murrelet. These activities include, but are not limited to: (1) Forest management activities that greatly reduce stand canopy closure, appreciably alter the stand structure or reduce the availability of nesting sites; (2) land disturbance activities such as mining, sand and gravel extraction, construction of hydroelectric facilities and road building; and (3) harvest of certain types of commercial forest products (*e.g.* moss).

These activities may have the following effects on marbled murrelet critical habitat:

(1) Removal or degradation of individual trees with potential nesting platforms, or the nest platforms themselves, that results in a significant decrease in the value of the trees for future nesting use. Moss may be an important component of nesting platforms in some areas.

(2) Removal or degradation of trees adjacent to trees with potential nesting platforms that provide habitat elements essential to the suitability of the potential nest tree or platform, such as trees providing cover from weather or predators.

(3) Removal or degradation of forested areas with a canopy height of at least one-half the site-potential tree height and, regardless of contiguity, within 0.8 km (0.5 mi) of individual trees containing potential nest platforms. This includes removal or degradation of trees currently unsuitable for nesting that contribute to the structure/integrity of the potential nest area (*i.e.,* trees that contribute to the canopy of the forested area). These trees provide the canopy, stand conditions, and protection from predators important for marbled murrelet nesting.

For a proposed action to result in destruction or adverse modification of critical habitat, it must affect the designated critical habitat to an extent that the affected unit(s) no longer serves its intended conservation role for the species or no longer retains its current ability for the PCEs to support the species. Proposed actions requiring a section 7 consultation must be evaluated individually, in light of the baseline condition of the critical habitat unit and Conservation Zone, unique history of the area, and effect of the impact on the critical habitat unit relative to its regional and range-wide role in the conservation of the species.

All of the units designated as critical habitat contain physical or biological features essential to the conservation of the marbled murrelet. All units are within the geographic range of the species, were occupied or were likely to have been occupied by the species at the time of listing, and are likely used by the marbled murrelet. Federal agencies already consult with us on activities in areas occupied by the marbled murrelet or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the marbled murrelet.

Activities that have little to no effect to one critical habitat unit or Conservation Zone may result in serious effects in another, due to differences in existing conditions and the conservation function of critical habitat. Therefore, the Service cannot provide a detailed description of the threshold for future actions that would result in the destruction or adverse modification of critical habitat that would be applicable throughout the range of the designated critical habitat in this final rule.

Actions that impact forest stands that are not within 0.5 mile (0.8 km) of individual trees with potential nesting platforms would probably not adversely modify critical habitat, even if they occur within the boundaries of the area designated as critical habitat. Activities that do not affect the PCEs or the ability for the PCEs to support the species are unlikely to be affected by the designation. However, even though an action may not adversely affect or modify critical habitat, it may still affect marbled murrelets (*e.g.,* through disturbance) and may, therefore, still be

subject to consultation under section 7 of the Act.

Activities conducted according to the standards and guidelines for LSRs, as described in the Record of Decision for the Northwest Forest Plan, would be unlikely to result in the destruction or adverse modification of marbled murrelet critical habitat. Activities in these areas would be limited to manipulation of young forest stands that are not currently marbled murrelet nesting habitat. These forest management activities would be conducted in a manner that would not slow the development of these areas into future nesting habitat, and should speed the development of some characteristics of older forest.

If you have questions regarding whether specific activities may constitute destruction or adverse modification of critical habitat, contact a Field Supervisor listed under **FOR FURTHER INFORMATION CONTACT**.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resource management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(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.''

Although we did receive comments from the U.S. Navy related to their INRMP at Naval Radio Station Jim Creek in Washington, we are unaware of any lands owned or managed by the DOD within the specific areas that were being considered for removal from the 1996 critical habitat designation, as identified in the proposed rule (73 FR 44678; July 31, 2008). Therefore, this final rule will not have any effect on DOD lands subject to section 4(a)(3)(B)(i) of the Act.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific and commercial data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as 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. However, since this action involves removing critical habitat from the existing designation, rather than designating critical habitat in new areas, section 4(b)(2) of the Act is not applicable, given the narrow scope of the action described in the proposed rule.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order (E.O.) 12866. OMB bases its determination upon the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Regulatory Enforcement Fairness Act amended the Regulatory Flexibility Act to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

This revision will result in an approximate 189,671-acre (76,757-ha) reduction in the critical habitat acreage designated in the May 24, 1996, final rule (61 FR 26256). No additional critical habitat is being designated by this revision, and the areas being removed from the 1996 critical habitat designation occur exclusively on Federal lands (with the exception of an approximate one-acre linear strip of State land within CHU OR–07–f). Accordingly, we are certifying that the revised designation will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal

mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that would impose an enforceable duty upon State, local, or Tribal governments with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments lack authority to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) A condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor does critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(2) This revision results in an approximate 189,671-ac (76,757-ha) reduction in the critical habitat acreage that was designated in the May 24, 1996, final rule (61 FR 26256). With the exception of a small linear strip of State-owned land in Unit OR–07-f, all of the acres being removed from the 1996 designation are on Federal lands. Accordingly, we do not believe that this rule will significantly or uniquely affect small governments because small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. This revision would remove a portion of the designated critical habitat, removing the need to consult on effects to critical habitat for those removed areas. Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of this revised designation of critical habitat for the marbled murrelet 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 revised designation of critical habitat for the marbled murrelet does not pose additional takings implications for lands within or affected by the original 1996 designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this final revised critical habitat designation with appropriate State resource agencies in California, Oregon, and Washington. During the public comment periods, we did not receive any comments from any State agency (see Summary of Comments and Recommendations section). We believe that the revised designation of critical habitat for the marbled murrelet will have little incremental impact on State and local governments and their activities, since the removal of approximately 189,671 ac (76,757 ha) of currently designated critical habitat would impose no additional restrictions beyond any that may already be in place.

Civil Justice Reform—Executive Order 12988

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are revising the critical habitat designation in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the elements of physical or biological features essential to the conservation of the species within the designated areas to assist the public in understanding the habitat needs of the marbled murrelet.

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.

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 responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that

tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

This revision will result in an approximate 189,671-ac (76,757-ha) reduction in the critical habitat acreage that was designated in the May 24, 1996, final rule (61 FR 26256). None of the areas being removed are on tribal lands, and we did not receive any comments from tribal entities in response to the proposed rule.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the United States Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the United States Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

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. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration. We do not expect this final rule to significantly affect energy supplies, distribution, or use, since it would involve removing approximately 189,700 ac (76,700 ha) of critical habitat from the existing critical habitat designation. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this rulemaking is available online at *http://www.fws.gov/wafwo/*or upon request from the Manager, Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are staff from the Pacific Region Ecological Services Offices.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

■ 2. Amend § 17.11(h), by revising the entry for ''Murrelet, marbled'' under ''BIRDS'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
BIRDS							
*	*	*	*	*	*		*
Murrelet, marbled	Brachyramphus marmoratus.	U.S.A. (AK, CA, OR, WA), Canada (B.C.).	U.S.A. (CA, OR, WA).	T	479	17.95(b)	NA
*	*	*	*	*	*		*

■ 3. In § 17.95(b), amend the entry for ''Marbled Murrelet'' as follows:

■ a. Revise the heading to read as set forth below;

■ b. Revise paragraph 3 to read as set forth below;

■ c. Remove the index map for Oregon (''General configuration of final critical habitat in Oregon'') and add in its place the map titled ''Critical Habitat for the Marbled Murrelet *(Brachyramphus marmoratus)* in Oregon'', as set forth below;

■ d. Remove the index map for California (''General configuration of final critical habitat in California'') and add in its place the map titled ''Critical Habitat for the Marbled Murrelet *(Brachyramphus marmoratus)* in California'', as set forth below;

■ e. Remove the critical habitat description and map for Unit OR–07–d and add in its place new text and a new map for Unit OR–07–d as set forth below;

■ f. Remove the critical habitat description and map for Unit OR–07–f and add in its place new text and a new map for Unit OR–07–f as set forth below;

■ g. Remove the critical habitat description and map for Unit CA–01–d and add in its place new text and a new map for Unit CA–01–d as set forth below;

■ h. Remove the critical habitat description and map for Unit CA–01–e and add in its place new text and a new map for Unit CA–01–e as set forth below;

■ i. Remove the critical habitat description and map for Unit CA–10–a;

■ j. Remove the critical habitat description and map for Unit CA–11–b and add in its place new text and a new map for Unit CA–11–b as set forth below;

■ k. Remove the critical habitat description and map for Unit CA–11–c; and

■ l. Remove the critical habitat description and map for Unit CA–11–d.

17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Marbled Murrelet (*Brachyramphus marmoratus*)

* * * * *

3. A description of the critical habitat units follows. Where a critical habitat unit includes Federal lands within the boundaries of a Late Successional Reserve (LSR) established by the Northwest Forest Plan, the areas included within the LSR boundaries as they existed on May 24, 1996, remain designated as critical habitat. Critical habitat units do not include non-Federal lands covered by a legally operative incidental take permit for marbled murrelets issued under section 10(a) of the Act.

* * * * *

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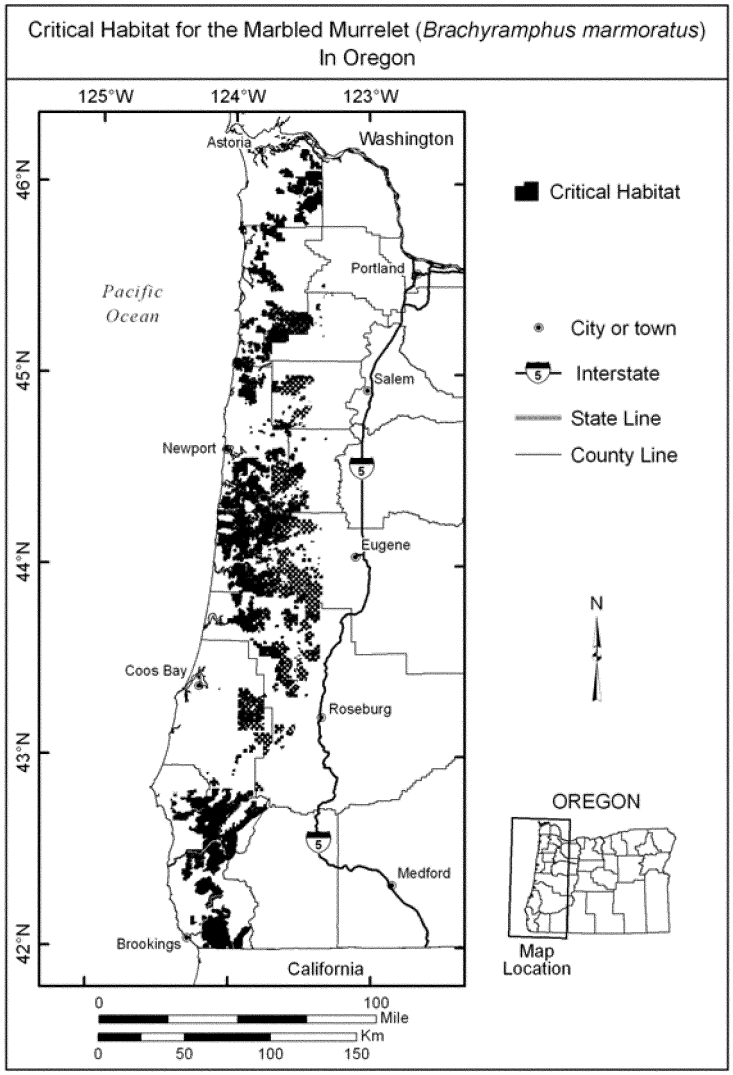

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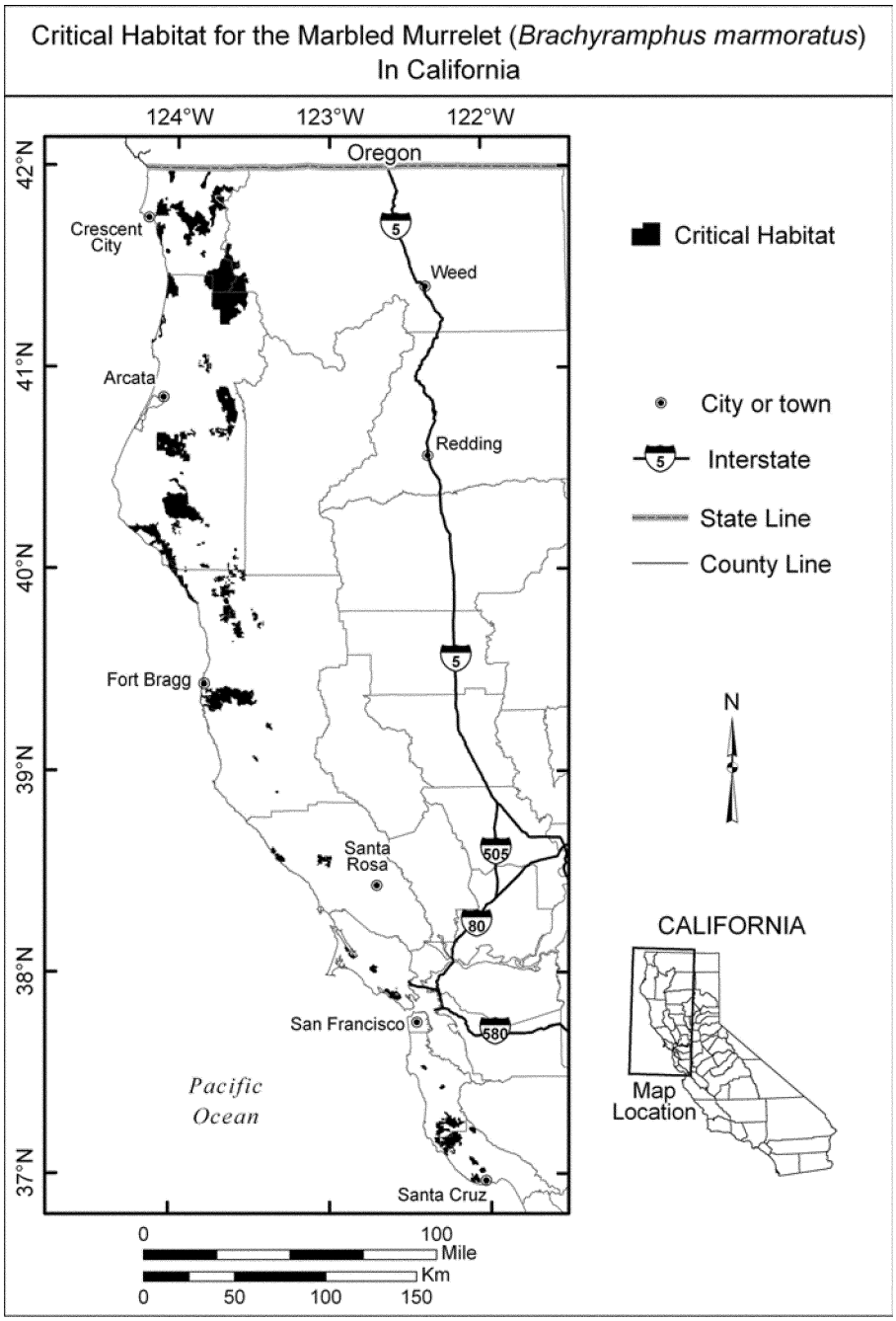

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Unit OR–07–d: Curry and Josephine Counties, Oregon. From United States Fish and Wildlife Service 1:100,000 map; Gold Beach and Grants Pass, Oregon; 1995.

Critical habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.38S., R.11W. Willamette Meridian: S ½ SE ¼, NE ¼ SE ¼, SE ¼ NE ¼ Section 31.

T.39S., R.11W. Willamette Meridian: SW ¼, SW ¼ SE ¼ Section 4; S ½, ½ NW ¼ Section 5; E ½, E ½ W ½ Section 6; Section 7 except NW ¼ NW ¼; Section 8 except SW ¼ SW ¼; Section 9; W ½ W ½, E ½ SW ¼ Section 10; NW ¼, SW ¼ SW ¼ Section 15; Section 16 except NW ¼ SW ¼, SW ¼ NW ¼; N ½ NE ¼, SE ¼ SW ¼, S ½ SE ¼ Section 17; Section 18 except N ½ NE ¼; Sections 19–20; Section 21 except SE ¼ SE ¼; W ½ NW ¼ Section 22; NW ¼ NW ¼, W ½ SW ¼, SE ¼ SW ¼, SW ¼ SE ¼ Section 29; Sections 30–32; SW ¼, S ½ NW ¼, W ½ SE ¼ Section 33.

T.39S., R.12W. Willamette Meridian: S ½ S ½ Section 1; S ½ S ½, N ½ SE ¼ Section 2; S ½ Section 3; Section 10 except SE ¼ SE ¼; Section 11 except S ½ SW ¼; Section 12; Section 13 except SW ¼, SW ¼ NW ¼; NE ¼ NE ¼ Section 14; W ½, W ½ E ½, E ½ SE ¼ Section 19; S ½, E ½ NE ¼ Section 20; Section 21; S ½ S ½, NW ¼ SW ¼, W ½ NW ¼, NE ¼ SE ¼ Section 22; S ½, S ½ N ½ Section 23; Sections 24–36.

T.39S., R.13W. Willamette Meridian: Section 33.

T.40S., R.10W. Willamette Meridian: SE ¼, S ½ SW ¼, E ½ NE ¼ Section 2; S ½ SW ¼ Section 3; SE ¼ SE ¼ Section 4; SE ¼, S ½ NE ¼ Section 8; Section 9 except N ½ NW ¼; Section

10; Section 11 except E ½ NW ¼, NE ¼ SE ¼, S ½ SE ¼; NW ¼ NW ¼ Section 14; Section 15 except SE ¼ SE ¼; Section 16; Section 17 except N ½ NW ¼, SW ¼ NW ¼; Section 19 except NW ¼, NW ¼ SW ¼, NW ¼ NE ¼; Section 20; Section 21 except SE ¼ SE ¼; N ½ NW ¼, SW ¼ NW ¼ Section 22; N ½ NW ¼, SW ¼ NW ¼ Section 28; Section 29; Sections 30–31; Section 32 except SE ¼ SE ¼.

T.40S., R.11W. Willamette Meridian: N ½ NW ¼, SW ¼ NW ¼, NW ¼ NE ¼ Section 4; Sections 5–8; W ½ NW ¼, S ½ SE ¼, SW ¼ Section 9; Section 16 except E ½ E ½; Sections 17–21; E ½ SE ¼, SW ¼ SE ¼ Section 25; Section 27 except E ½, NE ¼ NW ¼; Sections 28–33; W ½ Section 34; SE ¼ SE ¼, SE ¼ NE ¼ Section 35; Section 36.

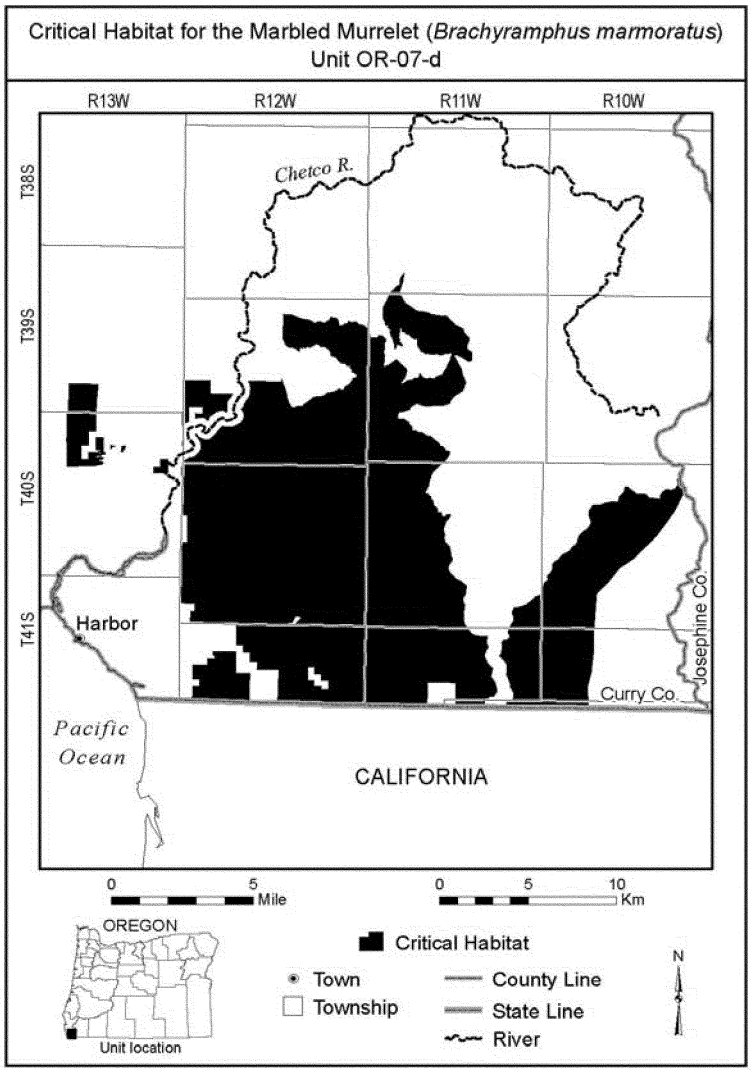
T.40S., R.12W. Willamette Meridian: Sections 1–30; Section 31 except W ½ SW ¼, SW ¼ NW ¼; Sections 32–36.

T.40S., R.13W. Willamette Meridian: Section 4 except SE ¼ SE ¼; W ½, NW ¼ NE ¼, S ½ SE ¼, NE ¼ SE ¼ Section 9; W ½, NE ¼ Section 10; SE ¼ SW ¼ Section 12; N ½ NW ¼ Section 13.

T.41S., R.10W. Willamette Meridian: Section 5 except E ½ E ½; Sections 6–7; Section 8 except E ½ E ½; Section 17 except E ½ E ½; Section 18.

T.41S., R.11W. Willamette Meridian: Section 1; Section 2 except NW ¼ NE ¼, NE ¼ NW ¼; Sections 3–15; Sections 17–18.

T.41S., R.12W. Willamette Meridian: Sections 1–4; Section 5 except W ½, SW ¼ SE ¼; Section 7 except NW ¼, W ½ SW ¼, NW ¼ NE ¼; W ½, S ½ SE ¼ Section 8; Section 9 except S ½ S ½, NW ¼ SW ¼; Section 10; Section 11 except SE ¼ SW ¼, W ½ SW ¼; Sections 12–13; Section 14 except NE ¼ NW ¼, NW ¼ NE ¼; Section 15; Section 17; Section 18 except W ½ W ½.



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Unit OR–07–f: Curry and Josephine Counties, Oregon. From United States Fish and Wildlife Service 1:100,000 map; Port Orford, Canyonville, Gold Beach and Grants Pass, Oregon; 1995.

Critical habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.32S., R.09W. Willamette Meridian: Section 34.

T.32S., R.10W. Willamette Meridian: Section 25; E ½, NE ¼ NW ¼, SE ¼ SW ¼ Section 26; Section 35 except W ½ NW ¼; Section 36 except SE ¼ SW ¼, SW ¼ SE ¼.

T.33S., R.09W. Willamette Meridian: NW ¼ SW ¼ Section 2; Sections 3–4;

Section 5 except SE ¼ NW ¼, E ½ SW ¼; Section 6 except SE ¼; Section 7 except E ½ NW ¼, W ½ NE ¼; Section 8 except NE ¼ NW ¼; Section 9 except S ½ SE ¼; NW ¼ NE ¼, N ½ NW ¼, SW ¼ NW ¼ Section 10; NW ¼, N ½ NE ¼, SW ¼ NE ¼, N ½ SW ¼ Section 17; Section 18; NW ¼ NE ¼, N ½ NW ¼, SW ¼ NW ¼ Section 19.

T.33S., R.10W. Willamette Meridian: Section 1 except NE ¼, N ½ SW ¼, S ½ NW ¼; Section 2 except NE ¼ SE ¼; Section 3 except NW ¼, N ½ NE ¼, SW ¼ SW ¼, N ½ SW ¼; Section 9 except W ½, N ½ NE ¼, SW ¼ SE ¼; Section 10; Section 11 except NE ¼ NW ¼; Section 12 except NW ¼, SE ¼ NE ¼; Sections 13–14; Section 15 except W ½ SW ¼; Section 21 except W ½; Sections 22–23; Section 24 except S ½ SE ¼, SE ¼ SW ¼; Section 26 except SE ¼, E ½ NE ¼, SE ¼ SW ¼; Section 27; Section 28 except N ½ NW ¼; Section 29 except NW ¼ SW ¼; SE ¼ SE ¼ Section 30; Section 31 except W ½, W ½ SE ¼; Sections 32–33; Section 34 except SE ¼, SE ¼ NE ¼, SE ¼ SW ¼.

T.34S., R.10W. Willamette Meridian: NW ¼, NW ¼ NE ¼, NW ¼ SW ¼ Section 4; Section 5; Section 6 except NW ¼ NE ¼, N ½ NW ¼, SW ¼ NW ¼; Section 7; NW ¼, NW ¼ NE ¼, NW ¼ SW ¼ Section 8; N ½ NW ¼, NW ¼ NE ¼, SW ¼ NW ¼ Section 18.

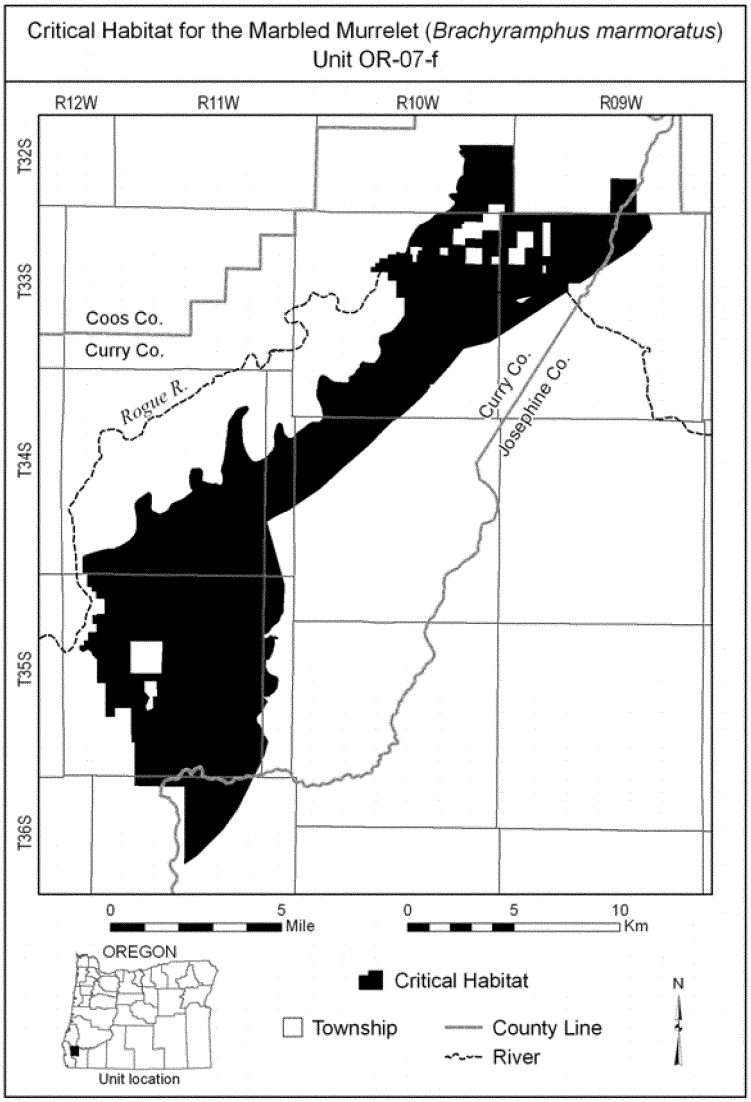
T.34S., R.10 ½ W. Willamette Meridian: S ½ Section 7; Section 18 except NW ¼ NW ¼; Section 19; N ½ NW ¼, W ½ SW ¼ Section 30; W ½ NW ¼, SW ¼ Section 31.

T.34S., R.11W. Willamette Meridian: E ½ SE ¼, SE ¼ NE ¼ Section 11; Section 12 except E ¼; Section 13 except NE ¼; E ½ E ½, SW ¼ SW ¼ Section 14; SE ¼ SE ¼ Section 15; Section 21 except N ½, E ½ SE ¼, NW ¼ SW ¼; Section 22 except NW ¼, W ½ NE ¼, NW ¼ SE ¼, N ½ SW ¼, SW ¼ SW ¼; Section 23 except NE ¼ NW ¼, NW ¼ NE ¼; Sections 24–28; S ½ NE ¼, SE ¼ Section 31; Section 32 except N ½ NW ¼; Sections 33–36.

T.35S., R.10 ½ W. Willamette Meridian: Section 6 except E ½ E ½; Section 7 except E ½ E ½, W ½ SE ¼, NE ¼ SW ¼; Section 18 except E ½, E ½ SW ¼; NW ¼, W ½ SW ¼, NW ¼ NE ¼ Section 19; W ½ SW ¼ Section 30.

T.35S., R.11W. Willamette Meridian: Sections 1–4; Section 5 except SW ¼ SW ¼; E ½ NE ¼ Section 6; E ½ E ½ Section 7; Sections 8–15; Section 17; E ½ NE ¼, NW ¼ NE ¼ Section 18; Section 20 except SW ¼ NW ¼, W ½ SW ¼; Section 21 except SW ¼ NE ¼; Sections 22–28; NE ¼ NW ¼, E ½ E ½ Section 29; Section 33 except W ½ SW ¼; Section 34–36.

T.36S., R.11W. Willamette Meridian: NW ¼, NW ¼ NE ¼, N ½ SW ¼, SW ¼ SW ¼ Section 2; Section 3; N ½ N ½, SE ¼ NE ¼, E ½ SE ¼ Section 4; NE ¼ NW ¼, N ½ NE ¼ Section 5; E ½ E ½ Section 9; Section 10 except S ½ SE ¼, NE ¼ SE ¼; NW ¼ NW ¼ Section 11; NW ¼ NW ¼ Section 15; E ½ NE ¼ Section 16.



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Unit CA–01–d: Siskiyou County, California. From United States Fish and Wildlife Service 1:100,000 map; Happy Camp California; 1995.

Critical habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.18N., R.04E. Humboldt Meridian: SE ¼ SW ¼, SW ¼ SE ¼ Section 33; E ½ SE ¼ Section 35; SW ¼, SW ¼ SE ¼, S ½ NW ¼ Section 36.

T.18N., R. 05E. Humboldt Meridian: S ½ SW ¼ Section 31.

T.17N., R.03E. Humboldt Meridian: NE ¼, E ½ SE ¼ Section 24; E ½ NE ¼, SE ¼, Section 25; N ½, E ½ SE ¼ Section 36.

T.17N., R.04E. Humboldt Meridian: Section 1 except SW ¼, SW ¼ NW ¼; Section 2 except NE ¼ NE ¼, N ½ NW ¼, E ½ SE ¼; Section 3 except N ½ N ½; Section 4; SE ¼ NE ¼, SE ¼ Section 5; Section 8 except NW ¼; Sections 9–10; NE ¼, NW ¼, NW ¼ SW ¼ Section 11; NE ¼ Section 12; Sections 16–17; W ½, W ½ E ½ Section 20; SE ¼, NE ¼ SW ¼ Section 21; S ½, S ½ N ½ Section 22; S ½, S ½ N ½ Section 23; W ½ SW ¼ Section 24; W ½ NW ¼, NW ¼ SW ¼ Section 25; Section 26; Section 27 except SW ¼; NE ¼, SW ¼, SW ¼ SE ¼ Section 28; Section 29 except E ½ NE ¼; SW ¼, W ½ SE ¼ Section 32; Section 33; N ½ NE ¼, SW ¼, SE ¼ Section 34; N ½, N ½ SE ¼, SW ¼ SW ¼ Section 35.

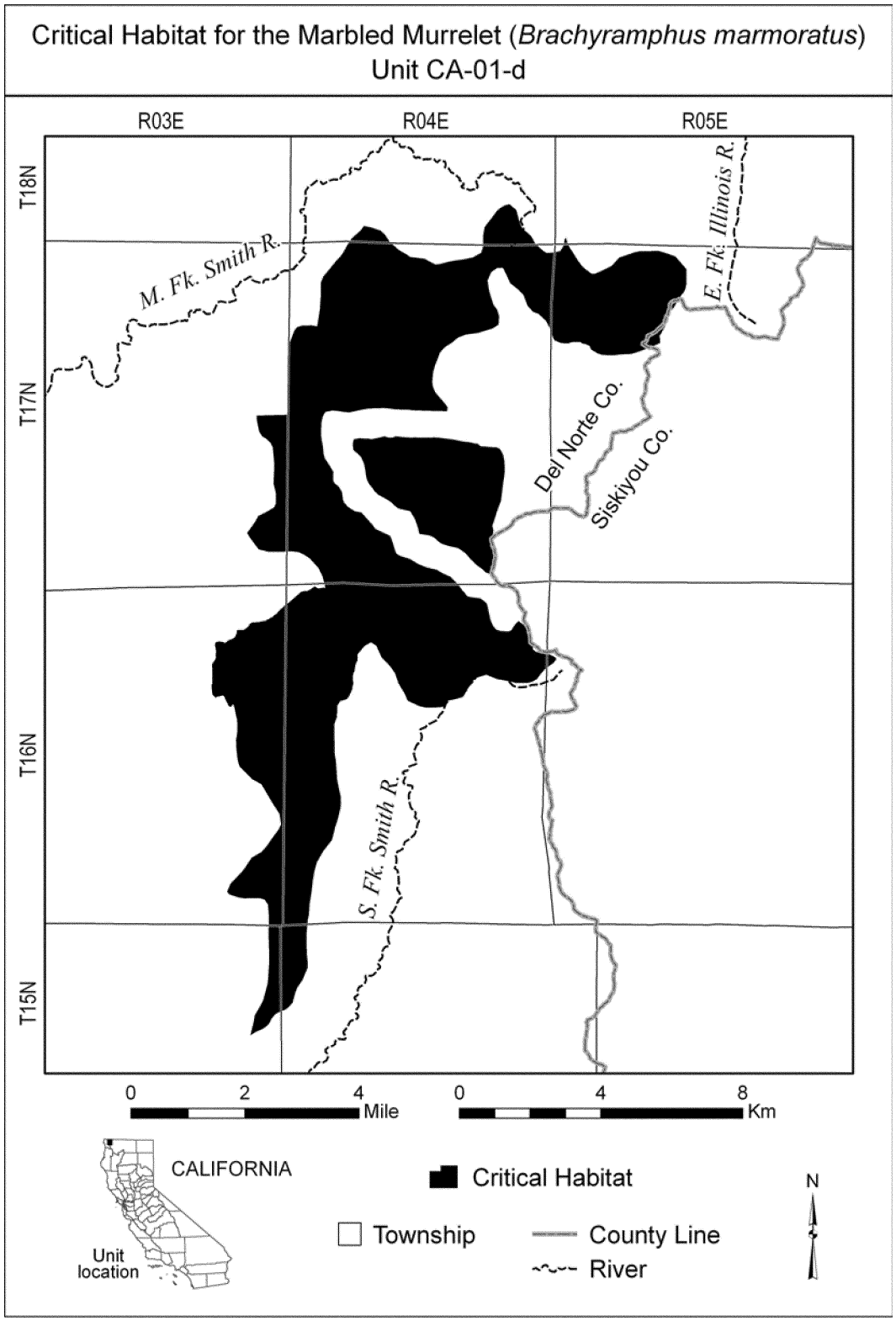
T.17N., R.05E. Humboldt Meridian: W ½ except NE ¼ NE ¼ Section 4; Section 5; Section 6 except NE ¼ NE ¼; Sections 7–8; W ½ NW ¼ Section 9.

T.16N., R.03E. Humboldt Meridian: S ½ SW ¼, SE ¼, NE ¼ SW ¼ Section 1; E ½ E ½ Section 11; Section 12; Section 13 except W ½ SW ¼, SW ¼ NW ¼; NE ¼, E ½ NW ¼, E ½ SE ¼ Section 24; SE ¼, SE ¼ NE ¼ Section 25; Section 36 except SW ¼, NW ¼ NW ¼, W ½ SE ¼.

T.16N., R.04E. Humboldt Meridian: S ½ SW ¼, W ½ SE ¼ Section 1; Section 2 except NE ¼; Sections 3–4; Section 5 except N ½ NW ¼; Section 8; W ½ W ½, NE ¼ NE ¼ Section 9; Section 10 except W ½ SW ¼; Section 11 except SE ¼, S ½ SW ¼; S ½ Section 12; E ½ E ½ Section 17; E ½ E ½ Section 20; Section 29 except SE ¼, E ½ NE ¼; W ½ Section 32.

T.15N., R.03E. Humboldt Meridian: E ½ E ½ Section 1; E ½, SE ¼ Section 12.

T.15N., R.04E. Humboldt Meridian: W ½ Section 6; W ½ NW ¼ Section 7.



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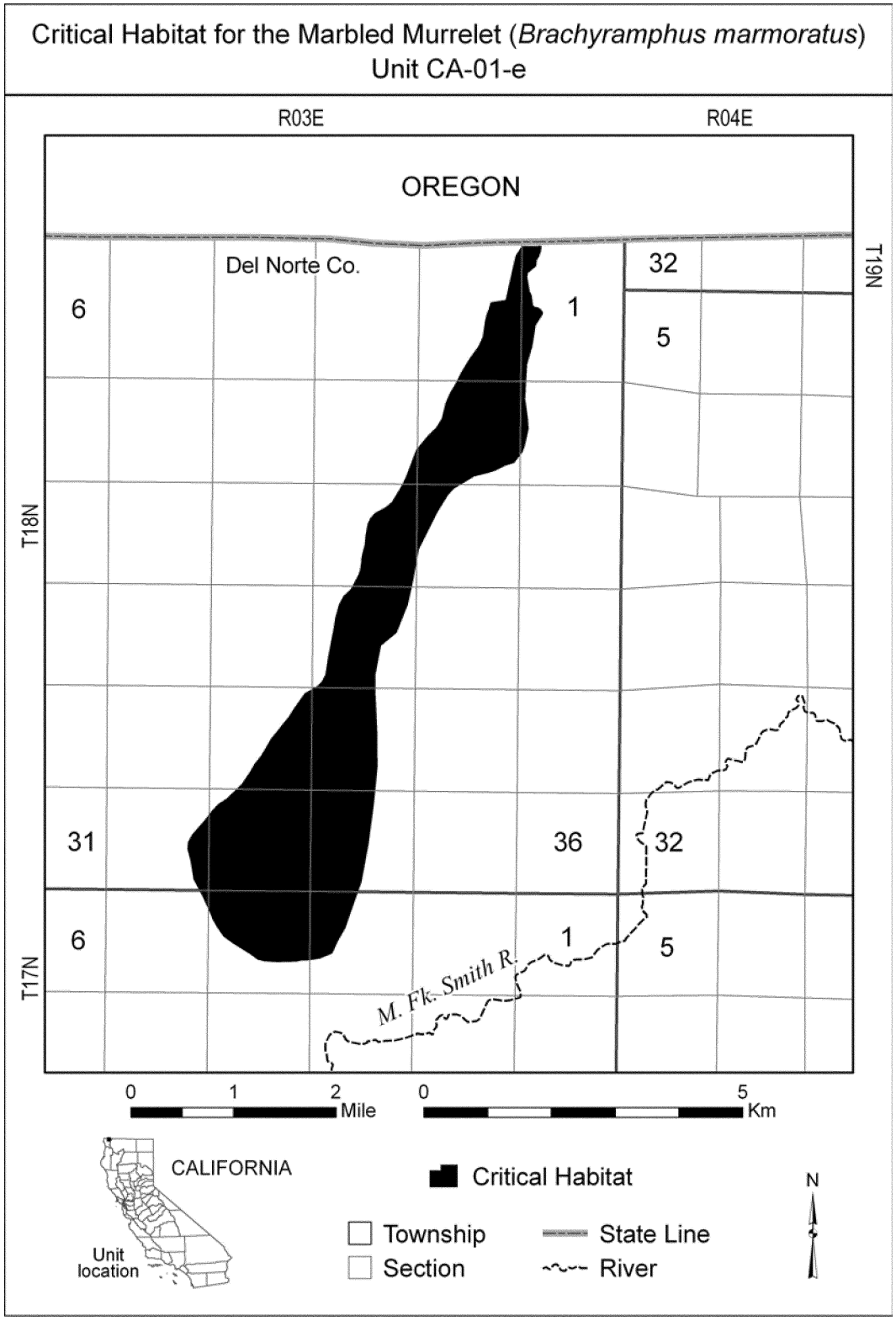
Unit CA–01–e: Del Norte County, California. From United States Fish and Wildlife Service 1:100,000 map; Grants Pass, Oregon; Happy Camp, California; 1995.

Critical habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.18N., R.03E. Humboldt Meridian: W ¼ Section 1; SE ¼, E ½ NE ¼, NE ¼ NE ¼, SE ¼ SW ¼ Section 2; SE ¼ SE ¼ Section 10; Section 11 except NW ¼ NW ¼; W ½ NW ¼; NW ¼ SW ¼ Section 12; W ½ NW ¼ Section 14; E ½, E ½ SW ¼ Section 15; W ½, NW ¼ SE ¼, N ½ NE ¼, SW ¼ NE ¼ Section 22; W ½ Section 27; SE ¼, S ½ NE ¼, NE ¼ NE ¼, E ½ SW ¼ Section 28; E ½ SE ¼, SE ¼ NE ¼ Section 32; Section 33; W ½ Section 34.

T.17N., R.03E. Humboldt Meridian: NW ¼, NW ¼ SW ¼ Section 3; Section 4 except S ½ S ½, NW ¼ SW ¼; NE ¼ NE ¼ Section 5.



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Unit CA–11–b: Humboldt County, California. From United States Fish and Wildlife Service 1:100,000 map; Hayfork, California; 1995.

Critical habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.03N., R.02E. Humboldt Meridian: SE ¼ NE ¼, SW ¼ NW ¼, N ½ N ½

Section 1; NE ¼, E ½ NW ¼, N ½ SE ¼ Section 2.

T.03N., R.03E. Humboldt Meridian: N ½ NE ¼, SE ¼ NW ¼, NE ¼ SW ¼, W ½ SE ¼, Section 6.

T.03N., R.04E. Humboldt Meridian: W ½ NE ¼, NW ¼ Section 1; Section 2 except SE ¼ SE ¼; E ½ NE ¼, SE ¼ SW ¼, SE ¼ Section 3; W ½ NE ¼, NW ¼ Section 5; E ½ NE ¼ Section 6.

T.03N., R.05E. Humboldt Meridian: NE ¼, N ½ SE ¼ Section 6; SW ¼ NW ¼, N ½ SW ¼, SW ¼ SW ¼ Section 7; NW ¼ NW ¼ Section 18.

T.04N., R.02E. Humboldt Meridian: S ½ SE ¼ Section 25.

T.04N., R.03E. Humboldt Meridian: S ½ NW ¼, NW ¼ SE ¼, SE ¼ SE ¼ Section 31.

T.04N., R.04E. Humboldt Meridian: NE ¼ Section 1; E ½ E ½ Section 12; S ½ Section 25; SE ¼ NW ¼, NW ¼ SW ¼, SE ¼ Section 26; S ½ NE ¼, NW ¼, N ½ SE ¼ Section 27; N ½, S ½ S ½, NE ¼ SW ¼, NE ¼ SE ¼ Section 28; SW ¼ NW ¼ Section 29; S ½ NE ¼, SW ¼, W ½ SE ¼ Section 30; W ½ NE ¼, NW ¼, N ½ SE ¼, NW ¼ SW ¼ Section 31; SE ¼ NW ¼, SW ¼ Section 32; N ½ N ½, SE ¼ NE ¼, SE ¼ NW ¼, NE ¼ SE ¼ Section 33; Section 34 except N ½ NE ¼, S ½ SW ¼; Section 35 except N ½ N ½.

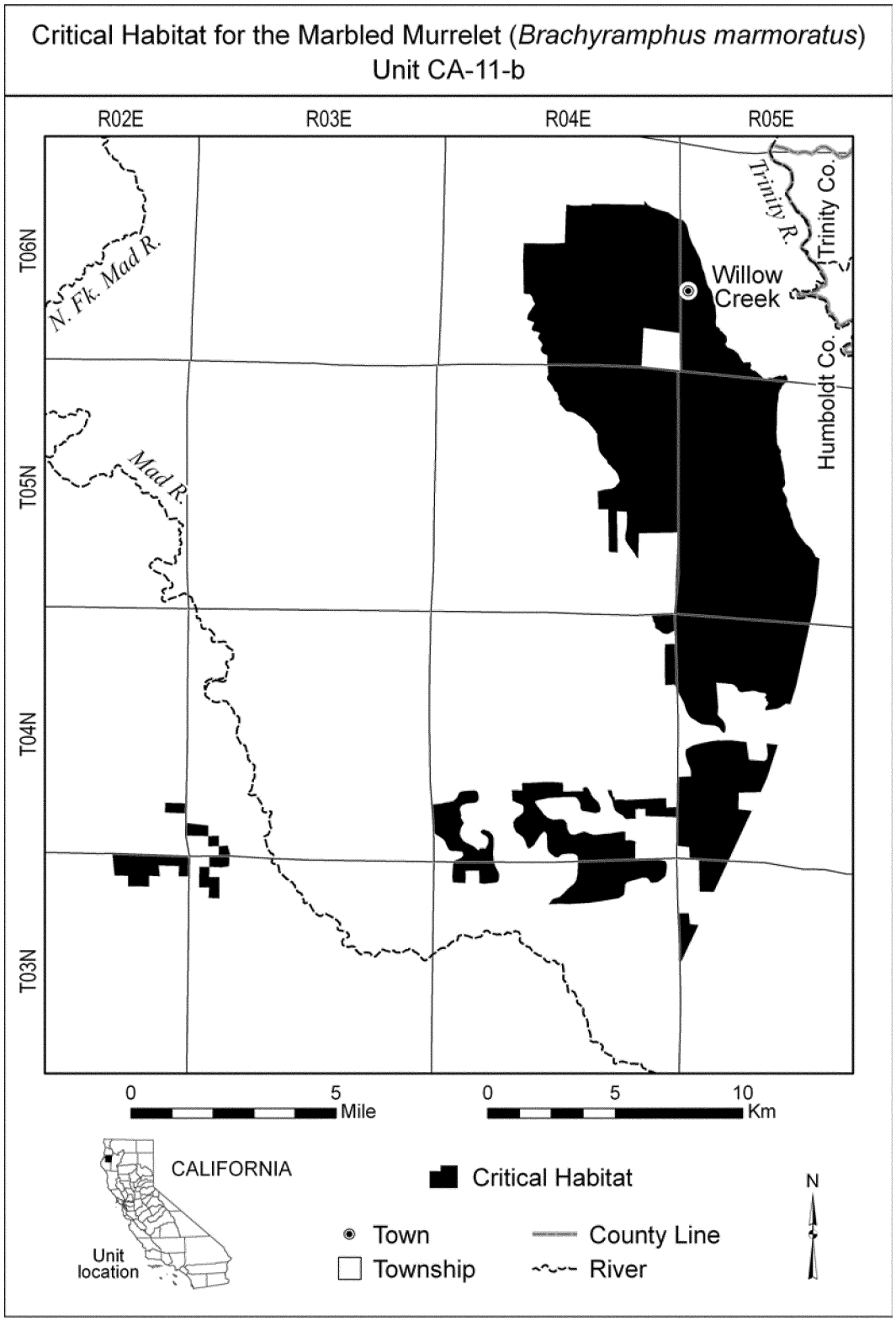
T.04N., R.05E. Humboldt Meridian: NW ¼, W ½ SW ¼, NE ¼ SW ¼, Section 3; Sections 4–7; S ½ S ½ Section 8; Section 9; W ½ NW ¼, NW ¼ SW ¼, Section 10; NE ¼ NW ¼, NW ¼ NE ¼ Section 16; NW ¼ SW ¼ Section 17; N ½, N ½ SE ¼ Section 18; Section 19 except W ½ W ½; Section 20; NE ¼ NW ¼, SW ¼ Section 21; NW ¼ NW ¼ Section 28; Section 29 except S ½ NE ¼, N ½ SE ¼, SE ¼ SE ¼; Section 30; Section 31 except SW ¼ SW ¼; NW ¼, W ½ SW ¼ Section 32.

T.05N., R.04E. Humboldt Meridian: Sections 1–3; E ½ NE ¼ Section 4; NE ¼, N ½ NW ¼, E ½ E ½ Section 10; Sections 11–13; Section 14 except SW ¼, SW ¼ NW ¼; Section 23 except W ½ SW ¼, W ½ SE ¼; Section 24; N ½ NW ¼, S ½ SE ¼ Section 25; E ½ NW ¼ Section 26.

T.05N., R.05E. Humboldt Meridian: Section 4 except E ½; Sections 5–8; Section 9 except E ½; Section 16 except E ½ E ½; Sections 17–20; Section 21 except E ½ NE ¼; W ½ SW ¼ Section 22; Section 27, except NE ¼ NE ¼, E ½ SE ¼; Sections 28–33; Section 34 except E ¼.

T.06N., R.04E. Humboldt Meridian: Sections 13–15; Sections 21–27; Section 28 except SW ¼ NW ¼, NW ¼ SW ¼; Section 33 except W ½ NW ¼, SW ¼; Sections 34–35.

T.06N., R.05E. Humboldt Meridian: W ½, W ½ SE ¼ Section 18; Section 19 except E ½ NE ¼; SW ¼ SW ¼ Section 29; Sections 30– 31; Section 32 except NE ¼, NE ¼ SE ¼, NE ¼ NW ¼.



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Dated: September 20, 2011.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–25583 Filed 10–4–11; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 76, No. 193
Wednesday, October 5, 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 HOMELAND SECURITY

U.S. Customs and Border Protection

8 CFR Part 100

[Docket No. USCBP–2011–0016]

RIN 1651–AA88

Potential Closing of Morses Line Border Crossing

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: U.S. Customs and Border Protection (CBP) currently operates a border crossing known as Morses Line, Vermont, located within the port limits of the port of entry of Highgate Springs/Alburg, Vermont. CBP officers are stationed at the Morses Line border crossing to accept entries of merchandise, collect duties, and enforce various provisions of the customs and immigration laws. The Morses Line border crossing is an aging facility that requires extensive upgrades and significant financial resources to update the facility to today's modern standards of border crossings. Based on internal analyses, feedback from many individuals in the local community, and consultation with members of Congress, CBP is evaluating the potential closure of the Morses Line border crossing. CBP is seeking public comment on this potential closure.

DATES: Comments must be received on or before December 5, 2011.

ADDRESSES: You may submit comments identified by *docket number,* by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2011–0016.
- *Mail:* Border Security Regulations Branch, Office of International Trade, Customs and Border Protection, Regulations and Rulings, Attention: Border Security Regulations Branch, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1179.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of International Trade, Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Roger Kaplan, CBP Office of Field Operations, telephone (202) 325–4543. You may also visit CBP's Morses Line Web site at *http://www.cbp.gov/MorsesLineInfo.*

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this advance notice of proposed rulemaking. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposal.

Background

CBP ports of entry are locations where CBP officers and employees are assigned to accept entries of merchandise, clear passengers, collect duties, and enforce the various provisions of customs, immigration, agriculture, and related U.S. laws at the border. The term ''port of entry'' is used in the Code of Federal Regulations (CFR) in title 8 for immigration purposes and in title 19 for customs purposes. Concerning customs purposes, the list of designated CBP ports of entry is set forth in paragraph (b)(1) of section 101.3 of the CBP regulations (19 CFR 101.3(b)(1)). Paragraph (b)(1) also provides the corresponding limits of those ports, generally by reference to a Treasury Decision (T.D.). The port of entry of Highgate Springs/Alburg, Vermont is described in T.D. 77–165 and includes the Morses Line border crossing.

For immigration purposes, 8 CFR 100.4(a) lists ports of entry for aliens arriving by vessel and land transportation. These ports are listed according to location by districts and are designated as Class A, B, or C. Morses Line is included in this list, in District No. 22, as a Class A port of entry, meaning a port that is designated as a port of entry for all aliens arriving by any means of travel other than aircraft.

Built in 1934, the Morses Line facility is CBP's oldest land border crossing facility, and its capabilities reflect the design requirements of that time. Although the crossing has undergone some limited renovation since it was built, a new facility would be needed to meet modern operational, safety, and technological demands. For an analysis of both the costs of updating the crossing and the costs of closing the crossing, see the section of this document entitled: Executive Order 12866: Regulatory Planning and Review. As indicated in that section, CBP has determined that the net benefit of closing rather than updating the crossing would be about $5.5 million the first year and $640,000 each year after that. Among other things, the analysis takes into account that the Morses Line crossing is one of CBP's lesser trafficked crossings, processing about 40 vehicles a day, as well as the close proximity of other border crossings.

Potential Closure of the Border Crossing

After hearing initial concerns expressed by members of Congress and some of their constituents regarding expansion and modernization of the Morses Line border crossing and considering the net benefits regarding closure of the crossing, CBP decided to investigate whether closing the crossing would be preferable to undertaking a modernization project. The low volume of traffic utilizing the Morses Line crossing as well as the proximity of alternate crossings, suggest that the cost

and expansion needed to modernize the crossing may not be justified. Therefore, CBP is conducting an evaluation to determine whether to close the Morses Line border crossing.

The closure of the Morses Line border crossing would mean that CBP officers would not be stationed there and that the road at the border would be secured. Persons wishing to cross the border would need to travel to the closest manned U.S. border crossing, which would most likely be Highgate Springs, which is about 17 miles west, in the port of entry of Highgate Springs/Alburg, Vermont or the West Berkshire crossing, which is about 10 miles east, in the port of entry of Richford, Vermont.

Obstacles To Modernizing the Border Crossing

The American Recovery and Reinvestment Act of 2009 (ARRA), Public Law 111–5 (Feb. 17, 2009), included funding for CBP to renovate various ports and crossings along the U.S.-Canadian border. CBP intended to use funds from ARRA to modernize the Morses Line border crossing. However, this funding has expired. Congress would now have to specifically appropriate funding and provide authorization for CBP to modernize the border crossing.

Also, for the Morses Line border crossing to remain open, CBP must build a new facility, which would require a larger land footprint. Thus, CBP will need to acquire private land adjacent to the existing facility. The current property owner remains strongly opposed to selling his land to CBP to expand the border crossing.

Public Consultations

On May 22, 2010, representatives from CBP held a town hall meeting in Morses Line, Vermont. The members of the public in attendance at this meeting conveyed their sentiment that the border crossing should be closed rather than expanded. Shortly after this meeting, CBP began the review process for closing the crossing. Since that time, members of the public have spoken out both in favor and opposition of the contemplated closure. The communities on both sides of the border have held several public meetings, including one on September 25, 2010, to protest the possible closure of the crossing.

Public Comments

In view of the community interest in this matter, CBP encourages the public to submit comments regarding the potential closure of the Morses Line border crossing.

Next Steps

If, after a full review and consideration of the public comments and other assessments, CBP determines that the Morses Line border crossing should be closed, CBP would publish a Notice of Proposed Rulemaking (NPRM) in the **Federal Register**, which would propose the closure. The NPRM would provide an additional opportunity for public comment. After the NPRM comment period closes, CBP would consider the public comments and determine whether to implement the NPRM as proposed by issuing a final rule. If CBP determines that the Morses Line crossing should remain open, CBP will publish a notice in the **Federal Register** withdrawing this ANPRM.

Congressional Notification

On July 9, 2010, the Commissioner of CBP notified Congress of the potential closure of the Morses Line border crossing, fulfilling the congressional notification requirements of 19 U.S.C. 2075(g)(2) and section 417 of the Homeland Security Act (6 U.S.C. 217).

Executive Order 12866: Regulatory Planning and Review

This Advance Notice of Proposed Rulemaking (ANPRM) is not a significant regulatory action under Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB) under that order. Below is CBP's preliminary assessment of the benefits and costs of this potential regulatory action. While an assessment of benefits and costs is not generally included in an ANPRM, we include one here to provide the public with as much information as possible. We welcome comments on the analytical approach and the data used.

Baseline Conditions

Morses Line is one of CBP's lesser trafficked crossings, processing about 40 vehicles a day between 8 a.m. and midnight. The port of Highgate Springs assigns 6 full time staff to the crossing, costing about $668,000 per year, including benefits. In addition, CBP spends about $24,000 a year on operating expenses such as utilities and maintenance. The total annual cost of operating the crossing is about $692,000. CBP has determined that the Morses Line crossing requires significant renovation and expansion. We estimate that it would cost approximately $5 million to acquire the needed land and build facilities that meet all current safety and operational standards, so CBP would spend about $5.7 million the first year (construction plus operating costs) and $0.7 million each subsequent year if the crossing were to remain open.

Costs of Closing the Crossing

The costs of this potential closure fall into three categories—the cost to CBP to physically close the port, the cost to U.S. travelers to drive to the next nearest port, and the cost to the economy of lost tourism revenue resulting from potential decreased Canadian travel. We estimate that it would cost approximately $158,000 to physically close the port, which involves building road barricades, boarding up the building, and managing asbestos.

In addition to the cost to the government of closing the port, we must examine the impact of this regulation on U.S. travelers (per guidance provided in OMB Circular A–4, this analysis is focused on costs and benefits to U.S. entities). Approximately 14,600 vehicles cross from Canada into the United States each year at Morses Line. According to CBP's Boston Field Office, vehicles crossing into the United States in Vermont, New Hampshire, and Maine carry an average of 1.8 passengers, 31 percent of whom are U.S. citizens. Using these figures, we estimate that 26,280 passengers cross into the United States through Morses Line each year and 8,147 are U.S. citizens. If the crossing is closed, these travelers would need to travel to an alternate crossing which could cost them both time and money. CBP does not collect data on outbound travelers, but since Morses Line is used primarily for local travel, we assume that outbound traffic closely resembles inbound traffic.

There are two alternate crossings near Morses Line—Highgate Springs, which is about 17 miles west, and West Berkshire, which is about 10 miles east. The alternate crossing travelers may choose would depend on their point of origin and their destination. In general, the closer the point of origin or destination to Morses Line, the more the traveler would be affected by the closure.

Because CBP does not collect data on either a traveler's point of origin or destination, we used Google Maps' ''Get Directions'' feature to estimate the effect of the closure on travelers. Using this tool, we measured the distance and estimated time between each probable cross-border combination (Abbot's Corner to Morses Line, Moore's Crossing to Franklin, etc.). We assume that travelers will always take the fastest route. Because Morses Line is not on major routes, it would not be the fastest route for the vast majority of travelers originating in or traveling outside this

area, so we only consider the immediate surrounding area in our analysis (current traffic volumes through Morses Line also support the assumption that travel is overwhelmingly local). We next measured the distance and estimated time for each combination assuming they could not travel through Morses Line.

By comparing the distance and travel time for the fastest route to those for the fastest route that does not use Morses Line, we calculate the effect of the crossing closure on both travel time and miles traveled. For example, traveling from Morgan's Corner to Morses Line currently takes 18 minutes. If the Morses Line crossing is closed, it would take an estimated 36 minutes, 18 minutes longer. Table 1 shows the effects of the closure on time traveled for the points considered. Table 2 shows the effect on miles traveled.

TABLE 1—DIFFERENCE IN TIME TRAVELED

[Minutes]

	Morses Line	Franklin	Franklin County State Airport	Sheldon Springs	Sheldon	Enosburg Falls	Highgate Springs	Swanton
Phillipsburg Bird Sanctuary	12	9	0	0	0	0	0	0
Morgan's Corner	18	16	0	0	0	2	0	0
Moore's Crossing	31	22	2	10	10	7	0	0
Le Coin-chez Desranleau	31	23	0	10	12	7	0	0
Campbell Corners	29	15	5	10	9	0	0	0
Pigeon Hill	24	10	5	4	5	0	0	0
Eccles Hill	20	6	8	1	1	0	0	4
Saint Armand Centre	18	4	5	0	0	0	0	0
Krans Corners	21	6	5	2	1	0	0	0
Hunter Mills	6	0	5	0	0	0	0	0
Frelighsburg	6	0	5	0	0	0	0	0
Joy Hill	2	0	1	0	0	0	0	0
Abbott's Corner	1	0	1	0	0	0	0	0

TABLE 2—DIFFERENCE IN DISTANCE TRAVELED

[Miles]

	Morses Line	Franklin	Franklin County State Airport	Sheldon Springs	Sheldon	Enosburg Falls	Highgate Springs	Swanton
Phillipsburg Bird Sanctuary	10	11	0	0	0	0	0	0
Morgan's Corner	13	9	0	0	0	6	0	0
Moore's Crossing	20	12	1	5	8	3	0	0
Le Coin-chez Desranleau	20	12	0	5	8	2	0	0
Campbell Corners	17	9	4	7	6	0	0	2
Pigeon Hill	13	5	3	4	4	0	0	1
Eccles Hill	12	4	5	3	3	0	0	3
Saint Armand Centre	11	2	3	0	0	0	0	2
Krans Corners	12	3	3	1	1	0	0	1
Hunter Mills	5	0	3	0	0	0	0	2
Frelighsburg	3	0	6	0	0	0	0	1
Joy Hill	3	0	5	0	0	0	0	1
Abbott's Corner	2	0	4	0	0	0	0	1

Because CBP does not collect data on the points of origin or destinations of travelers using Morses Line and because quality population data for these locations is not available, we assume that each route is used equally. Using this assumption probably overstates the costs of the closure because the area immediately surrounding Morses Line [1] (which would be impacted most by the closure) is sparsely populated when compared to areas farther from the crossing, such as Franklin or Highgate Springs. Using this assumption we estimate that those whose trip is affected by the closure of Morses Line would be delayed by an average of 8.19 minutes (0.137 hours) and 5.7 miles for a one-way trip.

In 2007, Industrial Economics, Inc. (IEc) conducted a study for CBP to develop ''an approach for estimating the monetary value of changes in time use for application in [CBP's] analyses of the benefits and costs of major regulations.'' [2] We follow the three-step approach detailed in IEc's 2007 analysis here to monetize the increase in travel time resulting from the closure of Morses Line: (1) Determine the local wage rate, (2) determine the purpose of the trip, and (3) determine the value of the travel delay as a result of this rule. We start by using the median hourly rate of $15.73 for Vermont, as the effects of the rule are local.[3] We next determine

[1] The population of the zip code containing Morses Line and Franklin is approximately 1,500 people. *http://vermont.hometownlocator.com/zip-codes/data,zipcode,05457.cfm.*

[2] Robinson, Lisa A. 2007. ''Value of Time.'' Submitted to U.S. Customs and Border Protection on February 15, 2007. The paper is contained in its entirely as Appendix D in the Regulatory Assessment for the April 2008 final rule for the Western Hemisphere Travel Initiative requirements in the land environment (73 FR 18384; April 3, 2008). See *http://www.regulations.gov* document numbers USCBP–2007–0061–0615 and USCBP–2007–0061–0616.

[3] Bureau of Labor Statistics, May 2010. *http://www.bls.gov/oes/current/oes_vt.htm#00-0000.*

the purpose of the trip. For the purposes of this analysis, we assume this travel will be personal travel and will be local travel. We identify the value of time multiplier recommended by the U.S. Department of Transportation (DOT) for personal, local travel, as 0.5.[4] Finally, we account for the value of the travel delay. Since the added time spent traveling is considered more inconvenient than the baseline travel, we account for this by using a factor that weighs time inconvenienced more heavily than baseline travel time. This factor, 1.47, is multiplied by the average wage rate and the DOT value of time multiplier for personal, local travel for a travel time value of $11.56 per traveler ($15.73 × 0.5 × 1.47).[5]

We next multiply the estimated number of U.S. citizens entering through Morses Line in a year (8,147) by the average delay (0.137 hours calculated above) to arrive at the number of additional hours U.S. citizens would be delayed as a result of this rule—1,116 hours. We multiply this by the value of travel time ($11.56) to arrive at the value of the additional driving time for U.S. citizens arriving in the United States once Morses Line is closed. Finally, we double this to reach a total time cost of a round trip for U.S. citizens of $25,802.

Besides the cost of additional travel time, we must consider the vehicular costs of a longer trip. We must first estimate the number of miles the closure of Morses Line would add to U.S. citizens' trips. The annual traffic arriving at Morses line is 14,600 vehicles. Since CBP does not track the number of vehicles entering by nationality, we estimate those owned by U.S. citizens. Since 31 percent of the passengers entering the United States by car in the Boston Field Office (which includes Morses Line) are U.S. citizens, we assume that 31 percent of the vehicles are owned by U.S. citizens. Therefore, we estimate that 4,526 U.S.-owned vehicles would be affected by this rule. We multiply this by the average increase in round trip distance of 11.4 miles for a total distance delay for U.S. owned vehicles of 51,596 miles. We next monetize the delay by applying the IRS's standard mileage rate for business travel of $0.50 to these vehicles, which includes fuel costs, wear-and-tear, and depreciation of the vehicle. Because this is an estimate for business travel, it may overstate slightly costs for leisure travelers using their vehicles on leisure activities. We estimate that a closure of Morses line would cost U.S. citizens $25,798 in additional vehicular costs (14,600 vehicles × 31 percent U.S. citizens × 11.4 miles × $0.50 per mile = $25,798).

The final cost we must consider is the cost to the economy of lost tourism revenue resulting from potential decreased Canadian travel. Because of the lack of local tourism data for this specific region, we are unable to monetize or quantify these costs. We therefore discuss this qualitatively.

Since both U.S. and foreign travelers would be inconvenienced by the closure of the Morses Line crossing, it is possible that fewer foreign travelers would choose to cross the border into the United States. To the extent that these visitors were spending money in the United States, local businesses would lose revenue. Since the average trip would only be lengthened by about 8 minutes, this effect would likely be very small. Also, it could be mitigated by U.S. citizens who would now choose to remain in the United States. We believe that the total impacts on the economy due to decreased travel to the United States are negligible.

In summary, the closure of the Morses Line crossing would cost CBP $158,000 in direct closure costs in the first year, and U.S. travelers $25,802 in time costs and $25,798 in vehicular costs annually. Total costs to close the port would thus be $210,000 in the first year and $52,000 each following year.

Net Effect of Closure

The costs to CBP of leaving the Morses Line crossing open would be $5.7 million the first year and $692,000 each following year. The costs of closing the crossing would be $210,000 the first year and $52,000 each following year. Thus, the net benefit of the crossing closure would be about $5.5 million the first year and $640,000 each year after the first year.

Dated: September 29, 2011.

Janet Napolitano,

Secretary.

[FR Doc. 2011–25748 Filed 10–4–11; 8:45 am]

BILLING CODE 9111–14–P

[4] U.S. Department of Transportation (DOT), *Revised Departmental Guidance, Valuation of Travel Time in Economic Analysis,* (Memorandum from E. H. Frankel), February 2003, Tables 1.

[5] Wardman, M., ''A Review of British Evidence on Time and Service Quality Valuations,'' *Transportation Research Part E,* Vol. 37, 2001, pp. 107–128.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 26

[Docket No. PRM–26–7; NRC–2011–0220]

Cheri Swensson; Certification of Substance Abuse Experts

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking (PRM), dated May 5, 2011, and supplemented on August 3, 2011, which was filed with the NRC by Cheri Swensson (the petitioner), on behalf of the American Academy of Health Care Providers in the Addictive Disorders (the Academy). The petition was docketed by the NRC on September 9, 2011, and has been assigned Docket No. PRM–26–7. The petitioner requests that the NRC amend its regulations to include the Academy as one of the organizations authorized to certify a substance abuse expert.

DATES: Submit comments by December 19, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2011–0220 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0220. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301–492–3668; *e-mail: Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attn.:* Rulemakings and Adjudications Staff.
- *E-mail comments to: Rulemaking.Comments@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (*telephone:* 301–415–1677).

• *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

FOR FURTHER INFORMATION CONTACT: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* 301–492–3667.

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

• *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

• *Federal Rulemaking Web site:* Public comments and supporting materials related to this petition for rulemaking can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0220.

Background

Cheri Swensson, on behalf of the Academy, submitted a petition for rulemaking dated May 5, 2011, and supplemented on August 3, 2011. The petitioner requested that the NRC amend Title 10 of the *Code of Federal Regulations* (10 CFR), Section 26.187, ''Substance abuse expert,'' by including the Academy at Section 26.187(b)(5). The petitioner is the Executive Director for the Academy, which is an international credentialing body composed of psychologists, medical doctors, nurses, social workers, and counselors that provides care in areas such as alcohol and gambling addiction. In 2010, the Academy received its accreditation from the National Commission for Certifying Agencies (NCCA). The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802, ''Petition for rulemaking,'' and the petition has been docketed as PRM–26–7. The NRC is requesting public comment on the petition for rulemaking.

Discussion of the Petition

The petitioner states that the Academy ''is very interested in working alongside the NRC to ensure its substance abuse experts are qualified and adhere to the NRC's code of professionalism and ethical conduct through [the Academy's] Certified Addiction Specialist [CAS] certification.'' The petitioner states that the Academy's CAS certification was accredited by the NCCA in 2010 and is a comprehensive credential offered by the Academy which includes competencies in alcohol addiction, drug addiction, sex addiction, eating disorders and gambling addiction. The petitioner claims that its certification requirements meet or exceed the NRC's requirements. The petitioner requests that the NRC amend § 26.187(b)(5) to include the Academy as one of the organizations authorized to certify a substance abuse expert.

Dated at Rockville, Maryland, this 30th day of September 2011.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2011–25784 Filed 10–4–11; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 125

RIN 3245–AG22

Small Business Subcontracting

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is proposing to amend its regulations to implement provisions of the Small Business Jobs Act of 2010, which pertain to small business subcontracting. SBA is proposing to amend its regulations to provide for a ''covered contract'' (a contract for which a small business subcontracting plan is required, currently valued above $1.5 million for construction and $650,000 for all other contracts), a prime contractor must notify the contracting officer in writing whenever the prime contractor does not utilize a subcontractor used in preparing its bid or proposal during contract performance. SBA is also proposing to amend its regulations to require a prime contractor to notify a contracting officer in writing whenever the prime contractor reduces payments to a subcontractor or when payments to a subcontractor are 90 days or more past due. In addition, SBA is proposing to clarify that the contracting officer is responsible for monitoring and evaluating small business subcontracting plan performance. SBA is also proposing to clarify which subcontracts must be included in subcontracting data reporting, which subcontracts should be excluded, and the way subcontracting data is reported.

SBA is also proposing to make other changes to update its subcontracting regulations, including changing subcontracting plan thresholds and referencing the electronic subcontracting reporting system (eSRS). Some of the SBA's proposed changes would require the contracting officer to review subcontracting plan reports within 60 days of the report ending date.

Finally, SBA is also proposing to address how subcontracting plan requirements and credit towards subcontracting goals can be implemented in connection with Multi-agency, Federal Supply Schedule, Multiple Award Schedule and Government-wide Acquisition indefinite delivery, indefinite quantity (IDIQ) contracts.

DATES: Comments must be received on or before December 5, 2011.

ADDRESSES: You may submit comments, identified by RIN: 3245–AG23, by any of the following methods:

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

• *Mail, for paper, disk, or CD/ROM submissions:* Dean Koppel, U.S. Small Business Administration, Office of Government Contracting, 409 Third Street, SW., 8th Floor, Washington, DC 20416.

• *Hand Delivery/Courier:* Dean Koppel, U.S. Small Business Administration, Office of Government Contracting, 409 Third Street, SW., 8th Floor, Washington, DC 20416.

SBA will post all comments on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.Regulations.gov,* please submit the information to Dean Koppel, U.S. Small Business Administration, Office of Government Contracting, 409 Third Street, SW., 8th Floor, Washington, DC 20416, or send an e-mail to *Dean.Koppel@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information or not.

FOR FURTHER INFORMATION CONTACT: Dean Koppel, Office of Government Contracting, 409 Third Street, SW., Washington, DC 20416; (202) 205–9751; *Dean.Koppel@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 1321 of the Jobs Act requires the SBA Administrator, in consultation with the Administrator of the Office of Federal Procurement Policy, to publish regulations establishing policies for subcontracting compliance, including assignment of compliance responsibilities between contracting offices, small business offices, and program offices. A 2010 Senate Report to a bill (S. 2989) that contained many of the same or similar provisions to the subcontracting provisions in the Jobs Act cites a 2005 Government Accountability Office (GAO) report concerning the Department of Energy, where GAO found that large business prime contractors had overstated their small business subcontracting achievements by excluding certain subcontracts from the base, such as electricity and utilities, thereby making it appear that the prime contractor awarded a much higher percentage of its subcontracts to small business concerns than the prime contractors actually awarded. S. Rep. No. 111–343, ''Small Business Contracting Revitalization Act of 2010,'' September 29, 2010; ''Department of Energy, Improved Oversight Could Better Ensure Opportunities for Small Business Subcontracting,'' GAO Report No. 05–459 (May 2005).

While SBA recognizes the valuable insight provided by GAO in the above-referenced report, it does not concur with all of GAO's findings. For example, SBA does not believe that electricity and utilities (*e.g.,* water, sewer, and refuse collection purchased from a municipality) belong in the subcontracting base. Including electricity and other utilities in the base creates the illusion that there are more subcontracting opportunities for small business than are actually available. SBA is proposing to define subcontract so that prime contractors and contracting officers will no longer be confused about which subcontracts must be included when reporting on small business subcontracting performance. For example, when preparing its individual subcontracting plan, a prime contractor must decide whether or not to include indirect costs in the subcontracting base, for both goaling and reporting purposes. Indirect costs must be included in a commercial plan to ensure comparability between goals and achievements because companies with commercial plans file only a summary report, not an individual report. All contractors must include indirect costs in their summary subcontracting reports.

In addition, GAO recommended that prime contractors report subcontracting to small businesses as a percentage of total contract dollars. Under current reporting requirements, prime contractors report subcontracting achievement in whole dollars and as a percentage of eligible subcontracts. SBA believes that subcontracting should be reported as a percentage of total subcontracting dollars rather than as a percentage of total contract dollars. The Small Business Act establishes government goals for socioeconomic groups based on a percentage of total subcontracted dollars, not total contract dollars. 15 U.S.C. 644(g)(1). However, SBA is proposing to explicitly authorize contracting officers to establish additional goals in terms of total contract dollars. Contracting officers are already doing this, and when a prime contractor enters its subcontracting achievements (*i.e.,* dollars) into eSRS, the system automatically calculates the percentage by both methods—*i.e.,* as a percentage of total subcontracting and as a percentage of total contract dollars. Thus, the contracting officer has the ability to compare achievements against the total contract dollars if desired.

GAO also found that there was confusion within the procuring agency about who was responsible for monitoring small business subcontracting plan performance. SBA is proposing to amend its regulations to make it clear that contracting officers (or administrative contracting officers if applicable) are responsible for monitoring and evaluating the prime contractor's small business subcontracting plan compliance and reporting. SBA is proposing to require the cognizant contracting officer to review every prime contractor's Individual Subcontract Report (ISR) or Subcontracting Report for Individual Contracts, SF 294, if authorized, or when applicable, the Summary Subcontract Report (SSR) for a commercial plan, within 60 days of the report ending date (*e.g.,* by November 30th for a report submitted for the fiscal year ended September 30th) and accept or reject the report in accordance with the Federal Acquisition Regulation (FAR) provisions set forth in subpart 19.7 and the eSRS instructions (*http://www.esrs.gov*).

All contractors whose reports are rejected, including those with individual contract plans and commercial plans as defined in FAR 19.701, will be required to make the necessary corrections and resubmit their reports within 30 days of receiving the notice of rejection.

SBA is also proposing to address subcontracting plans in connection with Multi-Agency, Federal Supply Schedule, Multiple Award Schedule and Government-wide Acquisition IDIQ contracts. Funding agencies have expressed interest in receiving credit towards their subcontracting goals for orders placed against another agency's task or delivery order contract. SBA is proposing that the contracting officer for the IDIQ contract will establish subcontracting plans for contractors without commercial plans. The contractor will report small business subcontracting achievement on an order-by-order basis to the contracting officer for the contracting agency. Contractors are currently reporting information on all orders collectively on a semi-annual or annual basis. Reporting on an order-by-order basis will allow the funding agency to receive credit towards its small business subcontracting goals. SBA is requesting comments on whether the reporting requirement should apply to all orders, or only apply to orders above a certain threshold. SBA is also proposing to allow the funding agency contracting

officer the discretion to establish goals in connection with individual orders.

SBA is proposing that contracting officers require prime contractors to update subcontracting plans whenever an option is exercised, as currently required by FAR 19.705–2(e). SBA is also proposing to require subcontracting plans whenever a modification causes a contract to exceed the subcontracting plan threshold. As currently written the FAR only requires a subcontracting plan if the value of the modification exceeds the subcontracting threshold. SBA is also proposing to allow the contracting officer to request a subcontracting plan when a firm's status changes from small to other than small as a result of a size recertification.

Section 1322 of the Jobs Act established a requirement that a prime contractor on a covered contract must notify the contracting officer in writing if the prime contractor fails to utilize a small business concern used in preparing and submitting the prime contractor's bid or proposal. Defining when a prime used a subcontractor in preparing a bid or proposal is very difficult. For example, providing a quote, or discussing availability, does not rise to the level of collaboration that would require notice to the Government. Consequently, we are proposing that the notice required by the statute will be triggered when: (1) The offeror specifically references a small business concern in a bid or proposal, (2) the offeror has entered into a written agreement with the small business concern for purposes of performing the specific contract as a subcontractor, or (3) the small business concern drafted portions of the proposal or submitted pricing or technical information that appears in the bid or proposal, with the intent or understanding that the small business concern will perform that related work if the offeror is awarded a contract.

Section 1334 of the Jobs Act established a requirement that a prime contractor notify the contracting officer in writing whenever a payment to a subcontractor is reduced or is 90 days or more past due for goods and services provided for the contract and for which the Federal agency has paid the contractor. The prime contractor shall include the reason for the reduction in payment to or failure to pay a subcontractor in the written notice. The contracting officer must consider the prime contractor's unjustified untimely or reduced price payments to subcontractors when evaluating the prime contractor's performance.

In addition, we are proposing that the contracting officer should consider whether to require a prime contractor to enter into a funds control agreement with a neutral third party if the prime contractor fails to pay subcontractors in a timely manner or fails to pay the agreed upon contractual price without justification. S. Rep. No. 111–343, p. 15. SBA is specifically requesting comments on how these arrangements work in the commercial sector, and specific language which can be used to guide contracting officers on the use of such an arrangement.

As required by the statute, SBA is also proposing that the contracting officer must record the identity of a prime contractor with a history of unjustified, untimely payments to subcontractors in the Federal Awardee Performance and Integrity System or any successor system. SBA is proposing to define a history of unjustified untimely or reduced payments as three incidents within a 12 month period. SBA invites comments on the proposed definition or alternatives with supporting rationales, or comments on whether such judgments should be left to the discretion of the contracting officer.

SBA is proposing to update its regulations to increase the subcontracting plan thresholds which were increased pursuant to the government-wide procurement program inflationary adjustments required by Section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375, see also 75 FR 53129 (Aug. 30, 2010). SBA proposes to reference eSRS instead of SF–294 and SF–295 (where appropriate). SBA proposes to clarify that compliance reviews include reviews to determine whether the prime has assigned the subcontract the correct NAICS code and corresponding size standard, and whether the subcontractor qualifies under the size or socioeconomic status claimed. In addition, SBA is proposing to update its regulations to specify that a compliance review includes analysis of whether the prime contractor is monitoring its subcontractors with respect to their subcontracting plans, achievement of their subcontracting goals and reviewing their ISRs or other reports.

Compliance With Executive Orders 12866, 13563, 12988, 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5. U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is a significant regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 801, *et. seq.*

Regulatory Impact Analysis

1. *Is there a need for the regulatory action?* The proposed regulations implement Sections 1321, 1322 and 1334 of the Small Business Jobs Act of 2010, Public Law 111–240, 124 Stat. 2504, September 27, 2010 (Jobs Act); 15 U.S.C. 637(d)(6)(G), (d)(12). Section 1321 of the Jobs Act requires the Administrator to establish a policy on subcontracting compliance within one year of enactment.

2. *What are the potential benefits and costs of this regulatory action?*

The proposed regulations will benefit small business subcontractors by encouraging large business prime contractors to pay small business subcontractors in a timely manner and the agreed upon contractual price. The proposed regulations will benefit small business subcontractors by encouraging large business contractors to utilize small business concerns in contract performance where the prime contractor used the small business concern to prepare the bid or proposal. The proposed regulations will benefit small business subcontractors by clarifying the responsibilities of the contracting officer in monitoring small business subcontracting plan compliance. The proposed regulations will benefit small business subcontractors by specifically authorizing procuring agencies to consider proposed small business subcontracting when evaluating offers.

The proposed regulations will benefit small business subcontractors by requiring large business concerns to report subcontracting results on an order-by-order basis, thereby enabling the funding agency to more closely monitor small business subcontracting in connection with the order and enabling the funding agency to receive credit towards its small business subcontracting goals. The proposed rule benefits funding agencies by allowing them to receive credit towards their subcontracting goals. The proposed rule benefits small business subcontractors by providing transparency with respect to small subcontracting on an order-by-order basis, thereby allowing the funding agency to monitor performance, and in its discretion, establish subcontracting goals for particular orders.

eSRS will have to be altered to allow large business prime contractors to report subcontracting results on an order-by-order basis. Other systems may

have to be altered to allow funding agencies to receive credit towards their small business subcontracting goals. Large business prime contractors will have to submit subcontracting reports more frequently.

Large businesses will have to report to the contracting officer in writing when they fail to utilize a small business concern in contract performance when the prime contractor utilized the small business concern in preparing the bid or proposal. Large businesses will have to report to the contracting officer in writing when they fail to pay a subcontractor within 90 days or when they pay a subcontractor a reduced price. The contracting officer will have to consider these written explanations when evaluating contract performance. The Federal Awardee Performance and Integrity System will have to be modified to allow contracting officers to identify large business prime contractors with a history of unjustified untimely payments.

3. *What are the alternatives to this final rule?*

Many of the proposed regulations are required to implement statutory provisions, and the Jobs Act requires promulgation of a policy on subcontracting compliance with within one year of enactment. The alternative to the proposed regulation concerning orders would be to maintain the current environment, where subcontracting results are not reported on an order-by-order basis, and agencies funding orders do not receive credit towards their small business subcontracting goals.

Executive Order 13563

As part of its ongoing efforts to engage stakeholders in the development of its regulations, SBA has solicited comments and suggestions from procuring agencies on how to best implement the Jobs Act. SBA held public forums around the country to discuss implementation of the Jobs Act. SBA has incorporated, where feasible, public input into the proposed rule. The proposed regulations concerning evaluation factors provide contracting officers with the discretion to utilize various methods to improve small business subcontracting, without requiring their use in all cases. The proposed rule concerning orders will provide contracting agencies with transparency by providing data concerning small business subcontracting for particular orders. Overall, these regulations would minimize the burden resulting from these proposed amendments. SBA is proposing to amend its regulations to remove outmoded thresholds that have increased and remove references to paper based forms that have been replaced by electronic reporting through eSRS.

As part of its implementation of this executive order and consistent with its commitment to public participation in the rulemaking process, SBA held public meetings in 13 locations around the country to discuss implementation of the Jobs Act, and received public input from thousands of small business owners, contracting officials and large business representatives. Although most of these amendments are new, SBA expects that public participation will help to form the Agency's retrospective analysis of related contracting regulations that are not being amended at this time.

Executive Order 12988

For purposes of Executive Order 12988, SBA has drafted this proposed rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of that Order, to minimize litigation, eliminate ambiguity, and reduce burden. This rule has no preemptive or retroactive effect.

Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various layers of government, as specified in the order. As such it does not warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

For the purpose of the Paperwork Reduction Act, SBA has determined that this rule, if adopted in final form, would impose new government-wide reporting requirements on large prime contractors. The Jobs Act requires such contractors to notify contracting officers, at the applicable procuring agency, in writing whenever a prime contractor fails to utilize a small business subcontractor used in preparing and submitting a bid or proposal; when the prime contractor pays a subcontractor a reduced price without justification; or when payments to a subcontractor are 90 days or more past due. These requirements will also be incorporated in the Federal Acquisition Regulations.

Regulatory Flexibility Act, 5 U.S.C. 601–612

SBA has determined that this proposed rule, if adopted in final form, may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Therefore, SBA has prepared an Initial Regulatory Flexibility Act (IRFA) analysis addressing the proposed regulation.

IRFA

When preparing a Regulatory Flexibility Analysis, an agency shall address all of the following: a description of why the action by the agency is being considered; the objectives and legal basis of the rule; the estimated number of small entities to which the rule may apply; a description of the projected reporting, recordkeeping and other compliance requirements; identification of all Federal rules which may duplicate, overlap or conflict with the proposed rule; and a description of significant alternatives which minimize any significant economic impact on small entities. This IRFA considers these points and the impact the proposed regulation concerning subcontracting may have on small entities.

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

The majority of the proposed regulatory amendments are required to implement Sections 1321, 1322 and 1334 of the Small Business Jobs Act of 2010, Public Law 111–240, 124 Stat. 2504, September 27, 2010 (Jobs Act); 15 U.S.C. 637(d)(6)(G), (d)(12). The proposed regulations that are not required by the Jobs Act are intended to help small business subcontractors by explicitly authorizing procuring agencies to consider proposed small business participation when evaluating offers from other than small business concerns, and to require other than small prime contractors to report data on small business subcontracting in connection with certain orders.

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

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of entities that may be affected by the proposed rules, if adopted. The RFA defines ''small entity'' to include ''small businesses,'' ''small organizations,'' and ''small governmental jurisdictions.'' SBA's programs generally do not apply to ''small organizations'' or ''small governmental jurisdictions'' because they are non-profit or governmental entities and do not generally qualify as ''business concerns'' within the meaning of SBA's regulations. SBA's

programs generally apply only to for-profit business concerns. However, to the extent this rule will impact small organizations or small governmental jurisdictions that receive prime contracts from the Federal government with values that exceed the threshold, the numbers would be minimal, and the major provisions would only apply if the entity fails to pay or utilize small business subcontractors.

The proposed rule will not directly negatively affect any small business concern, because it applies to other than small concerns and contracting officers. The proposed rule will indirectly benefit small business concerns, by requiring other than small prime contractors to report to the contracting officer when the prime contractor has failed to utilize a small business subcontractor used in preparing the bid or proposal. The proposed rule will also indirectly benefit small business concerns, by requiring large business prime contractors to report to the contracting officer when the prime contractor has failed to pay a small business subcontractor in a timely manner or pays a subcontractor a reduced rate without justification.

There are in approximately 348,000 concerns listed as small business concerns in the Dynamic Small Business Search (DSBS) database. We do not know how many of these concerns participate in small business subcontracting. Firms do not need to register in the DSBS database to participate in subcontracting. The DSBS database is primarily used for prime contracting purposes. Thus, the number of firms participating in subcontracting may be greater than or lower than the number of firms registered in the DSBS database.

(c) Projected Reporting, Recordkeeping and Other Compliance Requirements

To the extent the proposed rule imposes new information collection, recordkeeping or compliance requirements, they are imposed on other than small business concerns, not on small business concerns.

(d) Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule

SBA is not aware of any rules which duplicate, overlap or conflict with the proposed rule. The proposed rule primarily implements statutory provisions.

(e) Significant Alternatives to the Rule Which Could Minimize Impact on Small Entities

Section 1321 of the Jobs Act requires SBA to promulgate regulations implementing it. Section 1321 of the Jobs Act and its proposed implementing regulations primarily apply to contracting officers. Sections 1322 and 1334 of the Jobs Act amend portions of the Small Business Act, which SBA is responsible for administering and implementing through its regulations. The proposed rules implementing Sections 1322 and 1334 of the Jobs Act primarily apply to other than small concerns. As discussed above, the proposed rule indirectly benefits small business concerns, without requiring small business concerns to report, keep records or take other compliance actions.

List of Subjects

13 CFR Part 121

Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Small businesses.

13 CFR Part 125

Government contracting programs; Small business subcontracting program.

For the reasons stated in the preamble, SBA proposes to amend parts 121 and 125 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for 13 CFR part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644, and 662(5); and Public Law 105–135, sec. 401 *et seq.,* 111 Stat. 2592.

2. Amend § 121.404(g)(3)(ii) by adding the following sentence at the end of the paragraph:

§ 121.404 When does SBA determine the size status of a business concern?

* * * * *

(g) * * *

(3) * * *

(ii) * * * However, a contracting officer may require a subcontracting plan if a firm's size status changes from small to other than small as a result of a size recertification.

* * * * *

PART 125—GOVERNMENT CONTRACTING PROGRAMS

3. The authority citation for part 125 is revised to read as follows:

Authority: 15 U.S.C. 632(p), (q); 634(b)(6); 637; 644 and 657(f); Pub. L. 111–240, § 1321.

4. Amend § 125.3 as follows:

a. Revise paragraph (a);

b. Revise paragraph (b)(1);

c. Revise paragraph (c)(1) introductory text;

d. Revise paragraph (c)(1)(iii);

e. Redesignate paragraphs (c)(1)(iv), (v), and (vi) as (c)(1)(vii), (viii) and (ix) and add new paragraphs (c)(1)(iv), (v), and (vi);

f. Revise newly redesignated paragraphs (c)(1)(viii) and (ix);

g. Redesignate paragraph (c)(3) as (c)(6) and add new paragraphs (c)(3), (c)(4) and (c)(5);

h. Revise paragraph (d);

i. Revise paragraph (f)(2);

j. Revise paragraph (g); and

k. Add paragraph (h).

The additions and revisions read as follows:

§ 125.3 Subcontracting assistance.

(a) *General.* The purpose of the subcontracting assistance program is to provide the maximum practicable subcontracting opportunities for small business concerns, including small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, certified HUBZone small business concerns, certified small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women. The subcontracting assistance program implements section 8(d) of the Small Business Act, which includes the requirement that, unless otherwise exempt, other-than-small business concerns awarded contracts that offer subcontracting possibilities by the Federal Government in excess of $650,000, or in excess of $1,500,000 for construction of a public facility, must submit a subcontracting plan to the appropriate contracting agency. The Federal Acquisition Regulation sets forth the requirements for subcontracting plans in 48 CFR 19.7, and the clause at 48 CFR 52.219–9.

(1) Subcontract under this section means any agreement (other than one involving an employer-employee relationship) entered into by a Government prime contractor or subcontractor calling for supplies and/or services required for performance of the contract or subcontract (including modifications). Purchases from a corporation, company, or subdivision that is an affiliate of the prime contractor or subcontractor are not included. Subcontract award data

reported by prime contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made beyond the immediate next-tier, unless the contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian Tribe. Only subcontracts involving performance in the United States or its outlying areas should be included, with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas and subcontracts for foreign military sales unless waived in accordance with agency regulations. The following should not be included in the subcontracting base: Internally generated costs such as salaries and wages, employee insurance; other employee benefits; payments for petty cash; depreciation; interest; income taxes; property taxes; lease payments; bank fees; fines, claims, and dues; Original Equipment Manufacturer relationships during warranty periods (negotiated up front with product); electricity; utilities such as water, sewer, and other services purchased from a municipality; and philanthropic contributions. Utility companies may be eligible for additional exclusions unique to their industry, which may be approved by the contracting officer on a case-by-case basis.

(2) Subcontracting goals required under paragraph (c) must be established in terms of the total dollars subcontracted and as a percentage of total subcontract dollars. However, a contracting officer may establish additional goals as a percentage of total contract dollars.

(3) A prime contractor has a history of unjustified untimely or reduced payments to subcontractors if the prime contractor has reported itself to a contracting officer in accordance with paragraph (c)(5) on three occasions within a 12 month period.

(b) *Responsibilities of prime contractors.* (1) Prime contractors (including small business prime contractors) selected to receive a Federal contract that exceeds the simplified acquisition threshold, that will not be performed entirely outside of any state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, and that is not for services which are personal in nature, are responsible for ensuring that small business concerns have the maximum practicable opportunity to participate in the performance of the contract, including subcontracts for subsystems, assemblies, components, and related services for major systems, consistent with the efficient performance of the contract.

* * * * *

(c) *Additional responsibilities of large prime contractors.* (1) In addition to the responsibilities provided in paragraph (b) of this section, a prime contractor selected for award of a contract or contract modification that exceeds $650,000, or $1,500,000 in the case of construction of a public facility, is responsible for:

* * * * *

(iii) A prime contractor may not prohibit a subcontractor from discussing any material matter pertaining to payment or utilization as set forth in paragraph (c) with the contracting officer;

(iv) When developing an individual subcontracting plan (also called individual contract plan), the contractor must decide whether to include indirect costs in its subcontracting goals. If indirect costs are included in the goals, these costs must be included in the Individual Subcontract Report (ISR) in *http://www.esrs.gov* (eSRS) or Subcontract Reports for Individual Contracts (the paper SF–294 (if authorized). If indirect costs are excluded from the goals, these costs must be excluded from the ISRs (or SF–294 if authorized); however, these costs must be included on a prorated basis in the Summary Subcontracting Report (SSR) in the eSRS system. A contractor authorized to use a commercial subcontracting plan must include all indirect costs in its SSR;

(v) Assigning each subcontract the NAICS code and corresponding size standard that best describes the principal purpose of the subcontract (see 121.410);

(vi) Submitting timely and accurate ISRs and SSRs in eSRS, or if information for a particular procurement cannot be entered into eSRS, submit a timely SF–294, Subcontracting Report for Individual Contract. When a report is rejected by the contracting officer, the contractor must make the necessary corrections and resubmit the report within 30 days of receiving the notice of rejection;

* * * * *

(viii) Providing pre-award written notification to unsuccessful small business offerors on all subcontracts over $150,000 for which a small business concern received a preference. The written notification must include the name and location of the apparent successful offeror and if the successful offeror is a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business; and

(ix) As a best practice, providing the pre-award written notification cited in paragraph (c)(1)(viii) of this section to unsuccessful and small business offerors on subcontracts at or below $150,000 whenever it is practical to do so.

* * * * *

(3) An offeror must represent to the contracting officer that it will make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing the bid or proposal, in the same amount and quality used in preparing and submitting the bid or proposal. An offeror used a small business concern in preparing the bid or proposal if:

(i) The offeror references the small business concern as a subcontractor in the bid or proposal;

(ii) The offeror has a subcontract or agreement in principle to subcontract with the small business concern to perform a portion of the specific contract; or

(iii) The small business concern drafted any portion of the bid or proposal or the offeror used the small business concern's pricing or cost information or technical expertise in preparing the bid or proposal, where there is an intent or understanding that the small business concern will be awarded a subcontract for the related work if the offeror is awarded the contract.

(4) If an offeror fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in paragraph (c)(3) of this section, the offeror must provide the contracting officer with a written explanation.

(5) A prime contractor shall notify the contracting officer in writing if the prime contractor pays a reduced price to a subcontractor for goods and services upon completion of the responsibilities of the subcontractor or the payment to a subcontractor is more than 90 days past due for goods and services provided for the contract and for which the Federal agency has paid the prime contractor. The prime contractor shall include the reason for the reduction in payment to or failure to pay a subcontractor in any written notice.

(d) *Contracting officer responsibilities.* The contracting officer (or administrative contracting officer if specifically delegated in writing to accomplish this task) is responsible for evaluating the prime contractor's compliance with its subcontracting plan, including:

(1) Ensuring that all contractors submit their subcontracting reports into the eSRS or, if applicable, the SF–294, Subcontracting Report for Individual Contracts, within 30 days after the report ending date (e.g., by October 30th for the fiscal year ended September 30th);

(2) Reviewing all reports in eSRS within 60 days of the report ending date (e.g., by November 30th for a report submitted for the fiscal year ended September 30th);

(3) Evaluating whether the prime contractor made a good faith effort to comply with its small business subcontracting plan. Evidence that a large business prime contractor has made a good faith effort to comply with its subcontracting plan or other subcontracting responsibilities includes supporting documentation that:

(i) The contractor performed one or more of the actions described in paragraph (b) of this section, as appropriate for the procurement;

(ii) Although the contractor may have failed to achieve its goal in one socioeconomic category, it overachieved its goal by an equal or greater amount in one or more of the other categories; or

(iii) The contractor fulfilled all of the requirements of its subcontracting plan.

(4) Evaluating the prime contractor's written explanation concerning the prime contractor's failure to use a small business concern in performance when the prime contractor used the small business concern to prepare the bid or proposal.

(5) Evaluating the prime contractor's written explanation concerning its payment of a reduced price to a subcontractor for goods and services upon completion of the responsibilities of the subcontractor or its payment to a subcontractor more than 90 days late for goods and services provided for the contract and for which the Federal agency has paid the prime contractor.

(6) Evaluating whether a prime contractor that has failed to pay subcontractors in a timely manner or failed to pay subcontractors an agreed upon contractual price without justification should be required to enter into a funds control agreement with a neutral third party for the purpose of paying subcontractors the contractual amount in a timely manner.

(7) Evaluating whether the prime contractor has a history of unjustified untimely or reduced payments to subcontractors, and if so, recording the identity of the prime contractor in the Federal Awardee Performance and Integrity Information System (FAPIIS), or any successor database.

(8) A contracting officer must require the prime contractor (other than a prime contractor with a commercial plan) to update its subcontracting plan when an option is exercised.

(9) A contracting officer must require the prime contractor (other than a contractor with a commercial plan) to submit a subcontracting plan if the value of a modification causes the value of the contract to exceed the subcontracting plan threshold.

(10) A contracting officer may require a subcontracting plan if a firm's size status changes from small to other than small as a result of a size recertification.

* * * * *

(f) * * *

(2) All compliance reviews begin with a validation of the contractor's most recent ISR (or SF–294, if applicable) or SSR.

(i) A compliance review includes an evaluation of whether the prime contractor assigned the proper NAICS code and corresponding size standard to a subcontract, and a review of whether small business subcontractors qualify for the size or socioeconomic status claimed.

(ii) A compliance review includes validation of the contractor's methodology for completing its subcontracting reports.

(iii) A compliance review includes consideration of whether the contractor is monitoring its subcontractors with regard to their subcontracting plans, achievement of their proposed subcontracting goals, and reviewing their subcontractors' ISRs (or SF–294s, if applicable).

* * * * *

(g) *Subcontracting consideration in source selection.* (1) A solicitation requiring a subcontracting plan may contain an evaluation factor or subfactor for small business subcontracting participation in the subject procurement. A small business concern submitting an offer must receive the maximum score or credit under the evaluation factor or subfactor, without having to submit any information in connection with this factor or subfactor.

(2) When an ordering agency anticipates placing an order against a Federal Supply Schedule, government-wide acquisition contract (GWAC), or multi-agency contract (MAC), the ordering agency may evaluate subcontracting as a significant factor in its source selection process. In addition, the ordering agency may also evaluate subcontracting as a significant factor in source selection when entering into a blanket purchase agreement. At the time of contract award, the contracting officer must disclose to all competitors which one (or more) of these three elements will be evaluated as an important source selection evaluation factor in any subsequent procurement action. A small business offeror automatically receives the maximum possible score or credit on this evaluation factor without having to submit a subcontracting plan and without having to demonstrate subcontracting past performance. The factors that may be evaluated, individually or in combination, are:

(i) The subcontracting to be performed on the specific requirement;

(ii) The goals negotiated in previous subcontracting plans; and

(iii) The contractor's past performance in meeting the subcontracting goals contained in previous subcontracting plans.

(h) *Multi-agency, Federal Supply Schedule, Multiple Award Schedule and Government-wide Acquisition Contracts.* Except where a prime contractor has a commercial plan, the contracting officer shall require subcontracting plans for Multi-agency, Federal Supply Schedule, Multiple Award Schedule and Government-wide Acquisition indefinite delivery, indefinite quantity (IDIQ) contracts with estimated values above the subcontracting plan thresholds and that have subcontracting possibilities.

(1) Contractors shall submit small business subcontracting reports for individual orders to the contracting agency on an annual basis.

(2) The agency funding the order shall receive credit towards its small business subcontracting goals.

(3) The agency funding the order may in its discretion establish small business subcontracting goals for individual orders.

Dated: September 26, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–25767 Filed 10–4–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0994; Directorate Identifier 2010–NM–143–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) 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 that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

The right-hand inboard main landing gear (MLG) door of a CRJ 700 departed the aircraft during the landing phase of flight. The door damaged the trailing edge flap and punctured the rear fuselage near the floor level. The aircraft landed safely. Preliminary investigation indicates the failure was initiated by fatigue of the panel structure near a panel hinge lug. Loss of the main landing gear door during flight could result in damage to the aircraft and injury to persons on the ground.

* * * * *

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 November 21, 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.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: Daniel Parrillo, Program Manager, Continuing Operational Safety, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax (516) 794–5531.

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–2011–0994; Directorate Identifier 2010–NM–143–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

On June 28, 2006, we issued AD 2006–14–05, Amendment 39–14676 (71 FR 38979, July 11, 2006). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2006–14–05, Amendment 39–14676 (71 FR 38979, July 11, 2006), we have determined it is necessary to require a new modification of the MLG door configuration. We have also removed airplanes equipped with the new MLG door during production from the applicability of this NPRM. Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2003–23R3, dated May 21, 2010 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

The right-hand inboard main landing gear (MLG) door of a CRJ 700 departed the aircraft during the landing phase of flight. The door damaged the trailing edge flap and punctured the rear fuselage near the floor level. The aircraft landed safely. Preliminary investigation indicates the failure was initiated by fatigue of the panel structure near a panel hinge lug. Loss of the main landing gear door during flight could result in damage to the aircraft and injury to persons on the ground.

Subsequent to the issuance of Revision 1 of this directive, Transport Canada (TC) approved an alternate means of compliance (AMOC), AARDG 2004/A007, to allow extension of the repeat inspection interval when inboard MLG doors have incorporated certain repairs or modifications.

Subsequent to the issuance of the TC AMOC AARDG 2004/A007, an inboard MLG door departed from an aircraft operating under an AMOC equivalent to TC AMOC AARDG 2004/007. As a result of this incident, this directive was revised to Revision 2 to introduce additional inspection requirements according to Bombardier Alert Service Bulletin A670–32–016. In addition, Revision 2 also eliminated escalation of the repeat inspection interval allowed in TC AMOC AARDG 2004/007 and revised the aircraft applicability to add a new aircraft model.

Since the issuance of Revision 2 of this directive, TC approved an AMOC, AARDG 2006–A051, to allow the installation of a new modified MLG door configuration and to perform alternative inspection. Service history shows that this new modified MLG door configuration resolves the safety concerns associated with this directive.

Revision 3 of this directive mandates the incorporation of the new modified MLG door configuration in accordance with Bombardier Aerospace Service Bulletin (SB) 670BA–32–017 as the terminating action. In addition, this revision restricts the applicability to aircraft not equipped with the new modified MLG door configuration at delivery.

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

We have also revised paragraph (j)(2) of this NPRM to remove reference to Task Cards 32–12–01–000–801–A01 and 32–12–01–400–801–A01 of the Bombardier CRJ 700/900 Series Regional Jet Aircraft Maintenance Manual. We

added Note 2 to this NPRM to refer to these tasks cards as additional sources of guidance for replacing the lower panel assembly. Operators may contact the International Branch, ANM–116, Transport Airplane Directorate, FAA, for information regarding the use of the task cards for replacing the lower panel assembly, as required by paragraph (j)(2) of this AD.

Relevant Service Information

Bombardier has issued Alert Service Bulletin A670BA–32–016, Revision F, dated May 14, 2010, including Appendices A and B, dated June 2, 2005; and Service Bulletin 670BA–32–017, Revision C, dated May 14, 2010. 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 about 220 products of U.S. registry.

The actions that are required by AD 2006–14–05, Amendment 39–14676 (71 FR 38979, July 11, 2006), and retained in this proposed AD take about 3 work-hours per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $255 per product.

We estimate that it would take about 115 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $2,150,500, or $9,775 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 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 removing Amendment 39–14676 (71 FR 38979, July 11, 2006) and adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2011–0994; Directorate Identifier 2010–NM–143–AD.

Comments Due Date

(a) We must receive comments by November 21, 2011.

Affected ADs

(b) This AD supersedes AD 2006–14–05, Amendment 39–14676 (71 FR 38979, July 11, 2006).

Applicability

(c) This AD applies to Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes having serial numbers (S/Ns) 10003 through 10230 inclusive; and Model CL–600–2D15 (Regional Jet Series 705) airplanes; and Model CL–600–2D24 (Regional Jet Series 900) airplanes having S/Ns 15001 through 15053 inclusive, 15055, and 15056; certificated in any category.

Subject

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

Reason

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

The right-hand inboard main landing gear (MLG) door of a CRJ 700 departed the aircraft during the landing phase of flight. The door damaged the trailing edge flap and punctured the rear fuselage near the floor level. The aircraft landed safely. Preliminary investigation indicates the failure was initiated by fatigue of the panel structure near a panel hinge lug. Loss of the main landing gear door during flight could result in damage to the aircraft and injury to persons on the ground.

* * * * *

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.

Restatement of Requirements of AD 2003–19–51, Amendment 39–13353 (68 FR 61615, October 29, 2003), With Revised Serial Numbers and Service Information

Initial Compliance Time

(g) For Model CL–600–2C10 (Regional Jet series 700 & 701) series airplanes, S/Ns 10003 through 10230 inclusive; and Model CL–600–2D24 (Regional Jet series 900) series airplanes, S/Ns 15002 through 15053 inclusive, 15055, and 15056: Perform the initial inspection specified in paragraph (h) of this AD at the applicable time specified in paragraph (g)(1) or (g)(2) of this AD.

(1) For airplanes with fewer than 1,500 total flight cycles as of November 3, 2003 (the effective date of AD 2003–19–51, Amendment 39–13353 (68 FR 61615, October 29, 2003)): Do the inspections before the accumulation of 1,050 total flight cycles, or within 50 flight cycles after August 15, 2006 (the effective date of AD 2006–14–05, Amendment 39–14676 (71 FR 38979, July 11, 2006)), whichever is later.

(2) For airplanes with 1,500 or more total flight cycles as of November 3, 2003: Do the inspections within 10 flight cycles after August 15, 2006.

Inspections

(h) For Model CL–600–2C10 (Regional Jet series 700 & 701) series airplanes, S/Ns 10003 through 10230 inclusive; and Model CL–600–2D24 (Regional Jet series 900) series airplanes, S/Ns 15002 through 15053 inclusive, 15055 and 15056: At the applicable time specified in paragraph (g) of this AD, perform detailed inspections of the lower panel, part number (P/N) CC670–10520, of the left- and right-hand MLG doors for the conditions and in the areas specified in paragraphs (h)(1), (h)(2), (h)(3), and (h)(4) of this AD; and Figures 1, 2, and 3 of this AD.

Note 1: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) Inspect the cross member, P/N CC670–10572, of the MLG door lower panel for cracking or deformation, in accordance with Figure 2 of this AD.

(2) Inspect the inner skin, P/N CC670–10577, of the MLG door lower panel at the cross member (P/N CC670–10572) for cracking or deformation, or pulled or missing fasteners, in accordance with Figure 2 of this AD.

(3) Inspect the outer skin, P/N CC670–10574, of the MLG door lower panel at the cross member (P/N CC670–10572) for cracking or deformation, or pulled or missing fasteners, in accordance with Figure 2 of this AD.

(4) Inspect the forward member, P/N CC670–10570, and aft member, P/N CC670–10571, of the MLG door lower panel for cracking or deformation, or pulled or missing fasteners, in accordance with Figure 3 of this AD. Figures 1 through 3 of this AD follow.

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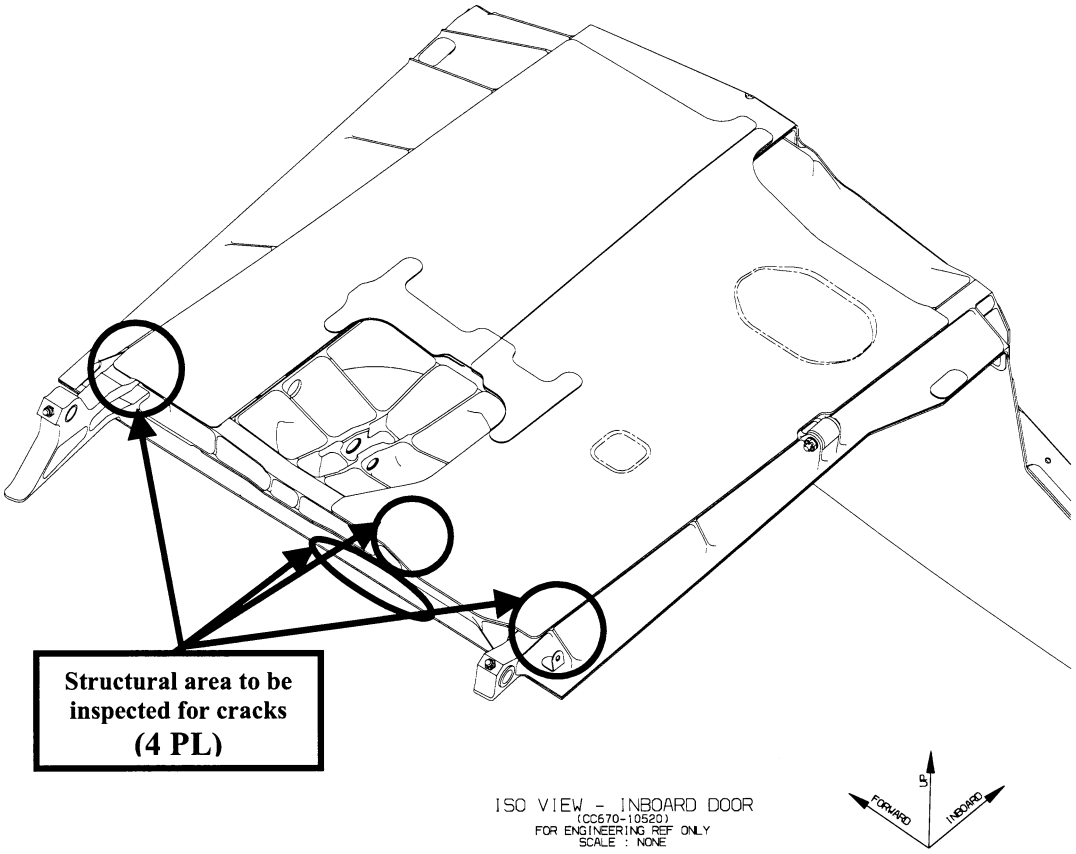

Figure 1
LH side shown
RH side opposite

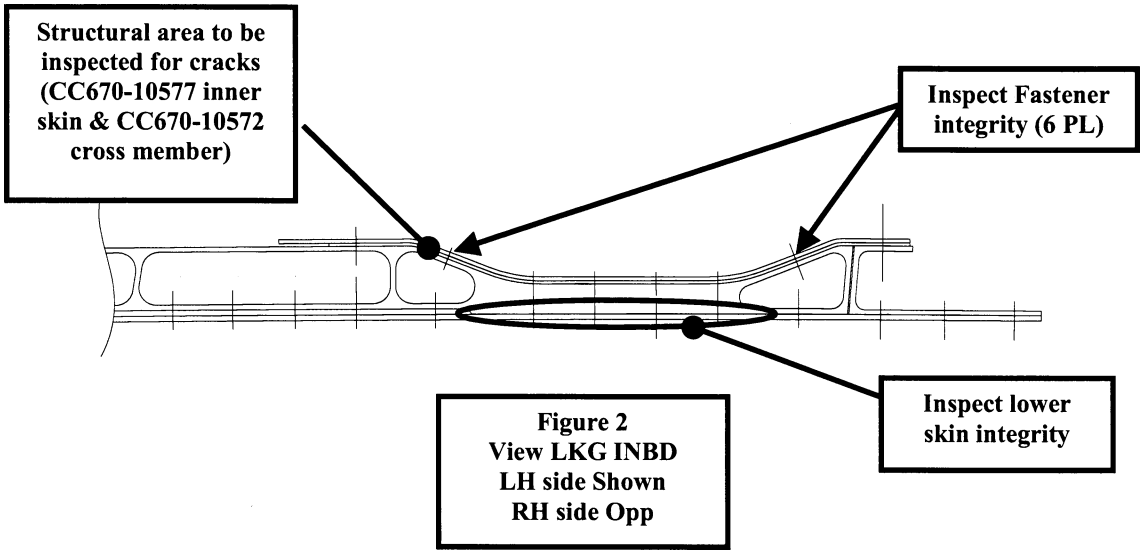

Figure 2
View LKG INBD
LH side Shown
RH side Opp

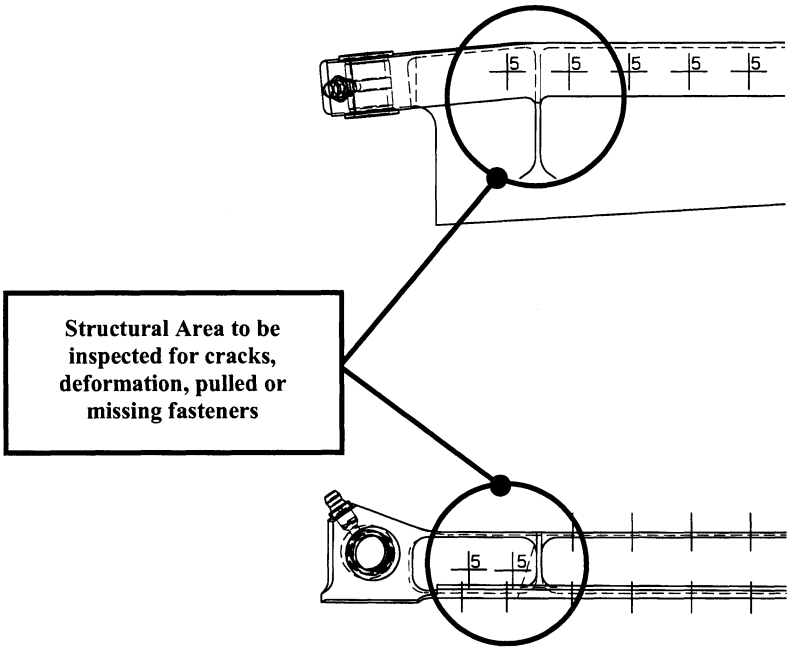

Figure 3
View LKG INBD
LH side Shown
RH side Opp

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Repetitive Inspections

(i) If no cracking or deformation, or pulled or missing fastener, as applicable, is found during any inspection required by paragraph (h) or (i) of this AD, repeat the inspections thereafter at intervals not to exceed 100 flight cycles.

Corrective Actions

(j) If any cracking or deformation, or pulled or missing fastener, as applicable, is found during any inspection done in accordance with paragraph (h) or (i) of this AD: Before further flight, accomplish paragraph (j)(1), (j)(2), or (j)(3) of this AD.

(1) Repair the damage in accordance with a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent); and accomplish repetitive inspections in accordance with a method and at a repetitive interval approved by same.

(2) Replace the lower panel assembly, P/N CC670–10520, of the affected MLG door with a new or serviceable lower panel assembly having the same P/N, according to a method approved by either the Manager, New York ACO, FAA; or TCCA (or its delegated agent).

Repeat the inspections specified in paragraph (h) of this AD at intervals not to exceed 100 flight cycles.

Note 2: For guidance on replacing the lower panel assembly, refer to Task Cards 32–12–01–000–801–A01 and 32–12–01–400–801–A01 of the Bombardier CRJ 700/900 Series Regional Jet Aircraft Maintenance Manual.

(3) Remove the lower panel assembly, P/N CC670–10520, of the affected MLG door, and accomplish paragraph (j)(3)(i) or (j)(3)(ii) of this AD, as applicable.

(i) For Model CL600–2C10 (Regional Jet series 700 & 701) series airplanes: Revise the Configuration Deviation List (CDL), Appendix 1, of the airplane flight manual (AFM), to include the following limitations. This may be accomplished by inserting a copy of this AD into the CDL of the AFM.

''For Model CL600–2C10 series airplanes: If one or both door panel assemblies, part number CC670–10520, is missing:

(1) Take-off Weight is reduced by 202.5 kg/door, or 450 lb/door.

(2) Enroute Climb Weight is reduced by 445.5 kg/door, or 990 lb/door.

(3) Landing Weight is reduced by 202.5 kg/door, or 450 lb/door.

(4) Fuel Consumption is increased by +3.42% on fuel used/door.

(5) Cruise Airspeed is limited to not more than 0.78 Mach.''

(ii) For Model CL–600–2D24 (Regional Jet series 900) series airplanes: Revise the CDL, Appendix 1, of the AFM, to include the following limitations. This may be accomplished by inserting a copy of this AD into the CDL of the AFM.

''For Model CL600–2D24 series airplanes: If one or both door panel assemblies, part number CC670–10520, is missing:

(1) Take-off Weight is reduced by 245 kg/door, or 540 lb/door.

(2) Enroute Climb Weight is reduced by 551 kg/door, or 1,215 lb/door.

(3) Landing Weight is reduced by 245 kg/door, or 540 lb/door.

(4) Fuel Consumption is increased by +3.42% on fuel used/door.

(5) Cruise Airspeed is limited to not more than 0.78 Mach.''

Restatement of Requirements of AD 2006–14–05, Amendment 39–14676 (71 FR 38979, July 11, 2006), With Revised Service Information:

Inboard MLG Door Inspections

(k) For all airplanes on which an inspection has not been done in accordance with paragraph (h) of this AD on or before August 15, 2006: At the applicable time specified in paragraph (k)(1) or (k)(2) of this AD, do the inspections of the left- and right-hand inboard MLG doors for damage, in accordance with Part A of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–32–016, Revision A, dated June 7, 2005, excluding Appendix A, dated June 2, 2005, and including Appendix B, dated June 2, 2005; or Bombardier Alert Service Bulletin A670BA–32–016, Revision F, dated May 14, 2010, excluding Appendix A, dated June 2, 2005, and including Appendix B, dated June 2, 2005. Doing the inspections required by this paragraph terminates the actions required by paragraphs (g) through (j) of this AD. As of the effective date of this AD, use only Bombardier Alert Service Bulletin A670BA–32–016, Revision F, dated May 14, 2010.

(1) For airplanes that have accumulated fewer than 1,500 total flight cycles as of August 15, 2006: Before the accumulation of 1,000 total flight cycles, or within 50 flight cycles after August 15, 2006, whichever occurs later.

(2) For airplanes that have accumulated 1,500 flight cycles or more as of August 15, 2006: Within 10 flight cycles after August 15, 2006.

(l) For airplanes on which an inspection has been done in accordance with paragraph (h) of this AD on or before August 15, 2006: At the applicable time specified in paragraph (l)(1) or (l)(2) of this AD, inspect installed door(s) as specified in paragraph (k) of this AD. Doing the inspections required by this paragraph terminates the actions required by paragraphs (g) through (j) of this AD.

(1) For airplanes that are not subject to an approved alternative method of compliance (AMOC) that extends the inspection interval to 450 flight cycles: Within 100 flight cycles since the last inspection done in accordance with paragraph (h) of this AD.

(2) For airplanes that are subject to an approved AMOC that extends the inspection interval to 450 flight cycles: At the earlier of the times specified in paragraphs (l)(2)(i) and (l)(2)(ii) of this AD:

(i) Within 450 flight cycles since the last inspection done in accordance with paragraph (h) of this AD.

(ii) Within 100 flight cycles since the last inspection done in accordance with paragraph (h) of this AD, or within 50 cycles after August 15, 2006, whichever occurs later.

(m) If no damage is found during any inspection done in accordance with paragraph (k) of this AD, repeat the inspections specified in paragraph (k) of this AD thereafter at intervals not to exceed 100 flight cycles.

Corrective Action—Replace or Remove MLG Door

(n) If any damage is found during any inspection done in accordance with paragraph (k) of this AD, before further flight, do the actions in paragraph (n)(1) or (n)(2) of this AD. Repeat the inspections specified in paragraph (k) of this AD thereafter at intervals not to exceed 100 flight cycles.

(1) Replace the inboard MLG door with a new or repaired door in accordance with Part B of the Accomplishment Instructions of the Bombardier Alert Service Bulletin A670BA–32–016, Revision A, dated June 7, 2005, excluding Appendix A, dated June 2, 2005, and including Appendix B, dated June 2, 2005; or Bombardier Alert Service Bulletin A670BA–32–016, Revision F, dated May 14, 2010, excluding Appendix A, dated June 2, 2005, and including Appendix B, dated June 2, 2005; except where those service bulletins specify to contact the manufacturer for repair if no generic repair engineering order (REO) is available, before further flight, repair using a method approved by either the Manager, New York ACO, FAA; or TCCA (or its delegated agent). As of the effective date of this AD, use only Bombardier Alert Service Bulletin A670BA–32–016, Revision F, dated May 14, 2010.

(2) Remove the inboard MLG door in accordance with Part B of the Accomplishment Instructions of the Bombardier Alert Service Bulletin A670BA–32–016, Revision A, dated June 7, 2005, excluding Appendix A, dated June 2, 2005, and including Appendix B, dated June 2, 2005; or Bombardier Alert Service Bulletin A670BA–32–016, Revision F, dated May 14, 2010, excluding Appendix A, dated June 2, 2005, and including Appendix B, dated June 2, 2005; and accomplish paragraph (n)(2)(i) or (n)(2)(ii) of this AD, as applicable. As of the effective date of this AD, use only Bombardier Alert Service Bulletin A670BA–32–016, Revision F, dated May 14, 2010.

(i) For Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes and Model CL–600–2D15 (Regional Jet Series 705) airplanes: Revise the Configuration Deviation List (CDL), Appendix 1, of the Bombardier Canadair Regional Jet AFM, to include the following limitations. This may be accomplished by inserting a copy of this AD into the CDL of the AFM. Remove any existing CDL limitation required by paragraph (j)(3)(i) of this AD from the AFM.

''For Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes and Model CL–600–2D15 (Regional Jet Series 705) airplanes: If one or both door panel assemblies, part number CC670–10520, is missing:

(1) Take-off Weight is reduced by 202.5 kg/door, or 450 lb/door.

(2) Enroute Climb Weight is reduced by 445.5 kg/door, or 990 lb/door.

(3) Landing Weight is reduced by 202.5 kg/door, or 450 lb/door.

(4) Fuel Consumption is increased by +2.5% on fuel used/door.

(5) Cruise Airspeed is limited to not more than 0.78 Mach.

(6) The climb ceiling obtained from the Flight Planning and Cruise Control Manual (FPCCM) must be reduced by 1,000 ft/door.''

Note 3: When a statement with the information specified in paragraph (n)(2)(i) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

(ii) For Model CL–600–2D24 (Regional Jet Series 900) airplanes: Revise the CDL, Appendix 1, of the Bombardier Canadair Regional Jet AFM, to include the following limitations. This may be accomplished by inserting a copy of this AD into the CDL of the AFM. Remove any existing CDL limitation required by paragraph (j)(3)(ii) of this AD from the AFM.

''For Model CL–600–2D24 (Regional Jet Series 900) airplanes: If one or both door panel assemblies, part number CC670–10520, is missing:

(1) Take-off Weight is reduced by 245 kg/door, or 540 lb/door.

(2) Enroute Climb Weight is reduced by 551 kg/door, or 1,215 lb/door.

(3) Landing Weight is reduced by 245 kg/door, or 540 lb/door.

(4) Fuel Consumption is increased by +2.5% on fuel used/door.

(5) Cruise Airspeed is limited to not more than 0.78 Mach.

(6) The climb ceiling obtained from the Flight Planning and Cruise Control Manual (FPCCM) must be reduced by 1,000 ft/door.''

Note 4: When a statement with the information specified in paragraph (n)(2)(ii) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Revise CDL

(o) For airplanes on which the door(s) have been removed in accordance with paragraph (j)(3) of this AD: Within 30 days after August 15, 2006, do the revision specified in paragraph (n)(2)(i) or (n)(2)(ii) of this AD, as applicable, and remove any revision required by paragraph (j)(3)(i) or (j)(3)(ii) of this AD.

No Reporting Required

(p) Although Bombardier Alert Service Bulletin A670BA–32–016, Revision A, dated June 7, 2005, excluding Appendix A, dated June 2, 2005, and including Appendix B, dated June 2, 2005; and Revision F, dated May 14, 2010, excluding Appendix A, dated June 2, 2005, and including Appendix B, dated June 2, 2005; specify to submit certain information to the manufacturer, this AD does not include that requirement.

Actions Accomplished According to Previous Issue of Service Bulletin

(q) Actions accomplished before August 15, 2006, according to Bombardier Alert Service Bulletin A670BA–32–016, dated June 2, 2005, are considered acceptable for compliance with the corresponding actions of this AD.

New Requirements of This AD

Terminating Modification for MLG Door Configuration

(r) Within 6,000 flight hours after the effective date of this AD, modify the MLG door, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–017, Revision C, dated May 14, 2010. Doing this modification terminates the requirements of this AD.

Credit for Actions Accomplished in Accordance With Previous Service Information

(s) Modifying the MLG door before the effective date of this AD, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–017, dated July 24, 2006; Revision A, dated September 26, 2006; or Revision B, dated July 31, 2008; as applicable; is considered acceptable for compliance with the requirements of paragraph (r) of this AD.

FAA AD Differences

Note 5: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, 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: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. 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. AMOCs approved previously in accordance with AD 2006–14–05, Amendment 39–14676 (71 FR 38979, July 11, 2006), are acceptable for compliance with 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

(u) Refer to MCAI TCCA Airworthiness Directive CF–2003–23R3, dated May 21, 2010; Bombardier Alert Service Bulletin A670BA–32–016, Revision F, dated May 14, 2010, excluding Appendix A, dated June 2, 2005, and including Appendix B, dated June 2, 2005; and Bombardier Service Bulletin 670BA–32–017, Revision C, dated May 14, 2010; for related information.

Issued in Renton, Washington, on September 22, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–25571 Filed 10–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0995; Directorate Identifier 2010–NM–243–AD]

RIN 2120–AA64

Airworthiness Directives; 328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–100 and 328–300 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:

Based on in-service experience, the System Safety Analyses for the Flight Controls have been reviewed and their conclusions have been accepted during the latest Candidate Maintenance Coordination Committee meeting.

This review resulted in reduced inspection intervals, specifically for the flight controls tab-to-actuator linkage [certification maintenance requirements] CMR** repetitive inspections, which have been identified as mandatory actions for continued airworthiness.

Failure of these components or their constituent parts could lead to reduced control of the aeroplane.

* * * * *

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 November 21, 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 328 Support Services GmbH, Global Support Center, P.O. Box 1252, D–82231 Wessling, Federal Republic of Germany; *telephone:* +49 8153 88111 6666; *fax:* +49 8153 88111 6565; *e-mail: gsc.op@328support.de; Internet: http://www.328support.de.* 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

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–2011–0995; Directorate Identifier 2010–NM–243–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 2010–0054, dated March 25, 2010 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Based on in-service experience, the System Safety Analyses for the Flight Controls have been reviewed and their conclusions have been accepted during the latest Candidate Maintenance Coordination Committee meeting.
>
> This review resulted in reduced inspection intervals, specifically for the flight controls tab-to-actuator linkage CMR** repetitive inspections, which have been identified as mandatory actions for continued airworthiness.
>
> Failure of these components or their constituent parts could lead to reduced control of the aeroplane.
>
> Consistent with the EASA policy to require compliance with any new and reduced airworthiness limitations by taking AD action and for the reasons described above, this EASA AD requires the accomplishment of the reduced-interval repetitive inspections and, depending on findings, related corrective action(s). In addition, this AD requires the implementation of the affected reduced inspection intervals and associated corrective actions into the operator's approved maintenance programme.

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

Relevant Service Information

328 Support Services GmbH has issued Dornier 328 Certification Maintenance Requirements Document TM–CMR–010793–ALL, Revision 13, dated April 30, 2007; and Dornier 328JET Certification Maintenance Requirements Document TM–CMR–010599–ALL, Revision 2, dated May 1, 2007. 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 about 63 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 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 $5,355, or $85 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 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),

(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:

328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH): Docket No. FAA–2011–0995; Directorate Identifier 2010–NM–243–AD.

Comments Due Date

(a) We must receive comments by November 21, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to 328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–100 and 328–300 airplanes; certificated in any category; all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight Controls.

Reason

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

Based on in-service experience, the System Safety Analyses for the Flight Controls have been reviewed and their conclusions have been accepted during the latest Candidate Maintenance Coordination Committee meeting.

This review resulted in reduced inspection intervals, specifically for the flight controls tab-to-actuator linkage [certification maintenance requirements] CMR** repetitive inspections, which have been identified as mandatory actions for continued airworthiness.

Failure of these components or their constituent parts could lead to reduced control of the aeroplane.

* * * * *

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.

Maintenance Program Revision

(g) Within 100 flight hours after the effective date of this AD: Revise the airplane maintenance program by incorporating the applicable CMR tasks identified in table 1 of this AD.

TABLE 1—CMR TASKS

Model—	Task No.—	Task description—	Identified in—
328–100 airplanes	Task 27–10–00–09	Visual Check of Mechanical Linkages Aileron Trim Tab to Actuator.	328 Support Services Dornier 328 Certification Maintenance Requirements Document TM–CMR–010793–ALL, Revision 13, dated April 30, 2007.
328–100 airplanes	Task 27–20–00–09	Visual Check of Mechanical Linkages Rudder Trim Tab/Spring Tab to Actuator.	328 Support Services Dornier 328 Certification Maintenance Requirements Document TM–CMR–010793–ALL, Revision 13, dated April 30, 2007.
328–100 airplanes	Task 27–30–00–13	Visual Check of Mechanical Linkages Elevator Trim Tabs to Actuator.	328 Support Services Dornier 328 Certification Maintenance Requirements Document TM–CMR–010793–ALL, Revision 13, dated April 30, 2007.
328–300 airplanes	Task 27–10–00–13	Visual Check of Linkage Aileron Trim Tab to Actuator.	328 Support Services Dornier 328JET Certification Maintenance Requirements Document TM–CMR–010599–ALL, Revision 2, dated May 1, 2007.
328–300 airplanes	Task 27–20–00–11	Visual Check of Linkage Rudder Trim Tab/Spring Tab to Actuator.	328 Support Services Dornier 328JET Certification Maintenance Requirements Document TM–CMR–010599–ALL, Revision 2, dated May 1, 2007.
328–300 airplanes	Task 27–30–00–14	Visual Check of Linkage Elevator Trim Tabs to Actuator.	328 Support Services Dornier 328JET Certification Maintenance Requirements Document TM–CMR–010599–ALL, Revision 2, dated May 1, 2007.

(h) The initial compliance time for the CMR tasks identified in table 1 of this AD is within 500 flight hours after the most recent inspection, or within 100 flight hours after the effective date of this AD, whichever occurs later.

No Alternative Inspections or Inspection Intervals

(i) After accomplishing the revision required by paragraph (g) of this AD, no alternative inspection or inspection interval may be used unless the inspection or inspection interval is approved as an alternative methods of compliance (AMOC) in accordance with the procedures specified in paragraph (j) of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

Although EASA Airworthiness Directive 2010–0054, dated March 25, 2010, specifies both revising the maintenance program, doing certain repetitive actions, and doing corrective actions, this AD only requires the revision. Requiring a revision of the maintenance program, rather than requiring individual repetitive actions, requires operators to record AD compliance only at the time the revision is made.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance:* 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. 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. 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.

Related Information

(k) Refer to MCAI EASA Airworthiness Directive 2010–0054, dated March 25, 2010; 328 Support Services Dornier 328

Certification Maintenance Requirements Document TM–CMR–010793–ALL, Revision 13, dated April 30, 2007; and 328 Support Services Dornier 328JET Certification Maintenance Requirements Document TM–CMR–010599–ALL, Revision 2, dated May 1, 2007; for related information.

Issued in Renton, Washington, on September 22, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–25580 Filed 10–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0998; Directorate Identifier 2011–NM–046–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319–111, –112, and –132 Airplanes; Model A320–111, –211, –212, –214 and –232 Airplanes; and Model A321–111, –211, –212, and –231 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:

Cases of corrosion findings have been reported on the overwing refueling aperture (used to fill the fuel tank by gravity) on the wing top skin. * * *

* * * * *

This condition, if not corrected, could, in combination with a lightning strike in this area, create a source of ignition in a fuel tank, possibly resulting in a fire or explosion and consequent loss of the aeroplane.

* * * * *

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 November 21, 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 Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com;* Internet *http://www.airbus.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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; 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–2011–0998; Directorate Identifier 2011–NM–046–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 2011–0034, dated March 2, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Cases of corrosion findings have been reported on the overwing refueling aperture (used to fill the fuel tank by gravity) on the wing top skin. The reported corrosion was on the mating surface of the aperture flange, underneath the refuel adaptor. Corrosion findings have been repaired on a case by case basis in accordance with approved data.

For certain aeroplanes (identified by MSN in the applicability section of this AD), the provided repair contained instructions to apply primer coating on the mating surface. Since doing those repairs, it has been found that this primer coating may prevent proper electrical bonding provision between the overwing refuelling cap adaptor and the wing skin.

This condition, if not corrected, could, in combination with a lightning strike in this area, create a source of ignition in a fuel tank, possibly resulting in a fire or explosion and consequent loss of the aeroplane.

For the reasons described above, this AD requires a one-time electrical bonding check between the gravity fill re-fuel adaptor and the top skin panels on the affected aeroplanes and, in case of findings [a general visual inspection for corrosion of the component interface and adjacent area], the application of the associated corrective actions [*i.e.* repair].

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

Relevant Service Information

Airbus has issued Service Bulletin A320–57–1152, dated June 14, 2010. 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 about 67 products of U.S. registry. We also estimate that it would take about 6 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 $34,170 or $510 per product.

In addition, we estimate that any necessary follow-on actions would take about 6 work-hours and require parts costing $0, for a cost of $510 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2011–0998; Directorate Identifier 2011–NM–046–AD.

Comments Due Date

(a) We must receive comments by November 21, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A319–111, –112, and –132 airplanes; Model A320–111, –211, –212, –214 and –232 airplanes; and Model A321–111, –211, –212, and –231 airplanes; certificated in any category; having manufacturer serial numbers 0039, 0078, 0109, 0118, 0120, 0153, 0174, 0187, 0203, 0215, 0218, 0226, 0227, 0228, 0236, 0237, 0269, 0270, 0278, 0285, 0286, 0287, 0288, 0294, 0301, 0337, 0377, 0462, 0463, 0464, 0465, 0520, 0523, 0528, 0876, 0888, 0921, 0935, 0974, 1014, 1102, 1130, 1160, 1162, 1177, 1215, 1250, 1287, 1336, 1388, 1404, 1444, 1449, 1476, 1505, 1524, 1564, 1605, 1616, 1622, 1640, 1645, 1658, 1677, 1691, 1729, and 1905.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

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

Cases of corrosion findings have been reported on the overwing refueling aperture (used to fill the fuel tank by gravity) on the wing top skin. * * *

* * * * *

This condition, if not corrected, could, in combination with a lightning strike in this area, create a source of ignition in a fuel tank, possibly resulting in a fire or explosion and consequent loss of the aeroplane.

* * * * *

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.

Actions

(g) Within 24 months after the effective date of this AD, do an electrical bonding test to check for bonding between the re-fuel adaptor of the gravity fill and the top skin panels on the left-hand and right-hand wings, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1152, dated June 14, 2010.

(1) If the resistance value is 10 milliOhms or less at the left-hand and right-hand wing, no further action is required.

(2) If the resistance value is greater than 10 milliOhms at the left-hand or right-hand wing, before further flight do a general visual inspection for corrosion of the component interface and adjacent area, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1152, dated June 14, 2010. If any corrosion is found during the inspection, before further flight repair the gravity fuel adaptor, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1152, dated June 14, 2010; except where Airbus Service Bulletin A320–57–1152, dated June 14, 2010, specifies to contact Airbus before further flight, repair 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).

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; 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.

Related Information

(i) Refer to MCAI EASA Airworthiness Directive 2011–0034, dated March 2, 2011; and Airbus Service Bulletin A320–57–1152, dated June 14, 2010; for related information.

Issued in Renton, Washington, on September 22, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–25569 Filed 10–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0996; Directorate Identifier 2011–NM–068–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER Series 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 would require replacement of the thumbnail fairing edge seals on both sides of the engines with Nitronic 60 stainless steel alloy seals. This proposed AD was prompted by reports of excessive in-service wear damage of the thumbnail fairing edge seal and the fan cowl panel rub strip and fan cowl skin assembly. We are proposing this AD to prevent failure of the fire seal, which could allow a fire in the fan compartment to spread beyond the firewall and reach the flammable fluid leakage zones, resulting in an uncontrolled fire.

DATES: We must receive comments on this proposed AD by November 21, 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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, *Attention:* Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Chris Parker, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* 425–917–6496; *fax:* 425–917–6590; *e-mail: chris.r.parker@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0996; Directorate Identifier 2011–NM–068–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We received reports of repetitive occurrences of excessive in-service wear damage of the thumbnail fairing edge seal and of the fan cowl panel rub strip and fan cowl skin assembly. Identical abrasion damage was also reported at the location where the thumbnail fairing edge seal rests against the top surface of the hinge beam forward firewall. This condition, if not corrected, could result in failure of the fire seal, which could allow a fire in the fan compartment to spread beyond the firewall and reach the flammable fluid leakage zones, resulting in an uncontrolled fire.

Relevant Service Information

We reviewed Boeing Special Attention Service Bulletin 737–54–1046, dated February 16, 2011. That service bulletin describes procedures for replacing the thumbnail fairing edge seals on both the left side and the right side of both engine 1 and engine 2 with new Nitronic 60 stainless steel alloy seals.

FAA's Determination and Proposed AD Requirements

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 989 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace thumbnail faring edge seals.	6 work-hours × $85 per hour = $510	$2,032	$2,542	$2,514,038

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),

(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.

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 airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2011–0996; Directorate Identifier 2011–NM–068–AD.

Comments Due Date

(a) We must receive comments by November 21, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 737–54–1046, dated February 16, 2011.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 54: Nacelles/Pylons.

Unsafe Condition

(e) This AD was prompted by reports of excessive in-service wear damage of the thumbnail fairing edge seal and the fan cowl panel rub strip and fan cowl skin assembly. We are issuing this AD to prevent failure of the fire seal, which could allow a fire in the fan compartment to spread beyond the firewall and reach the flammable fluid leakage zones, resulting in an uncontrolled fire.

Compliance

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

Replacement of the Thumbnail Fairing Edge Seals

(g) Within 60 months after the effective date of this AD, replace the thumbnail fairing edge seals, on both the left side and the right side of engine 1 and engine 2, with new Nitronic 60 stainless steel alloy seals, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–54–1046, dated February 16, 2011.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. 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 manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@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.

Related Information

(i) For more information about this AD, contact Chris Parker, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* 425–917–6496; *fax:* 425–917–6590; *e-mail: chris.r.parker@faa.gov.*

(j) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; *e-mail me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on September 22, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–25579 Filed 10–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0997; Directorate Identifier 2011–NM–043–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200 Series Airplanes; Model A330–300 Series Airplanes; Model A340–200 Series Airplanes; and Model A340–300 Series 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:

During fatigue testing of the MLG [main landing gear], three failures of the retraction bracket occurred before the calculated life limitation. Further analysis has confirmed that those failures were due to fatigue initiated by fretting between the bush and lug bore.

The failure of the retraction bracket, if not detected, could lead to a MLG extension with no damping resulting in MLG structural damage.

* * * * *

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 November 21, 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; e-mail *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; 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–2011–0997; Directorate Identifier 2011–NM–043–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 2010–0205, dated October 8, 2010 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

During fatigue testing of the MLG [main landing gear], three failures of the retraction bracket occurred before the calculated life limitation. Further analysis has confirmed that those failures were due to fatigue initiated by fretting between the bush and lug bore.

The failure of the retraction bracket, if not detected, could lead to a MLG extension with no damping resulting in MLG structural damage.

Airbus carried out an investigation, demonstrating that the life limit of retraction brackets must be reduced to 19,800 Landings (LDG), which is below the life limit stated in the following A330 and A340 Airbus ALS Part 4 revisions:

—Airbus A330 ALS Part 4 revision 02 approved by EASA on 16 December 2009.

—Airbus A340 ALS Part 4 revision 01 approved by EASA on 15 December 2009.

In order to maintain the structural integrity of the aeroplane, this [EASA] AD requires the replacement of these MLG retraction brackets before the accumulation of 19,800 total LDG.

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

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 about 29 products of U.S. registry. We also estimate that it would take about 25 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $200,000 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $5,861,625, or $202,125 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 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:

Airbus: Docket No. FAA–2011–0997; Directorate Identifier 2011–NM–043–AD.

Comments Due Date

(a) We must receive comments by November 21, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–211, –212, –213, –311, –312, and –313 airplanes; certificated in any category, all manufacturer serial numbers; except airplanes on which Airbus modification 54500 has been embodied in production; and except airplanes on which Airbus Service Bulletin A330–32–3212 or Airbus Service Bulletin A340–32–4256 has been embodied in service; as applicable to airplane model.

Subject

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

Reason

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

During fatigue testing of the MLG [main landing gear], three failures of the retraction bracket occurred before the calculated life limitation. Further analysis has confirmed that those failures were due to fatigue initiated by fretting between the bush and lug bore.

The failure of the retraction bracket, if not detected, could lead to a MLG extension with no damping resulting in MLG structural damage.

* * * * *

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.

Actions

(g) Before the accumulation of 19,800 total landings on the retraction brackets of the main landing gear or within 900 flight hours after the effective date of this AD, whichever occurs later: Replace the affected retraction bracket of the MLG specified in table 1 of this AD with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, or European Aviation Safety Agency (EASA) (or its delegated agent). Thereafter, before the accumulation of 19,800 total landings on any retraction bracket of the MLG identified in table 1 of this AD, replace the retraction bracket with a serviceable part, in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, or EASA (or its delegated agent).

TABLE 1—RETRACTION BRACKET OF THE MLG

Nomenclature	Part Nos.
Retraction Bracket of the MLG ...	201478303
	201478304
	201478305
	201478306
	201478307
	201478308
	201428380
	201428381
	201428382
	201428383
	201428384
	201428385
	201428378
	201428379
	201428351
	201428352

Note 1: Additional guidance for the replacement can be found in Task 32–11–11–400–804–A, Removal of the MLG Retraction Bracket Assembly, and Task 32–11–11–000–804–A, Installation of the MLG Retraction Bracket Assembly, of subsection 32–11–11 of Chapter 32 of the Airbus A330 Aircraft Maintenance Manual, Revision 36, dated January 1, 2011.

Note 2: ''Total landings'' are the accumulated landings since the initial entry of the MLG retraction bracket into service on any airplane.

Note 3: The initial entry into service for the transferable systems components/items is defined as the date at which the component/item accomplishes the first flight for which it will undertake its intended function.

FAA AD Differences

Note 4: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; 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.

Related Information

(i) Refer to MCAI Airworthiness Directive EASA 2010–0205, dated October 8, 2010, for related information.

Issued in Renton, Washington, on September 22, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–25570 Filed 10–4–11; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 174 and 180

[EPA–HQ–OPP–2011–0082; FRL–8890–5]

Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before November 4, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID number and the pesticide petition number of interest as shown in the body of this document. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *regulations.gov* or e-mail. The *regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: A contact person, with telephone number and e-mail address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

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 at the end of the pesticide petition summary of interest.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerances

1. *PP 1E7890.* (EPA–HQ–OPP–2011–0758). Interregional Research Project Number 4 (IR–4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201–W., Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180 for residues of the herbicide sulfentrazone (*N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]-methanesulfonamide) and its metabolites 3-hydroxymethyl-sulfentrazone (*N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide) and 3-desmethyl sulfentrazone (*N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide), in or on rhubarb at 0.2 parts per million (ppm); turnip, roots at 0.2 ppm; turnip, tops at 0.7 ppm; and sunflower subgroup 20B at 0.2 ppm; ''Tolerances with regional registrations'' in or on wheat, forage at 0.45 ppm (Pacific Northwest only); wheat, hay at 0.20 ppm (Pacific Northwest only); wheat, grain at 0.20 ppm (Pacific Northwest only); wheat, straw at 1.4 ppm (Pacific Northwest only); and cowpea, succulent at 0.15 ppm (Tennessee only). There is a practical analytical method for detecting and measuring levels of sulfentrazone and its metabolites in or on food with a limit of quantitation that allows monitoring of food with residues at or above the levels set or proposed in the tolerances. The analytical enforcement method for sulfentrazone was used with minor modification that eliminated several clean-up and derivatization steps that was required for gas chromatography with mass selective detection (GC/MSD) but not for liquid chromatography with tandem mass spectrometric detection (LC/MS/MS). The analytical method for sulfentrazone involves separate analyses for parent and its metabolites. The parent is analyzed by evaporation and reconstitution of the sample prior to analysis by LC/MS/MS GC/electron capture detector (ECD). The metabolites samples were refluxed in the presence of acid and cleaned up with solid phase extraction prior to analysis by LC/MS/MS. *Contact:* Laura Nollen, (703) 305–7390, *e-mail address: nollen.laura@epa.gov.*

2. *PP 1F7872.* (EPA–HQ–OPP–2011–0743). Agriphar S.A., c/o Ceres International, LLC., 1087 Heartsease Drive, West Chester, PA 19382, requests to establish tolerances in 40 CFR part 180 for residues of the fungicide dodine (dodecylguanidine acetate), in or on stone fruits (Group 12) at 5 parts per million (ppm); tree nuts (Group 14, except almond hulls) at 0.3 ppm; and almond hulls at 12 ppm. An adequate enforcement method using GC/mass spectrometry detection (MSD), Method 45137, is available for determining dodine residues in or on plant commodities. Concerning tree crops, a method using LC/MS/MS; METH1595.02, after the samples were extracted with methanol, was

submitted. Adequate data collection method validation, independent laboratory validation (ILV), and radio-validation data for the method has been submitted. Since there is no reasonable expectation of finding residues of dodine in livestock or poultry, no analytical method for animal tissues is required. *Contact:* Tamue L. Gibson, (703) 305–9096, *e-mail address: gibson.tamue@epa.gov.*

3. *PP 1F7887.* (EPA–HQ–OPP–2011–0741). Cytec Industries, Inc., 5 Garret Mountain Plaza, Woodland Park, NJ 07424, requests to establish tolerances in 40 CFR part 180 for residues of phosphine, in or on asparagus; cherimoya; dates, fresh; figs, fresh; globe artichokes; pawpaws; pineapple, water chestnuts and watercress, and for all fresh fruit and vegetable crop groups (including berry and small fruit; citrus fruit; pome fruit; stone fruit; herbs and spices; *Brassica* leafy vegetables; leafy vegetables; bulb vegetables; cucurbits; fruiting vegetables except cucurbits; legume vegetables, except soybeans; foliage of legume vegetables; root and tuber group; and root and tuber leaves group) at 0.01 ppm. The PAM Vol. II lists, under aluminum phosphide, a colorimetric method level of detection (LOD = 0.01) and a gas liquid chromatography (GLC) method with a flame photometric detection (LOD = 0.001 ppm) as Method A and B, respectively, for the enforcement of tolerances. The residue of concern is phosphine. It is noted that Method A, remains a lettered method because of variable recoveries observed in an Agency method try-out. However, the method has been determined to be acceptable for enforcement because phosphine is highly reactive, and finite residues are not expected. Data submitted in support of the established tolerances were collected by one of these two methods. Because phosphine is an inorganic compound, recovery of residues using FDA Multiresidue Protocols is not expected, and the requirement for such data has been waived by the Agency. *Contact:* Gene Benbow, (703) 347–0235, *e-mail address: benbow.gene@epa.gov.*

4. *PP 1F7897.* (EPA–HQ–OPP–2009–0677). Arysta LifeScience, North America, LLC., 15401 Weston Parkway, Suite 150, Cary, NC 27513, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide fluoxastrobin, (1*E*)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimydinyl]oxy]phenyl] (5,6-dihydro-1,4,2-dioxazin-3-yl)methanone *O*-methyloxime, and its *Z*-isomer, (1*Z*)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimydinyl]oxy]phenyl] (5,6-dihydro-1,4,2-dioxazin-3-yl)methanone *O*-methyloxime, in or on rice, grain at 6.0 ppm. Adequate analytical methodology is available for enforcement purposes. The method comprises microwave solvent extraction followed by a solid phase extraction clean-up and quantification by high performance liquid chromatography with tandem mass spectrometric detection (HPLC/MS/MS). The individual detector responses for measured *E*- and *Z*-isomers is summed to give total residue. *Contact:* Heather A. Garvie, (703) 308–0034, *e-mail address: garvie.heather@epa.gov.*

Amended Tolerance

PP 1E7890. (EPA–HQ–OPP–2011–0758). Interregional Research Project Number 4 (IR–4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201–W., Princeton, NJ 08540, requests to amend the current tolerances in 40 CFR 180.498 for residues of the herbicide sulfentrazone (*N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]-methanesulfonamide) and its metabolites 3-hydroxymethyl-sulfentrazone (*N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide) and 3-desmethyl sulfentrazone (*N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide), in or on bean, lima, succulent at 0.15 ppm by removing the tolerance from the table in Section (a)(2) and adding the tolerance to Section (c) *Tolerances with regional registrations.* Upon approval of the aforementioned tolerance under ''New Tolerances'', the petition additionally proposes to remove the established tolerance in or on the raw agricultural commodity sunflower, seed at 0.2 ppm. *Contact:* Laura Nollen, (703) 305–7390, *e-mail address: nollen.laura@epa.gov.*

New Tolerance Exemptions

1. *PP 1E7903.* (EPA–HQ–OPP–2011–0736). ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077, requests to establish an exemption from the requirement of a tolerance for residues of *D*-mannose (CAS No. 3458–28–4) under 40 CFR 180.920 when used as an inert ingredient (sequestrant) in pesticide formulations applied pre-harvest to all raw agricultural commodities. The petitioner believes no analytical method is needed because this information is not required for the establishment of a tolerance exemption. *Contact:* Mark Dow, (703) 305–5533, *e-mail address: dow.mark@epa.gov.*

2. *PP 1E7909.* (EPA–HQ–OPP–2011–0732). Momentive Performance Materials, 22 Corporate Woods Blvd., Albany, NY 12211, requests to establish an exemption from the requirement of a tolerance for residues of 2-Propenoic acid, 2-methyl-, polymer with butyl 2-propenoate and ethenylbenzene (CAS No. 25036–16–2) under 40 CFR 180.960 when used as a pesticide inert ingredient as a sticker in pesticide formulations without limitation. The petitioner believes no analytical method is needed because this information is not required for the establishment of a tolerance exemption. *Contact:* Elizabeth Fertich, (703) 347–8560, *e-mail address: fertich.elizabeth@epa.gov.*

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 28, 2011.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2011–25725 Filed 10–4–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1221]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this proposed rule is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for

participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before January 3, 2012.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1221, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	
				Existing	Modified
Unincorporated Areas of Carbon County, Montana					
Montana	Unincorporated Areas of Carbon County.	Clarks Fork Yellowstone River.	Approximately 1.89 miles downstream of Twany Trail.	None	+3304
			Approximately 770 feet downstream of the Rock Creek (Lower) confluence.	None	+3405

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Carbon County

Maps are available for inspection at 17 West 11th Street, Red Lodge, MT 59068.

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	
				Existing	Modified
Unincorporated Areas of Mineral County, Nevada					
Nevada	Unincorporated Areas of Mineral County.	Cottonwood Creek	Approximately 1,400 feet north of the intersection of Marian Drive and U.S. Route 95.	None	#1
Nevada	Unincorporated Areas of Mineral County.	Mina Fan	Approximately 1,584 feet southwest of the intersection of Cross Street and U.S. Route 95.	None	#1
			Approximately 1.8 miles southwest of the intersection of 1st Street and U.S. Route 95.	None	#1
			Approximately 2.0 miles southwest of the intersection of Cross Street and U.S. Route 95.	None	#1
			Approximately 0.7 mile upstream of the intersection of 1st Street and U.S. Route 95.	None	#1

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Mineral County

Maps are available for inspection at 105 South A Street, Suite 1, Hawthorne, NV 89415.

City of Lubbock, Texas					
Texas	City of Lubbock	Playa System E1	At the intersection of Avenue T and 40th Street.	+3208	+3206
			At the intersection of Slide Road and 58th Street.	+3255	+3256

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Lubbock

Maps are available for inspection at City Hall, 1625 13th Street, Lubbock, TX 79401.

City of McCleary, Washington					
Washington	City of McCleary	East Fork Wildcat Creek	Approximately 360 feet upstream of State Route 108.	None	+245
			Approximately 1,200 feet upstream of the railroad.	None	+268

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	
				Existing	Modified

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of McCleary

* Maps are available for inspection at City Hall, 100 South 3rd Street, McCleary, WA 98557.

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Volusia County, Florida, and Incorporated Areas				
B–19 Canal	At the Spruce Creek confluence	+4	+5	City of Daytona Beach, City of Port Orange, Unincorporated Areas of Volusia County.
	Approximately 375 feet upstream of Beville Road	None	+29	
B–27 Canal North	At the LPGA Canal confluence	None	+5	City of Holly Hill, Unincorporated Areas of Volusia County.
	Approximately 75 feet upstream of Calle Grande Street.	None	+5	
B–27 Canal South	At the LPGA Canal confluence	None	+5	City of Daytona Beach, City of Holly Hill.
	Approximately 70 feet upstream of Kingston Avenue	None	+6	
Halifax Canal	Approximately 700 feet upstream of Powers Avenue	None	+6	City of Port Orange.
	Approximately 100 feet upstream of Jackson Street	None	+7	
LPGA Canal	At the upstream side of Ridgewood Avenue	None	+4	City of Holly Hill.
	Approximately 1,940 feet upstream of Center Avenue	None	+7	
Laurel Creek	At the upstream side of the railroad	None	+6	City of Ormond Beach.
	Approximately 330 feet upstream of Laurel Oaks Circle.	None	+7	
Nova Canal North Reach 1	Approximately 775 feet downstream of LPGA Boulevard.	None	+7	City of Holly Hill, Unincorporated Areas of Volusia County.
	At the upstream side of Alabama Avenue	None	+7	
Nova Canal North Reach 2	Approximately 1,660 feet downstream of 10th Street	None	+7	City of Daytona Beach, City of Holly Hill.
	Approximately 925 feet upstream of Orange Avenue	None	+8	
Nova Canal South Reach 1	Approximately 125 feet downstream of Reed Canal Road.	None	+7	City of Daytona Beach, City of South Daytona.
	At the Nova Canal North Reach 2 confluence	None	+8	
Nova Canal South Reach 2	Approximately 1,775 feet upstream of Nova Road	None	+7	City of Port Orange, City of South Daytona.
	At the Nova Canal South Reach 1 confluence	None	+7	
Thompson Creek	At the upstream side of Industrial Drive	+6	+7	City of Ormond Beach.
	Approximately 575 feet upstream of Division Avenue	None	+8	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Daytona Beach

Maps are available for inspection at 950 Bellevue Avenue, Room 600, Daytona Beach, FL 32115.

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL)		Communities affected
		Effective	Modified	

City of Holly Hill
Maps are available for inspection at 1065 Ridgewood Avenue, Holly Hill, FL 32117.

City of Ormond Beach
Maps are available for inspection at 22 South Beach Street, Ormond Beach, FL 32174.

City of Port Orange
Maps are available for inspection at 1000 City Center Circle, Port Orange, FL 32129.

City of South Daytona
Maps are available for inspection at 1672 South Ridgewood Avenue, South Daytona, FL 32119.

Unincorporated Areas of Volusia County
Maps are available for inspection at 123 West Indiana Avenue, DeLand, FL 32720.

Webster County, Iowa, and Incorporated Areas

Des Moines River	Approximately 1.6 miles downstream of U.S. Route 20.	None	+987	City of Fort Dodge, Unincorporated Areas of Webster County.
	Approximately 2.1 miles upstream of East Hawkeye Avenue.	None	+1008	
Lizard Creek	At the Des Moines River confluence	+992	+995	City of Fort Dodge, Unincorporated Areas of Webster County.
	Approximately 0.9 mile upstream of Phinney Park Drive.	+1000	+999	
Soldier Creek	At the Des Moines River confluence	None	+993	City of Fort Dodge, Unincorporated Areas of Webster County.
	Approximately 1.2 miles upstream of Soldier Creek Drive.	None	+1098	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Fort Dodge
Maps are available for inspection at 819 1st Avenue South, Fort Dodge, IA 50501.

Unincorporated Areas of Webster County
Maps are available for inspection at the Webster County Courthouse, 701 Central Avenue, 4th Floor, Fort Dodge, IA 50501.

St. Helena Parish, Louisiana, and Incorporated Areas

Joseph Branch	Approximately 0.70 mile upstream of Kendrick Road	None	+189	Unincorporated Areas of St. Helena Parish.
	Approximately 0.90 mile upstream of Kendrick Road	None	+189	
Ward Line Canal	Approximately 790 feet upstream of Sitman Road	None	+185	Town of Greensburg.
	Approximately 1,480 feet upstream of Sitman Road	None	+187	

* National Geodetic Vertical Datum.
North American Vertical Datum.
Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Greensburg
Maps are available for inspection at the Town Hall, 14560 Louisiana Highway 37, Greensburg, LA 70441

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Unincorporated Areas of St. Helena Parish				
Maps are available for inspection at the St. Helena Parish Police Jury Administration Building, 17911 Louisiana Highway 43, Greensburg, LA 70441.				
Oceana County, Michigan (All Jurisdictions)				
Lake Michigan	Entire shoreline within community	None	+585	Township of Benona, Township of Claybanks.
Lake Michigan	Entire shoreline within community	None	+584	Township of Golden.
Pentwater Lake	Entire shoreline	None	+584	Township of Weare.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Township of Benona
Maps are available for inspection at the Benona Township Hall, 7169 West Baker Road, Shelby, MI 49455.

Township of Claybanks
Maps are available for inspection at the Claybanks Township Hall, 7577 West Cleveland Road, New Era, MI 49446.

Township of Golden
Maps are available for inspection at the Golden Township Hall, 5527 West Fox Road, Mears, MI 49436.

Township of Weare
Maps are available for inspection at the Weare Township Hall, 5846 North Oceana Drive, Hart, MI 49420.

Fort Bend County, Texas, and Incorporated Areas				
Brazos River	Approximately 2.16 miles downstream of FM 2759	+62	+61	Town of Thompsons.
	Approximately 2.75 miles upstream of the Alcorn Bayou confluence.	None	+71	
Oyster Creek	Approximately 1.1 miles downstream of FM 1464	None	+81	Fort Bend County Municipal Utility District No. 25.
	Approximately 150 feet downstream of FM 1464	None	+81	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Fort Bend County Municipal Utility District No. 25
Maps are available for inspection at 8522 Katy Freeway, Suite 300, Houston, TX 77024.

Town of Thompsons
Maps are available for inspection at 520 Thompson Oil Field Road, Thompsons, TX 77481.

Montgomery County, Texas, and Incorporated Areas				
Arnold Branch	Approximately 1.4 miles downstream of FM 1488	None	+219	Town of Magnolia.
	Approximately 1,475 feet upstream of FM 1488	None	+246	
Peach Creek	Approximately 1,375 feet downstream of Roman Forest Boulevard.	None	+85	Town of Roman Forest.
	Approximately 425 feet upstream of Roman Forest Boulevard.	None	+86	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL)		Communities affected
		Effective	Modified	

∧ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

Town of Magnolia

Maps are available for inspection at 510 Magnolia Boulevard, Magnolia, TX 77356.

Town of Roman Forest

Maps are available for inspection at 2430 Roman Forest Boulevard, New Caney, TX 77357.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: September 13, 2011.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation,Department of Homeland Security,Federal Emergency Management Agency.

[FR Doc. 2011–25611 Filed 10–4–11; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 10–26; FCC 11–133]

Definition of Part 15 Auditory Assistance Device

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the definition of ''auditory assistance device'' in the Commission's rules to allow such devices to be used by anyone at any location for simultaneous language interpretation, where the spoken words are translated continuously in near real time. This action is taken in response to a petition for declaratory ruling filed by Williams Sound Corporation (Williams Sound Petition), a provider of wireless auditory assistance devices. The current definition restricts the use of part 15 auditory assistance devices that operate in the 72.0–73.0 MHz, 74.6–74.8 MHz, and 75.2–76.0 MHz bands (72–76 MHz bands) to auditory assistance to a handicapped person or persons; such devices may be used for auricular training in an educational institution, for auditory assistance at places of public gatherings, such as a church, theater, or auditorium, and to handicapped individuals, only, in other locations. The proposed amendment would permit part 15 auditory assistance devices that operate in the 72–76 MHz bands to be used by anyone at any location for simultaneous language interpretation.

DATES: Comments must be filed on or before November 4, 2011, and reply comments must be filed on or before November 21, 2011.

FOR FURTHER INFORMATION CONTACT: Patrick Forster, Office of Engineering and Technology, (202) 418–7061, *e-mail: Patrick.Forster@fcc.gov,* TTY (202) 418–2989.

ADDRESSES: You may submit comments, identified by ET Docket No. 10–26, by any of the following methods:

- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail: [Optional: Include the mailing address for paper, disk, or CD–ROM submissions needed/requested by your Bureau or Office. Do not include the Office of the Secretary's mailing address here.]*
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by *e-mail: FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** of this document.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order and Notice of Proposed Rule Making,* ET Docket No. 10–26, FCC 11–133, adopted September 9, 2011, and released September 16, 2011. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.*

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445

12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

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

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

Introduction

1. In the *Notice of Proposed Rule Making (NPRM),* the Commission proposes to amend the definition of ''auditory assistance device'' in its part 15 rules to allow such devices to be used by anyone at any location for simultaneous language interpretation, where the spoken words are translated continuously in near real time. Auditory assistance devices transmit audio signals via radio frequency (RF) waves, magnetic fields, or infrared light waves to specialized receivers used by listeners to enhance the reception of speech. By minimizing the disproportionate effects of background noise and reverberation on speech perception by people with hearing disabilities, auditory assistance devices improve the quality of the sound over that which would be received via a loudspeaker system.

2. The Commission takes this action in response to a petition for declaratory ruling filed by Williams Sound Corporation (Williams Sound Petition), a provider of wireless auditory assistance devices. Williams Sound asks the Commission to clarify that part 15 auditory assistance devices may be used to provide simultaneous language interpretation. This proposed amendment would expand the opportunities to deploy auditory assistance devices and remove barriers to communication, provide greater flexibility and enhanced benefits for persons wishing to use auditory assistance technologies, and harmonize the definition of ''auditory assistance device'' in part 15 of our rules with the definition of ''auditory assistance communications'' in part 95 of our rules. The Commission declines to grant the relief that Williams Sound has requested and instead is incorporating the issues raised in Williams Sound's petition into the *NPRM.*

Order

3. The Commission first addresses the Williams Sound petition for declaratory ruling. Williams Sound seeks a ruling that auditory assistance devices which operate under the part 15 rules in the 72–76 MHz bands may be used to provide simultaneous language interpretation and that such use is expressly included in the uses defined by 47 CFR 15.3(a). Under such an interpretation, the existing definition of an ''auditory assistance device'' would allow part 15 devices that operate in the 72–76 MHz bands to be used to provide simultaneous language interpretation for any individual that does not understand the language spoken in an audio presentation.

4. The Commission concludes that a declaratory ruling is not the appropriate vehicle to grant the relief requested by Williams Sound. Pursuant to § 1.2 of the Commission's rules, it may issue a declaratory ruling for purposes of ''terminating a controversy or removing uncertainty.'' However, a declaratory ruling may not be used to substantively change a rule. An analysis of the Commission's auditory assistance device rules in part 15 leads the Commission to the conclusion that by accepting Williams Sound's proposed interpretation, the Commission would expand the scope of permitted uses so significantly as to constitute a change in the rule. Section 15.3(a) of the Commission's rules states that an auditory assistance device is ''[a]n intentional radiator used to provide auditory assistance to a handicapped person or persons. Such a device may be used for auricular training in an education institution, for auditory assistance at places of public gatherings, such as a church, theater, or auditorium, and for auditory assistance to handicapped individuals, only, in other locations.''

5. In 1982, the Commission addressed the issue of whether auditory assistance devices that operate in the 72–73 MHz and 75.4–76 MHz bands could be used for purposes other than serving handicapped individuals in response to petitions for rulemaking filed by Williams Sound and Phonic Ear, Inc. In that proceeding, the Commission expanded the use of auditory assistance devices that operate in the 72–73 MHz and 75.4–76 MHz bands beyond the initial limitations of operating solely in educational institutions and mere amplification of sounds to include any aural assistance that may be given to a handicapped person (*e.g.,* audio description for the blind) but maintained the restrictions that these devices be used only by and for handicapped persons.

6. In 2009, the Commission issued a citation to ProLingo, a provider of simultaneous interpretation equipment and services, for marketing, as a component of its simultaneous language interpretation systems, transmitters operating on frequencies in the 72–76 MHz bands. ProLingo was found to have violated Section 302(b) of the Communications Act and §§ 2.803(a)(1) and 15.237 of the Commission's rules. Williams Sound appears to seek approval by declaratory ruling to conduct substantially the same activity that the Commission found to violate its rules. Furthermore, the Commission rejects Williams Sound's assertion that the inability to understand a foreign language can be considered a handicap, which thereby justifies permitting auditory assistance devices that operate in the 72–76 MHz bands to be used for simultaneous language interpretation. Such an interpretation is not consistent with the meaning given to the term ''handicap'' historically in part 1, subpart N of the Commission's rules, which was based on the Rehabilitation Act of 1973. The term was defined as a physical or mental impairment that substantially limits one or more of the major life activities of an individual. In 2003, the Commission replaced ''handicap'' with ''disability'' in part 1, subpart N, to be consistent with the Americans with Disabilities Act of 1990, but did not make any substantive changes to the definition. Williams Sound does not provide a basis for interpreting the term ''handicap'' in part 15 differently than the Commission has interpreted that term in part 1.

7. Together, these reasons lead the Commission to conclude that it would not be appropriate to grant the relief that Williams Sound has requested. The Commission believes, however, that Williams Sound provides good reasons for exploring whether expanding the part 15 definition of an ''auditory assistance device'' to permit such devices to be used for simultaneous language interpretation would benefit the public interest. Accordingly, on its own motion, the Commission addresses this matter in the *NPRM.*

Notice of Proposed Rulemaking

8. In this *NPRM,* the Commission proposes to amend the part 15 definition of an ''auditory assistance device'' to permit these devices to be

used by anyone at any location for simultaneous language interpretation. As discussed by Williams Sound, the Commission believes that there are sound public policy reasons for allowing auditory assistance devices that operate in the 72–76 MHz bands to be used by persons who have language barriers but who may not be disabled. Expanding the scope of the rule would appear to be consistent with the Commission's goal of facilitating public access to telecommunications technologies. Many commenters, several of them providers of auditory assistance devices and/or simultaneous interpretation systems, support Williams Sound's Petition. Several of these commenters submit that allowing auditory assistance devices to be used in support of simultaneous language interpretation would also benefit individuals who have a hearing disability by promoting wider availability of auditory assistance devices in general. This, in turn, could facilitate communications with individuals that require both amplification and language interpretation. The Commission also finds merit in Williams Sound's observation that the use of auditory assistance devices that operate in the 72–76 MHz bands in support of simultaneous language interpretation would not only improve the aural experience and comprehension of those who need interpretation, but also would lower the noise level for those who do not care to listen to an interpreter, thereby enhancing the auditory experience of both groups.

9. Although current law requires operators of public gathering places to provide auditory assistance devices for use by persons with disabilities, operators of such venues may not decide who may benefit from these devices. However, the interference potential of an auditory assistance device is unrelated to the number of users or type of use. The Commission expects that expanding the permitted uses of part 15 auditory assistance devices that operate in the 72–76 MHz bands to include simultaneous language interpretation by anyone at any location will not increase their potential for harmful interference to authorized users in the 72–76 MHz or adjacent bands or impede the operation of other part 15 auditory assistance devices operating in the 72–76 MHz bands. In addition, because part 15 auditory assistance devices that operate in the 72–76 MHz bands use 200-kilohertz wide channels, ample spectrum is available for multiple applications. Thus, the Commission believes that part 15 auditory assistance devices that operate in the 72–76 MHz bands and provide simultaneous language interpretation should be able to simultaneously provide auditory assistance to persons with disabilities, and in any event, will not diminish the ability to provide auditory assistance to persons with disabilities.

10. For these reasons, the Commission proposes to amend the part 15 definition of ''auditory assistance device'' to permit these devices to be used by anyone at any location for simultaneous language interpretation as permitted under part 95, as reflected in the proposed rules set forth in Appendix A of the *NPRM.* The expanded definition would include any person requiring simultaneous language interpretation at any location. The Commission seeks comment on this proposal and its advantages and disadvantages. The Commission believes this action would serve the public interest by aiding the comprehension of individuals who require such interpretation. Moreover, expanding the permissible uses of part 15 auditory assistance devices to include simultaneous language interpretation would allow these devices to be used to provide either simultaneous language interpretation or auditory assistance, or both, thereby potentially providing a significant benefit to the public at no apparent additional cost. The Commission seeks comment on the potential benefits of expanding the allowable uses of part 15 auditory assistance devices to include simultaneous language interpretation. Do commenters agree with the Commission's assessment that its proposed rule change would not appear to impose additional costs? If not, the Commission seeks comment on any qualitative or quantitative costs associated with its proposal.

11. The Commission expects that expanding the types of operation permitted for part 15 auditory assistance devices to include simultaneous language interpretation for anyone at any location will result in an increase in their use. This could include operation of devices at locations where they are not also used to provide auditory assistance to disabled individuals. In addition, a greater number of channels may be operated at any given location where auditory assistance devices are used to provide both simultaneous language interpretation and auditory assistance for persons with disabilities. Thus, the Commission must also consider the effect that such increased use may have on other in-band, as well as adjacent-band, services.

12. The 72–73 MHz, 74.6–74.8 MHz, and 75.2–76 MHz bands, where part 15 auditory assistance device transmitters operate, are allocated on a primary basis to the fixed and mobile services. As indicated, these bands are available for licensed use under the Public Mobile Service (part 22), the Aviation Service (part 87), the Private Land Mobile Radio Service (part 90), and the Radio Control (R/C) Radio Service (part 95). In the bands adjacent to those where Part 15 auditory assistance devices operate, the 73–74.6 MHz band is allocated on a primary basis for radio astronomy, and the 74.8–75.2 MHz band is allocated on a primary basis to the aeronautical radionavigation service and is available for licensed use in the Radiodetermination Service (part 87). Additionally, the 66–72 MHz and 76–82 MHz bands (VHF TV channels 4 and 5, respectively) are allocated to the broadcast service and are available for licensed television broadcast stations (part 73).

13. With a maximum permissible ERP of 1.2 mW, the power of auditory assistance devices that operate in the 72–76 MHz bands is relatively low compared to that of authorized services in the 72–76 MHz and adjacent bands. Under the current rules which limit the location and types of use of part 15 auditory assistance devices, these devices have not been sources of interference to authorized services in these bands. The Commission seeks comment on whether increased use of part 15 auditory assistance devices for simultaneous language interpretation would increase the potential for harmful interference to authorized services in the 72–76 MHz and adjacent bands. If so, by how much, and what would the specific effects of such harmful interference be? If commenters believe there are qualitative or quantitative costs associated with increased use of part 15 auditory assistance devices for simultaneous language interpretation, the Commission asks that they discuss them. In particular, the Commission seeks comment on whether increased use of part 15 auditory assistance devices for simultaneous language interpretation would require additional safeguards or changes to the technical requirements to prevent harmful interference to authorized services in the 72–76 MHz (72–73 MHz, 74.6–74.8 MHz, and 75.2–76 MHz) and adjacent (66–72 MHz, 73–74.6 MHz, 74.8–75.2 MHz, and 76–82 MHz) bands, and if so, what rule changes are necessary. Are there any qualitative or quantitative costs associated with such rule changes?

If so, the Commission asks commenters to discuss them.

14. Outside of the 72–76 MHz bands in which they operate, part 15 auditory assistance devices must comply with an emissions limit of 1,500 microvolts per meter (μV/m) measured at a distance of 3 meters. As noted above, the aeronautical radiodetermination, radio astronomy, and TV broadcast services are in bands adjacent to the part 15 auditory assistance device bands and are therefore potentially affected by out-of-band emissions from these auditory assistance devices. As with the case of in-band emissions from part 15 auditory assistance devices, the Commission is not aware of instances where auditory assistance devices have caused harmful interference to authorized services in adjacent bands. However, since the time the Commission adopted the rules for auditory assistance device transmitters in 1972, all full-service TV stations have converted from analog to digital transmissions. The Commission notes that in its proceeding proposing steps to open the TV spectrum to new wireless broadband services, it has sought comment on measures it could take to improve TV reception for consumers on VHF channels and encourage broadcasters to use these channels in the future. It noted that one of the problems with indoor VHF reception is noise from nearby consumer electronics equipment. The Commission stated that it would be desirable to reduce that noise, and while it declined to propose any specific changes, it sought comment on what actions it might take to reduce noise in the VHF TV bands.

15. The Commission notes that the allowed out-of-band emissions limit of 1,500 μV/m at 3 meters for auditory assistance devices that operate in the 72–76 MHz bands is 15 times higher (23.5 dB more power) than the § 15.209 emissions limit of 100 μV/m at 3 meters that applies to most other part 15 devices' emissions in the 72–76 MHz and adjacent bands. It is also 18 times higher (25 dB more power) than the out-of-band emissions limit that applies to part 15 personal/portable TV bands devices that operate in bands adjacent to occupied TV channels, which corresponds to 84 μV/m at 3 meters for a device operating at 40 mW. In light of the Commission's proposal to expand the permissible uses for part 15 auditory assistance devices to include simultaneous language interpretation and its goal of improving VHF TV reception, it seeks comment on whether there is a need to tighten the out-of-band emissions limits for part 15 auditory assistance devices. If so, what limit is appropriate—the § 15.209 limit, the unlicensed TV bands device limit, or some other limit? What are the potential advantages and disadvantages of each limit, and what specific qualitative or quantitative costs are associated with each limit? Are any other safeguards or technical requirements necessary to prevent harmful interference to authorized services in the adjacent 66–72 MHz, 73–74.6 MHz, 74.8–75.2 MHz, and 76–82 MHz bands? If so, what are the potential advantages and disadvantages and specific qualitative or quantitative costs associated with each? The Commission also notes that, based upon its review of the equipment authorization records for auditory assistance devices that operate in the 72–76 MHz bands, currently available equipment would not comply with the § 15.209 limits. If tighter limits are necessary, what would be the appropriate transition period for compliance with new limits? Should currently approved equipment be grandfathered, either for a limited time or permanently? If not, what specific qualitative or quantitative costs would be associated with acquiring equipment that complies with the § 15.209 limits?

16. The Commission recognizes that further restricting the out-of-band emissions of part 15 auditory assistance devices to protect the adjacent VHF TV bands would impose additional costs on manufacturers of these devices. Would the advantages of improving the reception of VHF TV channels 4 and 5 outweigh the disadvantages associated with further restricting part 15 auditory assistance device emissions to both manufacturers and users of these devices? The Commission requests specific information and data on the qualitative and quantitative costs associated with complying with additional safeguards or changes to the technical requirements and/or more restrictive out-of-band emissions limits. For example, the Commission requests information on technologies that could be used to decrease out-of-band emissions and the advantages and disadvantages of each; the cost to manufacturers and users to meet lower out-of-band emissions limits; and whether further reducing the out-of-band emissions would in any way impair the device's performance in other ways and how. The Commission also requests comment on any benefits for authorized services in the 72–76 MHz and adjacent bands by reducing the out-of-band emissions of these devices.

Ordering Clauses

17. Pursuant to Sections 2, 4(i), 302(a), 303(f), and 303(r) of the Communications Act of 1934, 47 U.S.C. 152, 154(i), 302(a), 303(f), and 303(r), this Notice of Proposed Rulemaking is hereby *adopted.*

18. Pursuant to Sections 4(i), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), and 303(r), the petition for declaratory ruling filed by Williams Sound Corporation filed on September 25, 2009, *is denied.*

19. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Initial Regulatory Flexibility Analysis

20. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines specified on the first page of this *NPRM.* The Commission will send a copy of this *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register.**[3]

A. Need for, and Objectives of, the Proposed Rule

21. This *NPRM* proposes to modify § 15.3(a) definition of ''auditory assistance device'' to allow part 15 unlicensed auditory assistance devices to be used by anyone at any location for simultaneous language interpretation. The proposal is designed to expand the permitted uses of part 15 auditory assistance devices to include a use other than those for the disabled (*i.e.,* amplification of sound for those with a hearing disability and audio description for the blind) to facilitate public access to telecommunications technology. Permitting part 15 audio assistance devices that operate in the 72.0–73.0 MHz, 74.6–74.8 MHz, and 75.2–76.0 MHz bands (72–76 MHz bands) to be

[1] *See 5 U.S.C. 603.* The RFA, *see 5 U.S.C. 601–612,* has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. 603(a).

[3] *See* 5 U.S.C. 603(a).

used by anyone at any location for simultaneous language interpretation would benefit persons requiring simultaneous language interpretation whether or not they have a disability. The *NPRM* seeks comment on whether allowing auditory assistance devices that operate in the 72–76 MHz bands to also be used by anyone at any location for simultaneous language interpretation will increase the potential for harmful interference to authorized services in the 72–76 MHz and adjacent bands (i.e., 66–72 MHz, 73–74.6 MHz, 74.8–75.2 MHz, and 76–82 MHz), and if so, whether additional safeguards or technical requirements are necessary to prevent harmful interference to these authorized services.

B. Legal Basis

22. This action is authorized under Sections 1, 4(i), 302, 303(f) and (r), 332, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 4(i), 154(i), 302a, 303(f) and (r), 332, 337.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

23. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[4] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[5] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[6]

24. Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.[7] A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[8] Nationwide, as of 2002, there were approximately 1.6 million small organizations.[9] The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.''[10] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[11] The Commission estimates that, of this total, 84,377 entities were ''small governmental jurisdictions.''[12] Thus, the Commission estimates that most governmental jurisdictions are small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

25. This *NPRM* addresses the possibility of allowing additional flexibility for part 15 auditory assistance devices that operate in the 72–76 MHz bands by expanding the definition of allowed uses of part 15 auditory assistance devices to include simultaneous language interpretation for anyone at any location. This item does not contain any new reporting or recording keeping requirements.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

26. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[13]

27. If the part 15 definition of auditory assistance device is expanded to include simultaneous language interpretation for anyone as an allowed use at any location, it may be necessary to modify the administrative and/or technical requirements for auditory assistance devices that operate in the 72–76 MHz bands to prevent harmful interference to authorized services in the 72–76 MHz and adjacent bands (*i.e.,* 66–72 MHz, 73–74.6 MHz, 74.8–75.2 MHz, and 76–82 MHz).

28. Although the proposed rule is not expected to have a significant economic impact on small entities, the Commission will continue to examine alternatives with the objectives of eliminating unnecessary regulations and minimizing significant economic impact on small entities. The Commission seeks comment on significant alternatives that should be adopted.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

29. None.

List of Subjects in 47 CFR Part 15

Communications equipment.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons set forth in the preamble, the Federal Communications Commission proposes to amend part 15 of Title 47 of the Code of Federal Regulations to read as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544a.

2. Section 15.3 is amended by revising paragraph (a) to read as follows:

§ 15.3 Definitions.

(a) *Auditory assistance device.* An intentional radiator used to provide auditory assistance communications (including but not limited to applications such as assistive listening, auricular training, audio description for the blind, and simultaneous language translation) for:

(1) Persons with disabilities. In the context of the part 15 rules, the term ''disability,'' with respect to the individual, has the meaning given to it by section 3(2)(A) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)(A)), *i.e.,* a physical or mental impairment that substantially limits one

[4] *Id.* at 603(b)(3).

[5] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[6] Small Business Act, 15 U.S.C. 632 (1996).

[7] *See* SBA, Office of Advocacy, ''Frequently Asked Questions,'' *http://web.sba.gov/faqs/faqindex.cfm?areaID=24* (revised Sept. 2009).

[8] 5 U.S.C. 601(4).

[9] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[10] 5 U.S.C. 601(5).

[11] U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, page 272, Table 415.

[12] The Commission assumes that villages, school districts, and special districts are small, and they total 48,558. *See* U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

[13] 5 U.S.C. 603(c).

or more of the major life activities of such individuals;

(2) Persons who require language translation; or

(3) Persons who may otherwise benefit from auditory assistance communications in places of public gatherings, such as a church, theater, auditorium, or educational institution.

* * * * *

[FR Doc. 2011–25756 Filed 10–4–11; 8:45 am]

BILLING CODE 6712–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9903

Cost Accounting Standards: Clarification of the Exemption From Cost Accounting Standards for Firm-Fixed-Price Contracts and Subcontracts Awarded Without Submission of Certified Cost or Pricing Data

AGENCY: Office of Management and Budget (OMB), Office of Federal Procurement Policy, Cost Accounting Standards Board.

ACTION: Proposed rule.

SUMMARY: The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards (CAS) Board, invites public comments concerning this proposed to clarify the application of the exemption from CAS at 48 CFR 9903.201–1(b)(15) for firm-fixed-price (FFP) contracts and subcontracts awarded on the basis of adequate price competition without submission of cost or pricing data (hereafter referred to as the ''(b)(15) FFP exemption''). The proposed rule will revise the (b)(15) FFP exemption to clarify that the exemption applies to firm-fixed-price contracts and subcontracts awarded on the basis of adequate price competition without submission of certified cost or pricing data.

DATES: *Comment date:* Comments must be in writing and must be received by December 5, 2011.

ADDRESSES: All comments to this proposed rule must be in writing. Electronic comments may be submitted in any one of three ways:

1. *Federal eRulemaking Portal:* Comments may be directly sent via *http://www.regulations.gov*—a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type ''(b)(15) FFP exemption'' (without quotation marks) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments;

2. *E-mail:* Comments may be included in an e-mail message sent to *casb2@omb.eop.gov.* The comments may be submitted in the text of the e-mail message or as an attachment;

3. *Facsimile:* Comments may also be submitted via facsimile to (202) 395–5105; or

4. *Mail:* If you choose to submit your responses via regular mail, please mail them to: Office of Federal Procurement Policy, 725 17th Street, NW., Room 9013, Washington, DC 20503, ATTN: Raymond J.M. Wong. Due to delays caused by the screening and processing of mail, respondents are strongly encouraged to submit responses electronically.

Be sure to include your name, title, organization, postal address, telephone number, and e-mail address in the text of your public comment and reference ''(b)(15) FFP exemption'' in the subject line irrespective of how you submit your comments. Comments received by the date specified above will be included as part of the official record. Comments delayed due to use of regular mail may not be considered.

Please note that all public comments received will be available in their entirety at *http://www.whitehouse.gov/omb/casb_index_public_comments/* and *http://www.regulations.gov* after the close of the comment period. Do not include any information whose disclosure you would object to.

FOR FURTHER INFORMATION CONTACT: Raymond J.M. Wong, Director, Cost Accounting Standards Board (*telephone:* 202–395–6805; *e-mail: Raymond_wong@omb.eop.gov*).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process

Rules, Regulations and Standards issued by the CAS Accounting Standards Board (Board) are codified at 48 CFR Chapter 99. This proposed rule concerns the amendment of a CAS Board regulation other than a Standard, and as such is not subject to the statutorily prescribed rulemaking process for the promulgation of a Standard at 41 U.S.C. 1502(c) [formerly, 41 U.S.C. 422(g)].

B. Background and Summary

Section 802 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65) contained a provision for ''Streamlined Applicability of Cost Accounting Standards.'' Included in the provision was a revision to paragraph (2)(B) of Section 26(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 1502(b)(1)(C) [formerly, 41 U.S.C. 422(f)(2)(B)]) that exempted from the application of CAS, ''Firm-fixed-price contracts or subcontracts awarded on the basis of adequate price competition without submission of certified cost or pricing data.''

Section 802 adopted the recommendation of the Cost Accounting Standards Board Review Panel of the General Accounting Office (GAO) (as it was then called—the name was changed effective July 7, 2004 to the Government Accountability Office) that examined the future role of the CAS Board. In its report of April 2, 1999, the panel observed that a contracting officer is generally not allowed to request certified cost or pricing data where there is adequate price competition, the prices are set by law or regulation, or the acquisition is for commercial items. The panel noted that the risk to the Government in negotiating contract prices in these circumstances is not considered high enough to warrant obtaining certified cost or pricing data. The panel opined that the Government's risk assessment should be equally applicable to CAS and concluded that when certified cost or pricing data were not obtained for FFP contracts and subcontracts, the safeguards provided by CAS were likewise not necessary.

Section 802 was implemented by the CAS Board as an interim rule on February 7, 2000 (65 FR 5990), and as a final rule on June 9, 2000 (65 FR 36768). At the time, the CAS Board chose to express the (b)(15) FFP exemption as follows: ''Firm-fixed-price contracts or subcontracts awarded on the basis of adequate price competition without submission of cost or pricing data.'' The term ''certified'' was not used. The CAS Board explained that it chose this wording in order to conform to the statutory requirements of 10 U.S.C. 2306(h)(1) and 41 U.S.C. 3502(b) [formerly, 41 U.S.C. 254(b)] which defined ''cost or pricing data'' as data that requires certification. That is, the phrase ''cost or pricing data'' was understood to mean ''certified cost or pricing data.''

On August 30, 2010, the Civilian Agency Acquisition Council and Defense Acquisition Regulations Council (Councils) issued a final rule to clarify the distinction between ''certified cost or pricing data'' and ''data other than certified cost or pricing data,'' as well as to clarify requirements for submission of cost or pricing data (75 FR 53135). Among other things, the Councils revised the definitions at

Federal Acquisition Regulation (FAR) 2.101 related to cost or pricing data. Included within the definition of ''data other than certified cost or pricing data'' is a statement that such data may include the identical types of data as ''certified cost or pricing data,'' but without the certification. Thus, the definitions of both ''certified cost or pricing data'' and ''data other than certified cost or pricing data'' refer to cost or pricing data.

C. Conclusion

The CAS Board believes the August 30, 2010 revisions to FAR 2.101 may cause some confusion over the applicability of CAS in view of the current wording of the (b)(15) FFP exemption. Consistent with Section 802, it has not been the CAS Board's intent to apply CAS to FFP contracts or subcontracts awarded on the basis of adequate price competition where certified cost or pricing data was not obtained. Therefore, the CAS Board is considering a proposed change to the wording of the (b)(15) FFP exemption.

D. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35, Subchapter I) does not apply to this rulemaking, because this rule imposes no additional paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq.* The purpose of this proposed rule is to clarify the implementation of the ''Streamlined Applicability of Cost Accounting Standards'' at Section 802 of National Defense Authorization Act for Fiscal Year 2000.

E. Executive Order 12866, the Congressional Review Act, and the Regulatory Flexibility Act

This rule serves to clarify the elimination of certain administrative requirements associated with the application and administration of the Cost Accounting Standards by covered Government contractors and subcontractors, consistent with the provisions of ''Streamlined Applicability of Cost Accounting Standards'' at Section 802 of National Defense Authorization Act for Fiscal Year 2000. The economic impact on contractors and subcontractors is, therefore, expected to be minor. As a result, the CAS Board has determined that this proposed rule will not result in the promulgation of an ''economically significant rule'' under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be required. Finally, this rule does not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this proposed rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980, 5 U.S.C. Chapter 6.

List of Subjects in 48 CFR Part 9903

Cost accounting standards, Government procurement.

Daniel I. Gordon,

Chair, Cost Accounting Standards Board.

For the reasons set forth in this preamble, chapter 99 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 9903—CONTRACT COVERAGE

1. The authority citation for Part 9903 continues to read as follows:

Authority: Public Law 111–350, 124 Stat. 3677, 41 U.S.C. 1502.

SUBPART 9903.2—CAS PROGRAM REQUIREMENTS

2. Section 9903.201–1 is amended by revising paragraph (b)(15) to read as follows:

9903.201–1 CAS applicability.

* * * * *

(b) * * *

(15) Firm-fixed-price contracts or subcontracts awarded on the basis of adequate price competition without submission of certified cost or pricing data.

* * * * *

[FR Doc. 2011–25623 Filed 10–4–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110907562–1598–01]

RIN 0648–BB40

Fisheries of the Northeastern United States; Changes to Vessel Replacement and Upgrade Provisions for Fishing Vessels Issued Limited Access Federal Fishery Permits

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: NMFS, in consultation with the Atlantic States Marine Fisheries Commission (Commission) and the New England and Mid-Atlantic Fishery Management Councils (Councils), is considering changes to the current system of regulations that limit the potential size of a replacement vessel. This advance notice of proposed rulemaking (ANPR) provides background information and requests public comment on the administrative and financial burdens of the current system, as well as on what type of changes would be appropriate to reduce that burden and the regulatory complexity without adversely affecting the fishery. NMFS will consider all recommendations received in response to this ANPR prior to any proposed rulemaking.

DATES: Comments must be received on or before December 5, 2011.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2011–0213, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, and then enter NOAA–NMFS–2011–0213 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail and hand delivery:* Submit written comments to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on Vessel Upgrade ANPR.''
- *Fax:* (978) 281–9135.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*) submitted voluntarily by the sender will 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). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, (978) 281–9341, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

Measures to limit the potential size of a replacement vessel were first implemented in the Northeast Region in 1994 in conjunction with the adoption of limited access permits in the Northeast Multispecies and Atlantic Scallop Fishery Management Plans (FMP). NMFS enacted these measures to promote conservation of the fish species by limiting the potential increase in fishing capacity of the fleet and thereby maintaining total fishing mortality within the requirements of the respective rebuilding schedule of the FMP. In the following years, NMFS adopted limited access permits for other fisheries in the Northeast, some of which included various restrictions on how a permitted vessel could be replaced. In 1999, an omnibus amendment (Consistency Amendment) to all the FMPs of the Councils was implemented (64 FR 8263, February 19, 1999) to expand and standardize the upgrade restrictions to encompass most of the limited access fisheries in the Northeast.

The current regulations restrict the size and horsepower of any replacement vessel, or modifications to the current vessel, based on the specifications of a baseline vessel. The baseline vessel for each limited access permit is typically the first vessel issued the limited access permit in that fishery at the time that permit was issued. In the case of fisheries that adopted baseline restrictions through the Consistency Amendment, the permitted vessel as of the date of the final rule's implementation sets the baseline. In some cases, this methodology resulted in a single vessel with permits for multiple fisheries having more than one baseline. In that situation, the most restrictive combination of baseline specifications applies, unless the vessel owner chooses to relinquish permanently the permit with the more restrictive baseline(s).

Current regulations allow vessel owners to increase (or upgrade) a specification either by moving the limited access permit to a new vessel or by modifying the current vessel, up to 10 percent above of the baseline vessel's length overall, gross registered tonnage, and net tonnage and up to 20 percent above the baseline vessel's horsepower. As a matter of NMFS policy, all calculated maximum upgrade values are rounded up to the next whole number. The baseline size and horsepower specifications associated with a permit can only be upgraded once, although the vessel size characteristics (length overall, gross registered tonnage, and net tonnage) and engine horsepower can be upgraded at different times. For example, a vessel owner looking to replace his current vessel, which has a baseline engine horsepower of 300, may, if the horsepower on that permit was not upgraded before, move it to a vessel with up to 360 horsepower (20 percent greater than the 300-horsepower baseline). If the owner opts for a new vessel with a 340-horsepower engine, that action counts as the one-time upgrade, and any future replacement vessel could not exceed that new 340-horsepower maximum limit. The baseline size characteristics can be upgraded through this same vessel replacement or used another time. However, since size characteristics are upgraded as a group, if the baseline length overall is upgraded but not the gross and net tonnages, the baseline tonnage specifications cannot be upgraded in the future.

When a vessel owner wants to move a limited access Federal fishery permit to a replacement vessel, as part of the application he must provide documentation from a third party to demonstrate that the length, gross registered tonnage, net tonnage, and horsepower are within the limits for that permit. Many vessels use the U.S. Coast Guard vessel documentation certificate for length and tonnages, although the documentation certificate should then reflect the length overall as required by NMFS regulation, rather than the typical registered length. Vessels that are not documented by the U.S. Coast Guard must provide other documentation for vessel size. Obtaining vessel specification documents may involve the time and expense of having the new vessel measured by a marine surveyor or other qualified individual. Engine horsepower documentation may require testing by a marine mechanic and documentation of the results on formal letterhead. On the other hand, all of this information might be routinely obtained for other purposes (*e.g.,* for insurance coverage) and it could be a minimal additional cost to provide copies as part of a permit transfer application. The cost of documenting vessel specifications has been previously estimated at $375 for calculating the burden to the public under the requirements of the Paperwork Reduction Act. The full cost to the industry of this process is not clear, and the public is encouraged to submit comments on how much of a financial and time burden this process has been.

Some members of the fishing industry have reported that it can be difficult to find a suitable replacement vessel within allowed upgrades, especially for small boats. For example, a replacement for a 25-ft (7.6-m) baseline vessel could not exceed 28 ft (8.5 m), and manufacturers may not make vessels in the allowed size range that also meet other specific needs of a vessel owner. Similarly, modern marine engines are manufactured to meet more stringent emissions standards, and horsepower ratings may not be as adjustable as in the past without violating those limits. The safety of a vessel at sea, especially in adverse weather conditions, is affected by many factors, including the size of the vessel. NMFS encourages comments from the public on the availability of suitable replacement vessels, and the impact this has on safety at sea.

The primary justification for the adoption of upgrade restrictions was to control the potential increase in catch from each permitted vessel that could occur with increases in vessel size and horsepower and, therefore, to prevent unexpected increases in fishing mortality that could hinder a rebuilding program. Since the initial implementation of vessel upgrade and replacement restrictions, many fisheries have also adopted trip limits or other measures that control the potential harvest of a vessel beyond just restricting vessel size. In addition, the recent adoption in all fisheries of annual catch limits that cap total harvest in a given year may reduce the concern over excessive fishing mortality. In light of these other measures, it is possible that vessel baseline restrictions could be relaxed without adversely affecting stock rebuilding. However, the upgrade restriction is considered one factor that is helping to preserve the small vessel character of the fishing fleet in the Northeast region. Larger and more powerful vessels could also have increased impacts on habitat or bycatch of non-target species. Further, fishery management actions adopted by the coastal states through the Commission may rely on the baseline upgrade restrictions for federally permitted vessels to control harvest potential. These considerations will have to be more fully understood before a change

to current regulation can be implemented.

A wide range of options could be considered as part of any action to change vessel baseline regulations. NMFS would like public input on the full range of potential actions, including suggestions for other changes to baseline regulations that are not specifically listed in this announcement, such as how to treat vessels that have multiple baselines and/or have already upgraded under the current system. Potential changes may include one or more of the following.

1. *Eliminate tonnages from vessel baseline regulations.* The tonnages are often considered the most malleable of baseline specifications. The gross registered tonnage can vary significantly depending on whether exact measurements or the simplified calculation method is used. Similarly, net tonnage can be calculated based either on the gross tonnage or from measurements of the vessel, and may be changed by modifying internal bulkheads. Tonnage has also been a concern for owners of vessels built outside of the United States that are determined to be under 5 net tons (14.16 m^3) for import purposes.

2. *Eliminate the one-time upgrade provision.* This would eliminate the incentive to use as much of the available upgrade as possible to avoid ''losing'' some amount of future upgrade. The change could also simplify upgrade considerations by establishing the maximum specifications of any future vessel without needing to know whether any specification has already been upgraded. For example, under this option, if the permit on your vessel has a baseline horsepower specification of 300, and at some point moved to a vessel with 340 horsepower, a future replacement vessel could still be up to 360 horsepower (20 percent greater than the 300-horsepower baseline).

3. *Change from a system of fixed upgrades to a system of size classes.* This option would allow a vessel owner to move a permit to any vessel that fits within the specified size class. The specifics of this type of change, including the number and size of the size classes, have not been fully developed, and NMFS seeks comment to this end. Specific size classes could be based on vessel length, horsepower, or a combination. Such a system would simplify the vessel replacement considerations by making them uniform for all vessels in a particular size class rather than the current system where potential upgrades are unique to each permit. However, determining specific size classes that are appropriate for all fisheries may be difficult, and such a system might disadvantage vessels that are already at the upper limit of a size class.

4. *Remove baseline upgrade restrictions for vessels under 30 ft (9.1 m).* The Councils discussed this potential measure in 1998 during the development of the Consistency Amendment, and again in 2003, but took no formal action at either time. This approach would remove the burden on the smallest vessels as long as they stay under 30 ft (9.1 m), but would establish upgrade provisions that are not uniform for all vessels, which might be confusing or seen as unfair.

5. *Complete removal of upgrade restrictions.* This would allow any vessel owner to move his/her permit to any other vessel. It would provides maximum flexibility to the industry, but would remove the baseline system's restrictions on fleet structure and would likely have the largest impacts on the fishery and the environment.

The long comment period for this ANPR is intended to overlap with meetings of both Councils. While this topic may be discussed at the Council meetings, please submit written comments on the burden of the current vessel baseline system, the potential changes outlined here, or any suggestions for other changes that might be appropriate through one of the methods identified in the **ADDRESSES** section of this ANPR, to ensure that they are fully considered.

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

Dated: September 30, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2011–25746 Filed 10–4–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 76, No. 193

Wednesday, October 5, 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

Economic Research Service

Notice of Intent To Request New Information Collection

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to send comments regarding any aspect of this proposed information collection. This is a new collection for the National Food Study.

DATES: Written comments on this notice must be received on or before December 5, 2011 to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Mark Denbaly, Food Economics Division, Economic Research Service, U.S. Department of Agriculture, 355 E St., SW., Room 05N09, Washington, DC 20024–3221. Comments may also be submitted via fax to the attention of Mark Denbaly at 202–245–4779 or via e-mail to *mdenbaly@ers.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Economic Research Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 355 E St., SW., Washington, DC 20024–3221.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: For further information contact Mark Denbaly at the address in the preamble. Tel. 202–694–5390.

SUPPLEMENTARY INFORMATION:

Title: National Food Study.

OMB Number: 0536–XXXX.

Expiration Date: Three years from the Date of Approval.

Type of Request: New Collection.

Abstract: The National Household Food Acquisition and Purchase Study (the National Food Study) will be conducted over a six-month period from April through September 2012. The survey will collect nationally representative data from 5,000 households, including 1,500 households participating in the Supplemental Nutrition Assistance Program (SNAP, formerly the Food Stamp Program). Each participating household will be asked to provide the pertinent information over a one-week period. Legislative authority for the planned data collection is Section 17 (a)(1) of the Food and Nutrition Act of 2008, 7 U.S.C. 2026. This section authorizes the Secretary to enter into contracts with private institutions to undertake research that will help improve the administration and effectiveness of the SNAP in delivering nutrition-related benefits.

The information to be collected by the National Food Study is necessary to assess and understand the relationships among: (1) Foods purchased for consumption at home and away from home over a one-week period, as well as foods acquired through food and nutrition assistance programs (both public and private); (2) household access to food, including locations where food is acquired and distance to acquisition points; (3) number of meals and snacks consumed by each household member during a one-week period; and (4) household characteristics, including income, participation in federal food assistance programs, non-food expenditures, food security, health status, and diet and nutrition knowledge of the primary food shopper.

This survey will provide data not currently available to program officials and researchers, thereby broadening the scope of economic analyses of food choices made by U.S. households and how those choices influence diet quality and reflect decisions about participation in food assistance programs. The information to be collected by the survey is necessary to assess and understand the relationships among: (1) The types of foods and beverages households purchase, including those obtained and consumed away from home; (2) the nutritional quality of these foods and beverages; (3) the types of food retailers within proximity to households; (4) the influence of household income and food prices on purchases of food brought home and food consumed away from home; (5) levels of food security and the relationships between food security and types of food purchases; (6) levels of dietary knowledge and the relationship with types of food purchases; and (7) differences in food acquisition and food security outcomes between SNAP participants and nonparticipants.

This nationally representative survey will collect data from a planned 5,000 households selected at random from within 50 Primary Sampling Units (counties or groups of counties) in 27 States. The sample will be selected from an address-based sampling frame. Households residing at selected addresses will be asked to complete a brief screener to determine eligibility. Eligible households will be asked to participate in the one-week survey. The primary respondent, identified as the primary food shopper, will be asked to use a handheld scanner provided by the study to scan barcodes on all foods brought into the home for a one-week period. All members of the household age 11 years and older will be asked to keep a food diary of all foods that they acquire and consume away from home during the one-week period; primary respondents will report the food diary information for all household members via brief telephone interviews three times during the week. The primary

household respondent will also be asked to complete two interviews: (1) Household Interview #1 will be conducted in person by a field interviewer at the start of the data collection week and will collect information about household demographics, food shopping, and participation in food assistance programs; (2) Household Interview #2 will be conducted in person at the end of the data collection week and will collect information about non-food expenditures, income, health status, diet and nutrition knowledge, and food security. The primary household respondent will be asked to complete two paper forms: (1) the Meals and Snacks form contains a grid with checkboxes to indicate the meals and snacks consumed by each household member on each day of the one-week data collection period; (2) the Respondent Feedback form contains four questions about household participation in the survey, to be completed at the end of the data collection week. To conduct the economic analyses of household food choice behavior, data from state agencies about participation in food programs may be used in combination with collected data. Any state data obtained will be kept strictly confidential. The confidential program data and linked files will be used solely for statistical and economic research purposes that inform program administration, not for enforcement purposes.

All study instruments will be kept as simple and respondent-friendly as possible. Responses are voluntary and confidential. Study instruments and procedures were tested during the National Food Study Field Test, conducted from February through May 2011. The field test collected data from 400 households selected at random from within two Primary Sampling Units (counties), and tested the efficacy of two alternate survey protocols for collecting food data and two different incentive levels for time spent completing the forms.

Responses from the National Food Study will be combined for statistical purposes and reported only in aggregate or statistical form. Two sets of data files will be prepared from survey data: (1) Public use data files that will not contain any personal identifiers like names and addresses of respondents; and (2) restricted-access files that will contain all data items in the public use files, plus geocodes for households and public locations (stores and restaurants) where foods were acquired.

Affected Public: Respondent groups include: (1) Households participating in SNAP; (2) non-SNAP households with incomes below 100% of the Federal Poverty Level (FPL); (3) non-SNAP households with incomes between 100% and 185% of the FPL; and (4) non-SNAP households with incomes above 185% of the FPL.

Estimated Number of Respondents: The estimated number of respondents includes: (1) 24,675 households screened for income eligibility (it is expected that 19,740 households, or 80 percent, will complete the screener and 4,935, or 20 percent, will not); (2) of the 7,726 households expected to be determined to be eligible for the survey after completing the screener, 5,795 (75 percent) are expected to agree to participate and complete Household Interview #1 and collect food data, and 1,932, (25 percent) will not; (3) of the 5,795 households who complete Household Interview #1 5,099 (88 percent) are expected to complete reporting of food obtained for home preparation and consumption, three Telephone interviews to report food away from home, and Household Interview #2, while 695 (12 percent) will not; (4) of the 5,795 households who complete Household Interview #1, 4,925 (85 percent) are expected to complete the Meals and Snacks form and Respondent Feedback form, and 869 (15 percent) will not; and (5) of the expected 13,892 food diaries to be completed (i.e., an average of 2.4 family members per household), 12,225 diaries (88 percent) are expected to be completed and 1,667 (12 percent) will not.

Estimates of the percentages of respondents who will agree to complete the forms are based on the National Food Study Field Test (conducted from February through May 2011) and, insofar as possible, on experience with previous data collections of similar complexity.

Estimated Number of Responses per Respondent: 6.51 (average). Estimated responses per respondent are as follows: all 24,675 sampled households will be asked to respond to the screener once; an estimated 7,726 survey-eligible households will be asked to respond to Household Interview #1 once; and an estimated 5,795 households completing Household Interview #1 will be asked to respond to Household Interview #2 once.

The estimated 5,795 households completing Household Interview #1 will be asked to complete reports on and scan food brought into the home, with an estimated frequency of three times during the seven-day data collection period. An estimated 13,892 family members aged 11 and above (an average of 2.4 members per household) will be asked to complete seven daily food diaries for food not brought home. An estimated 5,795 households will be asked to report food diary information over the telephone three times, complete the Meals and Snacks form on each of 7 days, and complete the Respondent Feedback form once.

Estimated Total Annual Responses: 160,755.

Estimated Time per Response: 0.23 hours. As shown in the table below, the estimated time of response varies from 0.02 hours (1 minute) to 0.58 hours (35 minutes) per instrument for respondents and from 0.02 hours (1 minute) to 0.08 hours (5 minutes) per instrument for non-respondents. These estimates of respondent burden are based on the National Food Study field test.

Estimated Total Annual Burden on Respondents: 37,562.55 hours. See the table below for the estimated total annual burden for each type of instrument.

REPORTING BURDEN

Description	Estimated number of respondents	Responses annually per respondent	Total annual reponses	Estimated average number of hours per response*	Estimated total annual hours of response burden
Household screener:					
Completed interviews	19740	1.00	19740	0.17	3290.00
Attempted interviews (including Short Form for Refusals)	4935	1.00	4935	0.08	411.25
Household Interview #1:					
Completed interviews	5795	1.00	5795	0.42	2414.38

REPORTING BURDEN—Continued

Description	Estimated number of respondents	Responses annually per respondent	Total annual reponses	Estimated average number of hours per response*	Estimated total annual hours of response burden
Attempted interviews	1932	1.00	1932	0.08	160.96
Household Interview #2:					
Completed interviews	5099	1.00	5099	0.58	2974.51
Attempted interviews	695	1.00	695	0.05	34.77
Reporting food obtained for home preparation or consumption:					
Completed reports	5099	3.00	15297	0.17	2549.58
Attempted reports	695	1.00	695	0.05	34.77
Food diary:					
Completed reports	12225	7.00	85573	0.25	21393.27
Attempted reports	1667	3.00	5001	0.08	416.75
Telephone reporting of ''food away from home'':					
Completed interviews	5099	3.00	15297	0.25	3824.37
Attempted interviews	695	1.00	695	0.08	57.95
Meals and Snacks Form:					
Completed interviews	4925	7.00	34477	0.02	574.62
Attempted interviews	869	1.00	869	0.02	14.49
Respondent Feedback Form:					
Completed interviews	4925	1.00	4925	0.08	410.44
Attempted interviews	869	1.00	869	0.02	14.49
Total responding burden	24,675	6.51	160,755	0.23	37562.55

* Estimates are rounded to the nearest hundredth.

Dated: September 27, 2011.

Sarahelen Thompson,

Acting Administrator, Economic Research Service, U. S. Department of Agriculture.

[FR Doc. 2011–25679 Filed 10–4–11; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee will meet on October 19, 2011, from 9 a.m. to 3 p.m. at the Okanogan-Wenatchee National Forest Headquarters Office, 215 Melody Lane, Wenatchee, WA and also on November 9, 2011, from 9 a.m. to 3 p.m. at Washington State Park office, 270 9th Street, NE., East Wenatchee, WA. During these meetings information will be shared about Access Travel Management. All Eastern Washington Cascades and Yakima Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Clint Kyhl, Designated Federal Official, USDA, Okanogan-Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, phone 509–664–9200.

Dated: September 27, 2011.

Clinton Kyhl,

Designated Federal Official, Okanogan-Wenatchee National Forest.

[FR Doc. 2011–25671 Filed 10–4–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Collaborative Forest Landscape Restoration Program Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Collaborative Forest Landscape Restoration Program (CFLRP) Advisory Committee will meet in person. The purpose of the meeting is to evaluate proposals submitted in response to the Fiscal Year 2011 CFLRP Request for Proposals and make recommendations for project selection to the Secretary of Agriculture.

DATES: The meeting will be held October 18–20, 2011, from 8 a.m. to 5 p.m. M.DT.

ADDRESSES: The meeting will be held at the Peery Hotel, located at 110 West Broadway, Salt Lake City, UT 84101. Written comments should be sent to Lauren Marshall, USDA Forest Service, Forest Management, Mailstop–1103, 1400 Independence Avenue, SW., Washington, DC 20250–1103. Comments may also be sent via e-mail to Lauren Marshall, *lemarshall@fs.fed.us*, or via facsimile to 202–205–1045.

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 USDA Forest Service, Forest Management, 201 14th Street, SW., Yates Building, Washington, DC. Visitors are encouraged to call ahead to 202–205–1218 to facilitate entry into the Forest Service building.

FOR FURTHER INFORMATION CONTACT: Lauren Marshall, Biological Scientist, Forest Management, 202–205–1218.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Collaborative Forest Landscape Restoration Program matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Time for public input will be provided,

during which individuals will have the opportunity to address the Committee.

Dated: September 29, 2011.

James W. Pena,

Associate Deputy Chief, National Forest System.

[FR Doc. 2011–25703 Filed 10–4–11; 8:45 am]

BILLING CODE 3410–11–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: Bureau of Industry and Security (BIS).

Title: Additional Protocol Report Forms.

OMB Control Number: 0694–0135.

Form Number(s): AP–1 through AP–17, AP–A through AP–Q.

Type of Request: Regular submission (extension/revision of a currently approved information collection).

Burden Hours: 844.

Number of Respondents: 500.

Average Hours per Response: 22 to 360 minutes.

Needs and Uses: The Additional Protocol requires the United States to submit declaration forms to the International Atomic Energy Agency (IAEA) on a number of commercial nuclear and nuclear-related items, materials, and activities that may be used for peaceful nuclear purposes, but also would be necessary elements for a nuclear weapons program. These forms provides the IAEA with information about additional aspects of the U.S. commercial nuclear fuel cycle, including: Mining and milling of nuclear materials; buildings on sites of facilities selected by the IAEA from the U.S. Eligible Facilities List; nuclear-related equipment manufacturing, assembly, or construction; import and export of nuclear and nuclear-related items and materials; and research and development. The Protocol also expands IAEA access to locations where these activities occur in order to verify the forms' data. The revision involves text clarifications.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

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 Jasmeet Seehra, OMB Desk Officer, e-mail to *Jasmeet_K._Seehra@omb.eop.gov,* or fax to (202) 395–5167.

Dated: September 29, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–25619 Filed 10–4–11; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 59–2011]

Proposed Foreign-Trade Zone—West Tennessee Area Under Alternative Site Framework; Application Filed

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Northwest Tennessee Regional Port Authority to establish a general-purpose foreign-trade zone at sites in Dyer, Gibson, Haywood, Lake, Lauderdale, Madison, Obion and Tipton Counties, Tennessee, adjacent to the Memphis Customs and Border Protection (CBP) port of entry, under the alternative site framework (ASF) adopted by the Board (74 FR 1170–1173, 1/12/09 (correction 74 FR 3987, 1/22/09); 75 FR 71069–71070, 11/22/10). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 29, 2011. The applicant is authorized to make the proposal under Tennessee Code Sections 7–85–101 thru 7–85–103.

The proposed zone would be the third general-purpose zone in Tennessee for the Memphis CBP port of entry and would be the fifth zone overall for the port of entry. The existing zones are as follows: FTZ 77, Memphis, Tennessee (Grantee: City of Memphis, Board Order 189, April 2, 1982); FTZ 223, Memphis, Tennessee (Grantee: Memphis International Trade Development Corporation, Board Order 904, July 2, 1997); FTZ 262, Southaven, Mississippi (Grantee: Northern Mississippi FTZ, Inc., Board Order 1353, October 1, 2004); and, FTZ 273, West Memphis, Arkansas (Grantee: City of West Memphis, Arkansas, Board Order 1551, April 15, 2008).

The applicant's proposed service area under the ASF would be Dyer, Gibson, Haywood, Lake, Lauderdale, Madison, Obion and Tipton Counties, Tennessee. If approved, the applicant would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is adjacent to the Memphis CBP port of entry.

The proposed zone would initially include nine ''magnet'' sites in the service area: *Proposed Site 1* (350 acres)—Cates Landing, One Cates Landing, State Highway 22 and Donaldson Road, Tiptonville (Lake County); *Proposed Site 2* (279 acres)—Dyersburg Industrial Park, located at the intersection of Interstate 155 and U.S. Highway 412, Dyersburg (Dyer County); *Proposed Site 3* (197 acres)—Gibson County Industrial Park, 2725 N. Central Avenue, Humboldt (Gibson County); *Proposed Site 4* (474 acres)—Brownsville South Industrial Park, located at the intersection of Highway 70/79 and Windrow Road, Brownsville (Haywood County); *Proposed Site 5* (1,720 acres)—Mega Site, located along Interstate 40 near Highways 70 and 79, Stanton (Haywood County); *Proposed Site 6* (161 acres)—Walker Industrial Park, 374 Highland Street, Ripley (Lauderdale County); *Proposed Site 7* (55 acres)—American Drive Business Center, 96 American Drive, Jackson (Madison County); *Proposed Site 8* (235 acres)—Obion County Industrial Park, located at the intersection of Highway 21 and U.S. Highway 51, Union City (Obion County); and, *Proposed Site 9* (415 acres)—Rialto Industrial Park, Highway 51 North, Covington (Tipton County). The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted.

The application indicates a need for zone services in the West Tennessee area. Several firms have indicated an interest in using zone procedures for

warehousing/distribution activities for a variety of products. Specific manufacturing approvals are not being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 5, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 19, 2011.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: September 29, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–25738 Filed 10–4–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840, A–549–822]

Certain Frozen Warmwater Shrimp From India and Thailand: Notice of Extension of Time Limits for the Preliminary Results of the 2010–2011 Administrative Reviews

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

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3874.

Background

On April 1, 2011, the Department of Commerce (the Department) published a notice of initiation of the administrative reviews of the antidumping duty orders on certain frozen warmwater shrimp From India and Thailand covering the period February 1, 2010, through January 31, 2011. *See Certain Frozen Warmwater Shrimp From Brazil, India, and Thailand: Notice of Initiation of Administrative Reviews,* 76 FR 18157 (Apr. 1, 2011).

Extension of Time Limit of Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination in an administrative review within 245 days after the last day of the anniversary month of an order or finding for which a review is requested. Consistent with section 751(a)(3)(A) of the Act, the Department may extend the 245-day period to 365 days if it is not practicable to complete the review within a 245-day period. The deadline for the preliminary results of these administrative reviews is currently October 31, 2011. The Department determines that completion of the preliminary results of these reviews within the statutory time period is not practicable because it recently initiated a cost investigation for one respondent in each review and the data necessary to conduct these investigations will not be received until late September (for Thailand) and early October 2011 (for India). The Department thus requires additional time to conduct its cost analysis in each of these reviews. Therefore, in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of these reviews until February 28, 2012. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: September 30, 2011.

Gary Taverman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–25741 Filed 10–4–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before October 25, 2011. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 11–059. *Applicant:* University of Arkansas Office of Business Affairs, ADMN 321, 1 University of Arkansas, Favetteville, AR 72701–1201. *Instrument:* Electron Microscope. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used to study semiconductor materials, metals, ceramics, and biological tissues, to determine the influence of impurities on medicine efficiency, the kinetics of the growth of particles in a specific environment, the phase transformation of metals, and the study of other phenomena. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* September 15, 2011.

Docket Number: 11–062. *Applicant:* University of Buffalo, NYS Center for Excellence, 701 Ellicott St., HJKRI B4–321, Buffalo, NY 14203. *Instrument:* Electron Microscope. *Manufacturer:* FEI, Czech Republic. *Intended Use:* The instrument will be used to study the normal and pathological brains and peripheral nerves from animal models, assessing the degree and quality of myelination and neuronal differentiation under different experimental conditions. The objective of the experiments is to discover treatments and cures for Krabbe and other demyelinating disease. The experiments require 2-angstrom resolution in order to examine the specimens. *Justification for Duty-Free Entry:* There are no instruments of the

same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* September 7, 2011.

Docket Number: 11–063. *Applicant:* Mount Sinai School of Medicine, 1 Gustave L. Levy Place New York, NY 10029–6574. *Instrument:* Electron Microscope. *Manufacturer:* JEOL Ltd., Japan. Intended Use: The instrument will be used to image a wide range of biological assemblies composed of protein, nucleic acids, lipid and detergent. The studies will include structural studies of nucleic acid binding protein, viruses and membrane proteins, among other research. A 120kV electron microscope with an anticontaminator and specimen holder suitable for imaging biological samples at liquid nitrogen temperatures is required for the research. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* September 16 2011.

Docket Number: 11–064. *Applicant:* University of Wyoming, 1000 E University Ave., Laramie, WY 82071. *Instrument:* Electron Microscope. *Manufacturer:* FEI, Czech Republic. Intended Use: The instrument will be used to study solar energy and materials science research. There are no other instruments with the necessary resolution that are also capable of operation at very high pressures (chamber pressures approaching atmospheric pressures), which are essential for the research applications. There are also no microscopes manufactured in the United States that are capable of spatial resolution on the nanometer scale, and generation and analysis of electron-beam induced signals such as characteristic x-ray analysis, electron beam induced current measurements, and e-beam lithography. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* September 16, 2011.

Dated: September 29, 2011.

Gregory Campbell,

Director, IA Subsidies Enforcement Office.

[FR Doc. 2011–25737 Filed 10–4–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Civil Nuclear Trade Advisory Committee Public Meeting

AGENCY: International Trade Administration, DOC.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Civil Nuclear Trade Advisory Committee (CINTAC).

DATES: The meeting is scheduled for Friday, November 4, 2011, at 9 a.m. Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held in Room 4830, U.S. Department of Commerce, Herbert Clark Hoover Building, 1401 Constitution Ave., NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mrs. Sarah Lopp, Office of Energy & Environmental Industries, International Trade Administration, Room 4053, 1401 Constitution Ave., NW., Washington, DC 20230. (*Phone:* 202–482–3851; *Fax:* 202–482–5665; *e-mail: sarah.lopp@trade.gov*).

SUPPLEMENTARY INFORMATION:

Background: The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand United States exports of civil nuclear goods and services in accordance with applicable United States laws and regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities will affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

Topics to be considered: The agenda for the November 4, 2011 CINTAC meeting is as follows:

Closed Session (9 a.m.–3 p.m.)

1. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. App. (10)(a)(1) and 10(a)(3).

Public Session (3 p.m.–4 p.m.)

1. International Trade Administration's Civil Nuclear Trade Initiative Update
2. Civil Nuclear Trade Promotion Activities Discussion
3. Public comment period

The open session will be disabled-accessible. Public seating is limited and available on a first-come, first-served basis. Members of the public wishing to attend the meeting must notify Mrs. Sarah Lopp at the contact information below by 5 p.m. EDT on Friday, October 28, 2011 in order to pre-register for clearance into the building. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted, but may be impossible to fill.

A limited amount of time will be available for pertinent brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. Individuals wishing to reserve speaking time during the meeting must contact Mrs. Lopp and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5 p.m. EDT on Friday, October 28, 2011. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration (ITA) may conduct a lottery to determine the speakers. Speakers are requested to bring at least 20 copies of their oral comments for distribution to the participants and public at the meeting.

Any member of the public may submit pertinent written comments concerning the CINTAC's affairs at any time before and after the meeting. Comments may be submitted to the Civil Nuclear Trade Advisory Committee, Office of Energy & Environmental Industries, Room 4053, 1401 Constitution Ave., N.W., Washington, DC 20230. For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5 p.m. EDT on Friday, October 28, 2011. Comments received after that date will be distributed to the members but may not be considered at the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on April 20, 2011, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App. (10)(d)), that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt

from the provisions relating to public meetings found in 5 U.S.C. App. (10)(a)(1) and 10(a)(3). The portion of the meeting dealing with matters requiring disclosure of trade secrets and commercial or financial information as described in 5 U.S.C. 552b(c)(4) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. App. §§ (10)(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2011–25667 Filed 10–4–11; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA718

Receipt of an Application for Incidental Take Permit (16230)

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

ACTION: Notice of availability.

SUMMARY: NMFS has received an application for an incidental take permit (Permit) from the North Carolina Division of Marine Fisheries (NCDMF) pursuant to the Endangered Species Act of 1973, as amended (ESA). As required by the ESA, NCDMF's application includes a conservation plan designed to minimize and mitigate take of endangered or threatened species. The permit application is for the incidental take of ESA-listed adult and juvenile sea turtles associated with otherwise lawful commercial gill net fisheries operating in inshore waters of North Carolina. The duration of the proposed permit is for 3 years. NMFS is providing this notice to allow other agencies and the public an opportunity to review and comment on the application and associated conservation plan. All comments received will become part of the public record and will be available for review.

DATES: Written comments from interested parties on the permit application and Plan must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Eastern daylight time on December 5, 2011.

ADDRESSES: You may submit comments on the permit application and conservation plan, identified by NOAA–NMFS–2011–0231, by any of the following methods during the 60-day comment period:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2011–0231 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Submit written comments to Kristy Long, Office of Protected Resources, 1315 East West Highway, 13th Floor, Silver Spring, MD 20910.
- *Fax:* 301–713–0376; Attn: Kristy Long.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*) submitted voluntarily by the sender will 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). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Kristy Long (ph. 301–427–8402, e-mail *Kristy.Long@noaa.gov;* Dennis Klemm (ph. 727–824–5312, e-mail *Dennis.Klemm@noaa.gov*).

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the ''taking'' of a species listed as endangered or threatened. The term ''take'' is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. NMFS regulations governing permits for threatened and endangered species are published at 50 CFR 222.307.

Species Covered in This Notice

The following species are included in the conservation plan and Permit application: Loggerhead (*Caretta caretta*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*), hawksbill (*Eretmochelys imbricata*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles.

Background

NMFS issued Permit No. 1259 to NCDMF (65 FR 65840, November 2, 2000), Permit No. 1348 (66 FR 51023, October 5, 2001), Permit No. 1398 (67 FR 67150, November 4, 2002), and Permit No. 1528 (70 FR 52984, September 6, 2005) authorizing the incidental take of the foregoing species in certain segments of the commercial fall gill net fisheries for flounder in Pamlico Sound subject to a series of mandatory sea turtle management and monitoring requirements and limits on the numbers of individuals that could be taken annually. On August 18, 2011, NCDMF submitted a revised application to NMFS for Permit No. 16230, authorizing incidental take of ESA-listed sea turtles associated with commercial and recreational gillnet fisheries in inshore state waters for 3 years. This application includes endangered Kemp's ridley, leatherback, and hawksbill sea turtles and threatened green and loggerhead sea turtles. This permit, if issued, and implementing the conservation plan would allow for the incidental take of specified numbers of sea turtles incidental to the continued commercial harvest of target fish species subject to conservation, management and monitoring requirements set forth in the plan and as permit conditions deemed necessary and appropriate by the NMFS.

Conservation Plan

The conservation plan prepared by NCDMF describes measures designed to monitor, minimize, and mitigate the incidental take of ESA-listed sea turtles. The conservation plan includes managing inshore gill net fisheries by dividing estuarine waters into 5 management units (*i.e.,* A–E). Each of the management units would be monitored seasonally and by fishery.

Management Units were delineated on the basis of three primary factors: Similarity of fisheries and management; extent of known protected species interactions in commercial gill net fisheries; and unit size and the ability of

the NCDMF to monitor fishing effort. Management Unit A encompasses all estuarine waters north of 35° 46.30′ N to the North Carolina/Virginia state line. This includes all of Albemarle, Currituck, Croatan, and Roanoke sounds as well as the contributing river systems in this area. Management Unit B encompasses all estuarine waters South of 35° 46.30′ N, East of 76° 28.00′ W and North of 34° 48.27′ N. This Management Unit will include all of Pamlico Sound and the Northern portion of Core Sound. Management Unit C will include the Pamlico, Pungo and Neuse river drainages west of 76° 28.00′ W. Management Unit D is divided into two areas, D–1 and D–2, to allow the NCDMF to effectively address areas of high sea turtle abundance or ''hot spots.'' Management Unit D–1 encompasses all estuarine waters South of 34° 48.27′ N. and east of a line running from 34° 40.70′ N.–76° 22.50′ W. to 34° 42.48′ N.–76° 36.70′ W. Management Unit D–1 includes Southern Core Sound, Back Sound and North River. Management Unit D–2 encompasses all estuarine waters west of a line running from 34° 40.70′ N.–76° 22.50′ W. to 34° 42.48′ N.–76° 36.70′ W. to the Western side of White Oak River. Management Unit D–2 includes Newport River, Bogue Sound and White Oak River. Management Unit E encompasses all estuarine waters south and west of the Western side of the White Oak River to the North Carolina/South Carolina state line. This includes the Atlantic Intercoastal Waterway and adjacent sounds, and the New, Cape Fear, Lockwood Folly and Shallotte rivers.

The large mesh (≥ 5 inch stretched mesh (12.7 cm)) gill net fisheries primarily target southern flounder (*Paralicthys lethostigma*), striped bass (*Morone saxatilis*), American shad (*Alosa americana*), hickory shad (*Polomolobus mediocris*), and catfishes (*Ictalurus sp.*). Large mesh gill net fisheries for flounder traditionally operate throughout the majority of the sounds and lower estuarine river systems with peaks in effort in the spring/summer months (April–June), and in the fall months (September–November). Fisheries for striped bass are more limited in time and space due to the anadromous migration pattern of this species. Striped bass gill net fisheries are prosecuted from late October through late April; fishermen are prohibited from targeting striped bass from May through early October. Consequently, the majority of striped bass effort occurs in Albemarle Sound with seasonal effort occurring in the Pamlico Sound and the Pamlico and Neuse River systems. American and hickory shad fishing operations occur almost exclusively from January 1 through April 14 due to their anadromous migration patterns and distribution. Catfish are harvested with large mesh gill nets in the river and Western Albemarle Sound with the majority of catches occurring during the winter to spring months. The most common mesh size for all large mesh gill net fisheries is 5½ inch (13.97 cm) stretched mesh.

The small mesh (<5 inch stretched mesh (12.7 cm)) gillnet fisheries primarily target spot (*Leiostomus xanthurus*), striped mullet (*Mugil cephalus*), bluefish (*Pomatomus saltatrix*), spotted seatrout (*Cynoscion nebulosus*), weakfish (*Cynoscion regalis*), Atlantic menhaden (*Brevoortia tyrannus*), Spanish mackerel (*Scomberomorus maculates*), white perch (*Morone americana*), and kingfishes (*Menticirrhus sp.*). Peaks in spot landings occur in the spring/summer (April to June) and fall (October to November) months; spot are landed throughout the estuarine waters and river systems. Striped mullet are landed year round with peaks in the fall/winter months (October to January). Bluefish are also landed year round throughout the estuarine and river systems with most landings occurring in the spring during April and May. Spotted seatrout and weakfish are targeted by small mesh gillnet operations primarily in the fall/winter (September to January) months. Weakfish landings may also peak in the spring during April and May. Atlantic menhaden are mostly targeted during the spring (February to May) with another peak in landings occurring in October. Spanish mackerel are primarily targeted during the spring and fall months. White perch are almost exclusively targeted during the winter/spring months (December to April). Kingfishes are targeted primarily in the spring and the fall throughout the estuarine and river systems. Mesh sizes used in small mesh gill net operations vary more than those used in large mesh fisheries. However, the most commonly used small mesh sizes generally fall between 3 inch (7.62 cm) and 3¾ inch (9.53 cm) stretched mesh.

Management measures identified in the Conservation Plan include: (1) Restricted soak times for large mesh gillnets from one hour before sunset on Monday through Thursday and one hour after sunrise from Tuesday through Friday (*i.e.,* fishing is prohibited from one hour after sunrise on Friday through one hour before sunset on Monday); (2) restrictions on the maximum net length per large mesh fishing operation (*i.e.,* 2,000 yards (1.83 km, 6,000 ft) per operation except south of the NC Highway 58 bridge where 1,000 yards (0.91 km, 3,000 ft) is maximum; (3) restrictions on large mesh net-shot lengths to 100 yards (91.44 m, 300 ft) with a 25 yard (22.86 m, 75 ft) separation between each net-shot; and (4) requirement for large mesh nets to be low profile (*e.g.,* maximum of 15 meshes in depth, tie-downs prohibited, floats or corks prohibited along float lines north of the NC Highway 58 bridge). NCDMF proposes to monitor sea turtle interactions through reports from fishery observers (both traditional and alternative platform), fishermen, and NCDMF Marine Patrol at a minimum of 7% coverage annually for large mesh gillnet trips. The proposed conservation plan also includes a requirement for NCDMF to provide monthly reports of sea turtle interactions to NMFS with estimates of take by management unit, season, sea turtle species, and disposition.

The annual incidental take of sea turtles, using a 90% confidence limit, is anticipated to be 295 lethal and 607 non-lethal. Specifically, the anticipated lethal and non-lethal take by species is 55 lethal and 116 non-lethal Kemp's ridley, 216 lethal and 436 non-lethal green, 23 lethal and 50 non-lethal loggerhead turtles, and 1 lethal and 5 non-lethal hawksbill turtles. NCDMF is proposing to limit inshore gillnet fisheries such that the impacts on ESA-listed sea turtles will be minimized. NCDMF would use a variety of adaptive fishery management measures and restrictions through their state proclamation authority to reduce sea turtle mortality and prohibit fishing in Management Units or sub-units where incidental take thresholds are exceeded. NCDMF considered and rejected one other alternative, not applying for a permit and closing the fishery, when developing their conservation plan.

National Environmental Policy Act

Issuing a permit would constitute a Federal action requiring NMFS to comply with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) as implemented by 40 CFR parts 1500–1508 and NOAA Administrative Order 216–6, *Environmental Review Procedures for Implementing the National Environmental Policy Act* (1999). NMFS intends to prepare an Environmental Assessment (EA) to consider a range of reasonable alternatives and fully evaluate the direct, indirect, and cumulative impacts likely to result from issuing a permit.

Next Steps

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the ESA. If we determine that the requirements of section 10(a) and the procedural requirements of NEPA are met, NMFS will issue a permit for incidental takes of ESA-listed sea turtles under the jurisdiction of NMFS. The final NEPA and permit determinations will not be completed until after the end of the 60-day comment period. NMFS will fully consider all public comments received during the comment period. NMFS will publish a record of its final action in the **Federal Register**.

Dated: September 29, 2011.

Helen Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–25752 Filed 10–4–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a public meeting of the Commerce Spectrum Management Advisory Committee (Committee). The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on spectrum management policy matters.

DATES: The meeting will be held on November 10, 2011, from 9 a.m. to 12 p.m., Eastern Standard Time.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4830, Washington, DC 20230. Public comments may be mailed to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue, NW., Room 4099, Washington, DC 20230 or e-mailed to *spectrumadvisory@ntia.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Bruce M. Washington, Designated Federal Officer, at (202) 482–6415 or *BWashington@ntia.doc.gov;* and/or visit NTIA's Web site at *http://www.ntia.doc.gov/category/CSMAC.*

SUPPLEMENTARY INFORMATION: *Background:* The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on needed reforms to domestic spectrum policies and management in order to: license radio frequencies in a way that maximizes their public benefits; keep wireless networks as open to innovation as possible; and make wireless services available to all Americans (*See* charter, at *http://www.ntia.doc.gov//page/2011/csmac-charter*). This Committee is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. § 904(b). The Committee functions solely as an advisory body in compliance with the FACA. For more information about the Committee visit: *http://www.ntia.doc.gov/category/CSMAC.*

Matters To Be Considered: The Committee will deliberate on the findings and recommendations from its four subcommittees (Search for 500 MHz, Spectrum Sharing, Spectrum Management Improvements, and Unlicensed), and identify future requirements for assessments. NTIA will post a detailed agenda on its Web site, *http://www.ntia.doc.gov,* prior to the meeting. There also will be an opportunity for public comment at the meeting.

Time and Date: The meeting will be held on November 10, 2011, from 9 a.m. to 12 p.m., Eastern Standard Time. The times and the agenda topics are subject to change. The meeting may be webcast or made available via audio link. Please refer to NTIA's Web site, *http://www.ntia.doc.gov,* for the most up-to-date meeting agenda and access information.

Place: The meeting will be held at the U.S. Department of Commerce, National Telecommunications and Information Administration, 1401 Constitution Avenue, NW., Room 4830, Washington, DC 20230. The meeting will be open to the public and press on a first-come, first-served basis. Space is limited. The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Mr. Washington, at (202) 482–6415 or *BWashington@ntia.doc.gov,* at least five (5) business days before the meeting.

Status: Interested parties are invited to attend and to submit written comments to the Committee at any time before or after the meeting. Parties wishing to submit written comments for consideration by the Committee in advance of this meeting must send them to NTIA's Washington, DC office at the above-listed address and comments must be received by close of business on October 28, 2011, to provide sufficient time for review. Comments received after October 28, 2011, will be distributed to the Committee, but may not be reviewed prior to the meeting. It would be helpful if paper submissions also include a compact disc (CD) in HTML, ASCII, Word, or WordPerfect format (please specify version). CDs should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. Alternatively, comments may be submitted electronically to *spectrumadvisory@ntia.doc.gov.* Comments provided via electronic mail also may be submitted in one or more of the formats specified above.

Records: NTIA maintains records of all Committee proceedings. Committee records are available for public inspection at NTIA's Washington, DC office at the address above. Documents including the Committee's charter, member list, agendas, minutes, and any reports are available on NTIA's Committee web page at *http://www.ntia.doc.gov/category/CSMAC.*

Dated: September 29, 2011.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2011–25669 Filed 10–4–11; 8:45 am]

BILLING CODE 3510–60–P

COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION

[OJP (OJJDP) Docket No. 1570]

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Coordinating Council on Juvenile Justice and Delinquency Prevention.

ACTION: Notice of meeting.

SUMMARY: The Coordinating Council on Juvenile Justice and Delinquency Prevention (Council) announces its October 2011 meeting.

DATES: Friday, October 21 from 10 a.m. to 12:30 p.m.

ADDRESSES: The meeting will take place in the third floor main conference room at the U.S. Department of Justice, Office

of Justice Programs, 810 7th St., NW., Washington, DC 20531.

FOR FURTHER INFORMATION: Visit the Web site for the Coordinating Council at *http://www.juvenilecouncil.gov* or contact Robin Delany-Shabazz, Designated Federal Official, by telephone at 202–307–9963 [**Note:** this is not a toll-free telephone number], or by e-mail at *Robin.Delany-Shabazz@usdoj.gov.* The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The Coordinating Council on Juvenile Justice and Delinquency Prevention, established pursuant to Section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2) will meet to carry out its advisory functions under Section 206 of the Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. 5601, *et seq.* Documents such as meeting announcements, agendas, minutes, and reports will be available on the Council's Web page, *http://www.juvenilecouncil.gov,* where you may also obtain information on the meeting.

Although designated agency representatives may attend, the Council membership is composed of the Attorney General (Chair), the Administrator of the Office of Juvenile Justice and Delinquency Prevention (Vice Chair), the Secretary of Health and Human Services (HHS), the Secretary of Labor, the Secretary of Education, the Secretary of Housing and Urban Development, the Director of the Office of National Drug Control Policy, the Chief Executive Officer of the Corporation for National and Community Service, and the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement. The nine additional members are appointed by the Speaker of the House of Representatives, the Senate Majority Leader, and the President of the United States. Other federal agencies take part in Council activities including the Departments of Agriculture, Defense, the Interior, and the Substance and Mental Health Services Administration of HHS.

Meeting Agenda

The preliminary agenda for this meeting includes: (a) A presentation on Strengthening Military Families organized by the Office of Children and Youth, U. S. Department of Defense; (b) an update on interagency efforts to promote adoption of effective approaches to school discipline; (c) a demonstration by the U.S. Department of Housing and Urban Development and GreatSchools of their initiative to provide evidence-based data to help inform families' decisions about housing and schools; and (d) other agency announcements.

Registration

For security purposes, members of the public who wish to attend the meeting must pre-register online at *http://www.juvenilecouncil.gov* no later than Friday, October 14, 2011. Should problems arise with web registration, call Daryel Dunston at 240–221–4343 or send a request to register to Mr. Dunston. Include name, title, organization or other affiliation, full address and phone, fax and e-mail information and send to his attention either by fax to 301–945–4295, or by e-mail to *ddunston@edjassociates.com.* [Note: these are not toll-free telephone numbers.] Additional identification documents may be required. Space is limited.

Note: Photo identification will be required for admission to the meeting.

Written Comments: Interested parties may submit written comments and questions by Friday, October 14, 2011, to Robin Delany-Shabazz, Designated Federal Official for the Coordinating Council on Juvenile Justice and Delinquency Prevention, at *Robin.Delany-Shabazz@usdoj.gov.* The Coordinating Council on Juvenile Justice and Delinquency Prevention expects that the public statements presented will not repeat previously submitted statements. Written questions from the public may also be invited at the meeting.

Jeff Slowikowski,

Acting Administrator.

[FR Doc. 2011–25673 Filed 10–4–11; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 11–30]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 11–30 with attached transmittal and policy justification.

Dated: September 30, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

SEP 2 7 2011

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-30, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Ecuador for defense articles and services estimated to cost $60 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 11–30

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, As Amended

(i) *Prospective Purchaser:* Ecuador

(ii) *Total Estimated Value:*

Major Defense Equipment *—$4 million.
Other—$56 million.

TOTAL—$60 million.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* Refurbishment of two SH–2G Helicopters being provided as grant Excess Defense Articles (EDA) to be modified for operational use. The two EDA aircraft will also be modified to include the following: HELRAS Helicopter Dipping SONAR, AAQ–22 Forward Looking Infrared Radar (FLIR), AN/APS–143C (V) 3 RADAR, ARC–210 UHF Radio, APX–72 Transponder, AN/ARN–147 VOR/ILS, AN/ARN–149 Receiver (ADF), HF–9000 HF Radio, ASN–150 Tactical Navigation Set, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support.

(iv) *Military Department:* Navy (SBO).

* As defined in Section 47(6) of the Arms Export Control Act.

(v) *Prior Related Cases, if any:* None.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None.

(viii) *Date Report Delivered to Congress:* 27 September 2011.

Policy Justification

Ecuador—SH–2G Helicopters

The Government of Ecuador has requested a possible sale for the refurbishment of two SH–2G Helicopters being provided as grant Excess Defense Articles (EDA) to be modified for operational use. The two EDA aircraft will also be modified to include the following: HELRAS Helicopter Dipping SONAR, AAQ–22 Forward Looking Infrared Radar (FLIR), AN/APS–143C (V) 3 RADAR, ARC–210 UHF Radio, APX–72 Transponder, AN/ARN–147 VOR/ILS, AN/ARN–149 Receiver (ADF), HF–9000 HF Radio, ASN–150 Tactical Navigation Set, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support. The estimated cost is $60 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of Ecuador which has been, and continues to be, an important force for political stability and economic progress in South America. This proposed sale will also improve the interoperability between the naval forces of the United States and Ecuador.

The proposed sale will improve Ecuador's capability to meet current and future anti-ship threats. The helicopters will perform antisubmarine warfare (ASW), antisurface warfare, search and rescue (SAR), and logistics support missions for the Ecuadorian Navy. They will improve Ecuador's ability to participate in the Maritime Multinational Operations with the U.S. Navy, will enhance Ecuador's control of its territorial sea and exclusive economic zone, and will increase the Ecuadorian Navy's SAR capabilities, further reducing Ecuador's dependency on the United States in case of emergencies. Additionally, these specialized ASW Helicopters would constitute a highly effective system to search, track, and destroy the mini-submarines used for illegal drug trafficking. Similar items have not previously been provided to Ecuador.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Kaman Corporation of Bloomfield, CT. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Ecuador.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2011–25668 Filed 10–4–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2011–OS–0106]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, Department of Defense (DoD).

ACTION: Notice to add a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on November 3, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on September 29, 2011, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: September 29, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DODEA 29

SYSTEM NAME:

Department of Defense Education Activity Non-DoD Schools Program.

SYSTEM LOCATION:

Department of Defense Education Activity (DoDEA) Headquarters office, 4040 North Fairfax Drive, Arlington, VA 22203–1635.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students receiving non-DoD schooling funded by DoDEA and their sponsors and tutors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Student Record Files. Demographic data includes student name, date of birth, grade, school attended, school year, special education services including tutorial and supplemental services, if applicable tuition paid by DoDEA, and applicable transportation payments.

Tutor Record Files. Includes name, address, telephone number, and e-mail address.

School Registration Files. Sponsor and/or registration forms reflecting sponsor name, Social Security Number (SSN) (for reimbursement purposes thru the Defense Finance and Accounting Service (DFAS), sponsor's grade/rank, local address, sponsoring agency

including address, telephone number and e-mail address, agency certification of sponsors/dependents, sponsors' Permanent Change of Station (PCS) orders, birth certificates, court documents that prove student's relationship to the sponsor, and similar files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

20 U.S.C. 926(b), Tuition and Assistance When Schools Unavailable, 10 U.S.C. 1605, Benefits for Certain Employees Assigned Outside the United States; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

This information is used to track obligations and invoices for transportation, tuition, and tutoring payments and to determine eligibility and enrollment by grade for all students who receive non-DoD schooling funded by DoD. This information is also used as a management tool for statistical analysis, tracking, reporting, evaluating program effectiveness and conducting research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To a non-DoD school, upon request of the school, when the child is enrolled in the school or receiving services from the school at DoD expense, so long as the disclosure is for purposes related to the student's enrollment or receipt of services.

To state and local social service offices in response to law enforcement inquiries and investigations, and child placement/support proceedings.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper file folders and electronic storage media.

RETRIEVABILITY:

Records may be retrieved by name, address, school year. Student records are also retrieved by grade, sponsor's name, or school name.

SAFEGUARDS:

Access is provided on a ''need-to-know'' basis and to authorized authenticated personnel only. The Non-DoD School Program system database requires the user to utilize a two-factor authentication and a system password. Paper records are maintained in controlled access areas. Program access, assignment and monitoring are the responsibility of DoDEA headquarters functional managers.

RETENTION AND DISPOSAL:

Documents and electronic records on enrollment and registration, school registration forms, parental correspondence, other notes and related information and similar records are destroyed five (5) years after transfer, withdrawal, or death of student.

Tutor record files are destroyed six (6) years and three (3) months after period covered by account.

Records of students not approved for the program are destroyed one year after end of school year.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Policy and Legislation Office, Department of Defense Education Activity Headquarters, 4040 North Fairfax Drive, Arlington, VA 22203–1635.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Officer, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1365.

Requests should contain the individual's name, address, and school year. Requests for student records should also include student's full name under which enrolled at time of attendance, sponsor's SSN (for verification), name of school, and year of graduation or last date of attendance, daytime telephone number, and address record should be mailed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, VA 22203–1364.

Requests should contain the individual's name, address, and school year. Requests for student records should also include student's full name under which enrolled at time of attendance, sponsor's SSN (for verification), name of school, and year of graduation or last date of attendance, daytime telephone number, and address record should be mailed. The request should also contain the name and number of this system of records and be signed.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the systems manager.

RECORD SOURCE CATEGORIES:

Parents, legal guardians, non-DoD school, School Liaison Officer, other educational facilities, military commanders, and installation activities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–25550 Filed 10–4–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2011–OS–0107]

Privacy Act of 1974; Systems of Records

AGENCY: National Security Agency/Central Security Service, Department of Defense (DoD).

ACTION: Notice to Amend a System of Records.

SUMMARY: The National Security Agency (NSA) is proposing to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on November 4, 2011 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public

viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Hill, National Security Agency/Central Security Service, Freedom of Information Act and Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248, or by phone at (301) 688–6527.

SUPPLEMENTARY INFORMATION: The National Security Agency/Central Security System systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 30, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

GNSA 17

SYSTEM NAME:

NSA/CSS Employee Assistance Service Case Records (December 30, 2008, 73 FR 79853).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

In any legal proceeding, where pertinent, to which DoD is a party before a court or administrative body (including, but not limited to the Equal Employment Opportunity Commission and Merit Systems Protection Board).

To any entity or individual under contract with NSA/CSS for the purpose of providing Employee Assistance Service related services.

Note: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' that appear at the beginning of the NSA/CSS compilation of systems of records notices do not apply to these types of records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Employee Assistance Service facilities are limited-access facilities for security-cleared personnel and visitors only. Facilities may also be patrolled or secured by guarded pedestrian gates and checkpoints. Inside of Employee Assistance Service office spaces, paper/hard-copy records are stored in locked containers with limited access. Access to electronic records is limited and controlled by password.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records of clients are retained locally (at Employee Assistance Service facilities/offices) and transferred to the NSA/CSS Records Center three years after case closure. Then, after five years, records are destroyed by pulping, burning, shredding, erasure or destruction of magnetic media.

Records of clients who retire or separate are retained locally (at Employee Assistance Service facilities/offices) and transferred to the NSA/CSS Records Center one year after date of separation or retirement. Then, after five years, records are destroyed by pulping, burning, shredding, erasure or destruction of magnetic media.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquiries should contain the individual's full name, SSN, mailing address, and signature.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquiries should contain the individual's full name, SSN, mailing address, and signature.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR Part 322 or may be obtained by written request addressed to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.''

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Within entry, replace ''E.O. 12958'' with ''E.O. 13526.''

* * * * *

GNSA 17

SYSTEM NAME:

NSA/CSS Employee Assistance Service Case Records.

SYSTEM LOCATION:

National Security Agency/Central Security Agency, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Files consist of the individual's full name, Social Security Number (SSN), address and case records compiled by counselor and patient questionnaires, questionnaires completed by private counselors to whom clients are referred, the records of medical treatment and services, correspondence with personal physicians and other care providers, NSA/CSS Medical Center reports, results of psychological assessment testing and interviews, psychiatric examination results and related reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Section 301, Departmental Regulations; 5 U.S.C. Section 7301, Presidential Regulations and 7361–7362, Employee Assistance Program; 5 U.S.C. Sections 7901–7904, Services to Employees; 42 U.S.C. Sections 290dd–1–290dd–2, Confidentiality of records; 5 CFR part 792, Federal Employees' Health and Counseling Programs; E.O. 12564, Drug Free Federal Workplace; E.O. 12196, Occupational safety and health programs for Federal employees, as amended and E.O. 9397 (SSN).

PURPOSE(S):

Used by counselors to facilitate and record treatment, referral and follow-up on behalf of employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

In any legal proceeding, where pertinent, to which DoD is a party before a court or administrative body (including, but not limited to the Equal Employment Opportunity Commission and Merit Systems Protection Board).

To any entity or individual under contract with NSA/CSS for the purpose of providing Employee Assistance Service related services.

Note: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' that appear at the beginning of the NSA/CSS compilation of systems of records notices do not apply to these types of records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper in file folders and electronic storage media.

RETRIEVABILITY:

By the individual's name and/or SSN.

SAFEGUARDS:

Employee Assistance Service facilities are limited-access facilities for security-cleared personnel and visitors only. Facilities may also be patrolled or secured by guarded pedestrian gates and checkpoints. Inside of Employee Assistance Service office spaces, paper/hard-copy records are stored in locked containers with limited access. Access to electronic records is limited and controlled by password.

RETENTION AND DISPOSAL:

Records of clients are retained locally (at Employee Assistance Service facilities/offices) and transferred to the NSA/CSS Records Center three years after case closure. Then, after five years, records are destroyed by pulping, burning, shredding, erasure or destruction of magnetic media.

Records of clients who retire or separate are retained locally (at Employee Assistance Service facilities/offices) and transferred to the NSA/CSS Records Center one year after date of separation or retirement. Then, after five years, records are destroyed by pulping, burning, shredding, erasure or destruction of magnetic media.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Employee Assistance Services, National Security Agency/Central Security Service, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquiries should contain the individual's full name, SSN, mailing address, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquiries should contain the individual's full name, SSN, mailing address, and signature.

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

RECORD SOURCE CATEGORIES:

Primary sources are Employee Assistance Service counselors, the client and the client's family. Other sources include other counselors and other individuals within NSA/CSS.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system may be exempt under 5 U.S.C. 552a(k)(1), (k)(2), (k)(4) and (k)(5), as applicable.

Information specifically authorized to be classified under E.O. 13526, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if any individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source. **Note:** When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlements of any individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material

would reveal the identity of a confidential source.

An exemption rule for this records system has been promulgated according to the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 322. For additional information, contact the system manager.

[FR Doc. 2011–25697 Filed 10–4–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2011–OS–0108]

Privacy Act of 1974; Systems of Records

AGENCY: National Security Agency/Central Security Service, Department of Defense (DoD).

ACTION: Notice to amend a system of records.

SUMMARY: The National Security Agency (NSA) is proposing to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on November 4, 2011 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal:* http://www.regulations.gov. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Hill, National Security Agency/Central Security Service, Freedom of Information Act and Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248, or by phone at (301) 688–6527.

SUPPLEMENTARY INFORMATION: The National Security Agency/Central Security System systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 30, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

GNSA 27

SYSTEM NAME:

Information Assurance Scholarship Program (November 3, 2010, 75 FR 67697).

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records are maintained for five years after the grant is completed and/or payment obligation as annotated in the student agreement is completed. Records are destroyed after five years by pulping, burning, shredding, or erasure or destruction of magnetic media.

* * * * *

GNSA 27

SYSTEM NAME:

Information Assurance Scholarship Program.

SYSTEM LOCATION:

National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and institutions who apply for recruitment scholarships, retention scholarships or grants under the DoD Information Assurance Scholarship Program (IASP).

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual information to include: Title, full name, Social Security Number (SSN), current address, permanent address, phone number, cell phone number, e-mail address, office address, office phone number, office fax number, office e-mail address; self-certification of U.S. citizenship; security clearance information; resume (to include activities such as community outreach, volunteerism, athletics, etc.); veterans status; letters of reference/recommendations; personal goal statement; list of awards and honors.

Educational information to include: Official transcripts from all schools attended; Scholastic Assessment Test (SAT) and Graduate Record Examination (GRE) test scores; list of previous schools attended and degree/certification; self-certification of enrollment status at a Center for Academic Excellence (CAE) to included anticipated date of graduation, proposed university(ies) and proposed degree to include start date, student status and anticipated date of graduation.

Work related information to include: Current supervisor's name, office title, office address, office phone number, office fax number, office e-mail address; office of primary responsibility, name, position title, office address, e-mail, and phone number; application for the position the individual will fill on completion of the program and the desired DoD Agency; and Continued Service Agreement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2200, Programs; purpose; 10 U.S.C. 7045, Officers of the other armed forces; enlisted members: admission; DoDI 8500.2, Information Assurance (IA) Implementation and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To maintain records relating to the processing and awarding of recruitment scholarships, retention scholarships or grants under the DoD Information Assurance Scholarship Program (IASP) to qualified applicants and institutions. This system is also used by management for tracking and reporting.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows: To authorized DoD hiring officials to facilitate the recruiting of DoD IASP award recipients into federal service for the purpose of fulfilling the DoD IASP mission.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12), Records maintained on individuals, may be made from this system to consumer reporting agencies

as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government, typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number (SSN)); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the NSA/CSS compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Retrieved by the individual's name, SSN, institution's name and/or year of application.

SAFEGUARDS:

Buildings are secured by a series of guarded pedestrian gates and checkpoints. Access to facilities is limited to security-cleared personnel and escorted visitors only. Within the facilities themselves, access to paper and computer printouts is controlled by limited-access facilities and lockable containers. Access to electronic means is limited and controlled by computer password protection.

RETENTION AND DISPOSAL:

Records are maintained for five years after the grant is completed and/or payment obligation as annotated in the student agreement is completed. Records are destroyed after five years by pulping, burning, shredding, or erasure or destruction of magnetic media.

SYSTEM MANAGER(S) AND ADDRESS:

DoD IASP Executive Administrator, National Security Agency/Central Security Service, 9800 Savage Road, Fort George G. Meade, Maryland 20755–6000.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether records about themselves is contained in this record system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, Maryland 20755–6248.

Written requests should contain the individual's name, address, scholarship award year and type, and the institution attended. All requests must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, Maryland 20755–6248.

Requests should include individual's name, address, scholarship award year and type, and the institution(s) attended. All requests must be signed.

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial agency determinations may be obtained by written request addressed to the National Security Agency/Central Security Service, Freedom of Information Act (FOIA)/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

RECORD SOURCE CATEGORIES:

Individuals, via the DoD IASP recruitment or retention application process; Centers for Academic Excellence (CAE)/Institutions via the grants application process.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–25702 Filed 10–4–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2011–0024]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, Department of Defense (DoD).

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Army proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on November 3, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Leroy Jones, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905, or by phone at (703) 428–6185.

SUPPLEMENTARY INFORMATION: The Department of the Army notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on September 29, 2011 to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: September 29, 2011.

Aaron Siegel,

Alternate OSD **Federal Register** *Liaison Officer, Department of Defense.*

A0350–20a TRADOC

SYSTEM NAME:

Standardized Student Records System.

SYSTEM LOCATION:

Army commands, installations and activities.

Deputy Chief of Staff, G–1/4, United States Army Training and Doctrine Command, (ATBO–S), 661 Sheppard Place, Fort Eustis, VA 23604–5752.

Commandant, Command and General Staff College (ATZL–SWD–DR), 100 Stimson Avenue, Fort Leavenworth KS 66027–2301.

Commandant, Defense Language Institute Foreign Language Center (ATFL–CMD–T), 1330 Plummer Street, Monterey, CA 93944–3326.

Commandant, Army Management Staff College (ATZL–SWM–ZA), 5500 21st Street, Building 247, Fort Belvoir, VA 22060–5934.

Commandant, U.S. Army War College (ATWC), 122 Forbes Avenue, Carlisle, PA 17013–5215.

Commandant, Western Hemisphere Institute for Security Cooperation (ATWI–CO), 7161 Richardson Circle, Building 36, Fort Benning, GA 31905–2507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of the Army, Navy, Marine Corps, Air Force, Reserve Officer Training Corps, National Defense Cadet Corps military personnel, Department of Defense civilian personnel, and approved foreign military personnel enrolled in a resident or non-resident course administered by the Army and enrolled to attend Army training.

CATEGORIES OF RECORDS IN THE SYSTEM:

Course and personnel data to include: Individual's name, Social Security Number (SSN), foreign identification number, and date of birth.

TRAINING DATA TO INCLUDE:

Class number, scheduling, testing, academic, graduation, student, and attrition data.

PERSONNEL DATA TO INCLUDE:

Unit, unit location, citizenship, race, ethnicity, biographical data, travel, purchasing, security, property data, personal cellular number, home mailing address, marital status, financial information, emergency contact information, other names used, birth date, home telephone number, medical, employment and education information, gender, work e-mail address, personal e-mail address, security clearance level, and disability information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 3583 Requirement of Exemplary Conduct; DoD Directive 5105.65, Defense Security Cooperation Agency; DoD Directive 6490.2E, Comprehensive Health Surveillance; DoD Instruction 6490.03, Deployment Health; Army Regulation 12–15, Joint Security Cooperation and Training; Army Regulation 40–5, Preventative Medicine; Army Regulation 40–66, Medical Record Administration and Health Care Documentation; Army Regulation 350–1, Army Training and Leader Development; Army Regulation 350–10, Management of Army Individual Training Requirements and Resources; Army Regulation 350–20, Management of the Defense Foreign Language Program; Army Regulation 600–8–104, Military Personnel Information Management/Records; Army Regulation 600–20, Army Command Policy; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

Standardized Student Records System purpose is to obtain training, education, experiential learning, personal, and biographical data to present a comprehensive and personalized view of the student record, course enrollment, course completion, official grade transcript, statistical studies to improve training and testing methods, and course catalog information. Records are created to assist leadership to instill an ongoing attitude of comprehensive, continuous, and consistent military health surveillance to implement early intervention and control strategies to promote and safeguard the moral, the physical well-being, and the general welfare of personnel at TRADOC organizations.

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of system of record notices apply to this record system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

By name, Social Security Number (SSN), foreign identification number, service number, class number, language, year of graduation, and date of birth.

SAFEGUARDS:

These systems are hosted on Army installations, in a secure environment. Building security is through police patrols, installation fences, key card access, building-server room alarms and cameras. System access is through the Army Network Enterprise Center's firewall. Each user requires a user ID and password (which has to be changed each 90 days). Direct access to the database is restricted to authorized System Administrators (SAs) only. Servers are located in a cipher locked room and access is controlled by the SA. Any person having access to personally identifiable information (PII) is specific only to them once they have been authenticated in the pertinent system through an incorporated security process, such as the implementation of User ID/Password—Common Access Cards (CAC); CAC optional but being mandated for CAC only access with the safeguards listed above. All personnel with access to PII are trained in Security+ certifications, to ensure they are current on new security standards.

RETENTION AND DISPOSAL:

Records are kept in current file area until no longer needed for conducting business, then retired to Records Holding Area (RHA)/Army Electronic Archive (AEA) or destroyed.

Individual academic records are transferred to the RHA/AEA, and are retired to National Records Personnel Center (NRPC) Annex, 1411 Boulder Drive, Rock City Industrial Center, Valmeyer, IL 62295–2603, when the record is 10 years old. The NPRC will destroy the record when 40 years old.

Instructor records are transferred to the RHA/AEA after transfer or

separation of instructor, and are destroyed 10 years after the event.

Office personnel records are kept until transfer or separation of individual. Keep in CFA until event occurs and then until no longer needed for conducting business, but not longer than 6 years after the event, then destroy or transfer to the gaining activity; whether it is an on or off post transfer.

Records on local training and individual goals are maintained until no longer needed for conducting business, but not longer than 6 years, then destroyed.

Destroy electronic media by deletion; destroy paper printout by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff, G–1/4, United States Army Training and Doctrine Command, (ATBO–S), 661 Sheppard Place, Fort Eustis, VA 23604–5752.

Commandant, Command and General Staff College (ATZL–SWD–DR), 100 Stimson Avenue, Fort Leavenworth, KS 66027–2301.

Commandant, Defense Language Institute Foreign Language Center (ATFL–CMD–T), 1330 Plummer Street, Monterey, CA 93944–3326.

Commandant, Army Management Staff College (ATZL–SWM–ZA), 5500 21st Street, Building 247, Fort Belvoir, VA 22060–5934.

Commandant, U.S. Army War College (ATWC), 122 Forbes Avenue, Carlisle, PA 17013–5215.

Commandant, Western Hemisphere Institute for Security Cooperation (ATWI–CO), 7161 Richardson Circle, Building 36, Fort Benning, GA 31905–2507.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to:

Deputy Chief of Staff, G–1/4, United States Army Training and Doctrine Command, (ATBO–S), 661 Sheppard Place, Fort Eustis, VA 23604–5752.

Commandant, Command and General Staff College (ATZL–SWD–DR), 100 Stimson Avenue, Fort Leavenworth, KS 66027–2301.

Commandant, Defense Language Institute Foreign Language Center (ATFL–CMD–T), 1330 Plummer Street, Monterey, CA 93944–3326.

Commandant, Army Management Staff College (ATZL–SWM–ZA), 5500 21st Street, Building 247, Fort Belvoir, VA 22060–5934.

Commandant, U.S. Army War College (ATWC), 122 Forbes Avenue, Carlisle, PA 17013–5215.

Commandant, Western Hemisphere Institute for Security Cooperation, ATTN: International Student Division (ATWI–CSI), 7161 Richardson Circle, Building 36, Fort Benning, GA 31905–2507.

Individual must furnish his/her full name, Social Security Number (SSN), current address and telephone number, and military status or other information verifiable from the record itself which may assist in locating the record, and their signature.

IN ADDITION, THE REQUESTER MUST PROVIDE A NOTARIZED STATEMENT OR AN UNSWORN DECLARATION MADE IN ACCORDANCE WITH 28 U.S.C. 1746, IN THE FOLLOWING FORMAT:

IF EXECUTED OUTSIDE THE UNITED STATES:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature)'.

IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to:

Deputy Chief of Staff, G–1/4, United States Army Training and Doctrine Command, (ATBO–S), 661 Sheppard Place, Fort Eustis, VA 23604–5752.

Commandant, Command and General Staff College (ATZL–SWD–DR), 100 Stimson Avenue, Fort Leavenworth, KS 66027–2301.

Commandant, Defense Language Institute Foreign Language Center (ATFL–CMD–T), 1330 Plummer Street, Monterey, CA 93944–3326.

Commandant, Army Management Staff College (ATZL–SWM–ZA), 5500 21st Street, Building 247, Fort Belvoir, VA 22060–5934.

Commandant, U.S. Army War College (ATWC), 122 Forbes Avenue, Carlisle, PA 17013–5215.

Commandant, Western Hemisphere Institute for Security Cooperation, ATTN: International Student Division (ATWI–CSI), 7161 Richardson Circle, Building 36, Fort Benning, GA 31905–2507.

For verification purposes, individual must furnish his/her full name, Social Security Number (SSN), current address and telephone number, and military status or other information verifiable from the record itself which may assist in locating the record, and their signature.

IN ADDITION, THE REQUESTER MUST PROVIDE A NOTARIZED STATEMENT OR AN UNSWORN DECLARATION MADE IN ACCORDANCE WITH 28 U.S.C. 1746, IN THE FOLLOWING FORMAT:

IF EXECUTED OUTSIDE THE UNITED STATES:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature)'.

IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD SOURCE CATEGORIES:

From DoD personnel to include school registrars; personnel who manage the system to include DoD military and civilian personnel and contractors; faculty who are the facilitators and instructors for the courses, to include DoD military and civilian personnel and contractors. From training and personnel information systems; and health providers, individuals by interview and risk assessment surveys.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–25548 Filed 10–4–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–546–000]

Panhandle Eastern Pipe Line Company, LP; Notice of Application

On September 16, 2011, Panhandle Eastern Pipe Line Company, LP (Panhandle) filed with the Federal Energy Regulatory Commission (Commission) an application under section 7(b) of the Natural Gas Act and the Rules and Regulations of the Commission's Regulations for authority to abandon the three remaining compressor units and appurtenant facilities at the Adams Compressor Station site in Texas County, Oklahoma. The abandonment would serve to align declining compression requirements of the gathering system feeding into the Adams Compressor Station. Furthermore, firm transportation services provided to existing Panhandle customers will not be affected, as more fully detailed in the Application.

Questions concerning this application may be directed to Stephen T. Veatch, Senior Director of Certificates & Tariffs, 5444 Weatheimer Road, Houston, Texas 77056, by calling 713–989–4654 or by e-mailing *Stephen.Veatch@sug.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 October 19, 2011.

Dated: September 28, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–25626 Filed 10–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–548–000]

ANR Pipeline Company; Notice of Application

Take notice that on September 22, 2011, ANR Pipeline Company (ANR Pipeline), 717 Texas Street, Suite 2400, Houston, Texas 77002–2761, filed in Docket No. CP11–548–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting authorization to abandon its obligation to provide transportation service through approximately 26 miles of 16-inch diameter pipeline extending from an offshore production platform in Mississippi Canyon Block 194 connecting with approximately 14 miles of 18-inch diameter onshore pipeline to a point of connection with Southern Natural Gas Company's pipeline facilities in the Romere Pass Field, Plaquemines Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Rene Staeb, Manager, Project Determinations & Regulatory Administration, ANR Pipeline Company, 717 Texas Street, Houston, Texas 77002–2761 or by calling (832) 320–5215 (telephone) or (832) 320–6215 (fax), *Rene_Staeb@transcanada.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 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the

proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

DATES: *Comment Date:* October 19, 2011.

Dated: September 28, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–25627 Filed 10–4–11; 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 corporate filings:

Docket Numbers: EC11–120–000.
Applicants: PECO Energy Company, Exelon Generation Company, LLC.
Description: Joint Application of PECO Energy Co. and Exelon Generation Company LLC for Transaction Approval pursuant to the FPA, Section 203.
Filed Date: 09/26/2011.
Accession Number: 20110926–5147.
Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2011.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–128–000.
Applicants: Record Hill Wind LLC.
Description: Self-Certification of EG of Record Hill Wind LLC.
Filed Date: 09/26/2011.
Accession Number: 20110926–5054.
Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3614–003.
Applicants: Glacial Energy Holdings.
Description: Glacial Energy Holdings submits tariff filing per 35: Substitute Market-Based Rate Filing to be effective 9/26/2011.
Filed Date: 09/26/2011.
Accession Number: 20110926–5057.
Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2011.

Docket Numbers: ER11–4254–001.
Applicants: New England Power Company.
Description: New England Power Company submits tariff filing per 35.17(b): Amendment to Filing of Interconnection Agreement with Lowell Cogeneration to be effective 10/1/2011.
Filed Date: 09/26/2011.
Accession Number: 20110926–5121.
Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2011.

Docket Numbers: ER11–4320–001.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits tariff filing per 35.17(b): Service Agreement No. 174, Amendment Type Filing to be effective 12/31/9998.
Filed Date: 09/26/2011.
Accession Number: 20110926–5087.
Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2011.

Docket Numbers: ER11–4388–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.17(b): ITCM Amendment to Cert. of Concurrence to be effective 10/4/2011.
Filed Date: 09/26/2011.
Accession Number: 20110926–5109.
Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2011.

Docket Numbers: ER11–4631–000.
Applicants: Florida Power Corporation.
Description: Florida Power Corporation submits tariff filing per 35.13(a)(2)(iii: Florida Power Corporation Amendment of RS–2 Tariff to be effective 9/26/2011.
Filed Date: 09/26/2011.
Accession Number: 20110926–5037.
Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2011.

Docket Numbers: ER11–4632–000.
Applicants: Southwestern Electric Power Company.
Description: Southwestern Electric Power Company submits tariff filing per 35.13(a)(2)(iii: 20110926 Bentonville PSA to be effective 12/17/2010.
Filed Date: 09/26/2011.
Accession Number: 20110926–5038.
Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2011.

Docket Numbers: ER11–4633–000.
Applicants: Madison Gas and Electric Company.
Description: Madison Gas and Electric Company submits tariff filing per 35.1: Madison Gas and Electric Company Market-Based Rate Tariff Baseline Filing to be effective 9/26/2011.
Filed Date: 09/26/2011.
Accession Number: 20110926–5049.
Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2011.

Docket Numbers: ER11–4634–000.
Applicants: Hazleton Generation LLC.
Description: Hazleton Generation LLC submits tariff filing per 35.1: Hazleton Generation, LLC MBR to be effective 9/26/2011.
Filed Date: 09/26/2011.
Accession Number: 20110926–5056.
Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2011.

Docket Numbers: ER11–4635–000.
Applicants: Hardee Power Partners Limited.
Description: Hardee Power Partners Limited submits tariff filing per 35.1: Eighth Amendments to Agreements for Sale and Purchase of Capacity and Energy to be effective 9/26/2011.
Filed Date: 09/26/2011.
Accession Number: 20110926–5074.
Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2011.

Docket Numbers: ER11–4636–000.
Applicants: Portland General Electric Company.
Description: Portland General Electric Company submits tariff filing per 35.13(a)(2)(iii: Colstrip Project Transmission Agreement to be effective 1/1/2012.
Filed Date: 09/26/2011.
Accession Number: 20110926–5085.
Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2011.

Docket Numbers: ER11–4637–000.
Applicants: NorthWestern Corporation.
Description: NorthWestern Corporation submits tariff filing per 35.13(a)(2)(iii): Colstrip Transmission Agreement to be effective 1/1/2012.
Filed Date: 09/26/2011.
Accession Number: 20110926–5090.
Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2011.

Docket Numbers: ER11–4638–000.
Applicants: Merck & Co., Inc.
Description: Merck & Co., Inc. submits tariff filing per 35.1: Baseline Tariff Filing to be effective 9/25/2011.
Filed Date: 09/26/2011.
Accession Number: 20110926–5091.
Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2011.

Docket Numbers: ER11–4639–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits tariff filing per 35.13(a)(2)(iii): Colstrip Project Transmission Agreement to be effective 1/1/2012.
Filed Date: 09/26/2011.
Accession Number: 20110926–5098.
Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2011.

Docket Numbers: ER11–4640–000.
Applicants: Akula Energy, LLC.
Description: Akula Energy, LLC submits Notice of Cancellation of its Market-Based Rate Tariff.
Filed Date: 09/26/2011.
Accession Number: 20110926–0015.
Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2011.

Docket Numbers: ER11–4641–000.
Applicants: New England Power Company.
Description: New England Power Company submits tariff filing per 35.13(a)(2)(iii): Cost Reimbursement Agreement with Granite Reliable LLC to be effective 8/4/2011.
Filed Date: 09/26/2011.
Accession Number: 20110926–5115.
Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2011.

Docket Numbers: ER11–4642–000.
Applicants: Puget Sound Energy, Inc.
Description: Puget Sound Energy, Inc. submits tariff filing per 35.12: Colstrip TX Agreement Rate Schedule 143 to be effective 1/1/2012.
Filed Date: 09/26/2011.
Accession Number: 20110926–5124.
Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2011.

Docket Numbers: ER11–4643–000.
Applicants: Portland General Electric Company.
Description: Portland General Electric Company submits tariff filing per 35.12: REPSIA between PGE and BPA to be effective 10/1/2011.
Filed Date: 09/26/2011.
Accession Number: 20110926–5127.
Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2011.

Docket Numbers: ER11–4644–000.
Applicants: Idaho Power Company.
Description: Idaho Power Company submits its Average System Cost for sales of electric power to Bonneville Power Administration for 2012–2013 et al.
Filed Date: 09/23/2011.
Accession Number: 20110926–0201.
Comment Date: 5 p.m. Eastern Time on Friday, October 14, 2011.

Docket Numbers: ER11–4645–000.
Applicants: Avista Corporation.
Description: Avista Corporation submits tariff filing per 35.13(a)(2)(iii): Avista Corp FERC Rate Schedule No. 190 to be effective 1/1/2012.
Filed Date: 09/26/2011.
Accession Number: 20110926–5130.
Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 27, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–25642 Filed 10–4–11; 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:

Filings Instituting Proceedings

Docket Numbers: RP11–2594–000.
Applicants: National Fuel Gas Supply Corporation.
Description: National Fuel Gas Supply Corporation submits tariff filing per 154.204: Rate Schedule PTR to be effective 10/27/2011.
Filed Date: 09/27/2011.
Accession Number: 20110927–5088.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 11, 2011.

Docket Numbers: RP11–2595–000.
Applicants: Midwestern Gas Transmission Company.
Description: Petition of Midwestern Gas Transmission Company for a Limited Waiver of Tariff Provisions.
Filed Date: 09/27/2011.
Accession Number: 20110927–5137.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 11, 2011.

Docket Numbers: RP11–2597–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Questar 36601–7 Amendment to Negotiated Rate Agreement Filing to be effective 10/1/2011.
Filed Date: 09/28/2011.
Accession Number: 20110928–5033.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 11, 2011.

Docket Numbers: RP11–2598–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Virginia Nat Gas 34696–5 Amendment to Negotiated Rate Agreement Filing to be effective 10/1/2011.
Filed Date: 09/28/2011.
Accession Number: 20110928–5034.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 11, 2011.

Docket Numbers: RP11–2599–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Questar 37657–8, 9 Amendments to Negotiated Rate Agreement to be effective 10/1/2011.
Filed Date: 09/28/2011.
Accession Number: 20110928–5035.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 11, 2011.

Docket Numbers: RP11–2600–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: HK 37731 to Texla 39107 Capacity Release Negotiated Rate Agreement Filing to be effective 10/1/2011.
Filed Date: 09/28/2011.
Accession Number: 20110928–5036.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 11, 2011.

Docket Numbers: RP11–2601–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Enbridge 34685 to Texla 39109 Capacity Release Negotiated Rate Agreement Filing to be effective 10/1/2011.
Filed Date: 09/28/2011.
Accession Number: 20110928–5037.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 11, 2011.

Docket Numbers: RP11–2602–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Enbridge 34685 to Texla 39116 Capacity Release Negotiated Rate Agreement Filing to be effective 10/1/2011.
Filed Date: 09/28/2011.
Accession Number: 20110928–5038.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 11, 2011.

Docket Numbers: RP11–2603–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Enbridge 34685 to Central Crude 39117 Capacity Release Negotiated Rate Agreement Filing to be effective 10/1/2011.
Filed Date: 09/28/2011.
Accession Number: 20110928–5039.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 11, 2011.

Docket Numbers: RP11–2604–000.
Applicants: Big Sandy Pipeline, LLC.
Description: Big Sandy Pipeline, LLC submits tariff filing per 154.204: Negotiated Rate Agreements from Volume 1–A to be effective 9/28/2011.
Filed Date: 09/28/2011.
Accession Number: 20110928–5042.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 11, 2011.

Docket Numbers: RP11–2605–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.204: Rate Schedule ESS and EESWS Reservation Charge Credits to be effective 11/1/2011.
Filed Date: 09/28/2011.
Accession Number: 20110928–5059.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 11, 2011.

Docket Numbers: RP11–2606–000.
Applicants: Big Sandy Pipeline, LLC.
Description: Big Sandy Pipeline, LLC submits tariff filing per 154.602: Cancellation of Original Volume No. 1–A to be effective 9/28/2011.
Filed Date: 09/28/2011.
Accession Number: 20110928–5062.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 11, 2011.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 28, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–25641 Filed 10–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–65–000]

Louisiana Public Service Commission v. Entergy Corporation, Entergy Services, Inc., Entergy Louisiana, LLC, Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Gulf States Louisiana, LLC, Entergy Texas, Inc.

Notice of Complaint

Take notice that on September 27, 2011, pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824e and 18 CFR 386.206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedures, the Louisiana Public Service Commission (Complainant) filed a complaint against Entergy Corporation, Entergy Services, Inc., Entergy Louisiana, LLC, Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Texas, Inc., and Entergy Gulf States Louisiana, LLC (Respondents), seeking a ruling (1) That the inclusion of the out-of-period costs and revenues for interruptible load refunds and surcharges in 2007 and 2008 violated the MSS–3 formula tariff and Commission precedent and was unjust, unreasonable, and unduly discriminatory, (2) that the inclusion of any additional interruptible load refunds and surcharges in the bandwidth cost inputs would be unjust, unreasonable, and unduly discriminatory, and, alternatively, (3) that any rebilling required by the Commission to reverse the effect of the 2008 refunds must be reflected in the 2008 test year.

The Complainant certifies that copies of the complaint were served on the contacts for Entergy Corporation, Entergy Services, Inc., Entergy Louisiana, LLC, Entergy Arkansas, Inc., Entergy Mississippi Inc., Entergy New Orleans, Inc., Entergy Texas, Inc., and Entergy Gulf States Louisiana, LLC, as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a

document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 17, 2011.

Dated: September 28, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–25628 Filed 10–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2479–011–CA]

Pacific Gas and Electric Company

Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the French Meadows transmission line project and has prepared an Environmental Assessment (EA). The project is located within the Middle Fork American River Drainage in Placer County, California, and occupies 32.78 acres of U.S. Forest Service land managed by the Eldorado and Tahoe National Forests. The combined length of the transmission lines on National Forest land is 6.58 miles, 6.42 miles on the Eldorado National Forest and 0.16 mile on the Tahoe National Forest. Approximately 6.69 miles on the French Meadows transmission line section of the project are located on private land.

The EA contains staff's analysis of the potential environmental effects of the project and alternatives and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending project. For assistance, contact FERC Online Support.

For further information, contact Mary Greene at (202) 502–8865.

Dated: September 28, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–25631 Filed 10–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX11–2–000]

City of College Station, TX; Notice of Filing

Take notice that on September 27, 2011, pursuant to sections 210, 211, and 212 of the Federal Power Act, 16 USC 824i, 824j, and 824k, Part 36 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18CFR 36.1, the City of College Station, TX filed an application requesting that the Commission direct (1) Entergy Texas, Inc. (ETI) to provide an interconnection located between ETI's College Station Junction and College Station's Switch Station to be used only during declared emergencies; and (2) direct ETI, in event of such declared emergencies, to provide transmission service for power flows within the transmission grid administered by the independent service operator, the Electric Reliability Council of Texas, Inc., certified by the Public Utility Commission of Texas to perform the functions set forth in Section 39.151(a) of the Texas Public Utility Regulatory Act.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive 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.

Comment Date: 5 pm Eastern Time on October 27, 2011.

Dated: September 28, 2011

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–25624 Filed 10–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4677–000]

NextEra Energy Montezuma II Wind, 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 NextEra Energy Montezuma II Wind, 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 October 19, 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: September 29, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–25658 Filed 10–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4678–000

Vasco Winds, 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 Vasco Winds, 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 October 19, 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: September 29, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–25657 Filed 10–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–539–000]

ANR Pipeline Company; Notice of Onsite Environmental Review

On October 11, 2011, the Office of Energy Projects (OEP) staff will be in Portage County, Wisconsin to gather data for the environmental analysis of ANR Pipeline Company's (ANR) Marshfield Reduction Project (Project). The OEP staff will visit the proposed Project's new compressor station site, as well as ANR's proposed alternative sites. The onsite review will assist the staff in completing its evaluation of the environmental impacts of the proposed project. Access to the compressor station site will be from North Sunset Drive.

All interested parties planning to attend must provide their own transportation. Those attending should meet at the following location:

The southwest corner of the Target parking lot, located at 5300 US Highway 10 E, Stevens Point, WI, at 11 a.m.

Please use the Federal Energy Regulatory Commission's free eSubscription service to keep track of all formal issuances and submittals in these dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm.*

Information about specific onsite environmental reviews is posted on the Commission's calendar at *http://www.ferc.gov/EventCalendar/EventsList.aspx.* For additional information, contact Office of External Affairs at (866) 208–FERC.

Dated: September 28, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–25625 Filed 10–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12693–001]

Sutton Hydroelectric Company, LLC

Notice of Site Visit

On February 6, 2008, Sutton Hydroelectric Company, LLC (Sutton Hydroelectric) filed a notice of intent and a preliminary application document to license its proposed Sutton Hydroelectric Project No. 12693. The project would be located at the U.S. Army Corps of Engineers' (Corps) Sutton Dam on the Elk River, in Braxton County, West Virginia. The project would occupy federal lands administered by the Corps.

On April 7, 2008, the Commission issued a Scoping Document containing a description of the proposed project and mode of operation, a preliminary list of issues to be addressed in the Commission's National Environmental Policy Act (NEPA) environmental document, and a request for information and written comments.

On October 12, 2011, at 9 a.m. (E.D.T.), as part of the NEPA scoping process, Commission staff will hold a site visit at the Sutton Dam. All participants interested in attending the site visit should meet at the upstream recreation parking lot next to the dam. All participants attending the site visit should be prepared to provide their own transportation. If you have any questions please contact Tim Konnert at (202) 502–6359 or *timothy.konnert@ferc.gov*.

Dated: September 28, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–25632 Filed 10–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2280–013; Seneca Nation of Indians]

FirstEnergy Generation Corporation Project No. 13889–000

Notice of Site Visit

On November 24, 2010, FirstEnergy, the current licensee, filed a notice of intent (NOI) and a pre-application document (PAD) for a license to continue to operate the Kinzua Pumped Storage Project No. 2280–013. On November 30, 2010, the Seneca Nation of Indians filed a competing NOI and PAD for a license for the Seneca Pumped Storage Project No. 13889–000. Both FirstEnergy and the Seneca Nation plan to use the Integrated Licensing Process (ILP). The project is located at the United States Army Corps of Engineers' Kinzua Dam, and to the United States Forest Service Allegheny National Forest, adjacent to the Allegheny River and the Allegheny Reservoir near the City of Warren, in Warren County, Pennsylvania. The project occupies 221.59 acres of federal lands.

On January 28, 2011, the Commission issued a Scoping Document containing a description of the existing project and proposed project facilities and mode of operation, a preliminary list of issues to be addressed in the Commission's National Environmental Policy Act (NEPA) environmental document, and a request for information and written comments.

On October 25, 2011, at 9 a.m. (E.D.T.), as part of the NEPA scoping process, Commission staff will hold a site visit at the Kinzua Pumped Storage Project—Seneca Pumped Storage Project. All participants interested in attending the site visit should meet at the Kinzua Dam Information Center parking lot in Warren, Pennsylvania. The information center is located below Kinzua Dam adjacent to the Allegheny River. All participants attending the site visit should be prepared to provide their own transportation. If you have any question please contact Gaylord Hoisington at (202) 502–6032 or *gaylord.hoisington@ferc.gov.*

Dated: September 28, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–25630 Filed 10–4–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0896; FRL–9475–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Worker Protection Standard Training and Notification

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: *Worker Protection Standard Training and Notification;* EPA ICR No. 1759.06, OMB Control No. 2070–0148. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before November 4, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OPP–2010–0896, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *opp.ncic@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), 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: Lily Negash, (7506P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 703–347–8515; *fax number:* 703–305–5884; *e-mail address: negash.lily@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 March 16, 2011 (76 FR 14390), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OPP–2010–0896, which is available for online viewing at *http// :www.regulations.gov,* or in person viewing at the OPP Regulatory Public 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 *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are

available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in *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. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in *http://www.regulations.gov.* The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in *http://www.regulations.gov.* For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Worker Protection Standard Training and Notification.

ICR Status: This is a request to renew an existing approved collection. This ICR is scheduled to expire on November 30, 2011. Under 5 CFR 1320.12(b)(2), the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: EPA is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Worker Protection Standard (WPS), codified at 40 CFR part 170, established requirements to protect agricultural workers and pesticide handlers from hazards of pesticides used on farms, on forests, in nurseries, and in greenhouses. EPA regulations in 40 CFR part 170 contain the standard and workplace practices, which are designed to reduce or eliminate exposure to pesticides and establish procedures for responding to exposure-related emergencies. The practices include prohibitions against applying pesticides in a way that would cause exposure to workers and others; a waiting period before workers can return to areas treated with pesticides (restricted entry interval); basic safety training (and voluntary training verification) and posting of information about pesticide hazards, as well as pesticide application information; arrangements for the supply of soap, water, and towels in case of pesticide exposure; and provisions for emergency assistance.

The training verification program facilitates compliance with the training requirements by providing a voluntary method for employers to verify that the required safety information has been provided to workers and handlers. Responses to all other aspects of this information collection activity are mandatory. 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**, are listed in 40 CFR part 9 and included on the related collection instrument or form, if applicable.

This renewal ICR estimates the third party response burden from complying with the WPS requirements. Information is exchanged between agricultural employers and employees at farm, forest, nursery and greenhouse establishments to ensure worker safety. No information is collected by the Agency under this ICR.

Burden Statement: The total annual respondent burden for providing the training and notifications associated with the Worker Protection Standard is estimated to be 1,827,493 hours, with the incremental burden of the various activities ranging from 2 minutes per respondent to provide initial basic safety information to 45 minutes per respondent for handler training. This total estimate includes the third party WPS training and notification requirements. Burden is defined in 5 CFR 1320.3(b).

Respondents/Affected Entities: Agricultural workers, pesticide handlers, employers in farms, nurseries, forestry, and greenhouse establishments *e.g.,* agricultural employers in farms; and (NAICS 111), and agricultural employers in the greenhouse and forestry sector (NAICS 115).

Estimated Number of Respondents: 309,085.

Frequency of Response: As needed.

Estimated Total Annual Hour Burden: 1,827,493 hours.

Estimated Total Annual Cost: $92,729,052.

Changes in the Estimates: There is an increase of 51,362 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an adjustment in the assumptions and a minor correction in the calculations clarified in the supporting statement.

Dated: September 29, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–25760 Filed 10–4–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2003–0200; FRL–8888–4]

Fenamiphos; Amendment To Use Deletion and Product Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's amendment to the order for the cancellation of products, voluntarily requested by the registrant and accepted by the Agency, containing the pesticide fenamiphos, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This amendment follows a July 13, 2011 **Federal Register** Notice of Receipt of Request to Amend Use Deletion and Product Cancellation Order. In the July 13, 2011 notice, EPA indicated that it would issue an order implementing the amendment, after the 30-day comment period. One comment was received during the 30-day comment period. After consideration, the Agency has granted the requested amendment. Accordingly, the Agency will extend the deadline for persons other than the registrant to sell and distribute Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide (EPA Reg. No. 264–731) for 1 year, until October 5, 2012. Additionally, the Agency will prohibit use of existing stocks of all fenamiphos products after October 6, 2014.

DATES: This amendment is effective October 5, 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; *fax number:* (703) 308–7070; *e-mail address: miederhoff.eric@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–2003–0200. 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 amendment of the December 10, 2003 use deletion and product cancellation order of fenamiphos products registered under section 3 of FIFRA, as amended on June 11, 2008 and December 10, 2008. The only registration affected by the extension of the sale and distribution date is Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide, EPA Registration Number 264–731. The prohibition on the use of fenamiphos products 3 years after publication of the amended order affects all fenamiphos product registrations.

On December 10, 2003, EPA published a Use Deletion and Product Cancellation Order (FRL–7332–5) (68 FR 68901). The order prohibited, among other things, the manufacture and distribution of fenamiphos by Bayer Corporation, the sole technical registrant, after May 31, 2007, the effective cancellation date for the fenamiphos product registrations. The deadline established for Bayer Corporation followed a production cap on the manufacture of fenamiphos, which limited fenamiphos production to 500,000 pounds of active ingredient for the year ending May 31, 2003, and reduced production by 20% each subsequent year during the 5-year phase-out period. The order also prohibited the sale and distribution of fenamiphos by persons other than the registrant after May 31, 2008. These provisions were intended to provide a reasonable amount of time for the material to move through the channels of trade following the cessation of sale and distribution of fenamiphos products by the registrant on May 31, 2007.

In a June 11, 2008 **Federal Register** Amendment to Use Deletion and Product Cancellation Order (FRL–8368–2) (73 FR 33082), the Agency extended the May 31, 2008 deadline on the sale and distribution by persons other than the registrant through November 30, 2008. This action was taken in response to a request from the sole fenamiphos technical registrant, Bayer Environmental Science, to extend the deadline to allow distributors to sell existing stockpiles of Nemacur 10% Turf and Ornamental Nematicide (EPA Reg. No. 432–1291) and Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide (EPA Reg. No. 264–731) to end users.

In a December 10, 2008 (FRL–8389–8) (73 FR 75097) **Federal Register** Amendment to Use Deletion and Product Cancellation Order, the Agency further extended the November 30, 2008 deadline for the sale and distribution of Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide (EPA Reg. No. 264–731) through March 31, 2009. This action was taken in response to a request from an end user, Maui Pineapple, to extend the deadline for sale and distribution of Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide (EPA Reg. No. 264–731) from November 30, 2008 to March 31, 2009.

On August 20, 2010 the Agency received another request from Maui Pineapple to extend the deadline for sale and distribution of Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide (EPA Reg. No. 264–731) to allow a transfer of its remaining stocks of Nemacur 3 to other end users.

The original May 31, 2008 deadline for fenamiphos was established to provide a reasonable amount of time for the material to move through the channels of trade following the cessation of sale and distribution of fenamiphos products by the registrant, Bayer Environmental Science, on May 31, 2007. Extending the deadline for distributors to sell and distribute Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide does not conflict with the Agency's application of the guidelines outlined in PR Notice 97–7, nor does it introduce more fenamiphos into the pesticide use cycle than had been stipulated by the terms of the 5-year phase-out. The extension allows for a redistribution of existing material already in the hands of end users and no new fenamiphos products will enter the marketplace. The Agency is extending the deadline for persons other than the registrant to sell and distribute Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide (EPA Reg. No. 264–731) for 1 year from the date of publication of this amended order until October 5, 2012.

The Agency is also prohibiting use of all fenamiphos products in the United States 3 years from the date of publication of this amended order in the **Federal Register**. Accordingly, all use of fenamiphos products in the United States will be prohibited after October 6, 2014. Previously, the Agency had allowed end users with existing stocks of products containing fenamiphos to continue to use these products until their stocks were exhausted, provided that the use complied with previously EPA-approved product label requirements for the respective products. Considering the initial Product Cancellation Order for fenamiphos was issued in 2003, 11 years will have elapsed since the initial cancellation order was issued, and approximately 7 years will have elapsed from the effective cancellation of the fenamiphos products. When the Agency specified in the initial Product Cancellation Order that users may use existing stocks until exhausted, it did not anticipate that fenamiphos products would not move through the channels of trade and be depleted by end users in a timely manner.

Moreover, all pesticides sold or distributed in the United States generally must be registered by the Environmental Protection Agency (EPA or the Agency), based on scientific data showing that they will not cause unreasonable risks to human health or the environment when used as directed on product labeling. Due to the fact that fenamiphos product registrations were cancelled as part of the voluntary phase-out, the Agency has determined that the registration review program, the periodic evaluation of pesticide safety, is not applicable to fenamiphos. The registration review of fenamiphos would have begun in 2008 if fenamiphos had had active product registrations at that time. The Agency is concerned that the use of existing stocks of fenamiphos products has continued for an extended period since the last comprehensive scientific risks assessments of its domestic use, which were completed for the 2002 Fenamiphos Reregistration Eligibility Decision. Therefore, the Agency is prohibiting all use of pesticide products containing fenamiphos after October 6, 2014.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received one comment in response to the July 13, 2011, **Federal Register** notice announcing the Agency's proposal to amend the fenamiphos use deletion and product cancellation order, (76 FR 41248) (FRL–8879–5). The comment, from the Arizona Department of Agriculture, supported the Agency's proposal to allow sale and distribution for an additional year. However, the comment also stated that it would be preferable to continue to allow use of fenamiphos products already in the hands of users until exhaustion. The comment describes the disposal of unusable pesticide products as expensive and time consuming. The Agency acknowledges the difficulties inherent in the safe disposal of pesticide products. However, as stated in Unit III, the Agency has concerns that, if the previous existing stocks provision allowing use until exhaustion were not amended, the use of fenamiphos would continue for an extended period of time beyond the most recent comprehensive scientific risk assessments of its domestic use. After consideration, the Agency has concluded that, with the additional 3 years provided by this order, an adequate period of time has been provided for existing stocks of fenamiphos products to have been used.

IV. Amended Order

Pursuant to FIFRA section 6(a), EPA is amending the December 10, 2008 order to allow persons other than the registrant to sell and distribute the fenamiphos product, Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide (EPA Registration Number 264–731), for 1 year, until October 5, 2012. Accordingly, the Agency orders that the sale and distribution of products containing fenamiphos is prohibited, except for proper disposal or export pursuant to section 17 of FIFRA, provided, however, that persons other than the registrant are permitted to sell and distribute existing stocks of Nemacur 3 Emulsifiable Systemic Insecticide-Nematicide (EPA Registration Number 264–731) for 1 year from the publication of the amended order. The Agency further orders that end users with existing stocks of any products containing fenamiphos may continue to use these products for 3 years, until October 6, 2014, provided that the use complies with EPA-approved product label requirements for the respective products. After October 6, 2014, all use of products containing fenamiphos is prohibited.

V. What is the agency's authority for taking this action?

Section 6(a)(1) of FIFRA provides that the Administrator may permit the continued sale and use of existing stocks of a pesticide whose registration is suspended or canceled under this section, or section 3 or 4 of FIFRA, to such extent, under such conditions, and for such uses as the Administrator determines that such sale or use is not inconsistent with the purposes of this Act.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 27, 2011.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011–25694 Filed 10–4–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2011–0784; FRL–8890–6]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (*i.e.,* a chemical not on the TSCA Chemical Substances Inventory (TSCA Inventory)) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of notices of commencement (NOC) to manufacture those chemicals. This document, which covers the period from August 29, 2011 to September 9, 2011, and provides the required notice and status report, consists of the PMNs and TMEs, both pending or expired, and the NOC to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before November 4, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2011–0784, and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available

at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Bernice Mudd, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (202) 564–8951; *fax number:* (202) 564–8955; *e-mail address: mudd.bernice@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; *telephone number:* (202) 554–1404; *e-mail address: TSCA–Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the PMNs addressed in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Why is EPA taking this action?

EPA classifies a chemical substance as either an ''existing'' chemical or a ''new'' chemical. Any chemical substance that is not on EPA's TSCA Inventory is classified as a ''new chemical,'' while those that are on the TSCA Inventory are classified as an ''existing chemical.'' For more information about the TSCA Inventory go to: *http://www.epa.gov/opptintr/newchems/pubs/inventory.htm.* Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for ''test marketing'' purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://ww.epa.gov/opt/newchems.*

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of NOCs to manufacture those chemicals. This status report, which covers the period from August 29, 2011 to September 9, 2011, consists of the PMNs and TMEs, both pending or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Reports

In Table I. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: The EPA case number assigned to the PMN, the date the PMN was received by EPA, the projected end date for EPA's review of the PMN, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the PMN, and the chemical identity.

TABLE I—16 PMNS RECEIVED FROM AUGUST 29, 2011 TO SEPTEMBER 9, 2011

Case No.	Received date	Projected notice end date	Manufacturer/ importer	Use	Chemical
P–11–0609	8/30/2011	11/27/2011	Crison LLC	(S) Monomer to be polymerized, copolymerized for use in coatings; medical research.	(S) Propenoic acid, 3-[(2-hydroxy-1,1-dimethylethyl)amino]-2-methyl- .
P–11–0610	8/30/2011	11/27/2011	Crison LLC	(S) Monomer to be polymerized, copolymerized for use in coatings; medical research.	(S) Propenoic acid, 3-[[1,1-bis (hydroxymethyl) propyl] amino]-2-methyl-.
P–11–0611	8/30/2011	11/27/2011	Crison LLC	(S) Monomer to be polymerized, copolymerized for use in coatings; medical research.	(S) Propenoic acid, 3-[[2-hydroxy -1-bism(hydroxymethyl) ethyl] amino]-2-methyl-.
P–11–0612	8/29/2011	11/26/2011	Nanotech Industries, Inc.	(S) Flooring; paints; top coating	(S) Carbamic acid, N,N'-(trimethyl-1,6-hexanediyl)bis-, ester with 1,2-propanediol (1:2) .
P–11–0613	8/30/2011	11/27/2011	CBI	(G) Biodiesel and crude fuel additive.	(G) Vinyl polymer grafted alkyl methacrylate.
P–11–0614	8/30/2011	11/27/2011	CBI	(G) Biodiesel and crude fuel additive.	(G) Vinyl polymer grafted poly methacrylate.
P–11–0615	8/31/2011	11/28/2011	Corsitech	(S) Rheology additive to drilling fluids.	(G) C_{18} dimer reaction product.
P–11–0616	9/1/2011	11/29/2011	CBI	(S) Component for industrial & commercial coatings.	(G) Alkyl silsesquioxanes.
P–11–0617	9/6/2011	12/4/2011	CBI	(G) Dyestuff	(G) Substituted xanthene derivative.
P–11–0618	9/6/2011	12/4/2011	CBI	(G) Dyestuff	(G) Substituted anthraquinone derivative.
P–11–0619	9/6/2011	12/4/2011	CBI	(G) Industrial cleaning solution component.	(G) Amino acid, carboxyalkyl, alkylsulfonate, alkali salt.
P–11–0620	9/6/2011	12/4/2011	CBI	(G) Industrial cleaning solution component.	(G) Amino acid, carboxyalkyl, alkylsulfonate, alkali salt.
P–11–0621	9/6/2011	12/4/2011	IGM Resins Inc	(G) Polymeric photoinitiator	(G) Piperazino based aminoalkylphenone.
P–11–0622	9/7/2011	12/5/2011	Henkel Corporation.	(S) Component in cyanoacrylate adhesive formulations.	(S) 4,5,6,7-tetrahydro-isobenzofuran-1,3-dione.
P–11–0623	9/7/2011	12/5/2011	Cytec Industries Inc.	(G) Coating resin for increased impact resistance..	(G) Heteromonocycle, homopolymer, disubstituted carbomonocycle, substituted alkyl ester.
P–11–0624	9/9/2011	12/7/2011	Oleon Americas Inc.	(G) Industrial base oil	(G) Fatty acids, polymers with bicarboxylic acid, polyol and substituted alkanoic acid.

In Table II. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received by EPA during this period: The EPA case number assigned to the TME, the date the TME was received by EPA, the projected end date for EPA's review of the TME, the submitting manufacturer/ importer, the potential uses identified by the manufacturer/importer in the TME, and the chemical identity.

TABLE II—1 TMES RECEIVED FROM AUGUST 29, 2011 TO SEPTEMBER 9, 2011

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
T–11–0015	9/7/2011	10/21/2011	Cytec industries inc	(G) Coating resin for increased impact resistance.	(G) Heteromonocycle, homopolymer, disubstituted carbomonocycle, substituted alkyl ester.

In Table III. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs received by EPA during this period: The EPA case number assigned to the NOC, the date the NOC was received by EPA, the projected end date for EPA's review of the NOC, and chemical identity.

TABLE III—17 NOCS RECEIVED FROM AUGUST 29, 2011 TO SEPTEMBER 9, 2011

Case No.	Received date	Commencement notice end date	Chemical
P–00–0533	9/8/2011	9/7/2011	(S) Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 2,2'-[1,4-butanediylbis(oxymethylene)]bis[oxirane], dihydro-3-(tetrapropenyl)-2,5-furandione and à-hydro-omega-hydroxypoly(oxy-1,2-ethanediyl)- compd. with 2-(dimethylamino)ethanol.
P–08–0063	8/31/2011	8/26/2011	(G) Polyamide based on alkanedioic acid, alkyl lactam and polyoxyalkylene.
P–08–0347	9/8/2011	8/16/2011	(G) Alkyl lactyl lactate.
P–11–0058	8/26/2011	8/23/2011	(G) Aromatic diol, diaryl carboxylate.
P–11–0123	9/7/2011	8/2/2011	(G) Hydroxyalkyl methacrylate, reaction product with cyclic ether and cyclic carbonic acid anhydride.
P–11–0146	9/8/2011	7/26/2011	(G) Styrene-acrylic copolymer.
P–11–0219	8/30/2011	8/19/2011	(G) Alkyl acrylate, polymer with alkyl acrylate, alkyl methacrylates, and styrene, peroxide-initiated.
P–11–0278	9/6/2011	8/10/2011	(G) Heteromonocycle, polymer with disubstituted carbomonocyle and alkylene glycol, alkyl acrylate blocked.
P–11–0300	9/8/2011	9/1/2011	(G) Aromatic polyester polyol.
P–11–0309	8/29/2011	8/16/2011	(G) Hexanedioic acid, polymer with polyether polyol, 1,1'-methylenebis[4-isocyanatobenzene] and dihydroxydialkyl ether.
P–11–0339	9/6/2011	8/26/2011	(S) Multi-wall carbon nanotube also known as—mwnt.
P–11–0356	8/31/2011	8/4/2011	(G) Alkoxysilyl polyether prepolymer.
P–11–0357	9/8/2011	8/18/2011	(G) Polycarbonate type urethane resin.
P–11–0366	9/6/2011	8/21/2011	(G) 1-propanone, 2-hydroxy-2-methyl-, 1-(4-alkylaryl) derivs.
P–11–0375	9/1/2011	8/18/2011	(G) Solvent free aromatic adhesive.
P–11–0376	9/8/2011	9/3/2011	(G) Aliphatic alcohol type polyester.
P–11–0394	9/2/2011	8/30/2011	(S) Amines, C_{36}-alkylenedi-, polymers with 5,5'-oxybis[1,3-isobenzofurandione], reaction products with maleic anhydride.

If you are interested in information that is not included in these tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Imports, Notice of commencement, Premanufacturer, Reporting and recordkeeping requirements, Test marketing exemptions.

Dated: September 27, 2011.

Chandler Sirmons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2011–25706 Filed 10–4–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2011–0798; FRL–9475–6]

Gulf of Mexico Regional Ecosystem Restoration Strategy (Preliminary)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: This notice announces the availability of the Gulf of Mexico Regional Ecosystem Restoration Strategy (Preliminary) for public review and feedback. The document is available at *http://www.regulations.gov* in the docket identified by Docket ID No. EPA–HQ–OA–2011–0798. President Barack Obama established the Gulf Coast Ecosystem Restoration Task Force (Task Force) on October 5, 2010 through Executive Order 13554 for the purpose of coordinating the long-term conservation and restoration of America's Gulf Coast. The Task Force is an intergovernmental advisory body comprised of senior officials from 11 federal cabinet level agencies and the Executive Office of the President, and one representative from each of the five Gulf Coast states, Alabama, Florida, Louisiana, Mississippi, and Texas. The President charged the Task Force to work with state and federal agencies, tribes, communities, stakeholders and the public throughout the Gulf Coast to develop a Gulf of Mexico Ecosystem Restoration Strategy. Additionally, the Task Force was instructed to build upon existing research and ecosystem restoration plans, and to learn from those who are actively involved in ecosystem restoration.

Over the past year the Task Force has engaged with various stakeholders and the public as well as coordinated with other entities that share the Task Force's important goals. The Task Force held at least one public meeting in each of the five Gulf states, which included a public listening session to gather individual input from those most connected to the Gulf ecosystem. In addition to the listening sessions that took place during public meetings, the Task Force held multiple listening sessions throughout the Gulf in partnership with local government leadership, academics, and non-governmental organizations. The culmination of these efforts has led to the development of the Gulf of Mexico Regional Ecosystem Restoration Strategy (Preliminary), which is being released for public review and feedback.

DATES: Comments must be received on or before October 26, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OA–2011–0798, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* oei.docket@epa.gov.
- *Fax:* (202) 566–9744.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Environmental Information Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OA–2011–0798. EPA's policy is that all comments received will be included in the public

docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be available to the public only at the EPA Docket Center. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Office of Environmental Information Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Carolyn Scully, Gulf Coast Ecosystem Restoration Task Force, Mail Code 1101R, Environmental Protection Agency, 1300 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 566–1457; *e-mail address: scully.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

What should I consider as I prepare my feedback for the Gulf Coast Ecosystem Restoration Task Force?

Tips for Preparing Your Feedback. When preparing your feedback, you may find the following suggestions helpful:

- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified under **DATES**.

Dated: September 26, 2011.

John H. Hankinson, Jr.,

Executive Director, Gulf Coast Ecosystem Restoration Task Force.

Dated: September 26, 2011.

John E. Reeder,

Deputy Chief of Staff to the Administrator, U.S. Environmental Protection Agency.

[FR Doc. 2011–25769 Filed 10–4–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9475–3]

Meeting of the Local Government Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Local Government Advisory Committee's Gulf Coast Restoration Workgroup will meet on Thursday, October 13, 2011, in New Orleans, LA. The Workgroup meeting will be located at the Sheraton Hotel, 500 Canal Street, New Orleans, Louisiana 70130. The focus of the Gulf Coast Restoration Workgroup meeting is to engage local government officials in Gulf Coast Ecosystem restoration efforts and provide an opportunity for input to the full Committee as it develops recommendations for the Administrator in her role as Chair of the Gulf Coast Ecosystem Restoration Task Force. This is an open meeting and all interested persons are invited to attend. The Committee will hear comments from the public between 11:30 a.m.–12:15 p.m. on Thursday, October 13, 2011. Individuals or organizations wishing to address the Workgroup meeting will be allowed a maximum of five minutes to present their point of view. Also, written comments should be submitted electronically to *cook.rebecca@epa.gov.* Please contact the Designated Federal Officer (DFO) at the number listed below to schedule agenda time. Time will be allotted on a first come first serve basis, and the total period for comments may be extended if the number of requests for appearances requires it.

ADDRESSES: The LGAC Gulf Coast Restoration Workgroup meeting will be held at the Sheraton Hotel, located at 500 Canal Street, New Orleans, Louisiana. The Workgroup's meeting summary will be available after the meeting online at *http://www.epa.gov/ocir/scas* and can be obtained by written request to the DFO.

FOR FURTHER INFORMATION CONTACT: Rebecca Cook, Gulf Coast Restoration Workgroup at (202) 564–5340 or Fran Eargle, the Designated Federal Officer for the Local Government Advisory Committee (LGAC) at (202) 564–3115 or e-mail at *Eargle.frances@epa.gov.*

Information on Services for Those With Disabilities: For Information on access or services for individuals with disabilities, please contact Frances Eargle at (202) 564–3115 or *eargle.frances@epa.gov.* To request accommodation of a disability, please request it 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: September 28, 2011.

Frances Eargle,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. 2011–25764 Filed 10–4–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9475–8]

New York State Prohibition of Discharges of Vessel Sewage; Receipt of Petition and Tentative Affirmative Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice—Receipt of Petition and Tentative Affirmative Determination.

SUMMARY: Notice is hereby given that, pursuant to Clean Water Act, Section 312(f)(3) (33 U.S.C. 1322(f)(3)), the State

of New York has determined that the protection and enhancement of the quality of the New York State portions of Lake Ontario requires greater environmental protection, and has petitioned the United States Environmental Protection Agency (EPA), Region 2, for a determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for those waters, so that the State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters.

New York State (NYS or State) has proposed to establish a Vessel Waste No Discharge Zone (NDZ) for the New York State portion of Lake Ontario including the waters of the Lake within the New York State boundary, stretching from the Niagara River (including the Niagara River up to Niagara Falls) in the west, to Tibbetts Point at the Lake's outlet to the Saint Lawrence River in the east. The proposed No Discharge Zone encompasses approximately 3,675 square miles and 326 linear shoreline miles, including the navigable portions of the Lower Genesee, Oswego, Black Rivers and numerous other tributaries and harbors, embayments of the Lake including Irondequoit Bay, Sodus Bay, North/South Ponds, Henderson Bay, Black River Bay and Chautmont Bay, and abundance of formally designated habitats and waterways of local, state, and national significance.

DATES: Comments regarding this tentative determination are due by November 4, 2011.

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

- *E-mail: chang.moses@epa.gov.* Include ''Comments on Tentative Affirmative Decision for NYS Lake Ontario NDZ'' in the subject line of the message.
- *Fax:* 212–637–3891
- *Mail and Hand Delivery/Courier:* Moses Chang, U.S. EPA Region 2, 290 Broadway, 24th Floor, New York, NY 10007–1866. Deliveries are only accepted during the Regional Office's normal hours of operation (8 a.m. to 5 p.m., Monday through Friday, excluding Federal holidays), and special arrangements should be made for deliveries of boxed information.

FOR FURTHER INFORMATION CONTACT: Moses Chang, (212) 637–3867, *e-mail address: chang.moses@epa.gov.* The EPA Region 2 NDZ Web site is: *http://www.epa.gov/region02/water/ndz/index.html.* A copy of the State's NDZ petition can be found there.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the State of New York (NYS or State) has petitioned the United States Environmental Protection Agency, Region 2, (EPA) pursuant to section 312(f)(3) of Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the NYS portion of Lake Ontario. Adequate pumpout facilities are defined as one pumpout station for every 300—600 boats pursuant to the Clean Vessel Act: Pumpout Station and Dump Station Technical Guidelines (**Federal Register**, Vol. 59, No. 47, March 10, 1994).

As one of the nation's premier waterbodies, the open waters, harbors, embayments, creeks and wetlands of Lake Ontario support a remarkable diversity of uses—fish spawning areas, breeding grounds, valuable habitats, commercial and recreational boating, and a profusion of recreational resources. The Lake serves as an economic engine for the region and a place of great natural beauty, heavily used and enjoyed by the citizens of the many lakeshore communities and throughout the Lake Ontario Watershed, which encompasses about one-quarter of New York State. It is also a source of drinking water for 760,000 people. The New York State Department of Environmental Conservation (DEC) developed this petition in collaboration with New York State Department of State (DOS) and the New York State Environmental Facilities Corporation (EFC) in order to establish a vessel waste No Discharge Zone (NDZ) on the open waters, tributaries, harbors and embayments New York State's portion of Lake Ontario.

In 1987, the governments of Canada and the United States made a commitment, under the Great Lakes Water Quality Agreement (GLWQA), to develop a Lakewide Management Plan (LaMP) for each of the five Great Lakes. This commitment was adopted into Federal law as part of the 1987 amendments to the U.S. Federal Water Pollution Control Act (33 U.S.C. 1268). The Lake Ontario LaMP is a binational, cooperative effort to restore and protect the health of Lake Ontario by reducing chemical pollutants entering the lake and addressing the needs of fish and wildlife living in the watershed.

Virtually all of the waters of Lake Ontario are classified by New York State as Class A. As such, the best usages of these waters are as ''a source of water supply for drinking, food processing purposes; primary and secondary contact recreation; and fishing.'' Furthermore, this classification states that such waters, if subjected to treatment typical of and appropriate for water supply use, will meet New York State Department of Health (DOH) drinking water standards and are or will be considered safe and satisfactory for drinking water purposes.

Currently there are ten municipal water supplies that draw water from Lake Ontario, serving over 760,000 people in New York State. But the Lake's significance as a water supply goes beyond its current use. As part of the Great Lakes System, Lake Ontario is one component of a reservoir that contains 95 percent of the fresh surface water in the United States and is the largest single reservoir on earth. As such, the importance of protecting this water source cannot be overstated.

The Clean Vessel Act requires that one pumpout station be available for every 300—600 boats in order to support a No Discharge Zone Determination. Accordingly, for EPA to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the New York State portion of Lake Ontario, the State must demonstrate that the pumpout-to-vessel ratio meets the requirement. In its petition, the State described the recreational and commercial vessels that use Lake Ontario, and the pumpout facilities that are available for their use.

Based on recreational boater registrations obtained through the New York State Office of Parks, Recreation and Historic Preservation's 2009 Boating Report for the counties of Niagara, Orleans, Monroe, Wayne, Cayuga, Oswego and Jefferson (all of which have shoreline on Lake Ontario), a general estimate places the recreational vessel population at 10,050.

There are 28 pumpout facilities funded by the Clean Vessel Assistance Program (CVAP) in the relevant areas of the Lake. There are also 9 other (non-CVAP funded) pumpouts available for recreational and small commercial vessels for a total 37 facilities. These facilities either discharge to a holding tank, to a municipal wastewater treatment plant or to an on-site septic system. With 37 pumpouts available for the 10,050 recreational and small commercial vessels that use the lake, the pumpout-to-vessel ratio for those vessels is 1:272 (37:10,050). Because 7 of the nine non-CVAP funded pumpout facilities did not provide sufficient facility information in this petition we also evaluated the vessel to pumpout ratio using a more conservative total of 30 pumpout facilities for 10,050 boats yielding a 1:335 pumpout per vessel

ratio. (Note: These are the 30 pumpout facilities identified in the table below.) Based on NYS 2009 boater registrations, the pumpout facility ratios for each individual county are as follows: Orleans (1:138), Jefferson (1:193), Niagara (1:223), Oswego (1:231), Wayne (1:234), Cayuga (1:252), and Monroe (1:449). Therefore, adequate pumpout facilities for the safe and sanitary removal and treatment of sewage for recreational vessels are reasonably available for the New York portions of the lake as a whole and for each county on the lake along the Lake Ontario shore line.

In addition, Lake Ontario is used by commercial vessels. Commercial vessel populations were estimated using data from the National Ballast Information Clearinghouse (NBIC), which records ballast water discharge reports for arriving ships, and interviews with administrators involved with the two main commercial ports on Lake Ontario, Oswego and Rochester.

In the calendar year 2010, ballast manifests showed 73 vessel arrivals at the Port of Oswego, 43 of these ships were bulkers carrying a wide array of goods, such as petroleum, aluminum and salt. The other 30 ships consist of passenger ships, tugs and barges. During 2010 survey, ballast manifests showed 24 commercial vessels arriving at the Port of Rochester, one passenger ship and 23 bulkers. As with the Port of Oswego, all other commercial vessels in the Port of Rochester are transient. Summing these sources, an upper bound estimate of commercial boat traffic in Lake Ontario using New York ports is approximately 150 vessels a year, less than one every other day. Although there are no fixed commercial vessel pumpouts at the Ports of Oswego or Rochester, mobile pumpout services are available for hire. The Port of Rochester reported that ''honey dipper'' trucks have come in to pumpout commercial vessels on occasion while they are docked in the Port. The Port of Rochester supplies all commercial vessels with the names of pumpout trucks (as well as other services, such as solid waste handlers) at the time they receive their permits to dock at the terminal. Therefore, it appears that there are adequate pumpout facilities to serve the commercial vessels in Lake Ontario.

Based on the above information which supports that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Lake Ontario, the State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters.

A list of the pumpout facilities, phone numbers, locations, hours of operation, water depth and fee is provided as follows:

LIST OF PUMPOUTS IN THE LAKE ONTARIO NDZ PROPOSED AREA

Number	Name	Location	Contact information	Days and hours of operation	Water depth (feet)	Fee
1	Youngstown Yacht Club	Lower Niagara River	716–754–8245	Apr–Nov, Mon–Fri, 9 a.m.–5 p.m..	9′–12′	$5.00
2	NYSOPRSHP–Wilson-Tuscarora SP Marina.	Tuscarora Bay	716–278–1775	24 hours	5′	$5.00
3	Tuscarora Yacht Club	Tuscarora Bay	716–434–4475	9 a.m.–5 p.m.	7′	$5.00
4	Rochester Yacht Club	Genesee River/Lake Ontario.	585–342–5511/ 585–314–6460	Mon–Sun, 7 a.m.–10p.m.	9′	[1]
5	City of Rochester—River Street Waterfront.	Genesee River—Canal North to 490 Dam.	716–428–7045	Jan–Dec, 24 hours	4′–6′	0.00
6	County of Monroe—Irondequoit Bay NYS Marine.	Irondequoit Bay	716–428–5301	Apr–Oct, 7 a.m.–7 p.m.	8′	$5.00
7	Four C'S Marina at Oak Orchard Creek.	Oak Orchard Creek	585–682–4224	6 a.m.–7 p.m.	10′	$5.00
8	Eagle Creek Marina	Oak Orchard Creek	585–723–5708	8 a.m.–5 p.m.	8′–9′	$5.00
9	Braddock Marina	Braddock Bay	585–227–1579	10 a.m.–4 p.m.	2′	$8.00
10	Newport Marina, Inc.	Irondequoit Bay	585–544–4950	Mar–Dec, 9 a.m.–6 p.m.	6′	$10.00
11	Sutter's Marine, Inc.	Irondequoit Bay	716–217–8811	Apr–Nov, Mon–Fri, 6:30 a.m.–5:00 p.m..	7′	$5.00
12	Pultneyville Yacht Club	Pultneyville	315–524–2762	Apr–Sep, 24 hours	6′	$5.00
13	Sodus Bay Yacht Club	Pultneyville	315–483–9550	Apr–Sep, 24 hours	6′	$5.00
14	Krenzer Marine, Inc.	Sodus Bay	315–483–8808	Apr–Nov, 8 a.m.–5 p.m.	3′–6′	0.00
15	Arney's Marina, Inc.	Sodus Bay	315–483–9111	Apr–Oct, 9 a.m.–5 p.m.	7′	$5.00
16	Anchor Resort and Marina.	Little Sodus Bay	315–947–5331	Apr–Sep, 6 a.m.–6 p.m.	8′–10′	$5.00
17	Bayside Marina	Little Sodus Bay	315–947–5773	Apr–Oct, 24 hours	8′	$5.00
18	Port of Oswego—International Marina West.	(Erie) Oneida Shore Park Terminal—Three Rivers Port Terminal.	315–343–4503	Apr–Nov, 7 a.m.–9 p.m.	15′	$5.00
19	Port of Oswego—East Marina.	Three Rivers Point Terminal—Lock 8 (Wright's Landing).	315–343–4503	Apr–Nov, 7 a.m.–9 p.m.	18′	$5.00
20	Mexico Bay Co.	Mexico Bay—Little Salmon River.	315–963–3221	Daylight hours		$0.00
21	Wigwam Marina	North Pond	315–387–3001	12 p.m.–4 p.m.	8′	$0.00
22	Seber Shores Marina	North Pond	315–387–5502	May–Nov, 9 a.m.–5 p.m.	8′	$5.00
23	Harbor's End, Inc.	Henderson Bay and Harbor.	315–938–5425	Apr–Nov, 8 a.m.–4:30 p.m..	4.5′	$5.00
24	Henchen Marina	Henderson Bay and Harbor.	315–938–5313	Apr–Oct, 7 a.m.–8 p.m.	8′	$10.00
25	Harbor View Marina, Inc.	Henderson Bay and Harbor.	315–938–5494	May–Oct, 8 a.m.–5 p.m.		$0.00

LIST OF PUMPOUTS IN THE LAKE ONTARIO NDZ PROPOSED AREA—Continued

Number	Name	Location	Contact information	Days and hours of operation	Water depth (feet)	Fee
26	Grunerts Marina	Black River Bay	315–646–2003			$0.00
27	Navy Point Marina	Black River Bay	315–646–3364	May–Nov, 8 a.m.–5 p.m.	10′	$0.00
28	Madison Barracks	Black River Bay	315–646–3374	May 15–Oct 15, 8 a.m.–6 p.m..	10′	$0.00
29	Kitto's Marina	Chaumont Bay	315–788–2191	Apr–Oct, 8 a.m.–7 p.m. ..	7′	$0.00
30	Chaumont Club	Black River Bay	315–649–5018	Apr 15 –Nov, 7 a.m.–5 p.m..	6.5′–7′	$0.00

[1] Free—Members/$10.00—Guest.

Based on the information above, EPA hereby proposes to make an affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are available for the waters of the New York State portion of Lake Ontario. A 30-day period for public comment has been opened on this matter, and EPA invites any comments relevant to its proposed determination.

Dated: September 27, 2011.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2011–25758 Filed 10–4–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before December 5, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1014.

Title: Ku-band NGSO FSS.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1 respondent; 1 response.

Estimated Time per Response: 2 hours.

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4, 301, 302, 303, 307, 309, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, 307, 309, 332, and 701.

Total Annual Burden: 2 hours.

Annual Cost Burden: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) as an extension after this 60 day comment period has ended in order to obtain the full three year OMB clearance.

The information collection requirements (annual filings by licensees of reports on the status of their space station construction and launch) accounted for in this collection are necessary to ensure that prospective licensees in the Non-geostationary (NGSO) Fixed Satellite Service (FSS) follow their service rules. Without such information collection requirements, many existing radio services, both satellite and terrestrial, could potentially be interrupted by interference caused by NGSO FSS systems on the same frequencies.

OMB Control No.: 3060–1095.

Title: Surrenders of Authorizations for International Carrier, Space Station and Earth Station Licensees.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 82 respondents; 82 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation To Respond: Voluntary. The statutory authority for this information collection is contained in Sections 4(i), 7(a), 11, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 154(i), 157(a), 161, 303(c), 303(f), 303(g), and 303(r).

Total Annual Burden: 82 hours.

Annual Cost Burden: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) as an extension after this 60 day comment period has ended in order to obtain the full three year OMB clearance.

Licensees file surrenders of authorizations with the Commission on a voluntary basis. This information is used by Commission staff to issue Public Notices to announce the surrenders of authorization to the general public. The Commission's release of Public Notices is critical to keeping the general public abreast of the licensees' discontinuance of telecommunications services.

Without this collection of information, licensees would be required to submit surrenders of authorizations to the Commission by letter which is more time consuming than submitting such requests to the Commission electronically. In addition, Commission staff would spend an extensive amount of time processing surrenders of authorizations received by letter.

The collection of information saves time for both licensees and Commission staff since they are received in MyIBFS electronically and include only the information that is essential to process the requests in a timely manner. Furthermore, the E-filing module expedites the Commission staff's announcement of surrenders of authorizations via Public Notice.

OMB Control No.: 3060–1061.

Title: Licensing and Service Rules for Earth Stations on Board Vessels (ESVs).

Form No.: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 15 respondents; 15 responses.

Estimated Time per Response: 0.25–24 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; Third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The Commission has statutory approval for the information collection requirements under Sections 4(i), 7(a), 303(c), 303(f), 303(g) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g) and 303(r).

Total Annual Burden: 264 hours.

Total Annual Cost: $149,925.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality pertaining to the information collection requirements in this collection.

Needs and Uses: On July 31, 2009, the Federal Communications Commission (''Commission'') released an Order on Reconsideration titled, ''In the Matter of the Procedures to Govern the Use of Satellite Earth Stations on Board Vessels in the 5925–6425 MHz/3700–4200 MHz Bands and 14.0–14.5 GHz/11.7–12.2 GHz Bands'' (FCC 09–63), IB Docket No. 02–10 (''ESV Reconsideration Order''). In the ESV Reconsideration Order, the Commission resolved various concerns raised regarding the operational restrictions placed on ESVs that are designed to protect the fixed-satellite service (FSS), operating in the C-band and Ku-band, and the terrestrially based fixed service (FS), operating in the C-band, from harmful interference. The Commission adopted rule changes that provide ESV operators with greater operational flexibility while continuing to ensure that the other services in these bands are protected from harmful interference.

The Commission would like to maintain OMB approval of the following information collection requirements:

1. Any ESV applicant that uses transmitters with off-axis EIRP densities lower than or equal to the off-axis EIRP limits must: (1) File three tables showing the off-axis EIRP level of the proposed earth station antenna in the direction of the plane of the GSO; the co-polarized EIRP in the elevation plane, that is, the plane perpendicular to the plane of the GSO; and cross polarized EIRP. In each table, the EIRP level must be provided at increments of 0.1° for angles between 0° and 10° off-axis, and at increments of 5° for angles between 10° and 180° off-axis; or (2) a certification, in Schedule B, that the ESV antenna conforms to the gain pattern criteria of § 25.209(a) and (b), that, combined with the maximum input power density calculated from the EIRP density less the antenna gain, which is entered in Schedule B, demonstrates that the off-axis EIRP spectral density envelope will be met under the assumption that the antenna is pointed at the target satellite.

2. An ESV applicant proposing to implement a transmitter that will maintain a pointing error of less than or equal to 0.2° must provide a certification from the equipment manufacturer stating that the antenna tracking system will maintain a pointing error of less than or equal to 0.2° between the orbital location of the target satellite and the axis of the main lobe of the ESV antenna and that the antenna tracking system is capable of ceasing emissions within 100 milliseconds if the angle between the orbital location of the target satellite and the axis of the main lobe of the ESV antenna exceeds 0.5°.

3. An ESV applicant proposing to implement a transmitter with an antenna pointing error of greater than 0.2 degrees must: (A) Declare, in its application, a maximum antenna pointing error and demonstrate that the maximum antenna pointing error can be achieved without exceeding the off-axis EIRP spectral-density limits in paragraph (a)(1)(i) of this section; and (B) demonstrate that the ESV transmitter can detect if the transmitter exceeds the declared maximum antenna pointing error and can cease transmission within 100 milliseconds if the angle between the orbital location of the target satellite and the axis of the main lobe of the ESV antenna exceeds the declared maximum antenna pointing error, and will not resume transmissions until the angle between the orbital location of the target satellite and the axis of the main lobe of the ESV antenna is less than or equal to the declared maximum antenna pointing error.

4. An ESV applicant proposing to implement a transmitter that exceeds the off-axis EIRP spectral-density limits shall provide the following certifications and demonstration as exhibits to its earth station application: (i) A statement from the target satellite operator certifying that the proposed operation of the ESV has the potential to create harmful interference to satellite networks adjacent to the target satellite(s) that may be unacceptable; (ii) a statement from the target satellite operator certifying that the power-density levels that the ESV applicant provided to the target satellite operator are consistent with the existing coordination agreements between its satellite(s) and the adjacent satellite systems within 6° of orbital separation from its satellite(s); (iii) a statement from the target satellite operator certifying that it will include the power-density levels of the ESV applicant in all future coordination agreements; (iv) A demonstration from the ESV operator that the ESV system is capable of detecting and automatically ceasing emissions within 100 milliseconds when the transmitter exceeds the off-axis EIRP spectral-densities supplied to the target satellite operator; and (v) a certification from the ESV operator that the ESV system complies with the power limits in Section 25.204(h).

5. The point of contact information referred to in paragraph (a)(3) and, if applicable, paragraph (a)(6), of Sections 25.221 and 25.222, must be included in the application.

The information collection requirements accounted for in this collection are necessary to determine the technical and legal qualifications of applicants or licensees to operate a station, transfer or assign a license, and to determine whether the authorization is in the public interest, convenience and necessity. Without such information, the Commission could not determine whether to permit respondents to provide telecommunication services in the U.S. Therefore, the Commission would be unable to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the World Trade Organization (WTO) Basic Telecom Agreement.

OMB Control No.: 3060–1106.

Title: Licensing and Service Rules for Vehicle Mounted Earth Stations (VMES).

Form No.: Not Applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 10 respondents; 10 responses.

Estimated Time per Response: 0.25 hour–24 hours.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The Commission has statutory approval for the information collection requirements under Sections 1, 4(i), 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y) and 308 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 308.

Total Annual Burden: 322 hours.

Total Annual Cost: $104,300.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality pertaining to the information collection requirements in this collection.

Needs and Uses: On July 31, 2009, the Federal Communications Commission (''Commission'') released a Report and Order titled, ''In the Matter of Amendment of parts 2 and 25 of the Commission's Rules to Allocate Spectrum and Adopt Service Rules and Procedures to Govern the Use of Vehicle-Mounted Earth Stations in Certain Frequency Bands Allocated to the Fixed-Satellite Service,'' IB Docket No. 07–101, FCC 09–64 (hereinafter referred to as ''VMES Report and Order'').

The VMES Report and Order adopts part 2 allocation rules and part 25 technical and licensing rules for a new domestic Ku-band VMES service. VMES service has the potential to deliver advanced mobile applications through satellite technology, including broadband, which will be beneficial for public safety and commercial purposes.

The PRA information collection requirements contained in the VMES Report and Order are as follows:

1. 47 CFR 25.226(b)(1)(i) or 47 CFR 25.226(b)(1)(ii).

(i) Any VMES applicant filing an application pursuant to paragraph (a)(1) of this section shall file three tables showing the off-axis EIRP level of the proposed earth station antenna in the direction of the plane of the GSO; the co-polarized EIRP in the elevation plane, that is, the plane perpendicular to the plane of the GSO; and cross-polarized EIRP. Each table shall provide the EIRP level at increments of 0.1° for angles between 0° and 10° off-axis, and at increments of 5° for angles between 10° and 180° off-axis.

Or;

2. (ii) A VMES applicant shall include a certification, in Schedule B, that the VMES antenna conforms to the gain pattern criteria of § 25.209(a) and (b), that, combined with the maximum input power density calculated from the EIRP density less the antenna gain, which is entered in Schedule B, demonstrates that the off-axis EIRP spectral density envelope set forth in paragraphs (a)(1)(i)(A) through (a)(1)(i)(C) of this section will be met under the assumption that the antenna is pointed at the target satellite.

3. 47 CFR 25.226(b)(1)(iii)

(iii) A VMES applicant proposing to implement a transmitter under paragraph (a)(1)(ii)(A) of this section shall provide a certification from the equipment manufacturer stating that the antenna tracking system will maintain a pointing error of less than or equal to 0.2° between the orbital location of the target satellite and the axis of the main lobe of the VMES antenna and that the antenna tracking system is capable of ceasing emissions within 100 milliseconds if the angle between the orbital location of the target satellite and the axis of the main lobe of the VMES antenna exceeds 0.5°.

4. 47 CFR 25.226(b)(1)(iv)(A), (B)

A VMES applicant proposing to implement a transmitter under paragraph (a)(1)(ii)(B) of this section shall:

(A) Declare, in its application, a maximum antenna pointing error and demonstrate that the maximum antenna pointing error can be achieved without exceeding the off-axis EIRP spectral-density limits in paragraph (a)(1)(i) of this section; and (B) demonstrate that the VMES transmitter can detect if the transmitter exceeds the declared maximum antenna pointing error and can cease transmission within 100 milliseconds if the angle between the orbital location of the target satellite and the axis of the main lobe of the VMES antenna exceeds the declared maximum antenna pointing error, and will not resume transmissions until the angle between the orbital location of the target satellite and the axis of the main lobe of the VMES antenna is less than or equal to the declared maximum antenna pointing error.

5. 47 CFR 25.226(b)(2)(i), (ii), (iii), (iv)

A VMES applicant proposing to implement a transmitter under paragraph (a)(2) of this section and using off-axis EIRP spectral-densities in excess of the levels in paragraph (a)(1)(i) of this section shall provide the following certifications and demonstration as exhibits to its earth station application:

(i) A statement from the target satellite operator certifying that the proposed operation of the VMES has the potential to create harmful interference to satellite networks adjacent to the target satellite(s) that may be unacceptable.

(ii) A statement from the target satellite operator certifying that the power-density levels that the VMES applicant provided to the target satellite operator are consistent with the existing coordination agreements between its satellite(s) and the adjacent satellite systems within 6° of orbital separation from its satellite(s).

(iii) A statement from the target satellite operator certifying that it will include the power-density levels of the VMES applicant in all future coordination agreements.

(iv) A demonstration from the VMES operator that the VMES system is capable of detecting and automatically ceasing emissions within 100 milliseconds when the transmitter exceeds the off-axis EIRP spectral-densities supplied to the target satellite operator.

6. 47 CFR 25.226(b)(3)

A VMES applicant proposing to implement a VMES system under paragraph (a)(3) of this section and using variable power-density control of individual simultaneously transmitting co-frequency VMES earth stations in the

same satellite receiving beam shall provide the following certifications and demonstration as exhibits to its earth station application:

(i) The applicant shall make a detailed showing of the measures it intends to employ to maintain the effective aggregate EIRP-density from all simultaneously transmitting co-frequency terminals operating with the same satellite transponder at least 1 dB below the EIRP-density limits defined in paragraphs (a)(1)(i)(A)–(C) of this section. In this context the term ''effective'' means that the resultant co-polarized and cross-polarized EIRP-density experienced by any GSO or non-GSO satellite shall not exceed that produced by a single VMES transmitter operating at 1 dB below the limits defined in paragraphs (a)(1)(i)(A)–(C) of this section. The International Bureau will place this showing on Public Notice along with the application.

(ii) An applicant proposing to implement a VMES under (a)(3)(ii) of this section that uses off-axis EIRP spectral-densities in excess of the levels in paragraph (a)(3)(i) of this section shall provide the following certifications, demonstration and list of satellites as exhibits to its earth station application:

(A) A detailed showing of the measures the applicant intends to employ to maintain the effective aggregate EIRP-density from all simultaneously transmitting co-frequency terminals operating with the same satellite transponder at the EIRP-density limits supplied to the target satellite operator. The International Bureau will place this showing on Public Notice along with the application.

(B) A statement from the target satellite operator certifying that the proposed operation of the VMES has the potential to create harmful interference to satellite networks adjacent to the target satellite(s) that may be unacceptable.

(C) A statement from the target satellite operator certifying that the aggregate power density levels that the VMES applicant provided to the target satellite operator are consistent with the existing coordination agreements between its satellite(s) and the adjacent satellite systems within 6° of orbital separation from its satellite(s).

(D) A statement from the target satellite operator certifying that it will include the aggregate power-density levels of the VMES applicant in all future coordination agreements.

(E) A demonstration from the VMES operator that the VMES system is capable of detecting and automatically ceasing emissions within 100 milliseconds when an individual transmitter exceeds the off-axis EIRP spectral-densities supplied to the target satellite operator and that the overall system is capable of shutting off an individual transmitter or the entire system if the aggregate off-axis EIRP spectral-densities exceed those supplied to the target satellite operator.

(F) An identification of the specific satellite or satellites with which the VMES system will operate.

(iii) The applicant shall acknowledge that it will maintain sufficient statistical and technical information on the individual terminals and overall system operation to file a detailed report, one year after license issuance, describing the effective aggregate EIRP-density levels resulting from the operation of the VMES system.

7. 47 CFR 25.226(a)(5), (b)(6)

Applicant shall include in application point of contact with authority and ability to cease all emissions from VMES terminals.

8. 47 CFR 25.226 (a)(6), (b)(7)

VMES licensee shall provide data (record of vehicle location, transmit frequency, channel bandwidth and satellite used for each relevant VMES transmitter) to Commission, NTIA, FSS operator, FS operator, or frequency coordinator within 24 hours upon request.

The information collection requirements accounted for in this collection are necessary to prevent regulatory uncertainty with respect to VMES and other satellite services that operate in the Ku-band within the United States. Prior to this rulemaking, the lack of rules for VMES posed an administrative burden on those entities attempting to provide VMES-type services and on Commission staff because such services could be granted only through the use of waivers and Special Temporary Authority (STA) authorizations for a six-month period of time. The approval of fifteen-year licenses for VMES operators significantly reduces the burden imposed upon both licensees and Commission staff who review and approve the waivers and STAs. Furthermore, without such information the Commission would not be able to take the necessary measures to prevent harmful interference to satellite services from VMES. Finally, the Commission would not be able to advance its goals of managing spectrum efficiently and promoting broadband technologies to benefit American consumers throughout the United States.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–25660 Filed 10–4–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before December 5, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1035.

Title: Part 73, Subpart F—International Broadcast Stations.

Form No.: FCC Forms 309, 310 and 311.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents/Responses: 225 respondents; 225 responses.

Estimated Time per Response: 2–720 hours.

Frequency of Response: Recordkeeping requirement; on occasion, semi-annual, weekly and annual reporting requirements.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. Sections 154, 303, 307, 334, 336 and 554.

Total Annual Burden: 20,096 hours.

Annual Cost Burden: $72,575.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: In general, there is no need for confidentiality.

Needs and Uses: This information collection is used by the Commission to assign frequencies for use by international broadcast stations, to grant authority to operate such stations and to determine if interference or adverse propagation conditions exist that may impact the operation of such stations. The Commission collects this information pursuant to 47 CFR part 73, subpart F. If the Commission did not collect this information, it would not be in a position to effectively coordinate spectrum for international broadcasters or to act for entities in times of frequency interference or adverse propagation conditions. Therefore, the information collection requirements are as follows:

FCC Form 309—Application for Authority To Construct or Make Changes in an International, Experimental Television, Experimental Facsimile, or a Developmental Broadcast Station—The FCC Form 309 is filed on occasion when the applicant is requesting authority to construct or make modifications to the international broadcast station.

FCC Form 310—Application for an International, Experimental Television, Experimental Facsimile, or a Developmental Broadcast Station License—The FCC Form 310 is filed on occasion when the applicant is submitting an application for a new international broadcast station.

FCC Form 311—Application for Renewal of an International or Experimental Broadcast Station License—The FCC Form 311 is filed by applicants who are requesting renewal of their international broadcast station licenses.

The Commission has not developed the FCC Forms 309, 310 and 311 due to a lack of budget funds and technical staff. The Commission stated previously that the above referenced applications will be available to applicants in the International Bureau Filing System (''MyIBFS'') after implementation in the system. However, the Commission plans to develop a new Consolidated Licensing System (CLS) within the next five years that will replace MyIBFS. Therefore, the applications will be made available to the public in CLS instead of MyIBFS.

47 CFR 73.702(a) states that six months prior to the start of each season, licensees and permittees shall by informal written request, submitted to the Commission in triplicate, indicate for the season the frequency or frequencies desired for transmission to each zone or area of reception specified in the license or permit, the specific hours during which it desires to transmit to such zones or areas on each frequency, and the power, antenna gain, and antenna bearing it desires to use. Requests will be honored to the extent that interference and propagation conditions permit and that they are otherwise in accordance with the provisions of section 47 CFR 73.702(a).

47 CFR 73.702(b) states that two months before the start of each season, the licensee or permittee must inform the Commission in writing as to whether it plans to operate in accordance with the Commission's authorization or operate in another manner.

47 CFR 73.702(c) permits entities to file requests for changes to their original request for assignment and use of frequencies if they are able to show good cause. Because international broadcasters are assigned frequencies on a seasonal basis, as opposed to the full term of their eight-year license authorization, requests for changes need to be filed by entities on occasion.

47 CFR 73.702 (note) states that permittees who during the process of construction wish to engage in equipment tests shall by informal written request, submitted to the Commission in triplicate not less than 30 days before they desire to begin such testing, indicate the frequencies they desire to use for testing and the hours they desire to use those frequencies.

47 CFR 73.702(e) states within 14 days after the end of each season, each licensee or permittee must file a report with the Commission stating whether the licensee or permittee has operated the number of frequency hours authorized by the seasonal schedule to each of the zones or areas of reception specified in the schedule.

47 CFR 73.782 requires that licensees retain logs of international broadcast stations for two years. If it involves communications incident to a disaster, logs should be retained as long as required by the Commission.

47 CFR 73.759(d) states that the licensee or permittee must keep records of the time and results of each auxiliary transmitter test performed at least weekly.

47 CFR 73.762(b) requires that licensees notify the Commission in writing of any limitation or discontinuance of operation of not more than 10 days.

47 CFR 73.762(c) states that the licensee or permittee must request and receive specific authority from the Commission to discontinue operations for more than 10 days under extenuating circumstances.

47 CFR 1.1301–1.1319 cover certifications of compliance with the National Environmental Policy Act and how the public will be protected from radio frequency radiation hazards.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of the Managing Director.

[FR Doc. 2011–25661 Filed 10–4–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS11–26]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with Section 1104 (b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: OCC—250 E Street, SW., Room 7C/7CA, Washington, DC 20219.

Date: October 12, 2011.
Time: 10:30 a.m.
Status: Open.

Matters To Be Considered

Summary Agenda

September 21, 2011 minutes—Open Session

(No substantive discussion of the above items is anticipated. These matters will be resolved with a single vote unless a member of the ASC requests that an item be moved to the discussion agenda.)

Discussion Agenda

Appraisal Foundation June 2011 Grant Reimbursement Request.
Oklahoma Request for Extension of National Registry Fee Increase.
District of Columbia Compliance Review.
Mississippi Compliance Review.
Rhode Island Compliance Review.
Virginia Compliance Review.
Wyoming Compliance Review.

How To Attend and Observe an ASC Meeting:

E-mail your name, organization and contact information to *meetings@asc.gov.* You may also send a written request via U.S. Mail, fax or commercial carrier to the Executive Director of the ASC, 1401 H Street, NW., Ste. 760, Washington, DC 20005. The fax number is 202–289–4101. Your request must be received no later than 4:30 p.m., ET, on the Monday prior to the meeting. Attendees must have a valid government-issued photo ID and must agree to submit to reasonable security measures. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: September 29, 2011.

James R. Park,

Executive Director.

[FR Doc. 2011–25779 Filed 10–4–11; 8:45 am]

BILLING CODE P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS11–27]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of Meeting.

Description: In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in closed session:

Location: OCC—250 E Street, SW., Room 7C/7CA,Washington, DC 20219.
Date: October 12, 2011.
Time: Immediately following the ASC open session.
Status: Closed.

Matters To Be Considered

September 21, 2011 minutes—Closed Session.

Preliminary discussion of State Compliance Reviews.

Dated: September 29, 2011.

James R. Park,

Executive Director.

[FR Doc. 2011–25781 Filed 10–4–11; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012067–004.
Title: U.S. Supplemental Agreement to HLC Agreement.
Parties: BBC Chartering & Logistics GmbH & Co. KG; Beluga Chartering GmbH; Chipolbrok; Clipper Project Ltd.; Hyndai Merchant Marine Co., Ltd.; Industrial Maritime Carriers, L.L.C.; Nordana Line A/S; and Rickmers-Linie GmbH & Cie. KG.
Filing Party: Wade S. Hooker, *Esq.;* 211 Central Park W; New York, NY 10024.
Synopsis: The amendment would add Safmarine Container Lines N.V. as a party to the HLC Agreement. The parties have requested expedited review.

Agreement No.: 012135.
Title: EUKOR Car Carriers, Inc./FOML Space Charter.
Parties: EUKOR Car Carriers, Inc. and FESCO Ocean Management Limited.
Filing Parties: Neal M Mayer, Esq.; Hoppel, Mayer & Coleman; 1050 Connecticut Avenue, NW., 10th Floor; Washington, DC 20036.
Synopsis: The Agreement authorizes EUKOR to charter space to FOML in the trade from the port of Tacoma, WA to Vladivostok, Russia at such rates and charges as the parties may agree, subject to an agreed minimum revenue requirement.

Agreement No.: 012136.
Title: HSDG/ML/MSC Space Charter Agreement.
Parties: Hamburg-Sud, A.P. Moller-Maersk A/S, and MSC Mediterranean Shipping Company S.A.
Filing Parties: Wayne R. Rohde, *Esq.;* Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006–4007.
Synopsis: The Agreement authorizes Hamburg-Sud and Maersk to charter space to Med Shipping in the trade between U.S. Atlantic Coast ports and ports in Panama, Australia, and New Zealand. The parties requested expedited review.

By Order of the Federal Maritime Commission.
Dated: September 30, 2011.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2011–25774 Filed 10–4–11; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Availability of Draft NTP Monograph on the Health Effects of Low-Level Lead; Request for Comments; Announcement of a Panel Meeting to Peer Review Draft Monograph

AGENCY: Division of the National Toxicology Program (DNTP), National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health.

ACTION: Availability of Draft NTP Monograph; Request for Comments; Announcement of a Peer Review Panel Meeting.

SUMMARY: The NTP announces the availability of the Draft NTP Monograph on the Health Effects of Low-level Lead (available at *http://ntp.niehs.nih.gov/go/36639*) that will be peer-reviewed by an NTP Peer Review Panel at a meeting on November 17–18, 2011. The meeting is open to the public with time scheduled for oral public comment. The NTP also invites written comments on the draft monograph (see Request for Comments below).

DATES: The meeting is scheduled for November 17–18, 2011. Although two days are set aside for the meeting, it may adjourn sooner if the panel completes its peer review of the draft monograph. The draft NTP monograph should be available for public comment by October 14, 2011. The deadline to submit written comments is November 3, 2011, and the deadline for pre-registration to attend the meeting and/or provide oral comments is November 10, 2011.

ADDRESSES: The meeting will be held at the Rodbell Auditorium, Rall Building, NIEHS, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709. Public comments and any other correspondence on the draft monograph should be sent to Danica Andrews, NIEHS, P.O. Box 12233, MD K2–03, Research Triangle Park, NC 27709, *Fax:* (919) 541–0295, or *andrewsda@niehs.nih.gov.* Courier address: 530 Davis Drive, Room 2142, Morrisville, NC 27560. Individuals with disabilities who need accommodation to participate in this event should contact Danica Andrews at voice *telephone:* (919) 541–2595 or *e-mail: andrewsda@niehs.nih.gov.* TTY users should contact the Federal TTY Relay Service at 800–877–8339. Requests should be made at least five business days in advance of the event.

FOR FURTHER INFORMATION CONTACT: Danica Andrews, NTP Designated Federal Officer, (919) 541–2595, *andrewsda@niehs.nih.gov.*

SUPPLEMENTARY INFORMATION:

Background

The panel will peer review the Draft NTP Monograph on the Health Effects of Low-level Lead, prepared by the Office of Health Assessment and Translation (OHAT, formerly the Center for the Evaluation of Risks to Human Reproduction [CERHR]), DNTP. Lead exposure is a significant health concern despite policies and practices that have resulted in continued progress in reducing exposures and lowering blood lead levels in the U.S. population. OHAT selected low-level lead for evaluation because of: (1) Widespread human exposure, (2) published studies on health effects associated with low blood lead levels (< 10 μg/dL) in humans, and (3) public concern. An evaluation of low-level lead was initially discussed by the NTP Board of Scientific Counselors (BSC) on December 6, 2007 (72 FR 58854), the approach for the evaluation was discussed at the May 10, 2010 BSC meeting (75 FR 12244), and a call for information and nomination of experts was published on August 23, 2010 (75 FR 51815).

Preliminary Agenda and Availability of Meeting Materials

The preliminary agenda and draft monograph should be posted on the NTP Web site (*http://ntp.niehs.nih.gov/go/36639*) by October 14, 2011. Any additional information, when available, will be posted on the NTP Web site or may be requested in hardcopy from the Designated Federal Officer (see **ADDRESSES** above). Following the meeting, a report of the peer review will be prepared and made available on the NTP Web site.

Attendance and Registration

The meeting is scheduled for November 17, from 8:30 a.m. to 5 p.m. E.S.T. and November 18, from 8:30 a.m. until adjournment. Although two days are set aside for the meeting, it may adjourn sooner if the panel completes its peer review of the draft monograph. The meeting is open to the public with attendance limited only by the space available. Individuals who plan to attend are encouraged to register online at the NTP Web site (*http://ntp.niehs.nih.gov/go/36639*) by November 10, 2011, to facilitate access to the NIEHS campus. A photo ID is required to access the NIEHS campus. The NTP is making plans to webcast the meeting at *http://www.niehs.nih.gov/news/video/live.* Registered attendees are encouraged to access the meeting page to stay abreast of the most current information regarding the meeting.

Request for Comments

The NTP invites written comments on the draft monograph, which should be received by November 3, 2011, to enable review by the panel and NTP staff prior to the meeting. Persons submitting written comments should include their name, affiliation, mailing address, phone, e-mail, and sponsoring organization (if any) with the document. Written comments received in response to this notice will be posted on the NTP Web site, and the submitter will be identified by name, affiliation, and/or sponsoring organization.

Public input at this meeting is also invited, and time is set aside for the presentation of oral comments on the draft monograph. In addition to in-person oral comments at the meeting at the NIEHS, public comments can be presented by teleconference line. There will be 50 lines for this call; availability will be on a first-come, first-served basis. The available lines will be open from 8:30 a.m. until 5 p.m. on November 17 and from 8:30 until adjournment on November 18, although public comments will be received only during the formal public comment periods indicated on the preliminary agenda. Each organization is allowed one time slot. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes at the discretion of the chair. Persons wishing to make an oral presentation are asked to notify Danica Andrews via online registration at *http://ntp.niehs.nih.gov/go/36639,* phone, or e-mail (see **ADDRESSES** above) by November 10, 2011, and if possible, to send a copy of their slides and/or statement or talking points at that time. Written statements can supplement and may expand the oral presentation. Registration for oral comments will also be available at the meeting, although time allowed for presentation by on-site registrants may be less than that for pre-registered speakers and will be determined by the number of persons who register on-site.

Background Information on OHAT and NTP Peer Review Panels

The NIEHS/NTP established OHAT to serve as an environmental health resource to the public and to regulatory and health agencies. This office conducts evaluations to assess the evidence that environmental chemicals, physical substances, or mixtures (collectively referred to as ''substances'') cause adverse health effects and provides opinions on whether these substances may be of concern given what is known about current human exposure levels. OHAT also organizes workshops or state-of-the-science evaluations to address issues of importance in environmental health sciences. OHAT assessments are published as NTP Monographs. Information about OHAT is found at *http://ntp.niehs.nih.gov/go/ohat.*

NTP panels are technical, scientific advisory bodies established on an ''as needed'' basis to provide independent scientific peer review and advise the NTP on agents of public health concern, new/revised toxicological test methods, or other issues. These panels help ensure transparent, unbiased, and scientifically rigorous input to the program for its use in making credible decisions about human hazard, setting research and testing priorities, and providing information to regulatory agencies about alternative methods for toxicity screening. The NTP welcomes nominations of scientific experts for upcoming panels. Scientists interested in serving on an NTP panel should provide a current *curriculum vitae* to Danica Andrews (see **ADDRESSES**). The

authority for NTP panels is provided by 42 U.S.C. 217a; section 222 of the Public Health Service (PHS) Act, as amended. The panel is governed by the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: September 26, 2011.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2011–25726 Filed 10–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Chronic Fatigue Syndrome Advisory Committee

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health, Office on Women's Health.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the Chronic Fatigue Syndrome Advisory Committee (CFSAC) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will be held on Tuesday, November 8, 2011 and Wednesday, November 9, 2011. The meeting will be held from 9 a.m. to 5 p.m. on November 8, 2011, and 9 a.m. to 4:30 p.m. on November 9, 2011.

ADDRESSES: Holiday Inn Capitol; Columbia Room; 550 C Street, SW., Washington, DC 20024; Hotel (202–479–4000).

FOR FURTHER INFORMATION CONTACT: Nancy C. Lee, MD; Designated Federal Officer, Chronic Fatigue Syndrome Advisory Committee, Department of Health and Human Services; 200 Independence Avenue, SW., Hubert Humphrey Building, Room 712E; Washington, DC 20201. Please direct all inquiries to *cfsac@hhs.gov.*

SUPPLEMENTARY INFORMATION: CFSAC was established on September 5, 2002. The Committee shall advise and make recommendations to the Secretary, through the Assistant Secretary for Health, on a broad range of topics including (1) The current state of knowledge and research and the relevant gaps in knowledge and research about the epidemiology, etiologies, biomarkers and risk factors relating to CFS, and identifying potential opportunities in these areas; (2) impact and implications of current and proposed diagnosis and treatment methods for CFS; (3) development and implementation of programs to inform the public, health care professionals, and the biomedical academic and research communities about CFS advances; and (4) partnering to improve the quality of life of CFS patients.

The agenda for this meeting is being developed. The agenda will be posted on the CFSAC Web site, *http://www.hhs.gov/advcomcfs,* when it is finalized. The meeting will be recorded and archived for on-demand viewing through the CFSAC Web site. It will be available by audio on both days and the call-in numbers will be posted on the CFSAC Web site.

Public attendance at the meeting is open. Those attending the meeting will need to sign-in prior to entering the meeting room. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person at *cfsac@hhs.gov* in advance.

Members of the public will have the opportunity to provide oral testimony on both days of the meeting; pre-registration for oral testimony is required. Individuals who wish to address the Committee during the public comment session must pre-register by Wednesday, October 26, 2011, via e-mail to *cfsac@hhs.gov.* Time slots for public comment will be available on a first-come, first-served basis and will be limited to five minutes per speaker; no exceptions will be made. Priority will be given to individuals who have not presented public comment at previous CFSAC meetings. Individuals registering for public comment should submit a copy of their oral testimony in advance to *cfsac@hhs.gov,* prior to the close of business on Wednesday, October 26, 2011. If you wish to remain anonymous, please notify the CFSAC support team staff upon submission of your materials to *cfsac@hhs.gov.*

If you do not submit your written testimony by the close of business Wednesday, October 26, 2011, you may bring a copy to the meeting and present it to a CFSAC support team staff member. Your testimony will be included in a notebook available for viewing by the public on a table at the back of the meeting room.

Individuals who do not provide public comment at the meeting, but who wish to have printed material distributed to CFSAC members for review should submit, at a minimum, one copy of the material to the Designated Federal Officer at *cfsac@hhs.gov* prior to close of business on Wednesday, October 26, 2011. Submitted documents should be limited to five typewritten pages. If you wish to remain anonymous, please notify the CFSAC support team staff upon submitting your materials to *cfsac@hhs.gov.*

All testimony and printed material submitted for the meeting are part of the official meeting record and will be uploaded to the CFSAC Web site; this material will be made available for public inspection. Testimony and materials submitted should not include any sensitive personal information, such as a person's social security number; date of birth; driver's license number, State identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. Sensitive health information, such as medical records or other personal identifiable health information, or any non-public corporate or trade association information, such as trade secrets or other proprietary information also should be excluded from any materials submitted.

Dated: September 30, 2011.

Nancy C. Lee,

Designated Federal Officer, Chronic Fatigue Syndrome Advisory Committee.

[FR Doc. 2011–25739 Filed 10–4–11; 8:45 am]

BILLING CODE 4150–42–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Full Committee Meeting.

Time and Date: October 21, 2011, 3:30 p.m.–5 p.m., E.D.T.

Place: Teleconference. Dial-In Number: 1–877–939–9305, participant code is 4431134.

Status: Open.

Purpose: This teleconference is being held to discuss a draft letter to the Department regarding HHS's request for comments on how current regulations for protecting human subjects who participate in research might be modernized and revised to be more effective: ''Advanced Notice of Proposed Rulemaking (ANPRM) for Revisions to the Common Rule on Human Subjects Research Protection.'' The ANPRM

comment period closes Wednesday, October 26, 2011.

FOR FURTHER INFORMATION CONTACT: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS *Web site: http://www.ncvhs.hhs.gov/,* where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: September 27, 2011.

James Scanlon,

Deputy Assistant Secretary for Planning and Evaluation, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2011–25731 Filed 10–4–11; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Evaluation of the Technical Assistance to ARRA Complex Patient Grantees Project.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on August 3rd, 2011, and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by November 4, 2011.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (*attention:* AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Evaluation of the Technical Assistance to ARRA Complex Patient Grantees Project Under the American Recovery and Reinvestment Act (ARRA) of 2009, the Agency for Healthcare Research and Quality (AHRQ) awarded $473 million in grants and contracts to support patient-centered outcomes research. As part of this investment, AHRQ funded fourteen R21 (exploratory) grants and thirteen R24 (infrastructure development) grants to generate new knowledge on individuals with multiple chronic conditions. This work is critical to improve the understanding of how to prioritize evidence-based services for patients with multiple co-morbidities and to suggest appropriate adaptations to guidelines for their care.

In order to support the R21 and R24 complex patient grantees, AHRQ funded a Learning Network and Technical Assistance Center (LN&TAC) to encourage collaboration among the researchers and help them share research methods, definitions and products through in-person meetings, small workgroups and network facilitation. The LN&TAC will provide the grantees with technical assistance regarding research design, data collection, data analysis, public use dataset development, and dissemination.

Through the LN&TAC, AHRQ will support work to:

(1) Create and support a Learning Network of the complex patient grantees to facilitate advancement of infrastructure development, as well as to leverage developments and learning across the program. The Learning Network will give these grantees the opportunity to share information with and learn from other research teams, provide resources for data management and other research-related issues, and synthesize and disseminate findings that transcend individual projects.

(2) Provide both group and individual technical assistance to grantees as they address issues of ARRA reporting, infrastructure development, data sharing, and creation of public use data sets.

(3) Disseminate results, including developing materials targeted to researchers and policy-makers to describe study results and facilitate future use of newly created datasets. This will include a marketing plan to advertise availability of datasets and promote their use.

(4) Develop and implement an evaluation of the above activities throughout the project.

The purpose of this Information Collection Request is to evaluate the effectiveness of the LN&TAC. The goals of the evaluation are to:

(1) Ascertain whether expected outcomes of the LN&TAC were achieved;

(2) Assess whether the LN&TAC met the needs and expectations of the grantees;

(3) Identify challenges and lessons learned, and determine the feasibility and advisability of developing similar project models in the future. This study is being conducted by AHRQ through its contractor, Abt Associates, pursuant to AHRQ' s statutory authority to ''conduct and support research, evaluations, and training, support demonstration projects, research networks and multidisciplinary centers, provide technical assistance, and disseminate information on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of health care services.'' 42 U.S.C. 299a(a)(1).

Method of Collection

To meet the goals of this evaluation the following data collections will be implemented:

(1) *LN Meeting Evaluation*—Grantees who attend the three annual in-person Learning Network meetings will be asked to complete the LN Meeting Evaluation to provide immediate feedback about their level of satisfaction with the meeting (including session topics and speakers) and make suggestions about how the meeting could be improved.

(2) *Group TA Evaluation*—Grantees who participate in group technical assistance activities, such as Webinars and the TA given at annual meetings, will be asked to complete the Group TA Evaluation to provide feedback about their level of satisfaction with the group TA (including session leader), how effective the TA was, and make suggestions about how the TA session could have been better.

(3) *Individual TA Evaluation*—Grantees who request individual technical assistance will be asked to complete the Individual TA Evaluation to provide feedback about their level of satisfaction with the TA (including session leader), how effective the TA was, and make suggestions about how the TA session could have been better.

(4) *Annual Survey*—All 27 Complex Patient grantees will be asked to complete the Annual Survey once a year. This survey is designed to measure whether, due to their participation in the project, grantees have experienced changes in knowledge, confidence or attitudes related to research activities and grant requirements, changes in their research itself (design, methods, and/or analyses), and/or if participation has increased collaboration (*e.g.,* sharing methods, developing new coding, merging data sets) among the Complex Patient researchers, as well as satisfaction with the LN&TAC in general.

(5) *Annual Interview*—The Annual Interview will be administered with a small subset of 5 grantees per year, and will be used to augment the Annual Survey with more in-depth qualitative data. Therefore, similar questions will be asked in the Annual Interview as are asked in the Annual Survey, but the interview will allow for probing and clarification of answers. Different grantees will be asked to participate in the interview each year, such that no grantee participates in the Annual Interview more than once during the three-year contract.

These evaluation instruments are designed to capture a combination of quantitative and qualitative data. No claim is made that the results from this study will be generalizable in the statistical sense. Rather, this evaluation is aimed at determining the effectiveness of this particular program.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the grantees' time to participate in the surveys and interviews. The LN Meeting Evaluation will be completed by about 22 grantees and takes about 20 minutes to complete. The Group TA Evaluation will be completed by 8 grantees 4 times a year, although not necessarily the same 8 persons each time, and will take 5 minutes to complete. The Individual TA Evaluation will be completed by about 15 grantees annually and takes 5 minutes to complete. The Annual Survey will be completed by 22 grantees and will take about 10 minutes to complete. Annual Interviews will be conducted with 5 persons annually and will last 45 minutes. The total annualized burden hours are estimated to be 19 hours.

Exhibit 2 shows the estimated annualized cost burden for the grantees' time to provide the requested data. The estimated total cost burden is about $774.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
LN Meeting Evaluation	22	1	20/60	7
Group TA Evaluation	8	4	5/60	3
Individual TA Evaluation	15	1	5/60	1
Annual Survey	22	1	10/60	4
Annual Interview	5	1	45/60	4
Total	72	na	na	19

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost
LN Meeting Evaluation	22	7	$40.75	$285
Group TA Evaluation	8	3	40.75	122
Individual TA Evaluation	15	1	40.75	41
Annual Survey	22	4	40.75	163
Annual Interview	5	4	40.75	163
Total	72	19	40.75	774

* Based upon the mean hourly wage rate for Medical Scientists, except Epidemiologists, from the National Compensation Survey: Occupational Wages in the United States May 2009, ''U.S. Department of Labor, Bureau of Labor Statistics,'' accessed on April 26, 2011.

Estimated Annual Costs to the Federal Government

The total cost of this contract to the government is $178,137 over the three years of the project (September 27, 2010, to September 26, 2013). Therefore, the annualized cost to the government of the evaluation of the Complex Patient LN&TAC is $59,379.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development	$70,247	$23,416
Data Collection Activities	54,636	18,212

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST—Continued

Cost component	Total cost	Annualized cost
Data Processing and Analysis	31,220	10,406
Overhead	22,034	7,345
Total	178,137	59,379

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: September 26, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–25693 Filed 10–4–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0708]

Agency Information Collection Activities; Proposed Collection; Comment Request; FDA Form 3728, Animal Generic Drug User Fee Act Cover Sheet

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection burden of the Animal Generic Drug User Fee Cover Sheet Form FDA 3728 that further implements certain provisions of the Animal Generic Drug User Fee Act of 2008 (AGDUFA).

DATES: Submit either electronic or written comments on the collection of information by December 5, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *Juanmanuel.vilela@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

FDA Form 3728, Animal Generic Drug User Fee Act Cover Sheet—21 U.S.C. 379j–21 (OMB Control Number 0910–0632)—Extension

Section 741 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 379j–21) establishes three different kinds of user fees: (1) Fees for certain types of abbreviated applications for generic new animal drugs, (2) annual fees for certain generic new animal drug products, and (3) annual fees for certain sponsors of abbreviated applications for generic new animal drugs and/or investigational submissions for generic new animal drugs (21 U.S.C. 379j–21(a)). Because the submission of user fees concurrent with applications is required, the review of an application cannot begin until the fee is submitted. FDA Form 3728 is the AGDUFA Cover Sheet, which is designed to provide the minimum necessary information to determine whether a fee is required for review of an application, to determine the amount of the fee required, and to account for and track user fees. FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA Form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
FDA Form 3728	20	2	40	.08	3.2

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Respondents to this collection of information are generic animal drug applicants. Based on FDA's data base system, there are an estimated 20 sponsors of new animal drugs potentially subject to AGDUFA.

Dated: September 30, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–25708 Filed 10–4–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0423]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Requirements for Submission of Bioequivalence Data

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 4, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, *Attn:* FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0630. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *juanmanuel.vilela@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Requirements for Submission of Bioequivalence Data—21 CFR Parts 314 and 320—(OMB Control Number 0910–0630)—Extension

In the **Federal Register** of January 16, 2009 (74 FR 2849), the Agency published a final rule revising FDA regulations to require applicants to submit data on all bioequivalence (BE) studies, including studies that do not meet passing BE criteria, which are performed on a drug product formulation submitted for approval under an abbreviated new drug application (ANDA), or in an amendment to an ANDA that contains BE studies. In the final rule, FDA amended §§ 314.94(a)(7)(i), 314.96(a)(1), 314.97, and 320.21(b)(1), to require an ANDA applicant to submit information from all BE studies, both passing and nonpassing, conducted by the applicant on the same drug product formulation as that submitted for approval under an ANDA, amendment, or supplement.

In table 1 of this document, FDA has estimated the reporting burden associated with each section of the rule. FDA believes that the majority of additional BE studies will be reported in ANDAs (submitted under § 314.94), rather than supplements (reported in § 314.97), because it is unlikely than an ANDA holder will conduct BE studies with a drug after the drug has been approved. With respect to the reporting of additional BE studies in amendments (submitted under § 314.96), this should also account for a small number of reports, because most BE studies will be conducted on a drug prior to the submission of the ANDA, and will be reported in the ANDA itself.

FDA estimates it will require approximately 120 hours of staff time to prepare and submit each additional complete BE study report, and approximately 60 hours of staff time for each additional BE summary report. The Agency believes that a complete report will be required approximately 20 percent of the time, while a summary will suffice approximately 80 percent of the time. Based on a weighted-average calculation using the information presented above, the submission of each additional BE study is expected to take 72 hours of staff time ([120 × 0.2] + [60 × 0.8]).

In the **Federal Register** of June 10, 2011 (76 FR 34081), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
314.94(a)(7)	49	1	49	72	3,528
314.96(a)(1)	1	1	1	72	72
314.97	1	1	1	72	72
Total					3,672

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: September 30, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–25686 Filed 10–4–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0405]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 4, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, *Attn:* FDA Desk Officer, *Fax:* 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0409. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *juanmanuel.vilela@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring—21 CFR Part 315 (OMB Control Number 0910–0409)—Extension

FDA is requesting OMB approval of the information collection requirements contained in 21 CFR 315.4, 315.5, and 315.6. These regulations require manufacturers of diagnostic radiopharmaceuticals to submit information that demonstrates the safety and effectiveness of a new diagnostic radiopharmaceutical or of a new indication for use of an approved diagnostic radiopharmaceutical.

In response to the requirements of section 122 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115), FDA published a final rule in the **Federal Register** of May 17, 1999 (64 FR 26657), amending its regulations by adding provisions that clarify the Agency's evaluation and approval of in vivo radiopharmaceuticals used in the diagnosis or monitoring of diseases. The regulation describes the kinds of indications of diagnostic radiopharmaceuticals and some of the criteria that the Agency would use to evaluate the safety and effectiveness of a diagnostic radiopharmaceutical under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) (the FD&C Act) and section 351 of the Public Health Service Act (42 U.S.C. 262) (the PHS Act). Information about the safety or effectiveness of a diagnostic radiopharmaceutical enables FDA to properly evaluate the safety and effectiveness profiles of a new diagnostic radiopharmaceutical or a new indication for use of an approved diagnostic radiopharmaceutical.

The rule clarifies existing FDA requirements for approval and evaluation of drug and biological products already in place under the authorities of the FD&C Act and the PHS Act. The information, which is usually submitted as part of a new drug application or biologics license application or as a supplement to an approved application, typically includes, but is not limited to, nonclinical and clinical data on the pharmacology, toxicology, adverse events, radiation safety assessments, and chemistry, manufacturing, and controls. The content and format of an application for approval of a new drug are set forth in § 314.50 (21 CFR 314.50). Under 21 CFR part 315, information required under the FD&C Act and needed by FDA to evaluate the safety and effectiveness of in vivo radiopharmaceuticals still needs to be reported.

Based on the number of submissions (that is, human drug applications and/or new indication supplements for diagnostic radiopharmaceuticals) that FDA receives, the Agency estimates that it will receive approximately two submissions annually from two applicants. The hours per response refers to the estimated number of hours that an applicant would spend preparing the information required by the regulations. Based on FDA's experience, the Agency estimates the time needed to prepare a complete application for a diagnostic radiopharmaceutical to be approximately 10,000 hours, roughly one-fifth of which, or 2,000 hours, is estimated to be spent preparing the portions of the application that would be affected by these regulations. The regulation does not impose any additional reporting burden for safety and effectiveness information on diagnostic radiopharmaceuticals beyond the estimated burden of 2,000 hours because safety and effectiveness information is already required by § 314.50 (collection of information approved by OMB under OMB control number 0910–0001). In fact, clarification in these regulations of FDA's standards for evaluation of diagnostic radiopharmaceuticals is intended to streamline overall information collection burdens, particularly for diagnostic radiopharmaceuticals that may have well-established, low risk safety profiles, by enabling manufacturers to tailor information submissions and avoid unnecessary clinical studies. Table 1 of this document contains estimates of the annual reporting burden for the preparation of the safety and effectiveness sections of an application that are imposed by existing regulations. This estimate does not include the actual time needed to conduct studies and trials or other research from which the reported information is obtained.

In the **Federal Register** of June 10, 2011 (76 FR 34079), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received no comments.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
315.4, 315.5, and 315.6	2	1	2	2,000	4,000
Total					4,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: September 30, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–25685 Filed 10–4–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0165]

Deborah Martinez Seldon: Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) permanently debarring Deborah Martinez Seldon from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Ms. Seldon was convicted of multiple felonies under Federal law for conduct relating to the regulation of a drug product under the FD&C Act. Ms. Seldon was given notice of the proposed permanent debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. Ms. Seldon failed to respond. Ms. Seldon's failure to respond constitutes a waiver of her right to a hearing concerning this action.

DATES: This order is effective October 5, 2011.

ADDRESSES: Submit applications for special termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kenny Shade, Division of Compliance Policy (HFC–230), Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–4640.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(a)(2)(B) of the FD&C Act (21 U.S.C. 335a(a)(2)(B)) requires debarment of an individual if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the regulation of any drug product under the FD&C Act.

On March 27, 2009, judgment was entered against Ms. Seldon in the United States District Court for the District of Nevada for mail fraud, in violation of 18 U.S.C. 1341, aiding and abetting, in violation of 18 U.S.C. 2, and misbranding a drug while held for sale, in violation of 21 U.S.C. 331(k) and 333(a)(2).

The FDA's finding that debarment is appropriate is based on the felony convictions referenced herein for conduct relating to the regulation of a drug product. The factual basis for those convictions is as follows: Ms. Seldon was the manager of her husband's medical practice called A New You Medical Aesthetics (A New You) in Las Vegas, Nevada. As the office manager of A New You, Ms. Seldon was responsible for ordering supplies, paying bills, managing personnel, and managing the bank accounts.

From, on or about, October 15, 2003, until on or about September 16, 2005, in the State and Federal District of Nevada, Ms. Seldon and her husband, aided and abetted by each other, devised a scheme and artifice to fraudulently obtain money from patients by substituting the cheaper, non-FDA approved product marketed by Toxin Research International that purported to be Botulinum Neurotoxin Type A (TRI-toxin) in treatments provided to patients at A New You, while falsely and fraudulently representing to the patients that they were receiving injections of the FDA-approved BOTOX product marketed by Allergan, Inc..

As part of the scheme Ms. Seldon ordered and caused to be ordered 38 vials of TRI-toxin between October 2003 and September 2004 while at the same time the practice stopped purchasing the approved BOTOX in October 2003. In January 2005, as part of the scheme and artifice, Ms. Seldon arranged for a secret purchase of, and received 132 vials of TRI-toxin for use at A New You.

Ms. Seldon and her husband defrauded patients by misleading them to believe that they were receiving the FDA-approved drug BOTOX, when, in fact, the patients were receiving TRI-toxin, which was not approved, thereby exposing patients to severe health risk. On or about January 12, 2005, Ms. Seldon caused to be falsified computerized medical records by deleting references to BOTOX and changing these entries to the generic notation ''Cosmetic Procedure.'' In furtherance of their scheme, Ms. Seldon and Dr. Seldon caused 28 vials of TRI-toxin to be returned to the FDA, seeking to create the misleading impression that they were returning 28 of the original 38 vials they had purchased. In fact, all of the original TRI-toxin had been used on patients at A New You, and Ms. Seldon was returning vials that were part of the secret 132 vial purchase.

Ms. Seldon and her husband also caused advertisements to be placed in local magazines offering BOTOX, creating the false impression that the office was using approved BOTOX when, in fact, patients were being injected with unapproved TRI-toxin. Ms. Seldon also caused patients to sign consent forms that fraudulently represented that Dr. Seldon would be injecting approved BOTOX when she knew her husband was injecting them with TRI-toxin.

As a result of her convictions, on May 23, 2011, FDA sent Ms. Seldon a notice by certified mail proposing to permanently debar her from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(B) of the FD&C Act (21 U.S.C. 335a(a)(2)(B)), that Ms. Seldon was convicted of felonies under Federal law for conduct relating to the regulation of a drug product under the FD&C Act. The proposal also offered Ms. Seldon an opportunity to request a hearing, providing her 30 days from the date of receipt of the letter in which to file the request, and advised her that failure to

request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Ms. Seldon received the proposal on May 27, 2011, and failed to respond within the timeframe prescribed by regulation. She therefore has waived her opportunity for a hearing and any contentions concerning her debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Director, Office of Enforcement, Office of Regulatory Affairs, under section 306(a)(2)(B) of the FD&C Act (21 U.S.C. 335a(a)(2)(B)), under authority delegated to him (Staff Manual Guide 1410.35), finds that Deborah Martinez Seldon has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the FD&C Act.

As a result of the foregoing finding, Ms. Seldon is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**), (*see* section 306(c)(1)(B), (c)(2)(A)(ii), and 201(dd) of the FD&C Act (21 U.S.C. 335a(c)(1)(B), (c)(2)(A)(ii), and 321(dd))). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Ms. Seldon in any capacity during Ms. Seldon's debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Ms. Seldon provides services in any capacity to a person with an approved or pending drug product application during her period of debarment she will be subject to civil money penalties (section 307(a)(7) of the FD&C Act) (21 U.S.C. 335b(a)(7)). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Deborah Martinez Seldon during her period of debarment (section 306(c)(1)(A) of the FD&C Act (21 U.S.C. 335a(c)(1)(A)).

Any application by Deborah Martinez Seldon for special termination of debarment under section 306(d)(4) of the FD&C Act (21 U.S.C. 335a(d)(4)) should be identified with Docket No. FDA–2011–N–0165 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 6, 2011.

Armando Zamora,

Acting Director, Office of Enforcement, Office of Regulatory Affairs.

[FR Doc. 2011–25680 Filed 10–4–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 1, 2011, from 8 a.m. to 5:30 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You'', click on ''Public Meetings at the FDA White Oak Campus''. Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Caleb Briggs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, *Fax:* 301–847–8533, *e-mail: ODAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On November 1, 2011, information will be presented regarding pediatric development plans for four products that were either recently approved by FDA, are in late stage development for an adult oncology indication, or in late stage development in pediatric patients with cancer. The subcommittee will consider and discuss issues relating to the development of each product for pediatric use and provide guidance to facilitate the formulation of Written Requests for pediatric studies, if appropriate. The four products under consideration are: (1) Sodium thiosulfate injection, application submitted by Adherex Technologies, Inc.; (2) vismodegib (GDC–0449), application submitted by Genentech, Inc.; (3) pazopanib, application submitted by Glaxo Wellcome Manufacturing Pte Ltd., Singapore doing business as GlaxoSmithKline; and (4) Medi-573 (fully human antibody to IGF–I and IGF–II), application submitted by MedImmune, LLC.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 18, 2011. Oral presentations from the public will be scheduled between approximately 9:15 a.m. to 9:30 a.m., 11:15 a.m. to 11:30 a.m., 2:05 p.m. to 2:20 p.m., and 4:10 p.m. to 4:25 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed

participants, and an indication of the approximate time requested to make their presentation on or before October 7, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 11, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Caleb Briggs at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 30, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–25684 Filed 10–4–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; STAR METRICS (Science and Technology for America's Reinvestment: Measuring the EffecTs of Research on Innovation, Competitiveness and Science)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of the Director of the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: STAR METRICS (Science and Technology for America's Reinvestment: Measuring the EffecTs of Research on Innovation, Competitiveness and Science). *Type of Information Collection Request:* Reinstatement of OMB number 0925–0616, expiration date 01/31/2011. *Need and Use of Information Collection:* The aim of STAR METRICS is twofold. The goal of STAR METRICS is to continue to provide mechanisms that will allow participating universities and Federal agencies with a reliable and consistent means to account for the number of scientists and staff that are on research institution payrolls, supported by Federal funds. In subsequent generations of the program, it is hoped that STAR METRICS will allow for measurement of science impact on economic outcomes (such as job creation), on knowledge generation (such as citations and patents) as well as on social and health outcomes. *Frequency of Response:* Quarterly. *Affected Public:* Universities and other research institutions. *Type of Respondents:* University administrators. The annual reporting burden is as follows: *Estimated Number of Respondents:* 100. *Estimated Number of Responses per Respondent:* 4. *Average Burden Hours per Response:* 2.5. *Estimated Total Annual Burden Hours Requested:* 1,315. The annualized cost to respondents is estimated to be $65,750. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

A.12–1 ESTIMATES ANNUAL BURDEN HOURS

Form	Number of respondents	Frequency of response	Average time per response (in hours)	Annual hour burden
Stage 1: One time data input	7	1	45	315
Stage 2: Ongoing quarterly data input	100	4	2.5	1000
Total				1,315

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Julia Lane, e-mail: *julia.lane@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: September 27, 2011.

Stefano Bertuzzi,

Office of the Director, Office of Science Policy Analysis, Office of Science Policy, National Institutes of Health.

[FR Doc. 2011–25732 Filed 10–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, 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.

Platform Technology Using Ubiquitin To Improve the Delivery and Efficacy of Cytosolic Targeted Toxins

Description of Technology: Targeted toxins (TT) are hybrid protein drugs consisting of ligands that bind to the surface of cancer cells and deliver polypeptide toxins that kill malignant cells by inactivating cytosolic protein synthesis and inducing cell death. A major challenge in the construction of targeted toxins is reducing the nonspecific binding of the toxin moiety to normal tissues and increasing the cytotoxicity of the treatment.

To address these issues, the NIH inventors have identified that the protein ubiquitin, a small protein in eukaryotic cells that plays a role in protein recycling, can separate the targeting moiety and the catalytic moiety of a TT in the cytosol of cells. By decoupling the two moieties, the cytotoxicity of the TT treatment can be greatly increased since the catalytic domain remains longer in the cytosol. This technology would be highly useful for all TT and immunotoxins that access the cytosol to either affect cytosolic targets or traffic to further sites of action. To validate this approach, the inventors have tested ubiquitin variants within a TT consisting of anthrax toxin lethal factor N-terminus (LFn) and Pseudomonas exotoxin A catalytic domain (PEIII). Here, they show that the intracellular release of the PEIII (catalytic moiety) is achievable and that ubiquitination of the TT controls the persistence of the TTs in the cytosol and thus controls the observed cytotoxicity.

Potential Commercial Applications:

- Chimeric or fusion molecules for increasing the efficacy and cytotoxicity of targeted toxins and immunotoxins.
- Methods for cytosol delivery of targeted toxins to target cells.

Competitive Advantages:

- Broadly applicable to all cytotoxic immunoconjugates.
- Increased stability and cytotoxicity of the TT without affecting the delivery or specificity of the treatment.
- Therapeutic access to the cytosol and/or trafficking to further sites of action such as the nucleus.
- Rapid cytosolic release of the catalytic moiety and degradation of the targeting moiety.

Development Stage:

- Pre-clinical
- In vitro data available

Inventors: Christopher Bachran (NIAID), Stephen Leppla (NIAID), Shi-hui Liu (NIAID), Thomas Morley

Publications:

1. Tcherniuk S, *et al.* Construction of tumor-specific toxins using ubiquitin fusion technique. Mol Ther. 2005 Feb;11(2):196–204. [PMID 15668131]

2. Wang F. Selective cytotoxicity to HER2-positive tumor cells by a recombinant e23sFv-TD-tBID protein containing a furin cleavage sequence. Clin Cancer Res. 2010 Apr 15;16(8):2284–2294. [PMID 20371697]

3. Heisler I. A cleavable adapter to reduce nonspecific cytotoxicity of recombinant immunotoxins. Int J Cancer. 2003 Jan 10;103(2):277–282. [PMID 12455044]

Intellectual Property: HHS Reference No. E–150–2011/0—U.S. Provisional Application No. 61/473,450 filed 08 April 2011

Related Technologies:

- HHS Reference No. E–293–1999—Mutated Anthrax Toxin Protective Antigen Proteins That Specifically Target Cells Containing High Amounts of Cell-Surface Metalloproteinases or Plasminogen Activator Receptors (Leppla/NIAID)
- HHS Reference No. E–070–2007—Human Cancer Therapy Using Engineered Metalloproteinase-Activated Anthrax Lethal Toxin That Target Tumor Vasculature (Leppla/NIAID)
- HHS Reference No. E–059–2004—Multimeric Protein Toxins to Target Cells Having Multiple Identifying Characteristics (Leppla/NIAID)

Licensing Contact: Whitney Hastings; 301–451–7337; *hastingw@mail.nih.gov*

NOX5 Immunogenic Peptides and Monoclonal Antibodies for the Detection of Cancer and Inflammatory Responses

Description of Technology: The membrane-associated NADPH oxidase 5 (NOX5) protein is expressed in various fetal tissues, uterus, testis, spleen, lymph nodes and endothelial cells. In addition, the reactive oxygen species (ROS) generated by NOX5 have been shown to participate in signaling cascades regulating proliferation in several cancers and pre-cancerous conditions, such as hairy cell leukemia, melanoma, prostate cancer, and Barret's esophagus. Further, excess ROS produced by NOX5 has been associated with coronary artery disease, inflammation, and atherosclerosis.

The present invention discloses the identification and characterization of a purified monoclonal antibody against NOX5 protein. This NOX5 antibody can detect endogenous levels of NOX5 in human cells and could aid in studies and diagnostic tests of NOX5-based redox signaling involved in cancer, cell growth and differentiation, as well as angiogenic and inflammatory responses. In addition, the NOX5 antibody may have therapeutic applications (e.g. anti-inflammatory, antiangiogenic, or antiproliferative activity) by interfering with NOX5 activation at the cell surface.

Potential Commercial Applications:

- Diagnostic for the detection of NOX5 in human cells and NOX5-based redox signaling
- Antibody can be used in ELISA, Western Blot, Immunofluorescence, Immunoprecipitation and Immunohistochemistry
- Tool to aid in the understanding of NOX5's functional significance in human physiology and pathophysiology
- Possible therapeutic for the treatment of various human diseases associated with NOX5 and/or ROS

Competitive Advantages:

- Antibody is the only mouse monoclonal commercially available to the best of our knowledge
- Antibody is highly specific in recognizing the NOX5 protein with greater efficiency and the accurate detection compared to other Nox5 antibodies

Development Stage: Pre-clinical

Inventors: James H. Doroshow, Krishnendu K. Roy, Smitha Antony (NCI)

Publications:

1. Kamiguti AS, *et al.* Expression and activity of NOX5 in the circulating malignant B cells of hairy cell leukemia. J Immunol. 2005 Dec 15;175(12):8424–8430. [PMID: 16339585]

2. Brar SS, *et al.* NOX5 NAD(P)H oxidase regulates growth and apoptosis in DU 145 prostate cancer cells. Am J Physiol Cell Physiol. 2003 Aug;285(2):C353–C369. [PMID: 12686516]

3. Hong J, *et al.* Bile acid reflux contributes to development of esophageal adenocarcinoma via activation of phosphatidylinositol-specific phospholipase Cgamma2 and NADPH oxidase NOX5–S. Cancer Res. 2010 Feb 1;70(3):1247–1255. [PMID: 20086178]

Intellectual Property: HHS Reference No. E–149–2011/0—U.S. Provisional Application No. 61/471,596 filed 04 April 2011

Licensing Contact: Whitney Hastings; 301–451–7337; *hastingw@mail.nih.gov*

mGluR5 Tumor Mouse Model

Description of Technology: Glutamate receptor mGluR5 has been reported to function in the brain. There were no prior reports of it being involved in melanoma. The NIH investigators have discovered that when over expressed in transgenic animals, mGluR5 induces melanoma. The establishment of an mGluR5 tumor mouse model will provide a unique opportunity to help elucidate the mechanisms underlying tumor formation, and allow the study of aggressive melanoma in animals and a screen of potential therapeutics. Such an mGluR5 tumor mouse model is established at the National Institutes of Health and is available for licensing.

Potential Commercial Applications:

- Drug screening for melanoma therapeutics
- Research Tool

Competitive Advantage: Tumor mouse model only available from the NIH lab.

Development Stage:

- Prototype
- Pre-clinical
- In vivo data available (animal)

Inventors: Katherine W. Roche and Kyu Yeong Choi (NINDS)

Publication: Choi KY, *et al.* Expression of the metabotropic glutamate receptor 5 (mGluR5) induces melanoma in transgenic mice. Proc Natl Acad Sci USA 2011; published ahead of print September 6, 2011, doi:10.1073/pnas.1107304108.

Intellectual Property: HHS Reference No. E–123–2010/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Betty Tong, Ph.D.; 301–594–6565; *tongb@mail.nih.gov*

Monoclonal Antibodies to FCRL5 (CD307e/IRTA2/FcRH5) as Therapeutics and Diagnostics for B-cell Cancers

Description of Technology: The Fc receptor-like (FCRL) genes (also known as CD307, IRTA, FcRH, IFGP or SPAP) encode cell membrane proteins that are believed to play roles in immunity and B cell differentiation. Some FCRL genes have been implicated in B cell lymphomas and multiple myelomas. Data suggest that the FCRL1–5 proteins are expressed differently on malignant B cells as well as subpopulations of normal B cells. Due to this differential expression, FCRL proteins represent potential targets for the treatment of cancers of a B cell origin.

This technology relates to the development of novel monoclonal antibodies for a specific member of the FCRL protein family: FCRL5. FCRL5 is normally induced on mature B cells upon activation, but its expression is deregulated in multiple myeloma and Burkitt's lymphoma. Due to the correlation of FCRL5 overexpression and B cell malignancies, antibodies to FCRL5 may have value as a therapeutic or diagnostic tool. Specifically, the antibodies can be used as therapeutic agents by themselves or they can be attached to a cytotoxic agent such as Pseudomonas exotoxin A. Alternatively, the antibodies can be used to detect the deregulation of FCRL5 as a means of diagnosing B cell malignancies.

Potential Commercial Applications:

- Detection or diagnosis of B cell cancers using monoclonal antibodies to FCRL5
- Treatment of B cell cancers using monoclonal antibodies to FCRL5 for inducing antibody-dependent cell death
- Treatment of B cell cancers using monoclonal antibodies to FCRL5 for targeting cytotoxic agents specifically to cancer cells (e.g., immunotoxins)

Competitive Advantages:

- No cross-reactivity with other FCRL proteins demonstrates strong selectivity as both a therapeutic and diagnostic agent
- Targeted therapeutics such as monoclonal antibodies and immunotoxins decrease non-specific killing of healthy, essential cells, resulting in fewer side-effects and healthier patients

Development Stage: Pre-clinical

Inventors: Ira H. Pastan *et al.* (NCI)

Publications:

1. Ise T, *et al.* Elevation of soluble CD307 (IRTA2/FcRH5) protein in the blood and expression on malignant cells of patients with multiple myeloma, chronic lymphocytic leukemia, and mantle cell lymphoma. Leukemia. 2007 Jan; 21(1):169–174. [PMID 17051241]

2. Ise T, *et al.* Immunoglobulin superfamily receptor translocation associated 2 protein on lymphoma cell lines and hairy cell leukemia cells detected by novel monoclonal antibodies. Clin Cancer Res. 2005 Jan 1;11(1):87–96. [PMID 15671532]

Intellectual Property: HHS Reference No. E–287–2004/1—U.S. Patent 7,999,077 issued 16 Aug 2011

Licensing Contact: David A. Lambertson, Ph.D.; 301–435–4632; *lambertsond@mail.nih.gov*

Potent Inhibitory RNAs for Non-Surgical Treatment of Salivary Gland Cancers

Description of Technology: In the U.S., approximately 40,000 cases of head and neck cancer, including salivary gland tumors, are diagnosed each year. Surgery with post-operative radiotherapy is the most common treatment for salivary gland tumors. However, complete removal is difficult due to the three-dimensional growth pattern of these tumors which impedes a surgeon's ability to determine once the tumor has been fully removed. Both surgeons and patients desire minimal surgical approaches for cosmetic reasons, as well as to preserve nerve function in the facial area. Thus a significant need exists for non-surgical approaches to treating salivary gland tumors.

Researchers at the National Cancer Institute, NIH, have discovered that mucoepidermoid (MEC) salivary gland tumors arise from a chromosomal rearrangement which generates a fusion oncogene, Mect1–Maml2, that functions to alter Notch and CREB signaling pathways. An RNAi vector has been developed that selectively suppresses the oncogene and inhibits growth of certain MEC tumor cell lines containing the oncogene by at least 90%. The RNAi vector has no effect on cells that do not express the oncogene. This ability of the RNAi vectors to block the ''gain-of-function'' activity of the acquired Mect1–Maml2 oncogene suggests new possibilities for the diagnosis and therapy of these cancers.

Potential Commercial Applications:

- Diagnosis of MEC salivary gland tumors
- Treatment of MEC salivary gland tumors

Competitive Advantages:

- Non-surgical
- Selective
- Potent
- Can be used in combination with other known treatments, such as radiation and chemotherapy

Development Stage:

- Pre-clinical
- In vitro data available

Inventors: Frederic Kaye (formerly NCI), Takefumi Komiya (NCI)

Publications:

1. Tonon G, *et al.* t(11;19)(q21;p13) translocation in mucoepidermoid carcinoma creates a novel fusion

product that disrupts a Notch signaling pathway. Nat Genet. 2003 Feb;33(2):208–213. [PMID 12539049]

2. Martins C, *et al.* A study of MECT1–MAML2 in mucoepidermoid carcinoma and Warthin's tumor of salivary glands. J Mol Diagn. 2004 Aug;6(3):205–210. [PMID 15269296]

3. Coxon A, *et al.* Mect1–Maml2 fusion oncogene linked to the aberrant activation of cyclic AMP/CREB regulated genes. Cancer Res. 2005 Aug 15;65(16):7137–7144. [PMID 16103063]

4. Komiya T, *et al.* Sustained expression of Mect1–Maml2 is essential for tumor cell growth in salivary gland cancers carrying the t(11;19) translocation. Oncogene. 2006 Oct 5;25(45):6128–6132. [PMID 16652146]

5. Kaye FJ. Emerging biology of malignant salivary gland tumors offers new insights into the classification and treatment of mucoepidermoid cancer. Clin Cancer Res. 2006 Jul 1;12(13):3878–3881. [PMID 16818681]

6. Tirado Y, *et al.* CRTC1/MAML2 fusion transcript in high grade mucoepidermoid carcinomas of salivary and thyroid glands and Warthin's tumors: implications for histogenesis and biologic behavior. Genes Chromosomes Cancer. 2007 Jul;46(7):708–715. [PMID 17437281]

7. Komiya T, *et al.* Enhanced activity of the CREB co-activator Crtc1 in LKB1 null lung cancer. Oncogene. 2010 Mar 18;29(11):1672–1680. [PMID 20010869]

Intellectual Property: HHS, Reference No. E–086–2003/0 —

- U.S. Patent No. 7,553,822 issued 30 June 2009
- U.S. Patent Application No. 12/493,901 filed 29 June 2009

Licensing Contact: Patrick McCue, Ph.D.; 301–435–5560; *mccuepat@mail.nih.gov*

Dated: September 29, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–25734 Filed 10–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, 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.

Humanized Monoclonal Antibodies Efficient for Neutralization of Tick-Borne Encephalitis Virus (TBEV)

Description of Technology: TBEV causes serious illnesses from meningitis to meningo-encephalitis, totaling 3,000 cases of hospitalization in Europe and between 5,000–10,000 cases in Russia reported every year. The Far Eastern hemorrhagic TBEV strains are associated with a mortality rate (between 1–2%), higher than other strains isolated in the Siberia or Western Europe. There is a high proportion (up to 46%) of TBEV patients with temporary or permanent neurological sequelae. The number of TBEV infections has increased steadily and TBEV cases have been reported in new areas, probably reflecting an increased spread of vector tick species. Prevention of TBEV infections has been carried out in a few countries in Europe by immunization using an inactivated TBEV vaccine. The vaccine carries a high manufacturing cost and requires a regimen of multiple doses, and for this reason, vaccination is not generally carried out. The materials disclosed are humanized monoclonal antibodies derived from TBEV-neutralizing Fab antibodies isolated from infected chimpanzees by repertoire cloning. One antibody in particular, MAb 2E6, has been demonstrated to bind to and neutralize a TBEV/dengue type 4 virus chimera (via interaction with the TBEV antigenic determinants) as well as the related Langat virus. Protection against TBEV/DEN–4 infection and Langat infection has been demonstrated using animal models of infection. The antibodies disclosed, in particular MAb 2E6, have the potential for use as prophylactic and therapeutic agents against TBEV and Langat virus. Additionally, these antibodies may be suitable as diagnostic reagents for the detection of TBEV and/or Langat virus.

Potential Commercial Applications:

- TBEV Prophylaxis.
- TBEV Therapy.
- TBEV Diagnostics.

Competitive Advantages:

- Cost effective alternative to existing vaccine.
- Fully humanized antibody.
- Strongly neutralizing antibody.
- Efficient production methods.

Development Stage:

- Pre-clinical.
- In vitro data available.
- In vivo data available (animal).

Inventors: C. J. Lai, Robert Purcell, Alexander Pletnev (NIAID).

Intellectual Property: HHS Reference No. E–231–2011/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Peter Soukas; 301–435–4646; *soukasp@mail.nih.gov*

Collaborative Research Opportunity: The NIAID is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize TBEV monoclonal antibodies. For collaboration opportunities, please contact Wade Williams at 301–827–0258.

Rapid Molecular Assays for Specific Detection and Quantitation of Loa Loa Microfilaremia

Description of Technology: The risk of fatal reactions in some infected individuals administered drug treatments for Loa loa infection, and the lack of accurate, convenient, diagnostics for this infection have thwarted efforts to eradicate the disease. Time consuming, labor intensive and training intensive microscope-based analysis of blood samples is the standard available diagnostic for Loa loa infection. This new assay technology introduces an easy to use, species-specific, highly sensitive, diagnostic that is able to be performed with minimal training. Positive test results may be indicated by an easily visualized color change and this test may be run without the need for expensive equipment such as a thermocycler. Because this test is rapid, cost efficient, labor efficient, accurate, and simple to run and read, it may be readily incorporated into portable point-of-care formats. These attributes make it ideally suited for use in locations where Loa loa infection is endemic. These advantages may lead to this technology becoming the new standard for diagnosis of Loa loa infections and a valuable tool, in control programs, to

identify risks for adverse treatment reactions.

Potential Commercial Applications:

- Diagnostics testing.
- Infectious disease monitoring.

Competitive Advantages: Greater speed cost and labor efficiencies, accurate, and simple to run and read and ability to be incorporated into portable point-of-care format, ideally suited for Loa loa endemic regions.

Development Stage:

- Early-stage.
- Pre-clinical.

Inventors: Doran Fink and Thomas Nutman (NIAID).

Publications:

1. Fink DL, *et al.* Rapid molecular assays for specific detection and quantitation of Loa loa microfilaremia. PLoS Negl Trop Dis. 2011 Aug 30; 5(8): e1299; doi:10.1371/journal.pntd.0001299.
2. Klion AD, *et al.* Cloning and characterization of a species-specific repetitive DNA sequence from Loa loa. Mol Biochem Parasitol. 1991 Apr; 45(2): 297–305. [PMID: 2038361].

Intellectual Property: HHS Reference No. E–014–2011/0—U.S. Application No. 61/410,232 filed 04 Nov 2010.

Related Technologies:

- HHS Reference No. E–281–2010/0—U.S. Application No. 61/410,239 filed 04 Nov 2010.
- HHS Reference No. E–084–2010/0—PCT Application No. PCT/US2011/023320 filed 01 Feb 2011.

Licensing Contact: Tedd Fenn; 301–435–5031; *Tedd.Fenn@nih.gov*

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Disease (NIAID) is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize Rapid Molecular Assays for Specific Detection and Quantitation of Loa Loa Microfilaremia. For collaboration opportunities, please contact Johanna Schneider, PhD. at *Schneiderjs@niaid.nih.gov* or 301–451–9824.

Diagnostic Assays and Methods of Use for Detection of Filarial Infection

Description of Technology: The effort targeting the mosquito borne neglected tropical disease lymphatic filariasis for elimination through mass drug administration by 2020 will require accurate, cost effective methods for detecting early infections. The World Health Organization-recommended immunochromatographic test detects adult *Wuchereria bancrofti* (Wb) antigen in blood, but shows variable efficacy due to the complex life cycle of the parasites and cross reactivity with other organisms. This variability may hinder effective lymphatic filariasis elimination efforts. This new technology improves available detection methods through use of an isolated immunoreactive antigen, Wb123, from infective stage larvae (L3) Wb; which results in specific detection early in the infective cycle with reduced cross reactivity. This technology may see wide application in testing and surveillance of lymphatic filariasis as part of the effort to eliminate the disease worldwide.

Potential Commercial Applications:

- Diagnostics testing.
- Infectious disease monitoring.

Competitive Advantages: Improved detection of early stage lymphatic filariasis.

Development Stage:

- Early-stage.
- Pre-clinical.

Inventors: Doran Fink (NIAID), Joseph Kubofcik (NIAID), Peter Burbelo (NIDCR), Thomas Nutman (NIAID).

Publications:

1. Senbagavalli P, *et al.* Heightened measures of immune complex and complement function and immune complex-mediated granulocyte activation in human lymphatic filariasis. Am J Trop Med Hyg. 2011 Jul;85(1):89–96. [PMID 21734131]
2. Bennuru S, *et al.* Stage-specific proteomic expression patterns of the human filarial parasite Brugia malayi and its endosymbiont Wolbachia. Proc Natl Acad Sci USA. 2011 Jun;7;108 (23):9649–9654. [PMID 21606368].
3. Steel C, *et al.* PLoS One. Altered T cell memory and effector cell development in chronic lymphatic filarial infection that is independent of persistent parasite antigen. 2011 Apr 29;6(4):e19197. [PMID 21559422].
4. Fink DL, *et al.* Toward molecular parasitologic diagnosis: enhanced diagnostic sensitivity for filarial infections in mobile populations. J Clin Microbiol. 2011 Jan;49(1):42–47. [PMID 20980560].
5. Bennuru S, *et al.* Elevated levels of plasma angiogenic factors are associated with human lymphatic filarial infections. Am J Trop Med Hyg. 2010 Oct;83(4):884–890. [PMID 20889885].

Intellectual Property: HHS Reference No. E–281–2010/0—U.S. Application No. 61/410,239 filed 04 Nov 2010.

Related Technologies:

- HHS Reference No. E–084–2010/0—PCT Application No. PCT/US2011/023320 filed 01 Feb 2011.
- HHS Reference No. E–014–2011/0—U.S. Application No. 61/410,232 filed 04 Nov 2010.

Licensing Contact: Tedd Fenn; 301–435–5031; *Tedd.Fenn@nih.gov.*

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Disease (NIAID) is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize Diagnostic Assays and Methods of Use for Detection of Filarial Infection. For collaboration opportunities, please contact Johanna Schneider, Ph.D. at *Schneiderjs@niaid.nih.gov* or 301–451–9824.

A System and Method for Detecting Untoward Events in Hospitals

Description of Technology: This invention is of potential benefit to public health and patient care and can be commercially utilized by medical centers, hospitals and commercial developers of hospital information systems. It is basically a computer science based technology that may provide the capability of detecting untoward events such as patient crises, individual clinic adverse occurrences and adverse reactions related to new medication lots and inconsistencies in ordered and delivered patient medications and other treatments. The technology is comprised of a dedicated computer server that executes specially designed software with input data from a main hospital information system and other relevant patient data sensors and systems. The technology also includes design specifications for constructing a ''patient registration system'', an untoward event specification catalogue, intelligent software for detecting untoward events, and a report listing untoward alerts, as well as a light and sound panel design for signaling untoward alerts. The preferred embodiment for this technology is the NIH Clinical Center Clinical Research Informatics System (CRIS) presently operational in the NIH Clinical Center in Bethesda, Maryland.

Potential Commercial Applications: The technology can be commercially utilized by medical centers, hospitals and commercial developers of hospital information centers to improve patient medical treatment and clinical outcome.

Competitive Advantages: The design of the system is novel and practical. It fulfills and automates the need for a system and methodology that predicts, detects and signals untoward patient events and other untoward clinical events.

Development Stage: Prototype.

Inventors: James M. DeLeo and Patricia P. Sengstack (NIHCC).

Publications:

1. Heldt T, *et al.* Integrating Data, Models, and Reasoning in Critical Care. Proceedings of the 28th IEEE EMBS Annual International Conference, New

York City, USA, Aug 30–Sept 3, 2006, pp 350–353; doi 10.1109/IEMBS.2006.259734.

2. Hripcsak G, *et al.* Mining complex clinical data for patient safety research: a framework for event discovery. J Biomed Inform. 2003 Feb–Apr;36(1–2):120–130. [PMID 14552853].

3. Horsky J, *et al.* A framework for analyzing the cognitive complexity of computer assisted clinical ordering. J Biomed Inform. 2003 Feb–Apr;36(1–2):4–22. [PMID 14552843].

Intellectual Property: HHS Reference No. E–227–2009/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Michael Shmilovich, *Esq.;* 301–435–5019; *shmilovm@mail.nih.gov.*

Dated: September 26, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–25730 Filed 10–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Developmental Biology Subcommittee.

Date: October 20–21, 2011.

Time: 8:30 a.m .to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Cathy J. Wedeen, PhD, Scientific Review Officer, Division of Scientific Review, OD Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01–G, Bethesda, MD 20892, 301–435–6878, *wedeenc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–25633 Filed 10–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of a meeting of a working group of the NIH Blue Ribbon Panel

The purpose of this notice is to inform the public about a meeting of the NIH Blue Ribbon Panel to Advise on the Risk Assessment of the National Emerging Infectious Diseases Laboratories at Boston University Medical Center.

The meeting will be held Wednesday, November 2, 2011, at the Hyatt Regency Bethesda, 7400 Wisconsin Avenue, Bethesda, MD 20814 from approximately 8:30 a.m. to 4:30 p.m.

This meeting is the fourth in a series of public meetings to review and discuss the ongoing supplementary risk assessment study being conducted for the Boston University NEIDL. The National Research Council Committee on Technical Input will participate in this discussion and provide its views.

Public comment will begin at approximately 4 p.m. In the event that time does not allow for all those interested to present oral comments, anyone may file written comments by sending them to the address below. Comments should include the name, address, telephone number and when applicable, the business or professional affiliation of the commenter.

The meeting will be open to the public, with attendance limited to space available. There will be a live webcast of the meeting which can be accessed at *http://nihblueribbonpanel-bumc-neidl.od.nih.gov/*. 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.

A draft agenda and slides for the meeting may be obtained by connecting to *http://nihblueribbonpanel-bumc-neidl.od.nih.gov/*. For additional information concerning this meeting, contact Ms. Kelly Fennington, Senior Health Policy Analyst, Office of Biotechnology Activities, Office of Science Policy, Office of the Director, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892–7985; telephone 301–496–9838; e-mail *fennington@nih.gov*.

Dated: September 27, 2011.

Amy P. Patterson,

Director, Office of Science Policy, National Institutes of Health.

[FR Doc. 2011–25733 Filed 10–4–11; 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 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 Allergy and Infectious Diseases Special Emphasis Panel, ''Investigator Initiated Program Project Application.''

Date: October 26, 2011.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Michelle M Timmerman, PhD, Scientific Review Officer, Scientific Review Program, NIH/NIAID/DHHS, Room 3123, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, (301) 451–4573, *timmermanm@niaid.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: September 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–25728 Filed 10–4–11; 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 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 Heart, Lung, and Blood Institute Special Emphasis Panel, NHLBI Cardiovascular Outcomes.

Date: October 24, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Charles Joyce, PhD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892–7924, 301–435–0288, *cjoyce@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Genomic Research in AAT-Deficiency and Sarcoidosis—Genomics and Informatics Center.

Date: October 27, 2011.

Time: 9:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: William J Johnson, PhD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, *johnsonwj@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, SBIR Topic 53 Phase II Review.

Date: October 27, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6130 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Chang Sook Kim, PhD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7179, Bethesda, MD 20892–7924, 301–435–0287, *carolko@mail.nih.gov.*

(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: September 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–25724 Filed 10–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, PAR–10–194, PAR10–203, PAR–11–183: T32 Review.

Date: October 28, 2011.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Cathy J. Wedeen, PhD, Scientific Review Officer, Division of Scientific Review, OD, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01–G, Bethesda, MD 20892, 301–435–6878, *wedeenc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–25713 Filed 10–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Obstetrics and Maternal-Fetal Biology Subcommittee.

Date: October 27, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter Zelazowski, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6902, *peter.zelazowski@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–25705 Filed 10–4–11; 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 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Ischemic Tissue Therapy.

Date: November 2, 2011.

Time: 1 p.m. to 2 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: Michele L. Barnard, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ADPKD Ancillary Studies.

Date: November 4, 2011.

Time: 1 p.m. to 2 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: Paul A. Rushing, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.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: September 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–25640 Filed 10–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development, Special Emphasis Panel, Neuroplasticity and the Maternal Brain.

Date: October 26, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–25644 Filed 10–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development, Special Emphasis Panel, Training Programs Health Sciences T32/T35 Review.

Date: October 27–28, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Latham Hotel Georgetown, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Sherry L. Dupere, PhD, Director, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Rockville, MD 20852, 301–451–3415, *duperes@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–25643 Filed 10–4–11; 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 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: Center for Scientific Review Special Emphasis Panel, Small Business Grant Applications: Immunology.

Date: October 24–25, 2011.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Stephen M Nigida, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301–435–1222, *nigidas@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 27, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–25639 Filed 10–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable 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 Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders C.

Date: October 20–21, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: The West Chicago Lakeshore Hotel, 644 North Lakeshore Drive, Chicago, IL 60611.

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, DHHS/NIH/NINDS/DER/SRB, 6001 Executive Boulevard, MSC 9529, Neuroscience Center, Room 3208, Bethesda, MD 20892, 301–496–0660, *benzingw@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders A.

Date: November 2–3, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Embassy Suites, Washington, DC, 1250 22nd Street, Washington, DC 20037.

Contact Person: Richard D. Crosland, Ph.D., Scientific Review Officer, DHHS/NIH/NINDS/DER/SRB, 6001 Executive Boulevard, MSC 9529, Neuroscience Center, Room 3208, Bethesda, MD 20892, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 27, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–25634 Filed 10–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Career Development, Research Training & Pathways to Independence Review.

Date: October 25, 2011.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Charles H Washabaugh, PhD, Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Blvd, Suite 800, Bethesda, MD 20817, 301–594–4952, *washabac@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 27, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–25638 Filed 10–4–11; 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 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Data Coordinating Center for the Cardiovascular Cell Therapy Research Network.

Date: October 24, 2011.

Time: 8 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kristin Goltry, PhD, Scientific Review Officer, Review Branch, DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7198,

Bethesda, MD 20892, 301–435–0297, *goltrykl@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Regional Clinical Center for the Cardiovascular Cell Therapy Research Network.

Date: October 24–25, 2011.

Time: 9:30 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: Kristin Goltry, PhD, Scientific Review Officer, Review Branch, DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7198, Bethesda, MD 20892, 301–435–0297, *goltrykl@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Protein Capture Agents for Cardiovascular Research.

Date: October 24, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David A Wilson, PhD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7204, Bethesda, MD 20892–7924, 301–435–0299, *wilsonda2@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Translational Programs in Lung Diseases.

Date: October 26–27, 2011.

Time: 6 p.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, Office of Scientific Review/DERA, National, Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7185, Bethesda, MD 20892, *sunnarborgsw@nhlbi.nih.gov.*

Name of Comittee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Genomic Research in AAT-Deficiency and Sarcoidosis—Clinical Centers.

Date: October 26–27, 2011.

Time: 12:30 p.m. to 9 a.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: William J. Johnson, PhD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, *johnsonwj@nhlbi.nih.gov.*

(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: September 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–25635 Filed 10–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Agency Information Collection Activities: Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes

AGENCY: Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Revision of a currently approved collection.

SUMMARY: The Department of Homeland Security, Office of the Secretary, will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. chapter 35). DHS previously published this information collection request (ICR) in the **Federal Register** on July 18, 2011 at 76 FR 42132, for a 60-day public comment period. No comments were received by DHS. The purpose of this notice is to allow an additional 30-days for public comments.

DATES: Comments are encouraged and will be accepted until November 4, 2011. This process is conducted in accordance with 5 CFR 1320.10.

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 OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

The Office of Management and Budget is particularly interested in comments which:

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.

FOR FURTHER INFORMATION CONTACT: If additional information is required *contact:* Office of the Secretary, DHS *Attn.:* Steve Kozar *Steven.Kozar@hq.dhs.gov*, (202) 447–3368.

SUPPLEMENTARY INFORMATION: The REAL ID Act of 2005 (the Act) prohibits federal agencies from accepting state-issued drivers' licenses or identification cards for any official purpose—defined by the Act and regulations as boarding commercial aircraft, accessing federal facilities, or entering nuclear power plants—unless the license or card is issued by a state that meets the requirements set forth in the Act. Title II of Division B of Public Law 109–13, codified at 49 U.S.C. 30301 note. The REAL ID regulations, which DHS issued in January 2008, establish the minimum standards that states must meet to comply with the Act. *See* 73 FR 5272, also 6 CFR part 37 (Jan. 29, 2008). These include requirements for presentation and verification of documents to establish identity and lawful status, standards for document issuance and security, and physical security requirements for driver's license production facilities. For a state to achieve full compliance, the Department of Homeland Security (DHS) must make a final determination on or before January 15, 2013, that the state has met the requirements contained in the regulations and is compliant with the Act. The regulations include new information reporting and record keeping requirements for states seeking a full compliance determination by DHS. As discussed in more detail below, states seeking DHS's full compliance determination must certify that they are meeting certain standards in the issuance of driver's licenses and identification cards and submit security plans covering physical security of document production and storage facilities as well as security of personally identifiable information. 6 CFR 37.55(a). States also must conduct background checks and training for employees involved in the document

production and issuance processes and retain and store applicant photographs and other source documents. 6 CFR 37.31 and 37.45. States must recertify compliance with REAL ID every three years on a rolling basis as determined by the Secretary of Homeland Security. 6 CFR 37.55.

Certification Process Generally—Section 202(a)(2) of the REAL ID Act requires the Secretary to determine whether a state is meeting its requirements, ''based on certifications made by the State to the Secretary.'' To assist DHS in making a final compliance determination, § 37.55 of the rule requires the submission of the following materials:

(1) A certification by the highest level Executive official in the state overseeing the DMV that the state has implemented a program for issuing driver's licenses and identification cards in compliance with the REAL ID Act.

(2) A letter from the Attorney General of the state confirming the state has the legal authority to impose requirements necessary to meet the standards.

(3) A description of a state's exceptions process to accept alternate documents to establish identity and lawful status and wavier process used when conducting background checks for individuals involved in the document production process.

(4) The state's security plan.

Additionally, after a final compliance determination by DHS, states must recertify compliance every three years on a rolling basis as determined by DHS. 6 CFR 37.55(b).

State REAL ID programs will be subject to DHS review to determine whether the state meets the requirements for compliance. States must cooperate with DHS's compliance review and provide any reasonable information requested by DHS relevant to determining compliance. Under the rule, DHS may inspect sites associated with the enrollment of applicants and the production, manufacture, personalization, and issuance of driver's licenses or identification cards. DHS also may conduct interviews of employees and contractors involved in the document issuance, verification, and production processes. 6 CFR 37.59(a).

Following a review of a state's certification package, DHS may make a preliminary determination that the State needs to take corrective actions to achieve full compliance. In such cases, a state may have to respond to DHS and explain the actions it took or plans to take to correct any deficiencies cited in the preliminary determination or alternatively, detail why the DHS preliminary determination is incorrect. 6 CFR 37.59(b).

Security Plans—In order for states to be in compliance with the Act, they must ensure the security of production facilities and materials and conduct background checks and fraudulent document training for employees involved in document issuance and production. REAL ID Act § 202(d)(7)–(9). The Act also requires compliant licenses and identification cards to include features to prevent tampering, counterfeiting, or duplication. REAL ID Act § 202(b). To document compliance with these requirements the regulations require states to prepare a security plan and submit it as part of their certification package. 6 CFR 37.41. At a minimum, the security plan must address steps the state is taking to ensure:

- The physical security of production materials and storage and production facilities;
- Security of personally identifiable information maintained at DMVs including a privacy policy and standards and procedures for document retention and destruction;
- Document security features including a description of the use of biometrics and the technical standards used;
- Facility access control including credentialing and background checks;
- Fraudulent document and security awareness training;
- Emergency response;
- Internal audit controls; and
- An affirmation that the state possesses the authority and means to protect the confidentiality of REAL ID documents issued in support of criminal justice agencies or similar programs.

The security plan also must include a report on card security and integrity.

Background checks and waiver process—Within its security plans, the rule requires states to outline their approach to conducting background checks of certain DMV employees involved in the card production process. 6 CFR 37.45. Specifically, states are required to perform background checks on persons who are involved in the manufacture or production of REAL ID driver's licenses and identification cards, as well as on individuals who have the ability to affect the identity information that appears on the driver's license or identification card and on current employees who will be assigned to such positions. The background check must include a name-based and fingerprint-based criminal history records check, an employment eligibility check, and for newer employees a prior employment reference check. The regulation permits a state to establish procedures to allow for a waiver for certain background check requirements in cases, for example, where the employee has been arrested, but no final disposition of the matter has been reached.

Exceptions Process—Under the rule, a state DMV may choose to establish written, defined exceptions process for persons who, for reasons beyond their control, are unable to present all necessary documents and must rely on alternate documents to establish identity, date of birth, or SSN (including not having an SSN). 6 CFR 37.11(h). Alternative documents to demonstrate lawful status will only be allowed to demonstrate U.S. citizenship. The state must retain copies or images of the alternate documents accepted under the exceptions process and submit a report with a copy of the exceptions process as part of its certification package.

Recordkeeping—The rule requires states to maintain photographs of applicants and records of certain source documents. Paper or microfiche copies of these documents must be retained for a minimum of seven years. Digital images of these documents must be retained for a minimum of ten years. 6 CFR 37.31. The collection of the information will support the information needs of DHS in its efforts to determine state compliance with requirements for issuing REAL ID driver's licenses and identification cards. States may submit the required documents in any format that they choose. DHS has not defined specific format submission requirements for states. DHS will use all of the submitted documentation to evaluate State progress in implementing the requirements of the REAL ID final rule. DHS has used information provided under the current collection to grant extensions and track state progress.

Submission of the security plan helps to ensure the integrity of the license and identification card issuance and production process and outlines the measures taken to protect personal information collected, maintained, and used by state DMVs. Additionally, the collection will assist other federal and state agencies conducting or assisting with necessary background and immigration checks for certain employees. The purpose of the name-based and fingerprint based CHRC requirement is to ensure the suitability and trustworthiness of individuals who have the ability to affect the identity information that appears on the license; have access to the production process; or who are involved in the manufacture

or issuance of the licenses and identification cards.

In compliance with GPEA, states will be permitted to submit the required information for their security plans, certification packages, and written exceptions processes electronically. States will be permitted to submit electronic signatures but must keep the original signature on file. Additionally, because they contain sensitive security information (SSI), the security plans must be handled and protected in accordance with 49 CFR Part 1520. 6 CFR 37.41(c). The final rule does not dictate how States must submit their employees' fingerprints to the FBI for background checks; however it is assumed States will do so via electronic means or another means determined by the FBI.

This is a revision to the original REAL ID information request that covered submissions of material compliance checklists and requests for extensions to meet the requirements of the regulation. This collection is being revised to cover the collection of information required under the regulation for full compliance, including recordkeeping requirements and employee background checks, and to include information to assist DHS in making full compliance determinations. States seeking certification of full compliance with the REAL ID Act must follow the certification requirements described in § 37.55 of the regulation and referenced in the response to question one of this supporting statement. There are no new or additional costs associated with this revised information collection. All costs were included in the REAL ID final rule that was published in January 2008. There has been an increase in annual burden hours associated with this collection. This increase in burden is a result of the collection of information required for full compliance. The number of respondents also has increased from 51 to 56, as the previously approved collection did not include the five U.S. Territories (Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa).

Analysis

Agency: Office of the Secretary, DHS.

Title: REAL ID: Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies.

OMB Number: 1601–0005.

Frequency: Once.

Affected Public: State, Local, and Tribal Governments.

Number of Respondents: 56.

Estimated Time per Respondent: 1,098 hours.

Total Burden Hours: 443,606.

Dated: September 27, 2011.

Richard Spires,

Chief Information Officer.

[FR Doc. 2011–25608 Filed 10–4–11; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Agency Information Collection Activities: Case Submission Form, Case Assistance Form; (Form DHS–7001), Online Ombudsman Form DHS–7001

AGENCY: Office of the Citizenship and Immigration Service Ombudsman, DHS.

ACTION: 30-Day Notice and request for comments; Revision of a currently approved collection.

SUMMARY: The Department of Homeland Security, Office of the Citizenship and Immigration Service Ombudsman, will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). DHS previously published this information collection request (ICR) in the **Federal Register** on July 18, 2011 at 76 FR 42129, for a 60-day public comment period. No comments were received by DHS. The purpose of this notice is to allow additional 30-days for public comments.

DATES: Comments are encouraged and will be accepted until November 4, 2011. This process is conducted in accordance with 5 CFR 1320.10.

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 OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806. The Office of Management and Budget is particularly interested in comments which:

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.

FOR FURTHER INFORMATION CONTACT: If additional information is required contact: Office of the Citizenship and Immigration Services Ombudsman, DHS, *Attn.:* Chief of Special Programs, Mail Stop 1225, Washington, DC 20528–1225. Comments may also be submitted to DHA via facsimile to 202–272–8352, 202–357–0042 or via e-mail at *rfs.regs@dhs.gov* or *cisombudsman@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Citizenship and Immigration Services (CIS) Ombudsman was created under section 452 of the Homeland Security Act of 2002 (Public Law 107–296) to: (1) Assist individuals and employers in resolving problems with the U.S. Citizenship and Immigration Services (USCIS); (2) to identify areas in which individuals and employers have problems in dealing with USCIS; and (3) to the extent possible, propose changes in the administrative practices of USCIS to mitigate problems. This form is used by an applicant who is experiencing problems with USCIS during the processing of an immigration benefit.

The information collected on this form will allow the CIS Ombudsman to identify the issue such as: (1) A case problem which is a request for information about a case that was filed with USCIS (''case problem''); or (2) the identification of a systemic issue that may or may not pertain to an individual case which the individual, attorney or employer is seeking to bring to the attention of the CIS Ombudsman (''trend''). For case problems, the CIS Ombudsman will refer case specific issues to the Customer Assistance Office for USCIS for further research, and review.

For trends received, the CIS Ombudsman notes the systemic issue identified in the correspondence which may or may not be incorporated into future recommendations submitted to the Director of USCIS pursuant to section 452(d)(4) of Public Law 107–296.

The use of this form provides the most efficient means for collecting and processing the required data. The CIS Ombudsman anticipates employing the

use of information technology in collecting and processing information by offering the option for electronic submission of the DHS Form 7001 in FY2012. The technology for electronic capture of this data is in the final phase of development with successful testing of a pilot version conducted in the 4th quarter of FY2010. We are requesting a two year approval for the form anticipating Government Paperwork Elimination Act compliance for electronic means for collections to be developed and deployed by FY2012. We plan to submit any required paperwork to amend this document for the electronic version of this form during FY2011. There has been no increase or decrease in the estimated annual burden hours previously reported for this information collection. There is no change in the information being collected, however there have been cosmetic changes to the form including punctuation and formatting. The title of the form has changed from ''Case Problem Submission Worksheet (CIS Ombudsman Form DHS–7001)'' to ''Case Assistance Form (Form DHS–7001)'' The name of the system has changed from ''Virtual Ombudsman System'' to ''Online Ombudsman Form DHS–7001''. The instructions have been updated to reflect the electronic submission options. Instructions for electronic submission will be posted on the CIS Ombudsman Web site at *http://www.dhs.gov/cisombudsman.*

The terms of clearance from the previously approved collection have been addressed by updates to the: (a) Privacy Impact Assessment for the Office of the Citizenship & Immigration Services Ombudsman (CISOMB) Virtual Ombudsman System (March 19, 2010); and the (b) Systems of Records Notice: 9110–9B Department of Homeland Security, Office of the Secretary [Docket No. DHS–2009–0146] Privacy Act of 1974; Department of Homeland Security Citizenship and Immigration Services Ombudsman—001 Virtual Ombudsman System (March 2010) to reflect the name change to Online Ombudsman Form DHS–7001 System of Records.

Analysis

Agency: Office of the Citizenship and Immigration Service Ombudsman, DHS.

Title: Case Submission Form.

OMB Number: 1601–0004.

Frequency: On Occasion.

Affected Public: Individuals or Household.

Number of Respondents: 2,600.

Estimated Time Per Respondent: 1 Hour.

Total Burden Hours: 2,600.

Dated: September 27, 2011.

Richard Spires,

Chief Information Officer.

[FR Doc. 2011–25609 Filed 10–4–11; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Senior Executive Service Performance Review; Correction

AGENCY: Office of the Secretary, DHS.

ACTION: Notice; correction.

SUMMARY: The Department of Homeland Security published a document in the **Federal Register** of September 26, 2011, regarding the appointment of the members of the Senior Executive Performance Review Boards. This correction adds the names of three individuals who were omitted from the listing.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haefeli, Office of the Chief Human Capital Officer, telephone (202) 357–8164.

Correction

In the **Federal Register** of September 26, 2011, in FR Doc. 2011–24577, beginning on page 59417, please add the following three names to the column listing names in alphabetical order on pages 59417 and 59418:

McLaughlin, Christopher,
Shelton Waters,
Karen, Tate, Cornelius.

Dated: September 28, 2011.

Shonna R. James,

Director, Executive Resources, Office of the Chief Human Capital Officer.

[FR Doc. 2011–25610 Filed 10–4–11; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3327–EM; Docket ID FEMA–2011–0001]

North Carolina; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of North Carolina (FEMA–3327–EM), dated August 25, 2011, and related determinations.

DATES: *Effective Date:* August 25, 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: Notice is hereby given that, in a letter dated August 25, 2011, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5208 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of North Carolina resulting from Hurricane Irene beginning on August 25, 2011, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of North Carolina.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Michael F. Byrne, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of North Carolina have been designated as adversely affected by this declared emergency:

Carteret, Craven, Currituck, Dare, Halifax, Hyde, Johnston, Jones, Nash, Northampton, Onslow, Pamlico, Perquimans, Pitt, Tyrrell,

and Wilson Counties for emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program at 75 percent federal funding.

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. 2011–25598 Filed 10–4–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3340–EM; Docket ID FEMA–2011–0001]

Pennsylvania; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the Commonwealth of Pennsylvania (FEMA–3340–EM), dated September 8, 2011, and related determinations.

DATES: *Effective Date:* September 8, 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: Notice is hereby given that, in a letter dated September 8, 2011, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the Commonwealth of Pennsylvania resulting from the Remnants of Tropical Storm Lee beginning on September 3, 2011, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the Commonwealth of Pennsylvania.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Thomas J. McCool, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the Commonwealth of Pennsylvania have been designated as adversely affected by this declared emergency:

Adams, Bedford, Berks, Blair, Bradford, Bucks, Cambria, Carbon, Centre, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Schuylkill, Snyder, Somerset, Sullivan, Susquehanna, Tioga, Union, Wyoming, and York Counties for emergency protective measures (Category B), including direct Federal 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. 2011–25695 Filed 10–4–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3341–EM; Docket ID FEMA–2011–0001]

New York; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New York (FEMA–3341–EM), dated September 8, 2011, and related determinations.

DATES: *Effective Date:* September 8, 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: Notice is hereby given that, in a letter dated September 8, 2011, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of New York resulting from the remnants of Tropical Storm Lee beginning on September 7, 2011, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of New York.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are

authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Philip E. Parr, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of New York have been designated as adversely affected by this declared emergency:

Albany, Broome, Chenango, Chemung, Delaware, Greene, Herkimer, Montgomery, Oneida, Otsego, Rensselaer, Schenectady, Schoharie, Sullivan, and Tioga Counties for emergency protective measures (Category 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. 2011–25698 Filed 10–4–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4019–DR; Docket ID FEMA–2011–0001]

North Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–4019–DR), dated August 31, 2011, and related determinations.

DATES: *Effective Date:* August 31, 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: Notice is hereby given that, in a letter dated August 31, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of North Carolina resulting from Hurricane Irene beginning on August 25, 2011, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael E. Bolch, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of North Carolina have been designated as adversely affected by this major disaster:

Beaufort, Carteret, Craven, Dare, Hyde, Pamlico, and Tyrrell Counties for Individual Assistance.

All counties within the State of North Carolina are eligible to apply for assistance under the Hazard Mitigation Grant 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. 2011–25599 Filed 10–4–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4025–DR; Docket ID FEMA–2011–0001]

Pennsylvania; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA–4025–DR), dated September 3, 2011, and related determinations.

DATES: *Effective Date:* September 3, 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: Notice is hereby given that, in a letter dated September 3, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the Commonwealth of Pennsylvania resulting from Hurricane Irene during the period of August 26–30, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the Commonwealth of Pennsylvania.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas J. McCool, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Pennsylvania have been designated as adversely affected by this major disaster:

Chester, Northampton, Sullivan, Susquehanna, and Wyoming Counties for Public Assistance, including direct Federal assistance.

All counties within the Commonwealth of Pennsylvania are eligible to apply for assistance under the Hazard Mitigation Grant 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. 2011–25699 Filed 10–4–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4028–DR; Docket ID FEMA–2011–0001]

Massachusetts; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Massachusetts (FEMA–4028–DR), dated September 3, 2011, and related determinations.

DATES: *Effective Date:* September 3, 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: Notice is hereby given that, in a letter dated September 3, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the Commonwealth of Massachusetts resulting from Tropical Storm Irene during the period of August 27–29, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the Commonwealth of Massachusetts.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Massachusetts have been designated as adversely affected by this major disaster:

Berkshire and Franklin Counties for Individual Assistance.

Berkshire and Franklin Counties for Public Assistance. Direct Federal assistance is authorized.

All counties within the Commonwealth of Massachusetts are eligible to apply for assistance under the Hazard Mitigation Grant 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. 2011–25727 Filed 10–4–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4029–DR; Docket ID FEMA–2011–0001]

Texas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–4029–DR), dated September 9, 2011, and related determinations.

DATES: *Effective Date:* September 9, 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: Notice is hereby given that, in a letter dated September 9, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Texas resulting from wildfires beginning on August 30, 2011, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kevin L. Hannes, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Texas have been designated as adversely affected by this major disaster:

Bastrop County for Individual 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. 2011–25729 Filed 10–4–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4027–DR; Docket ID FEMA–2011–0001]

Rhode Island; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Rhode Island (FEMA–4027–DR), dated September 3, 2011, and related determinations.

DATES: *Effective Date:* September 3, 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: Notice is hereby given that, in a letter dated September 3, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Rhode Island resulting from Tropical Storm Irene during the period of August 27–29, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Rhode Island.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gracia B. Szczech, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Rhode Island have been designated as adversely affected by this major disaster:

Bristol, Kent, Newport, Providence, and Washington Counties for Public Assistance.

All counties within the State of Rhode Island are eligible to apply for assistance under the Hazard Mitigation Grant 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. 2011–25700 Filed 10–4–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4020–DR; Docket ID FEMA–2011–0001]

New York; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–4020–DR), dated August 31, 2011, and related determinations.

DATES: *Effective Date:* August 31, 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: Notice is hereby given that, in a letter dated August 31, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of New York resulting from Hurricane Irene beginning on August 26, 2011, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Philip E. Parr, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New York have been designated as adversely affected by this major disaster:

Albany, Delaware, Dutchess, Essex, Greene, Schenectady, Schoharie, and Ulster Counties for Individual Assistance.

Albany, Bronx, Clinton, Delaware, Dutchess, Essex, Greene, Montgomery, Nassau, New York, Queens, Rensselaer, Richmond, Rockland, Schoharie, Suffolk, Ulster, Warren, and Westchester Counties for Public Assistance. Direct federal assistance is authorized.

All counties within the State of New York are eligible to apply for assistance under the Hazard Mitigation Grant 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. 2011–25600 Filed 10–4–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4018–DR; Docket ID FEMA–2011–0001]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–4018–DR), dated August 30, 2011, and related determinations.

DATES: *Effective Date:* August 30, 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: Notice is hereby given that, in a letter dated August 30, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Iowa resulting from severe storms and flooding during the period of July 27–29, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael R. Scott, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Iowa have been designated as adversely affected by this major disaster:

Dubuque and Jackson Counties for Public Assistance.

All counties within the State of Iowa are eligible to apply for assistance under the Hazard Mitigation Grant 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. 2011–25602 Filed 10–4–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–C–101]

Notice of Submission of Proposed Information Collection to OMB Certification of Multifamily Housing Compliance With State and Local Housing Codes: Correction

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Correction.

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. This collection is necessary for HUD to ensure that all properties owned by potential purchasers are in compliance with the state and local housing codes that are in the same locality as the project to be purchased.

DATES: *Comments Due Date:* November 4, 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 (2502–0559) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806. *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 affecting 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: Certification of Multifamily Housing Compliance with State and Local Housing Codes.

OMB Approval Number: 2502–0559.

Form Numbers: HUD–9840.

Description of the Need for the Information and its Proposed Use:

This collection is necessary for HUD to ensure that all properties owned by potential purchasers are in compliance with the state and local housing codes that are in the same locality as the project to be purchased.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	25	1		0.24		6

Total Estimated Burden Hours: 6.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 30, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–25696 Filed 10–4–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–100]

Notice of Submission of Proposed Information Collection to OMB Closeout Instructions for Community Development Block Grant Programs (CDBG)

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.

Grant closeout documents verify and certify that CDBG funds have been properly spent and the requirements of the grant have been completed.

DATES: *Comments Due Date:* November 4, 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 (2506–Pending) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806. *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 affecting 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: Closeout Instructions for Community Development Block Grant Programs (CDBG).

OMB Approval Number: 2506–Pending.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use:

Grant closeout documents verify and certify that CDBG funds have been properly spent and the requirements of the grant have been completed.

Frequency of Submission: Other, At the time of closeout.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	1,621	0.00384		385.12		2,399.34

Total Estimated Burden Hours: 2399.34.

Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 29, 2011.

Colette Pollard,

Departmental Reports Management Officer Office of the Chief Information Officer.

[FR Doc. 2011–25742 Filed 10–4–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N207; 96300–1671–0000–P5]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA law requires that we invite public comment before issuing these permits.

DATES: We must receive comments or requests for documents on or before November 4, 2011.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES**. If you provide an e-mail address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, the Endangered Species Act of 1973, section 10(a)(1)(A), as amended (16 U.S.C. 1531 *et seq.*), requires that we invite public comment before final action on these permit applications.

III. Permit Applications

A. Endangered Species

Applicant: Erie Zoo, Erie, PA; PRT–200682

The applicant requests renewal and amendment of their captive-bred wildlife registration under 50 CFR

17.21(g) for the following families and species to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families:
Felidae (does not include jaguar, ocelot, margay or generic tigers),
Hominidae,
Hylobatidae,
Lemuridae.

Species:
Parma wallaby (*Macropus parma*),
Pied tamarin *(Saguinus bicolor*),
Cottontop tamarin (*Saguinus oedipus*),
Francois langur (*Trachypithecus francoisi*),
Lion-tailed macaque (*Macaca silenus*),
Diana monkey (*Cercopithecus diana*),
African wild dog (*Lycaon pictus*),
White-naped crane (*Grus vipio*),
Red-crowned crane (*Grus japonensis*),
Cuban parrot (*Amazona leucocephala*),
Golden parakeet (*Guarouba guarouba*),
Bali starling (*Leucopsar rothschildi*),
Galapagos tortoise (*Chelonoidis nigra*),
Radiated tortoise (*Astrochelys radiata*),
Indian python (*Python molurus molurus*).

Applicant: Yerkes Regional Primate Research Center, Atlanta, GA; PRT–837068

The applicant requests renewal and amendment of a permit to take captive held white-collared mangabeys (*Cercocebus torquatus*) through limited invasive sampling, including anesthetizing, collecting blood, skin, and bone marrow tissue samples, and MRI scanning, usually, but not always, during routine veterinary examinations for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Albuquerque Biological Park, Albuquerque, NM; PRT–671993

The applicant requests renewal of their Captive-bred Wildlife registration under 50 CFR 17.21(g) for the following families and species to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families:
Bovidae,
Callithricidae,
Camelidae,
Cebidae,
Cercopithecidae (includes *Colubus*),
Elephantidae,
Equidae,
Felidae (does not include jaguar, margay, ocelot or generic tiger),
Hominidae,
Hylobatidae,
Lemuridae,
Macropodidae,
Rhinocerotidae,
Cathartidae,
Psittacidae (does not include thick-billed parrot),
Sturnidae (does not include *Aplonis pelzelni*).

Species:
Komodo island monitor (*Varanus komodoensis*).

Applicant: Lincoln Park Zoo, Chicago, IL; PRT–679052

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families and species to enhance their propagation or survival. This notification covers activities to be conducted by the application over a 5-year period.

Families:
Bovidae,
Callithricidae,
Camelidae,
Canidae,
Cebidae,
Cercopithecidae,
Cervidae,
Equidae,
Felidae (*does not* include jaguar, margay, ocelot, or generic tiger),
Hominidae,
Lemuridae,
Lorisidae,
Macropodidae,
Muridae,
Rhinocerotidae,
Tapiridae,
Ursidae,
Bucerotidae,
Cathartidae,
Ciconiidae (does not include wood stork),
Columbidae,
Gruidae,
Psittacidae (*does not* include thick-billed parrot),
Sturnidae (*does not* include *Aplonis pelzelni*),
Threskiornithidae,
Boidae (does not include Mona or Puerto Rico Boas),
Iguanidae,
Pelomedusidae,
Testudinidae,
Varanidae,
Viperidae (includes *Crotalus unicolor* but *not Crotalus willardi*),
Crocodylidae (does not include American crocodile).

Species:
Brush-tailed rat-kangaroo (*Bettongia penicillata*),
White-cheeked gibbon (*Hylobates leucogenys*),
Central American river turtle (*Dermatemys mawii*).

Applicant: Alexandria Zoological Park, Alexandria, LA; PRT–185788

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families and species to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families:
Callithriciae,
Canidae,
Cercopithecidae,
Felidae (does not include jaguar, margay, ocelot, or generic tiger),
Hylobatidae,
Tapiridae,
Gruidae,
Crocodylidae.

Species:
Ring-tailed lemur (*Lemur catta*),
Black and white ruffed lemur (*Varecia variegata*),
Parma wallaby (*Macropus parma*),
Somali wild ass (*Equus africanus somalicus*),
Babirusa (*Babyrousa babyrussa*),
Anoa (*Bubalus depressicornis*),
Andean condor (*Vultur gryphus*),
Golden parakeet (*Guarouba guarouba*),
Radiated tortoise (*Astrochelys radiata*),
Galapagos tortoise (*Chelonodis nigra*),
Yellow-spot river turtle (*Podocemnis unifilis*),
Tartaruga (*Podocemnis expansa*),
Grand Cayman blue iguana (*Cyclura lewisi*).

Applicant: Rolling Hills Wildlife Adventure, Salina, KS; PRT–766088

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the families *Lemuridae and Callithricidae* and the species cheetah (*Acinonyx jubatus*), snow leopard (*Uncia uncia*), and mandrill (*Mandrillus sphinx*), in order to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the

Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Kurt Wille, Meeker, CO; PRT–51599A

Applicant: Carlos Fernandez, Miami, FL; PRT–52937A

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–25747 Filed 10–4–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2011–N161; 10120–1112–0000–F2]

Incidental Take Permit; Auwahi Wind Energy Generation Facility, Maui, HI; Draft Habitat Conservation Plan and Draft Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of permit application.

SUMMARY: Auwahi Wind Energy LLC (applicant), a subsidiary of Sempra Generation, has submitted an application to the U.S. Fish and Wildlife Service (Service) for an incidental take permit under the Endangered Species Act of 1973, as amended (ESA). The applicant is requesting an incidental take permit pursuant to the ESA to authorize take of two endangered Hawaiian bird species, one bat species, and one moth species. The permit application includes a draft Habitat Conservation Plan (HCP) describing the applicant's actions and the measures the applicant will implement to minimize, mitigate, and monitor incidental take of the Covered Species, and a draft Implementing Agreement (IA). The Service also announces the availability of a draft Environmental Assessment (EA) that has been prepared in response to the permit application in accordance with requirements of the National Environmental Policy Act (NEPA). We are making the permit application package and draft EA available for public review and comment.

DATES: All comments from interested parties must be received on or before November 21, 2011.

ADDRESSES: Please address written comments to Loyal Mehrhoff, Project Leader, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3–122, Honolulu, HI 96850. You may also send comments by facsimile to (808) 792–9580.

FOR FURTHER INFORMATION CONTACT: Dawn Greenlee, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service (see **ADDRESSES** above); telephone (808) 792–9400.

SUPPLEMENTARY INFORMATION: The applicant is requesting an ITP to authorize take of the endangered Hawaiian petrel (uau, *Pterodroma sandwichensis*), endangered Hawaiian goose (nene, *Branta sandvicensis*), endangered Hawaiian hoary bat (opeapea, *Lasiurus cinereus semotus*), and the endangered Blackburn's sphinx moth (*Manduca blackburni*) (collectively these four species are hereafter referred to as the ''Covered Species'').

Availability of Documents

You may request copies of the permit application, which includes the draft Habitat Conservation Plan (HCP), draft Implementing Agreement (IA), and draft Environmental Assessment (EA), by contacting the Service's Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**, above). These documents are also available electronically for review on the U.S. Fish and Wildlife Service Pacific Islands Fish and Wildlife Office Web site at *http://www.fws.gov/pacificislands.*

Comments and materials we receive, as well as supporting documentation we used in preparing the EA under NEPA, will become part of the public record and will be available for public inspection by appointment, during regular business hours. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Background

Section 9 of the ESA (16 U.S.C. 1538) and Federal regulations prohibit the take of fish and wildlife species listed as endangered or threatened. The term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, under section 10(a) of the ESA 16 U.S.C. 1539(a), we may issue permits to authorize incidental take of listed fish and wildlife species. Incidental take is defined as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22. If the permit is issued, the permittee would receive assurances under the Service's ''No Surprises'' regulations at 50 CFR 17.32(b)(5) and 50 CFR 17.22(b)(5).

The proposed Auwahi Wind Farm Project on the island of Maui would supply wind-generated electricity to the Maui Electric Company. The applicant has developed a draft HCP that addresses the incidental take of the four Covered Species that may occur as a result of the construction and operation of the Auwahi Wind Farm Project over a period of 25 years. In addition, the draft HCP addresses proposed measures the applicant will implement to minimize, mitigate, and monitor the impacts of incidental take of the Covered Species.

Covered Species

The Hawaiian petrel is a seabird that feeds in the open ocean and breeds on Maui. After spending the winter on the open ocean, adults return to breed at their colonial nesting grounds in the interior mountains of Maui, beginning in March and April. Fledglings (*i.e.,* young birds on their first flight to the open ocean) fly from the nesting colony to the open ocean in the fall. Adults and fledglings are known to collide with tall buildings, towers, power lines, and other structures while flying at night between their nesting colonies and at-sea foraging areas. The Hawaiian goose occurs in the vicinity of the proposed wind energy facility and may collide with project structures. Acoustic monitoring indicates that the Hawaiian hoary bat flies in the area proposed for wind turbine development, and that the species may roost on the project site. The adult Blackburn's sphinx moth feeds on the nectar of native plants and lays its eggs on native and nonnative vegetation.

The proposed project will result in the permanent loss of 0.3 acre (0.1 hectare) of the Blackburn's sphinx moth native habitat and 27.2 acres (11 hectares) of degraded Blackburn's sphinx moth habitat. The Hawaiian petrel, Hawaiian goose, and the Hawaiian hoary bat are known to have collided with the existing wind turbine structures at the 30-megawatt (MW) 21-turbine Kaheawa Wind Power I project currently operating on Maui.

Proposed Plan

The activities proposed to be covered by the permit include the construction and operation of a new 21-MW, eight-turbine wind energy generation facility on the lower slopes of Haleakala Volcano in the southern half of the Auwahi ahupuaa (*i.e.,* watershed), in the southeastern portion of the Island of Maui. The proposed facility will consist of eight wind turbine generators (WTGs), a maintenance building, an electrical substation, a battery energy storage system, an underground electrical collection system carrying electrical power from individual WTGs to the electrical substation, an overhead transmission line to connect the substation to the Maui Electric Company Ltd. transmission line, a permanent guyed meteorological monitoring tower, and service roads to connect the new WTGs and other facilities to existing highways. Improvements to portions of Kula Highway (referred to as Upcountry Piilani Highway) and Papaka Road would also be made in order to accommodate transportation of oversized project loads. The applicant has also applied for a State of Hawaii incidental take license under Hawaii State law. The draft HCP describes the impacts of take associated with those activities on the Covered Species, and proposes a program to minimize and mitigate take of each of the Covered Species.

The applicant is proposing mitigation measures on Maui that include: (1) Protection of a colony of breeding Hawaiian petrels on the slopes of Haleakala from cat, mongoose, and rat predators; (2) predator control or other management to conserve the Hawaiian goose at Haleakala National Park; (3) development of a permanent conservation easement and restoration of 350 acres of native forest habitat at Ulupalakua Ranch to conserve the Hawaiian hoary bat; (4) surveys to document the distribution and abundance of the Hawaiian hoary bat; and (5) restoration of Blackburn's sphinx moth habitat at Ulupalakua Ranch. This HCP incorporates adaptive management provisions to allow for modifications to the mitigation and monitoring measures as knowledge is gained during implementation.

Request for Comments

We specifically request information from the public on whether the permit application meets the statutory and regulatory requirements for issuing a permit, and identification of any aspects of the human environment that should be analyzed in the draft EA. We are also soliciting information regarding the adequacy of the HCP to minimize, mitigate, and monitor the proposed incidental take of the Covered Species and to provide for adaptive management, as evaluated against our permit issuance criteria found in section 10(a) of the ESA, 16 U.S.C. 1539(a), and 50 CFR 13.21, 17.22, and 17.32. In compliance with section 10(c) of the ESA (16 U.S.C. 1539(c)), we are making the permit application package available for public review and comment for 30 days (see **DATES** above).

We invite comments and suggestions from all interested parties and request that comments be as specific as possible. In particular, we request information and comments regarding the following issues:

(1) The direct, indirect, and cumulative effects that implementation of any reasonable HCP alternatives could have on endangered and threatened species;

(2) Other reasonable alternatives consistent with the purpose of the proposed HCP as described above, and their associated effects;

(3) Measures that would minimize and mitigate potentially adverse effects of the proposed action;

(4) Adaptive management or monitoring provisions that may be incorporated into the alternatives, and their benefits to listed species;

(5) Other plans or projects that might be relevant to this action;

(6) The proposed term of the Incidental Take Permit and whether the proposed conservation program would minimize and mitigate to the maximum extent practicable the incidental take that would be expected to occur over twenty years;

(7) Whether the HCP meets ESA section 10(a)(2)(B) (16 U.S.C. 1539 (a)(2)(B)) issuance criteria; and

(8) Any other information pertinent to evaluating the effects of the proposed action on the human environment.

The draft EA considers the direct, indirect, and cumulative effects of the proposed action of permit issuance, including the measures that will be implemented to minimize and mitigate such impacts. The EA contains an analysis of a no action alternative (no permit issuance and no measures by the applicant to reduce or eliminate the take of Covered Species), and an alternative with a reduced permit term.

Authority

This notice is provided under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulations (40 CFR 1506.6). The public process for the proposed Federal action will be completed after the public comment period, at which time we will evaluate the permit application, the HCP and associated documents (including the EA), and comments submitted thereon to determine whether or not the proposed action meets the requirements of section 10(a) (16 U.S.C. 1539(a)) of the ESA and has been adequately evaluated under NEPA.

Dated: September 8, 2011.

Hugh Morrison,

Acting Deputy Regional Director .

[FR Doc. 2011–25670 Filed 10–4–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–10233, AA–11482; LLAK–965000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Decision Approving Lands for Conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Calista Corporation. The decision will approve the conveyance of the surface and subsurface estates in certain lands pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) The lands are located north of Tuluksak, Alaska, and contains 5.23 acres. Notice of the decision will also be published four times in the *Anchorage Daily News.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits.

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until November 4, 2011, to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or e-mail, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by e-mail at *ak.blm.conveyance@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 BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Dina L. Torres,

Land of Transfer Resolution Specialist, Branch of Land Transfer Adjudication II.

[FR Doc. 2011–25604 Filed 10–4–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–22300; LLAK–965000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Decision Approving Lands for Conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to NANA Regional Corporation, Inc. The decision will approve the conveyance of the surface and subsurface estates in certain lands pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. *et seq.*). The lands are located southwest of Noatak, Alaska, and contain 4.14 acres. Notice of the decision will also be published four times in the *Anchorage Daily News.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until November 4, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or e-mail, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by e-mail at *ak.blm.conveyance@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 BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Dina L. Torres,

Land Transfer Resolution Specialist, Branch of Land Transfer Adjudication II.

[FR Doc. 2011–25614 Filed 10–4–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR936000–14300000–ET0000; HAG–11–0257; OROR–44954]

Public Land Order No. 7782; Extension of Public Land Order No. 6880; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends the duration of the withdrawal created by Public Land Order No. 6880, as corrected by Public Land Order No. 6918, for an additional 20-year period. The extension is necessary to continue protection of the scientific and ecological research values, and the investment of Federal funds at the Pringle Falls Experimental Forest and Research Natural Areas which would otherwise expire on September 29, 2011.

DATES: *Effective Date:* September 30, 2011.

FOR FURTHER INFORMATION CONTACT: Mike Barnes, Bureau of Land Management, Oregon/Washington State Office, 503–808–6155, or Dianne Torpin, United States Forest Service, Pacific Northwest Region, 503–808–2422. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to reach the BLM contact 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 purpose for which the withdrawal was first made requires this extension in order to continue the protection of the scientific and ecological research values, along with the investment of Federal funds at the Pringle Falls Experimental Forest and Research Natural Areas. The withdrawal extended by this order will expire on September 29, 2031, unless as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be further extended.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

Public Land Order No. 6880 (56 FR 49416 (1991)), as corrected by Public Land Order No. 6918 (56 FR 66602 (1991)), which withdrew approximately 11,675.51 acres of National Forest System lands from location and entry under the United States mining laws (30 U.S.C. ch 2), but not from leasing under the mineral leasing laws, to protect the Pringle Falls Experimental Forest and Research Natural Areas, is hereby extended for an additional 20-year period until September 29, 2031.

Authority: 43 CFR 2310.4.

Dated: September 9, 2011.

Rhea S. Suh,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 2011–25615 Filed 10–4–11; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MTM 067221]

Public Land Order No. 7781; Extension of Public Land Order No. 6881; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends the duration of the withdrawal created by Public Land Order No. 6881 for an additional 20-year period. The extension is necessary to continue the protection of the United States Forest Service's Howard Lake, Ross Creek, and Yaak Falls Recreation Areas located in the Kootenai National Forest which would otherwise expire on September 18, 2011.

DATES: *Effective Date:* September 19, 2011.

FOR FURTHER INFORMATION CONTACT: Scott Bixler, U.S. Forest Service, Region 1, P. O. Box 7669, Missoula, Montana 59807, 406–329–3655, *sbixler@fs.fed.us,* or Sandra Ward, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, 406–896–5052, *sward@mt.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 reach the Bureau of Land Management or Forest Service contact 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 purpose for which the withdrawal was first made requires this extension in order to continue the protection of the recreational values and the investment of Federal funds at the Howard Lake, Ross Creek, and Yaak Falls Recreation Areas. The withdrawal extended by this order will expire on September 18, 2031, unless, as a result of a review conducted prior to the expiration date, pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary of the Interior determines that the withdrawal shall be further extended.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

Public Land Order No. 6881 (56 FR 47414 (1991)) which withdrew 95 acres of National Forest System lands from location and entry under the United States mining laws (30 U.S.C. ch. 2), but not from leasing under the mineral leasing laws, to protect the Howard Lake, Ross Creek, and Yaak Falls Recreation Areas, is hereby extended for an additional 20-year period until September 18, 2031.

Authority: 43 CFR 2310.4.

Dated: September 9, 2011.

Rhea S. Suh,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 2011–25605 Filed 10–4–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on September 28, 2011, a proposed Consent Decree in *United States and Allegheny County Health Department* v. *Eastman Chemical Resins, Inc.,* Civil Action No. 11–1240 was lodged with the United States District Court for the Western District of Pennsylvania. The proposed Consent Decree, lodged on September 28, 2011, resolves the liability of defendant Eastman Chemical Resins, Inc. (''Eastman'') to the United States and the Allegheny County Health Department for violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.,* alleged in a Complaint filed on September 28, 2011. In the Complaint, the United States and the Allegheny County Health Department allege that Eastman violated the Clean Air Act by failing to comply with numerous permits issued pursuant to the Pennsylvania State Implementation Plan. These permits govern emissions of volatile organic compounds from Eastman's manufacturing plant located in West Elizabeth, Pennsylvania.

The Consent Decree requires Eastman, among other things, to install pollution control equipment, perform volatile organic compound (''VOC'') emissions testing, perform monitoring, maintain records, and submit reports and permit applications to the United States and the Allegheny County Health Department. The Consent Decree also requires Eastman to pay a civil penalty of $316,000 to the United States and $316,000 to the Allegheny County Clean Air Fund.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, by e-mail to *pubcommentees.enrd@usdoj.gov* or regular mail to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and refer to *United States and Allegheny County Health Department* v. *Eastman Chemical Resins, Inc.* D.J. Ref. 90–5–2–1–09001.

The Consent Decree may be examined at the Office of the United States Attorney for the Western District of Pennsylvania, 700 Grant Street, Suite 400, Pittsburgh, PA 15219 and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. When requesting a copy from the Consent Decree Library, please enclose a check in the amount of $20.00 for the Consent Decree only or $32.75 for the Consent Decree and attachments (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the address above.

Robert Brook,

Assistant Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 2011–25636 Filed 10–4–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on September 26, 2011, a proposed Consent Decree in *United States* v. *Newport Sand & Gravel Company, Inc., and Carroll Concrete Company, Inc.,* Civil Action No. 2:11–cv–228, was lodged with the United States District Court for the District of Vermont.

In this action, the United States seeks civil penalties and injunctive relief against Newport Sand & Gravel Company, Inc., and Carroll Concrete Company, Inc. (''Defendants'') for violations of the Clean Water Act. These

violations include unauthorized discharges of storm and process water at three concrete ready-mix plants in Vermont, one concrete ready-mix plant in New Hampshire, and one pre-cast concrete block plant in New Hampshire. The Consent Decree requires the Defendants to, among other things, pay a $200,000 penalty and implement employee training, facilities inspections, and other practices to prevent unauthorized storm water discharges.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Newport Sand & Gravel Company, Inc., and Carroll Concrete Company, Inc.,* Civil Action No. 2:11–cv–228, D.J. Ref. 90–5–1–1–09769.

During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $13.50 (25 cents per page reproduction costs of Consent Decree and Appendices) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–25637 Filed 10–4–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Comment Request for Information Collection; Information Collection Plan for Benefits.gov Online; Extension Without Change

AGENCY: Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) [44 U.S.C. 3505(c)(2)(A)]. The 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 the collection requirements on respondents can be properly assessed.

DATES: Written comments must be submitted by December 5, 2011.

ADDRESSES: A copy of the ICR and supporting documentation as submitted to the Office of Management and Budget (OMB) can be obtained by contacting the Department of Labor. To obtain copies, contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or e-mail to *DOL_PRA_PUBLIC@dol.gov.* Send comments regarding this proposed collection of information, including suggestions for reducing the burden to the U.S. Department of Labor, Office of the Chief Information Officer, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Government developed a strategy to simplify the delivery of services to citizens, which included the Department of Labor (DOL) serving as the managing partner of the Benefits.gov Web site. The Benefits.gov Web site assists citizens by providing information and eligibility prescreening services for more than 1,000 Federally funded benefit and assistance programs.

This Web site reduces the burden on citizens attempting to locate services available from many different government agencies by providing one-stop access to information on obtaining those services.

Respondents answer a series of questions to the extent necessary for locating relevant information on Federal benefits. Responses are used by the respondent to expedite the identification and retrieval of sought after information and resources pertaining to the benefits sponsored by the Federal government.

II. Current Action

Pursuant to the PRA implementing regulations at 5 CFR 1320.8(d)(1), this notice requests comments on the proposed information collection request discussed above in the Background section of this notice. OMB approval for this collection of information is currently scheduled to expire on January 31, 2012. The DOL will request a three-year extension of the approval from OMB for the collection of information required for locating information on the Benefits.gov Web site. Interested parties are encouraged to provide comments to the individual listed in the **ADDRESSES** section above.

III. Desired Focus of Comments

The Department is particularly interested in comments which:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhance the quality, utility, and clarity of the information to be collected; and

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Office of the Assistant Secretary for Administration and Management.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Information Collection Plan for Benefits.gov Online.

OMB Control Number: 1290–0003.

Affected Public: Individuals or households, not for-profit institutions.

Estimated Number of Respondents: 6,345,715.

Frequency: On occasion.

Total Estimated Annual Responses: 6,345,715.

Estimated Average Time per Response: 5.5 minutes.

Estimated Total Annual Burden Hours: 581,691 hours.

Total Estimated Annual Cost Burden: $0.

Dated: September 29, 2011.

Linda Watts-Thomas,

Agency Clearance Officer.

[FR Doc. 2011–25606 Filed 10–4–11; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,160]

Pension Systems Corporation, Sherman Oaks, CA; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated August 2, 2011, a petitioner requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Pension Systems Corporation, Sherman Oaks, California (Pension Systems). The negative determination was issued on July 20, 2011. The Department's Notice of Determination was published in the **Federal Register** on August 12, 2011 (76 FR 50270). The workers are engaged in activities related to the supply of pension administration and recordkeeping services.

The negative determination was based on the findings that, with respect to Section 222(a) or Section 222(b) of the Act, was not been met because the firm did not produce an article. With respect to Section 222(c) of the Act, the investigation revealed that the firm is not a Supplier or Downstream Producer to a firm with a TAA-certified worker group.

In the request for reconsideration, the petitioner stated that the subject firm produces software that administers and tracks 401k plans, and alleges that the worker separations at the subject firm are due to increased customer imports from India.

The Department has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the petitioning workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 28th day of September 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–25722 Filed 10–4–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,014]

Geneon Entertainment (USA) Including On-Site Leased Workers From Interplace, Inc., Apple One and Robert Half Legal Santa Monica, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on June 14, 2011, applicable to workers of Geneon Entertainment (USA), including on-site leased workers from Interplace, Inc., and Apple One, Santa Monica, California. The workers are engaged in activities related to the production of DVD masters. The notice was published in the **Federal Register** on July 8, 2011 (76 FR 40401).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. New information shows that workers leased from Robert Half Legal were employed on-site at the Santa Monica, California location of Geneon Entertainment (USA). The Department has determined that these workers were sufficiently under the control of Geneon Entertainment (USA) to be considered leased workers.

The intent of the Department's certification is to include all workers of Geneon Entertainment (USA) who were adversely affected by increased imports following a shift in the production of DVD masters to a foreign country.

Based on these findings, the Department is amending this certification to include workers leased from Robert Half Legal working on-site at the Santa Monica, California location of the subject firm.

The amended notice applicable to TA–W–80,014 is hereby issued as follows:

All workers of Geneon Entertainment (USA), Inc., including on-site leased workers from Interplace, Inc., Apple One and Robert Half Legal, Santa Monica, California, who became totally or partially separated from employment on or after March 1, 2010 through June 14, 2013, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of September 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–25720 Filed 10–4–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,174; TA–W–80,174A]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance; Delphi Corporation, Powertrain Division, Including On-Site Leased Workers From Bartech Workforce Management, Auburn Hills, MI; Delphi Corporation, Powertrain Division, Including On-Site Leased Workers From Bartech Workforce Management, Henrietta, NY

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on August 17, 2011, applicable to workers of Delphi Corporation Powertrain Division, including on-site leased workers from Bartech Workforce Management, Auburn Hills, Michigan (TA–W–80,174) and Delphi Corporation Powertrain Division, including on-site leased workers from Bartech Workforce Management, Henrietta, New York (TA–W–80,174A). The workers are engaged in activities related to design and production of automotive electronics. The notice was published in the **Federal Register** on September 2, 2011 (76 FR

54795). The notice was amended on November 17, 2009, to show that workers' wages are reported under a separate unemployment insurance (UI) tax account under the name GM Components Holding, LLC. The amended notice was published on December 8, 2009 (74 FR 64713–64714).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that on July 24, 2009, a certification of eligibility to apply for adjustment assistance was issued for all workers of Delphi Rochester Operations, Delphi Powertrain Division, a subsidiary of Delphi Corporation, including on-site leased workers from Bartech, Rochester, New York, separated from employment on or after June 9, 2009, through July 24, 2011. The notice was published in the **Federal Register** on September 2, 2009 (74 FR 45477).

In order to avoid an overlap in worker group coverage, the Department is amending the May 10, 2010 impact date established for the Henrietta, New York location of the subject firm (TA–W–80,174A) to read July 25, 2011.

The intent of the Department's certification is to include all workers of the subject firm adversely affected by the shift in production of automotive electronics to a foreign country.

The amended notice applicable to TA–W–80,174 is hereby issued as follows:

All workers from Delphi Corporation, Powertrain Division, including on-site leased workers from Bartech Workforce Management, Auburn Hills, Michigan (TA–W–80,174), who became totally or partially separated from employment on or after November 18, 2010, through August 17, 2013, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

AND

All workers from Delphi Corporation, Powertrain Division, including on-site leased workers from Bartech Workforce Management, Henrietta, New York (TA–W–80,174A), who became totally or partially separated from employment on or after July 25, 2011, through August 17, 2013, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of September 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–25723 Filed 10–4–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,810; TA–W–74,810A; TA–W–74,810B]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance; SYMANTEC Corporation, the Enterprise Product and Services Group, SSQ Engineering, VCS and VCS-One Division, Austin, TX; SYMANTEC Corporation, the Enterprise Product and Services Group, SQA Engineering, VCS and VCS-One Division, Encryption Engineering Division, Including Remote Workers Across the United States, Mountain View, CA; SYMANTEC Corporation, the Enterprise Product and Services Group, SQA Engineering, VCS and VCS-One Division, Beaverton, OR

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 20, 2011, applicable to workers of Symantec Corporation, SQA Engineering, VCS and VCS-One Group, Austin, Texas (TA–W–74,810), Symantec Corporation, SQA Engineering, VCS and VCS-One Group, Mountain View, California (TA–W–80,810A), and Symantec Corporation, SQA Engineering, VCS and VCS-One Group, Beaverton, Oregon (TA–W–80,810B).

The Department's Notice of determination was published in the **Federal Register** on May 3, 2011 (76 FR 24915). The subject worker groups provide SQA engineering services.

At the request of a company official, the Department reviewed the certification for workers of Symantec Corporation (subject firm).

New findings show that the Encryption Engineering Division, SQA Engineering, VCS and VCS-One Division, work in conjunction with each other, that the aforementioned groups are under the Enterprise Products Division umbrella of the subject firm, and that the aforementioned groups have experienced significant worker separations due to a shift in supply of SQA engineering services (or like or directly competitive services) to India.

Accordingly, the Department is amending the certification to include workers of the Encryption Engineering Division at the Mountain View, California location, and to correct the subject firm name in its entirety.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in SQA engineering services to Pune, India.

The amended notice applicable to TA–W–74,810, TA–W–74,810A and TA–W–74,810B are hereby issued as follows:

All workers of Symantec Corporation, The Enterprise Product and Services Group, SQA Engineering, VCS and VCS-One Division, Austin, Texas (TA–W–74,810), Symantec Corporation, The Enterprise Product and Services Group, SQA Engineering and VCS and VCS-One Division, Encryption Engineering Division, including remote workers across the United States, Mountain View, California (TA–W–74,810A), and Symantec Corporation, The Enterprise Product and Services Group, SQA Engineering, VCS and VCS-One Division, Beaverton, Oregon (TA–W–74,810B), who became totally or partially separated from employment on or after November 1, 2009, through April 20, 2013, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 28th day of September 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–25717 Filed 10–4–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,540]

Bmc Software, Inc. Including On-Site Leased Workers From COMSYS ITS Including Remote Workers Located Throughout the United States; Houston, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 23, 2010, applicable to workers of BMC Software, Inc., including on-site leased workers from Comsys ITS, Houston, Texas. The workers are engaged in employment related to software development services. The notice was published in the **Federal Register** on December 8, 2010 (75 FR 76488).

At the request of the State of Maine workforce agency, the Department

reviewed the certification for workers of the subject firm.

New information shows that worker separations have occurred involving employees of the subject firm who telework from off-site locations throughout the United States. These employees provided various activities related to software development services. Based on these findings, the Department is amending this certification to include employees of the subject firm who telework and report into the Houston, Texas facility.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in software development services to a foreign country.

The amended notice applicable to TA–W–74,540 is hereby issued as follows:

All workers of BMC Software, inc., including on-site leased workers from Comsys ITS, and including remote workers located throughout the United States, Houston, Texas, who became totally or partially separated from employment on or after July 22, 2009 through November 23, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 28th day of September 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–25715 Filed 10–4–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,260]

Unimin Corporation Including On-Site Leased Workers From Staffmark and Elwood Staffing Aurora, IN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on July 6, 2011, applicable to workers of Unimin Corporation, including on-site leased workers from Staffmark, Aurora, Indiana. The workers are engaged in activities related to the production of process olivine. Specifically, the workers are engaged in mining operations, processing, and office support functions. The notice was published in the **Federal Register** on July 29, 2011 (76 FR 45623).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that workers leased from Elwood Staffing were employed on-site at the Aurora, Indiana location of Unimin Corporation. The Department has determined that these workers were sufficiently under the control of Unimin Corporation to be considered leased workers.

The intent of the Department's certification is to include all workers of the subject firm adversely affected by actual/likely increase in imports following a shift abroad.

Based on these findings, the Department is amending this certification to include workers leased from Elwood Staffing working on-site at the Aurora, Indiana location of the subject firm.

The amended notice applicable to TA–W–80,260 is hereby issued as follows:

All workers of Unimin Corporation, including on-site leased workers from Staffmark and Elwood Staffing, Aurora, Indiana, who became totally or partially separated from employment on or after June 27, 2010, through July 6, 2013, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of September 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–25709 Filed 10–4–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *September 12, 2011 through September 16, 2011.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) All of the Following Must Be Satisfied

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) Both of the Following Must Be Satisfied

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm

and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–80,030; Excel Berger, New Brunswick, NJ: March 7, 2010

TA–W–80,161; Gatehouse Media IL Holdings, Inc., Rockford, IL: May 4, 2010

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA–W–80,135; PSC Fabricating, St. Smith, AR: April 26, 2010

TA–W–80,302; Disney Interactive Studios, Glendale, CA: July 12, 2010

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–80,333; Kimball Electronics Tampa, Inc., Fremont, CA: August 1, 2010

TA–W–80,353; The HON Company, Owensboro, KY: August 4, 2011

TA–W–80,393; SOLON Corp., Tucson, AZ: August 24, 2010

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–80,378; Kwik-File, LLC, Fridley, MN: August 16, 2010

TA–W–80,378A; Mayline Moldco, Sheboygan, WI: August 16, 2010

TA–W–80,386; Ansell Protective Products, Inc., Coshocton, OH: August 19, 2010

TA–W–80,400; Four Seasons, Div. of SMP, Inc., Grapevine, TX: August 19, 2010

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

TA–W–80,135; PSC Fabricating, Ft. Smith, AR

TA–W–80,302; Disney Interactive Studios, Glendale, CA

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–80,161; Gatehouse Media IL Holdings, Inc., Rockford, IL

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

TA–W–80,030; Excel Berger, New Brunswick, NJ

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–80,153; Intercontinental Hotels Group, Alpharetta, GA

TA–W–80,156; Bank of America, N.A., Dallas, TX

TA–W–80,297; Steiff North America, Lincoln, RI

TA–W–80,309; Cadmus Journal Services, Inc., Columbia, MD

TA–W–80,401; NewLift Academy of Information Technology, dba NewLife Technical Institute, East Liverpool, OH

TA–W–80,430; Product Dynamics LTD, Levittown, PA

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 USC 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W–80,319; Timberland Trucking, Medway, ME

TA–W–80,343; Jostens State College, State College, PA

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W–80,328; Siemens Medical Solutions USA, Inc., Youngstown, OH

I hereby certify that the aforementioned determinations were issued during the period of *September 12, 2011 through September 16,*

2011. Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or to *foiarequest@dol.gov.* These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: September 26, 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–25711 Filed 10–4–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 17, 2011.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 17, 2011.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 22nd day of September 2011.

Michael Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

Appendix

18 TAA PETITIONS INSTITUTED BETWEEN 9/12/11 AND 9/16/11

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
80427	Coastal Lumber Company (Workers)	Hopwood, PA	09/12/11	09/09/11
80428	Toho Tenax America, Inc. (Company)	Rockwood, TN	09/12/11	09/09/11
80429	Kennametal Inc. (Company)	Latrobe, PA	09/12/11	09/09/11
80430	Product Dynamics LTD (Workers)	Levittown, PA	09/12/11	09/09/11
80431	Covidien (Company)	Argyle, NY	09/12/11	09/11/11
80432	Infuscience (Workers)	North Charleston, SC	09/13/11	09/12/11
80433	Werner Company (State/One-Stop)	Merced, CA	09/13/11	09/12/11
80434	IBM Corporation (Workers)	Armonk, NY	09/13/11	09/09/11
80435	New United Motor Mfg. Inc (NUMMI) (Company).	Fremont, CA	09/13/11	09/09/11
80436	Ornamental Mouldings, LLC (Company)	Archdale, NC	09/14/11	09/06/11
80437	Klaussner Furniture Industry (State/One-Stop).	Milford, IA	09/14/11	09/13/11
80438	LabWest Inc. (Workers)	Santa Ana, CA	09/14/11	09/13/11
80439	Yahoo Inc. (Workers)	Hillsboro, OR	09/15/11	09/15/11
80440	Bank Of America (Company)	Scranton, PA	09/15/11	09/14/11
80441	Online Buddies (State/One-Stop)	Cambridge, MA	09/15/11	09/14/11
80442	Bon Worth (State/One-Stop)	Hendersonville, NC	09/15/11	09/13/11
80443	Olympic Panel Products LLC. (Union)	Shelton, WA	09/16/11	09/14/11
80444	Spang/Magnetics (Workers)	East Butler, PA	09/16/11	09/15/11

[FR Doc. 2011–25710 Filed 10–4–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,733]

Xpedite Systems, LLC Deerfield Beach, Florida; Notice of Negative Determination on Reconsideration

On March 4, 2011, the Department of Labor issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of Xpedite Systems, LLC, a subsidiary of Easylink Services International Corporation, formerly a subsidiary of Premier Global Services, Inc., Deerfield Beach, Florida (Xpedite). The Department's Notice was published in the **Federal Register** on March 17, 2011 (76 FR 14698). Workers of the subject firm are engaged in activities related to the supply of communication, applications, and support services.

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The Trade Adjustment Assistance (TAA) petition is dated October 8, 2010 and was filed by three workers who supplied ''application development & support'' services and were separated on October 30, 2009. The petition states that worker separations occurred because ''services outsourced to India—Development & Testing, Russia—Development.''

The initial investigation was based on the Department's findings that imports of services like or directly competitive with those supplied by the workers of Xpedite did not increase during the relevant period; there has not been a shift to a foreign country by the workers' firm in the supply of (like or directly competitive) services; and Xpedite did not supply a service that was used by a firm that employed a worker group eligible to apply for TAA and used the services supplied by the subject firm in the production of an article or supply of a service that was the basis for the aforementioned TAA certification.

In the request for reconsideration, the workers provide a summary of their allegations: ''* * * there was a contract between Xpedite and AppLabs, an Indian company to do customer development work. Xpedite's Sales staff are promoting custom development work on Xpedite's platform to gain customers that need custom data transfers. Xpedite was also using AppLabs for migration work. AppLabs employees located in India are writing/testing custom software applications on Xpedite's platform. In the long run employees in India replaced'' workers at the Deerfield Beach, Florida facility.

The workers attached a document titled ''Contract Highlights'' which included a process map with the following sequence of events: ''AppLabs completes SOW (SOW template) reviewed by SE before going to customer'' ''SOW delivered to customer, documented in Workflow tool'' ''Customer signs off on SOW'' ''App Labs builds and does initial testing on request'' ''Depending on Project Management Ownership, customer is contacted for test/confirmation of work.'' The request also included a document titled ''Ancillary Processes and Service Level Agreements (SLA)'' that provides narrative support to the process map and a spreadsheet that identifies AppLabs projects, including ''migration projects to remove Xpedite's existing customers from old outdated platforms to Xpedite's current platform.''

In a subsequent communication with the Department, a petitioning worker stated that ''PWI Technologies was another company that did custom software development work for Xpedite'' and asserted that it is possible that ''Xpedite stopped using PWI Technologies for software development * * * when they went into the contract with AppLabs.''

During the course of the reconsideration investigation, Xpedite addressed multiple worker allegations and provided additional materials, including a copy of a Strategic Agreement with AppLabs Technologies Private Limited (AppLabs). In making its determination on reconsideration, the Department carefully reviewed all responses and material submitted during the reconsideration investigation and the administrative record.

A careful review of information previously-submitted by Xpedite revealed that prior to October 21, 2010, Xpedite was a wholly-owned subsidiary of Premier Global Services, Inc. Effective October 21, 2010, Xpedite was acquired by EasyLink Services International Corporation in a stock purchase.

The definition of a firm includes an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy, and receiver under decree of any court. Further, a firm, together with a predecessor or successor-in-interest, or together with any affiliated firm controlled or substantially beneficially owned by substantially the same people, may be considered a single firm. 29 CFR 90.2

The careful review of previously-submitted information also revealed that Xpedite Systems, LLC had an affiliated facility in Tinton Falls, New Jersey that supplied some of the same services, and that operations were consolidated to the New Jersey facility in October 2009. Workers whose functions were not eliminated due to the domestic consolidation remained at the Florida facility until the acquisition of the subject firm by EasyLink Services International Corporation in October 2010.

Because the petition and filing dates precede the change in ownership, and because of the regulatory definition of a firm, the Department determines that, for purposes of this TAA investigation only, the subject firm is Xpedite Systems, LLC, a subsidiary of Premier Global Services, Inc., Deerfield Beach, Florida (Xpedite Systems, LLC), and the subject worker group consists only of former workers of Xpedite Systems, LLC, a subsidiary of Premier Global Services, Inc., Deerfield Beach, Florida. There were no leased or temporary workers at the subject firm from October 1, 2009 through October 21, 2010.

During the reconsideration investigation, the Department obtained a copy of a Strategic Agreement entered into by Xpedite Systems, LLC and AppLabs on October 13, 2009. Based on a careful review of the agreement, the Department determines that Xpedite Systems, LLC and AppLabs are two separate entities and do not constitute a single firm.

Section 222(a)(2) of the Trade Act of 1974, as amended, 19 U.S.C. 22272(a)(2), states that the shift in supply of services criterion may be met if there was a shift by the workers' firm to a foreign country in the supply of services like or directly competitive with the services supplied by the workers' firm.

Because Xpedite Systems, LLC and AppLabs are separate firms, a shift to/acquisition from a foreign country of services by AppLabs is not a shift to/acquisition from a foreign country of services by Xpedite Systems, LLC. Consequently, the shift in the supply of services by AppLabs to India cannot be a basis for certification of workers of Xpedite Systems, LLC. Further, the reconsideration investigation revealed that Xpedite Systems, LLC did not contract with AppLabs, PWI Technologies, or any other entity to perform like or directly competitive services in a foreign country.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Xpedite Systems, LLC, a subsidiary of Premier Global Services, Inc., Deerfield Beach, Florida.

Signed in Washington, DC, on this 28th day of September 2011.

Del Min Amy Chen

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–25716 Filed 10–4–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,949]

Western Digital Technologies, Inc.: Hard Drive Development Engineering Group Irvine (Formerly at Lake Forest), CA; Notice of Negative Determination on Remand

On May 26, 2011, the United States Court of International Trade (USCIT) granted the Department of Labor's request for voluntary remand to conduct further investigation in *Former Employees of Western Digital Technologies, Inc.* v. *United States Secretary of Labor* (Court No. 11–00085).

On November 25, 2009, former workers of Western Digital Technologies, Inc., Hard Drive Development Engineering Group, Lake Forest, California (subject firm) filed a petition for Trade Adjustment Assistance (TAA) on behalf of workers at the subject firm. AR 1. Workers at the subject firm (subject worker group) are engaged in engineering functions for the development of hard disk drives.

The initial investigation revealed that the subject firm had not shifted abroad services like or directly competitive with those provided by the subject worker group, had not acquired such services from abroad, and there had not been an increase in imports of articles like or directly competitive with those produced or services supplied by the subject firm. AR 72–77. Additionally, with respect to Section 222(c) of the Act, the initial investigation revealed that the subject firm could not be considered a Supplier or Downstream Producer to a firm that employed a TAA-certified worker group. AR 72–77. On August 5, 2010, the Department of Labor (Department) issued a Negative Determination regarding eligibility to apply for TAA applicable to workers and former workers of the subject firm. The Department's Notice of negative determination was published in the **Federal Register** on August 23, 2010 (75 FR 51849). AR 82.

By application dated September 14, 2010, the petitioning workers requested administrative reconsideration of the Department's negative determination. AR 83. In the request, the petitioners alleged that increased imports of articles that were produced using the services supplied by the subject worker group contributed importantly to worker separations at the subject firm. AR 83.

To investigate the petitioners' claim, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration on October 7, 2010. AR 84. The Department's Notice of Affirmative Determination was published in the **Federal Register** on October 25, 2010 (75 FR 65517). AR 286.

During the reconsideration investigation, the Department obtained information from the subject firm regarding the petitioners' claims and collected data from the U.S. International Trade Commission regarding imports of articles like or directly competitive with those produced using the services supplied by the subject worker group. AR 89–125, 126, 127.

Based on the findings of the reconsideration investigation, the Department concluded that worker separations at the subject firm were not caused by a shift in services abroad or increased imports of services like or directly competitive with those provided by the subject worker group. AR 89–125. Further, the reconsideration investigation revealed that the subject firm did not import articles like or directly competitive with those produced directly using services supplied by the subject worker group (AR 89–125) and U.S. aggregate imports of articles like or directly competitive with hard disk drives declined in the relevant time period. AR 126, 134–136, 137, 141–142, 143–145. Consequently, the Department issued a Notice of Negative Determination on Reconsideration on February 4, 2011. AR 129–130. The Department's Notice of determination was published in the **Federal Register**, on February 24, 2011 (75 FR 10403). AR 287.

In the complaint filed with the USCIT on April 11, 2011, the Plaintiffs claimed that their separations were directly caused by the subject firm's foreign operations and increased imports of hard disk drives and provided information in support of these claims. The Plaintiffs stated that the subject firm trained foreign engineers at the Lake Forest, California facility, who then returned to their respective countries to perform the same services as the Plaintiffs and provided a list of job announcements for engineers posted by the subject firm in Malaysia at the same time as the domestic layoffs. Additionally, the Plaintiffs provided import statistics pertaining to hard disk drives, specifically pointing to increased imports of these articles from Malaysia.

In a letter submitted to the Department on June 13, 2011, the Plaintiffs provided additional information surrounding the layoffs of the workers, including supporting information relating to the allegations made in the complaint to the USCIT. 154–182. The Plaintiffs provided a list of several engineering positions and functions that shifted to Asia from the Lake Forest, California facility and included statements on how engineering functions were transferred abroad, presenting details regarding the training of foreign workers who returned overseas to perform the same functions as the Plaintiffs. AR 154–182.

The intent of the Department is for a certification to cover all workers of a subject firm, or appropriate subdivision, who were adversely affected by increased imports of articles produced or services supplied by the firm or shifts in production or services, based on facts obtained during the investigation of the TAA petition. Therefore, the Department requested voluntary remand to address the allegations made by the Plaintiffs, to determine whether the subject worker group is eligible to apply for TAA under the Trade Act of 1974, as amended (hereafter referred to as the Act), and to issue an appropriate determination.

The group eligibility requirements for workers of a Firm under Section 222(a) of the Act, 19 U.S.C. 2272(a), can be satisfied if the following criteria are met:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated; and

(2)(A)(i) The sales or production, or both, of such firm have decreased absolutely;

(ii)(I) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(II) Imports of articles like or directly competitive with articles—

(aa) Into which one or more component parts produced by such firm are directly incorporated, or

(bb) Which are produced directly using services supplied by such firm, have increased; or

(III) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased; and

(iii) The increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

(B)(i)(I) There has been a shift by such workers' firm to a foreign country in the production of articles or the supply of services like or directly competitive with articles which are produced or services which are supplied by such firm; or

(II) Such workers' firm has acquired from a foreign country articles or services that are

like or directly competitive with articles which are produced or services which are supplied by such firm; and

(ii) The shift described in clause (i)(I) or the acquisition of articles or services described in clause (i)(II) contributed importantly to such workers' separation or threat of separation.

During the remand investigation, the Department confirmed all previously collected information, obtained additional information from the subject firm regarding domestic and foreign operations, solicited input from the Plaintiffs, and addressed all of the Plaintiffs' allegations. At the time of the remand investigation, the subject firm was in the process of transferring the corporate headquarters facility from Lake Forest, California to Irvine, California. AR 213.

The information the Department received on remand contained more detail regarding the operations of the subject firm domestically and abroad. In order to determine whether there was a shift abroad of the engineering services provided by the subject worker group, the Department had to first determine whether the subject firm employs engineers at its facilities in Asia that supply engineering services like or directly competitive with those supplied by the subject worker group at the Lake Forest, California facility.

The investigation revealed that the business model of the subject firm is to develop new products domestically and carry out the manufacturing at its facilities overseas. AR 152, 212–218, 228–231, 244, 245–246, 271–279. After the design and development of the products is provided by the subject worker group, the production takes place at the foreign facilities, a process that the subject firm did not change during the relevant time period for the investigation of this petition. AR 152, 212–218, 228–231, 244, 245–246, 271–279.

Although the Plaintiffs declare that the subject firm shifted out of the country engineering services like or directly competitive with those provided by the subject worker group (AR 154–182), based upon the data collected during the remand investigation, the Department determines that engineers employed at foreign facilities of the subject firm and the engineers employed by the subject firm domestically do not perform like or directly competitive functions. AR 152, 212–218, 228–231, 244, 245–246, 271–279. Because of the stage of production at which the functions are performed, the work performed by the engineers domestically and the engineers abroad is not interchangeable. AR 152, 212–218, 228–231, 244, 245–246, 271–279.

The findings confirmed that the workers were not impacted by a shift in services or foreign acquisition of services as the work supplied by the worker group abroad cannot be interchanged with the work provided by the domestic engineers. AR 152, 212–218, 228–231, 244, 245–246, 271–279. According to the subject firm, the engineering work performed abroad not only requires the engineers to be present at the manufacturing location, but is also different and less complex than the development work performed by the domestic engineers. AR 152, 212–218, 228–231, 244, 245–246, 271–279. Therefore, the Department determines that the work performed overseas did not contribute importantly to worker separations domestically because the services are not like or directly competitive.

Regarding the Plaintiffs' allegation that the subject firm brought foreign workers to be trained at the Lake Forest, California facility, the subject firm asserted that the firm's business model calls for the development of products domestically and for manufacturing at foreign facilities. AR 152, 212–218, 228–231, 244, 245–246, 271–279. However, the firm states that the foreign engineers still must be knowledgeable about the new products in order to carry out their work, so foreign engineers visit the United States to train on the new products to oversee the production at the manufacturing facilities. Consequently, the training of foreign workers in the U.S. does not show that the roles of the domestic and engineers abroad are interchangeable. AR 152, 212–218, 228–231, 244, 245–246, 271–279.

The Plaintiffs submitted a list of job announcements posted by the subject firm in Malaysia. AR 154–182. The subject firm maintains that at the time of the domestic reduction in force in late 2008 and early 2009, hiring efforts on a global level were suspended. AR 208–218. The Department collected employment numbers of engineers at Lake Forest, California, Malaysia, and Thailand. AR 271–285. The numbers revealed that employment of engineers decreased from December 2008 to June 2009, but started to increase at all three locations in late 2009. AR 241, 242, 243, 271–285. Nonetheless, the Department does not consider the services of the domestic engineers like or directly competitive with those provided by the engineers at the production facilities overseas. Therefore, the employment levels in these groups are not pertinent to the outcome of the investigation.

Plaintiffs also alleged that increased imports of hard disk drives contributed to worker separations. AR 154–182. Aggregate U.S. imports of hard disk drives or articles like or directly competitive declined in period under investigation. Nonetheless, the Department determined that increased imports of articles could not have contributed to worker separations because the subject firm develops hard disk drives domestically and manufactures them at the facilities in Asia. Therefore, an increase in imports of articles could not have contributed to a decline in the engineering services supplied by the subject worker group.

For Section 222(a)(A)(ii)(II)(bb) of the Act to be met, imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, must have increased. Because the subject firm does not produce articles like or directly competitive with hard disk drives domestically, this criterion is not met.

Based on a careful review of previously submitted information and new information obtained during the remand investigation, the Department reaffirms that the petitioning workers have not met the eligibility criteria of Section 222(a) of the Trade Act of 1974, as amended.

Conclusion

After careful reconsideration of the administrative record, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance applicable to workers and former workers of Western Digital Technologies, Inc., Hard Drive Development Engineering Group, Irvine (formerly at Lake Forest), California.

Signed at Washington, DC, this 23rd day of September 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–25712 Filed 10–4–11; 8:45 am]

BILLING CODE 4510–FN–P

U.S. DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,152]

CompONE Services, LTD, Ithaca, NY; Notice of Negative Determination Regarding Application for Reconsideration

By application received September 6, 2011, a worker requested administrative reconsideration of the negative

determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers at CompONE Services, LTD, Ithaca, New York (CompONE Services). The negative determination was issued on August 3, 2011. The Department's Notice of Determination was published in the **Federal Register** on August 18, 2011 (76 FR 51435). The workers of CompONE Services are engaged in activities related to the supply of medical billing and coding services.

The petition was filed on behalf of ''medical billers'' workers at CompONE Services, LTD, Ithaca, New York. The petition states that the service supplied by CompONE Services is being shifted to an affiliated facility in Vietnam.

The negative determination was based on the Department's findings that CompONE Services does not produce an article within the meaning of Section 222(a) or Section 222(b) of the Act. In order to be considered eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, the worker group seeking certification (or on whose behalf certification is being sought) must work for a ''firm'' or appropriate subdivision that produces an article.

Pursuant to 29 CFR 90.18(c), administrative reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The request for reconsideration asserts that ''an error has been made interpreting whether the facts of our case fit the criteria required by the statute.''

After the Trade Act of 2009 expired in February 2011, petitions for TAA were instituted under the Trade Adjustment Assistance Reform Act of 2002 (Trade Act of 2002). The petition for CompOne Services was instituted on May 5, 2011. Therefore, the statute applicable to TA–W–80,152 is the Trade Act of 2002.

Section 222 of the Trade Act of 2002 establishes the worker group eligibility requirements. The requirements include either ''imports of articles like or directly competitive with articles produced by such firm or subdivision have increased'' or ''a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision.'' The statute does not provide as a basis for certification a shift in the supply of services to a foreign country.

After careful review of the request for reconsideration, previously submitted materials, the applicable statute, and relevant regulation, the Department determines that there is no new information, mistake in fact, or misinterpretation of the facts or of the law.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 16th day of September 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–25721 Filed 10–4–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,001]

Mercer (US), Inc., a Subsidiary of Mercer LLC, a Subsidiary of Mercer, Inc., a Subsidiary of Marsh & Mclennan Companies, Inc., National Accounting Center Department, Chicago, IL; Notice of Negative Determination Regarding Application for Reconsideration

By application received July 22, 2011, a worker requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers Mercer (US), Inc., a subsidiary of Mercer LLC, a subsidiary of Mercer, Inc., a subsidiary of Marsh & McLennan Companies, Inc., National Accounting Center Department (NAC), Chicago, Illinois (Mercer (US), Inc., National Accounting Center Department). The negative determination was issued on June 3, 2011. The Department's Notice of determination was published in the **Federal Register** on June 17, 2011 (76 FR 35476). The workers of Mercer (US) Inc., National Accounting Center Department are engaged in activities related to the supply of commission and cash receipt processing services.

The petition was filed on behalf of ''national accounting center'' workers at Mercer (US), Inc., Chicago, Illinois. The petition states that Mercer (US), Inc. ''shifted production to India.''

The negative determination was based on the Department's findings that Mercer (US), Inc. does not produce an article within the meaning of Section 222(a) or Section 222(b) of the Act. In order to be considered eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, the worker group seeking certification (or on whose behalf certification is being sought) must work for a ''firm'' or appropriate subdivision that produces an article.

In the request for reconsideration, the petitioner asserts that subject worker group separations were due to a shift to India and stated that other similar firms have employed worker groups eligible to apply for TAA.

The determinations referenced in the request for reconsideration are March USA, Inc., NA Controllership Division, Chicago, Illinois, and HSBC Bank USA, Trade and Supply Chain Department, Brooklyn, New York (TA–W–71,889 issued on October 28, 2009; and TA–W–73,191 issued on May 17, 2011 respectively).

Workers covered by TA–W–71,889 and TA–W–73,191 were eligible to apply for worker adjustment assistance because the worker group eligibility requirements of the Trade and Globalization Adjustment Assistance Act of 2009 (Trade Act of 2009) was satisfied.

Pursuant to 29 CFR 90.18(c), administrative reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

After the Trade Act of 2009 expired in February 2011, petitions for TAA were instituted under the Trade Adjustment Assistance Reform Act of 2002 (Trade Act of 2002). Therefore, the statute applicable to TA–W–80,001 is the Trade Act of 2002. The applicable regulation is codified in 29 CFR Part 90, Subpart B.

Section 222 of the Trade Act of 2002 establishes the worker group eligibility

requirements. The requirements include either ''imports of articles like or directly competitive with articles produced by such firm or subdivision have increased'' or ''a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision.''

The request for reconsideration asserts that ''the situation/circumstances/duties under petition #80001 are similar in some instances and exactly the same in others'' to those of TA–W–71,889 and TA–W–73,191.

The certifications for TA–W–71,889 and TA–W–73,191 were issued based on the Department's findings that the workers' firm supplied a service and that the supply of services was shifted/acquired from a foreign country. The shift/acquisition of services that was the basis for certification under the Trade Act of 2009 cannot be the basis for certification under the Trade Act of 2002 because the two statutes have different worker group eligibility criteria.

After careful review of the request for reconsideration, previously submitted materials, the applicable statute, and relevant regulation, the Department determines that there is no new information, mistake in fact, or misinterpretation of the facts or of the law.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 28th day of September 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–25719 Filed 10–4–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–75,043]

SpectraWatt, Inc. Including On-Site Leased Workers From Kelly Services Hopewell Junction, NY; Notice of Revised Determination on Reconsideration

On June 6, 2011, the Department of Labor issued an Affirmative Determination Regarding Application for Reconsideration applicable to workers and former workers of SpectraWatt, Inc., Hopewell Junction, New York (subject firm). Workers at the subject firm were engaged in employment related to the production of solar cells for their application in solar panels. The worker group includes on-site leased workers from Kelly Services.

During the reconsideration investigation, the Department carefully reviewed previously submitted material and analyzed aggregate industry data and industry trends, including U.S. aggregate imports of like or directly competitive articles and finished articles containing components like or directly competitive to those produced by the subject firm.

The analysis revealed that, during the period of investigation, imports of articles like or directly competitive with solar cells produced by the subject firm have increased, and that the increased imports of solar cells (or like or directly competitive articles) contributed importantly to the worker group separations and sales/production declines at the subject firm.

The analysis also revealed that, over the relevant time period, solar modules installed in the U.S. included a lower percentage of U.S. produced solar cells and that the decline contributed importantly to the worker group separations and sales/production declines at the subject firm.

Conclusion

After careful review of the additional facts obtained during the reconsideration investigation, I determine that workers of SpectraWatt, Inc., Hopewell Junction, New York, meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. § 2272(a). In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

All workers of SpectraWatt, Inc., including on-site leased workers from Kelly Services, Hopewell Junction, New York, who became totally or partially separated from employment on or after December 22, 2009, through two years from the date of this revised certification, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 28th day of September 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–25718 Filed 10–4–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,441; TA–W–73,441A; TA–W–73,441B; TA–W–73,441C; TA–W–73,441D; TA–W–73,441E; TA–W–73,441F; TA–W–73,441G]

Notice of Revised Determination on Reconsideration

TA–W–73,441
Quad Graphics, Inc., Including Leased Workers From Staff Management, Inc., Sussex, WI
TA–W–73,441A
Quad Tech, Inc., Including Leased Workers From Firstech, Eagle Technology Group, Inc., and RCM Technologies, Sussex, WI
TA–W–73,441B
Quad Graphics, Inc., Including Leased Workers From Staff Management, Inc., West Allis, WI
TA–W–73,441C
Quad Graphics, Inc., Including Leased Workers From Staff Management, Inc., Pewaukee, WI
TA–W–73,441D
Quad Graphics, Inc., Including Leased Workers From Staff Management, Inc., Lomira, WI
TA–W–73,441E
Quad Graphics, Inc., Including Leased Workers From Staff Management, Inc., Hartford, WI
TA–W–73,441F
World Color Mt. Morris II, LLC, a Subsidiary of Quad Graphics, Inc., Mt. Morris, IL
TA–W–73,441G
Quad Graphics, Inc., Including Leased Workers From SPS Temporaries, Depew, NY

On February 17, 2011, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of Quad Tech, Inc. (subject firm), Sussex, Wisconsin (TA–W–73,441A) to apply for Trade Adjustment Assistance (TAA). The Department's Notice was published in the **Federal Register** on March 15, 2011 (76 FR 14099).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

During the reconsideration investigation, the subject firm company official clarified that the worker who requested reconsideration worked at Quad Graphics, Inc., Hartford, Wisconsin (TA–W–73,441E). Further, additional clarifying information was received which resulted in an expanded reconsideration investigation that included:

- Quad Graphics, Inc., including leased workers from Staff Management, Inc., Sussex, Wisconsin (TA–W–73,441), engaged in the production of magazines and catalogs;
- Quad Tech, Inc., including leased workers from FIRSTECH, Eagle Technology Group, Inc., and RCM Technologies, Sussex, Wisconsin (TA–W–73,441A), engaged in the production of automated controls and finishing controls for printing presses and supply of support services;
- Quad Graphics, Inc., including leased workers from Staff Management, Inc., West Allis, Wisconsin (TA–W–73,441B), engaged in the production of magazines and catalogs;
- Quad Graphics, Inc., including leased workers from Staff Management, Inc., Pewaukee, Wisconsin (TA–W–73,441C), engaged in the production of magazines and catalogs;
- Quad Graphics, Inc., including leased workers from Staff Management, Inc., Lomira, Wisconsin (TA–W–73,441D), engaged in the production of magazines and catalogs;
- Quad Graphics, Inc., including leased workers from Staff Management, Inc., Hartford, Wisconsin (TA–W–73,441E), engaged in the production of magazines and catalogs;
- World Color Mt. Morris II, LLC, a subsidiary of Quad Graphics, Inc., Mt. Morris, Illinois (TA–W–73,441F), engaged in the production of magazines and catalogs; and
- Quad Graphics, Inc., including leased workers from SPS Temporaries, Depew, New York (TA–W–73,441G), engaged in the production of paperback books.

The reconsideration investigation revealed that the following worker groups have met the certification criteria under Section 222(a) of the Trade Act, 19 U.S.C. 2272(a): TA–W–73,441, TA–W–73,441A, TA–W–73,441B, TA–W–73,441F, and TA–W–73,441G.

Criterion I has been met because a significant number or proportion of workers at each of the aforementioned worker groups have become totally or partially separated, or are threatened with such separation.

Criterion II has been met because there has been an acquisition from a foreign country by the subject firm of articles that are like or directly competitive with those produced by the aforementioned worker groups.

Criterion III has been met because the acquisition of articles contributed importantly to the workers' separation or threat of separation at the aforementioned worker groups.

A careful review of the administrative record and additional information obtained by the Department during the reconsideration investigation revealed that the following worker groups have not met the certification criteria under Section 222(a) of the Trade Act, 19 U.S.C. 2272(a): TA–W–73,441C, TA–W–73,441D and TA–W–73,441E.

Criterion I has not been met because a significant number or proportion of the workers' at each of the aforementioned worker groups have not become totally or partially separated, nor threatened to become totally or partially separated.

29 CFR 90.2 states that a significant number or proportion of the workers means at least three (3) workers in a firm (or appropriate subdivision thereof) with a workforce of fewer than 50 workers, or five (5) percent of the workers or 50 workers, whichever is less, in a workforce of 50 or more workers.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Quad Graphics, Inc., Pewaukee, Wisconsin (TA–W–73,441C); Quad Graphics, Inc., Lomira, Wisconsin (TA–W–73,441D); and Quad Graphics, Inc., Hartford, Wisconsin (TA–W–73,441E). Further, after careful review of the additional facts obtained on reconsideration, I determine that workers and former workers of Quad Graphics, Inc., Sussex, Wisconsin; Quad Tech, Inc., Sussex, Wisconsin; Quad Graphics, Inc., West Allis, Wisconsin; World Color Mt. Morris II, LLC, Mt. Morris, Illinois; and Quad Graphics, Inc., Depew, New York, meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. 2272(a). In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

All workers of Quad Graphics, Inc., including leased workers from Staff Management, Inc., Sussex, Wisconsin (TA–W–73,441); Quad Tech, Inc., including leased workers from FIRSTECH, Eagle Technology Group, Inc., and RCM Technologies, Sussex, Wisconsin (TA–W–73,441A); Quad Graphics, Inc., including leased workers from Staff Management, Inc., West Allis, Wisconsin (TA–W–73,441B); World Color Mt. Morris II, LLC, a subsidiary of Quad Graphics, Inc., Mt. Morris, Illinois (TA–W–73,441F); and Quad Graphics, Inc., including leased workers from SPS Temporaries, Depew, New York (TA–W–73,441G), who became totally or partially separated from employment on or after February 2, 2009, through two years from the date of this revised certification, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 27th day of September 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–25714 Filed 10–4–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0185]

Vehicle-Mounted Elevating and Rotating Work Platforms (Aerial Lifts); Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirement contained in the Standard on Vehicle-Mounted Elevating and Rotating Work Platforms (Aerial Lifts) (29 CFR 1910.67). The purpose of the requirement is to reduce workers' risk of death or serious injury by ensuring that aerial lifts are in safe operating condition.

DATES: Comments must be submitted (postmarked, sent, or received) by December 5, 2011.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0185, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2011–0185) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.* For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled ''Supplementary Information.''

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT:

Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Manufacturer's Certification of Modifications (§ 1910.67(b)(2)). The Standard requires that when aerial lifts are ''field modified'' for uses other than those intended by the manufacturer, the manufacturer or other equivalent entity, such as a nationally recognized testing laboratory, must certify in writing that the modification is in conformity with all applicable provisions of ANSI A92.2–1969 and the OSHA standard and that the modified aerial lift is at least as safe as the equipment was before modification. Employers are to maintain the certification record and make it available to OSHA compliance officers. This record provides assurance to employers, workers, and compliance officers that the modified aerial lift is safe for use, thereby, preventing failure while workers are being elevated. The certification record also provides the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirement contained in the Standard on Vehicle-Mounted Elevating and Rotating Work Platforms (Aerial Lifts) (29 CFR 1910.67). The Agency wishes to retain its current estimate of 21 burden hours. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Vehicle-Mounted Elevating and Rotating Work Platforms (Aerial Lifts) (29 CFR 1910.67).

OMB Control Number: 1218–0230.

Affected Public: Business or other for-profits; not-for-profit organizations; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 1,000.

Total Responses: 1,014

Frequency: On occasion.

Average Time Per Response: Ranges from 1 minute (.02 hour) to maintain the manufacturer's certification record to 2 minutes (.03 hour) to disclose the record to an OSHA Compliance Officer.

Estimated Total Burden Hours: 21.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2011–0185). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your

electronic comments by your name, date, and the docket number, so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information, such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 4–2010 (75 FR 55355).

Signed at Washington, DC, on September 30, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–25665 Filed 10–4–11; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0194]

Cotton Dust Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Cotton Dust Standard (29 CFR 1910.1043).

DATES: Comments must be submitted (postmarked, sent, or received) by December 5, 2011.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2011–0194, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2011–0194) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3468, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements specified in the Cotton Dust Standard protect workers from the adverse health effects that may result from their exposure to cotton dust. The major information collection requirements of the Cotton Dust Standard include: performing exposure monitoring, including initial, periodic,

and additional monitoring; notifying each worker of their exposure monitoring results either in writing or by posting; implementing a written compliance program; and establishing a respiratory protection program in accordance with OSHA's Respiratory Protection Standard (29 CFR 1910.134).

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting an adjustment decrease in burden hours from 35,739 to 20,558 (a total decrease of 15,181 hours). The adjustment is primarily due to a decrease in covered workers.

Type of Review: Extension of a Currently Approved Collection.

Title: Cotton Dust Standard (29 CFR 1910.1043).

OMB Number: 1218–0061.

Affected Public: Business or other for-profits; Federal Government; State, Local or Tribal Government.

Number of Respondents: 281.

Frequency of Response: Annually; semi-annually; on occasion.

Total Responses: 53,622.

Average Time per Response: Varies from 5 minutes (.08 hour) for a secretary to maintain a record to 2 hours to conduct exposure monitoring.

Estimated Total Burden Hours: 20,558.

Estimated Cost (Operation and Maintenance): $2,449,194.

IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2011–0194). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 4–2010 (75 FR 55355).

Signed at Washington, DC, on September 30, 2011.

David Michaels, PhD, MPH,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–25664 Filed 10–4–11; 8:45 am]

BILLING CODE 4510–26–P

OFFICE OF MANAGEMENT AND BUDGET

Agency Information Collection Activities: Proposed Collection; Comment Request; the Partnership Fund for Program Integrity Innovation Pilot Idea Template

AGENCY: Office of Management and Budget.

ACTION: Notice and request for public comments.

SUMMARY: The Office of Federal Financial Management (OFFM) within the Office of Management and Budget is proposing for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et. Seq.*) the attached template for pilot idea summaries submitted to the Partnership Fund for Program Integrity Innovation (Partnership Fund). This notice announces that OFFM intends to submit this collection to OMB for approval and solicits comments on specific aspects for the proposed collection. The first notice of this information collection request, as required by the Paperwork Reduction Act, was published in the **Federal Register** on June 6, 2011 [76 FR 32375]. There were no comments on the first notice.

The Partnership Fund seeks to identify pilot projects to improve the service delivery, payment accuracy, and administrative efficiency of state-administered Federal assistance programs, while also reducing access barriers for eligible beneficiaries.

The proposed pilot idea summary template is intended for use by those wishing to submit pilot ideas for consideration. It outlines the specific information required by the Partnership Fund to make informed decisions in the pilot selection process. Pilot ideas to advance the Partnership Fund's goals are being solicited from all stakeholders, including the general public. The template is currently in use by Federal agencies based on OMB guidance. If approved under the Paperwork Reduction Act, it will be used to solicit ideas from stakeholders outside the Federal government both as a general template and as an online form for idea solicitations through the Partnership Fund web site, *http://www.partner4solutions.gov.* Currently, general ideas may be submitted via e-mail to *partner4solutions@omb.eop.gov,* or through *http://www.partner4solutions.gov.* The Partnership Fund is funded through FY 2012 and will continue to accept pilot idea proposals on a rolling basis until funding is exhausted. The Partnership Fund must

comply with a statutory requirement that all pilot projects, when taken together, be cost neutral.

DATES: Submit comments on or before November 4, 2011. Late comments will be considered to the extent practicable.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Comments may be e-mailed to: *mmassey@omb.eop.gov* and/or *FN-OMB-OIRA-Submission@omb.eop.gov.* Please include the full body of your comments in the text of the electronic message, as well as in an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to (202) 395–3242.

FOR FURTHER INFORMATION CONTACT: Please visit our web site at *www.partner4solutions.gov* or contact Meg Massey at (202) 395–7552 or *mmassey@omb.eop.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Partnership Fund for Program Integrity Innovation (Partnership Fund) was established by the Consolidated Appropriations Act of 2010 (Pub. L. 111–117). An appropriation of $32.5 million [1] provides money to pilot and evaluate promising innovations that confront these challenges in Federal, state and/or local administration. The purpose of the Partnership Fund is to identify and evaluate innovations in programs jointly administered by Federal and state agencies and in other program areas where Federal-state cooperation would be beneficial. OMB coordinates and manages the Partnership Fund for the purpose of conducting pilot projects that test these innovations. The pilots will emphasize the Partnership Fund's four goals: service delivery, program integrity, administrative efficiency, and program access.

Ideas submitted by the public are shared with the Collaborative Forum, a self-directed stakeholder group (*http://www.collaborativeforumonline.com*) established to fulfill the statutory requirement that the OMB Director consult with an ''interagency council of stakeholders'' in determining which pilots will receive Partnership Fund funding. The Collaborative Forum identifies pilot ideas that show the greatest potential for meeting the Partnership Fund's four goals and convenes work groups to further develop these ideas into feasible, measurable pilot concepts. Collaborative Forum work groups include state and other stakeholders with relevant expertise. Work groups produce pilot concept papers describing the goals, methods, resource requirements, and anticipated outcomes of proposed pilots. Ideas sent to the Collaborative Forum may be developed into pilot concept papers to send to OMB for funding consideration.

Federal agencies may also develop ideas into pilot concept papers that are shared with the Collaborative Forum for consultation. Pilot concepts are then submitted for funding approval by OMB, which takes into account the consultation provided by the Collaborative Forum and by the Partnership Fund's Federal Steering Committee, which consists of senior policy officials from Federal agencies that administer the major benefits programs.

Funds for each approved pilot concept are transferred to a lead Federal agency, which in turn selects specific states, localities, and/or other relevant entities to participate in the pilot by implementing specific pilot projects using pilot funds. The lead agency also conducts a cost-effective evaluation of the pilot projects. Based on evaluation findings, successful pilots will serve as models for other states and local agencies. Evaluation results may also be used to inform future administrative or legislative changes to the affected programs, including broader implementation of the innovations tested.

Examples of Programs and Pilots: Examples of Federally funded, state-administered assistance programs relevant to the goals of the Partnership Fund are listed below. Other programs will also be included in concept idea submissions.

- Special Supplemental Nutrition Program for Women, Infants and Children (WIC)
- Supplemental Nutrition Assistance Program (SNAP—formerly Food Stamps)
- Medicaid
- Unemployment Insurance (UI)
- Child Welfare
- Child Care
- Temporary Assistance for Needy Families (TANF)

Examples of the types of pilots that could be supported include:

- Pilots that simplify or streamline processes for application, eligibility determination, and confirmation of continued eligibility
- Pilots that promote or utilize data matching and information sharing across programs
- Pilots that test integrated applications, screening, and verification for multiple benefit programs

Components of an ideal pilot are listed below. Not every pilot concept considered for funding will meet all of these criteria, and the size and scope of the pilot projects funded may vary widely:

- Yield reliable data that can be captured in the pilot evaluation to suggest replication or expansion and demonstrate how successfully the pilot meets the Partnership Fund's four goals
- Have the potential to be replicated and sustained on a larger scale
- Address multiple elements of the Partnership Fund's four goals
- Address multiple programs and/or otherwise bridge organizational silos
- Yield measurable results in nine to 18 months
- Support the statutory requirement that Partnership Fund pilot projects be cost neutral when looked at as a whole

Current Actions: New collection of information.

Type of Review: New collection.

Affected Public: Individuals and households, businesses and organizations, State, Local, or Tribal Government.

Estimated Number of Respondents: 300.

Frequency of Response: We expect that most respondents will use the form to submit one idea, while some respondents may submit more than one idea.

Average minutes per response: 2 hours.

Burden Hours: 600.

Needs and Uses: The template is currently being used by Federal agencies, per OMB guidance, to submit pilot ideas to the Partnership Fund for Program Integrity Innovation, and as a useful reference for other organizations or individuals wishing to submit pilot ideas. If approved, the template will be made available for use by all agencies, individuals, and organizations wishing to submit pilot concept proposals for consideration.

Obligation to respond: Voluntary. However, if Federal agencies wish to pursue a pilot through the Partnership Fund, they should use this template.

[1] The initial FY 2010 appropriation for the Partnership Fund was for $37.5 million. This appropriation has been reduced to $32.5 million due to a $5 million rescission in Public Law 112–10.

Nature and extent of confidentiality: All pilot ideas submitted to the Partnership Fund may be posted on the Collaborative Forum web site, *http://www.collaborativeforumonline.com*, for comment and feedback. Individuals and organizations that submit ideas, regardless of whether they elect to use the template, may submit contact information if they wish to be contacted by the Collaborative Forum about their idea. Contact information, if submitted, will not be shared or used for any other purpose.

Privacy Impact Assessment: All ideas submitted to the Partnership Fund may be posted on the Collaborative Forum web site for comment and feedback. The template makes clear that the ideas submitted will be shared.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments will be available for public inspection on Regulations.gov.

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 Office of Management and Budget control number.

Debra J. Bond,

Deputy Controller.

Partnership Fund for Program Integrity Innovation Template Instructions for Pilot Idea Summary

The first step in the Partnership Fund pilot selection process is the submission of a pilot idea summary. Pilot idea summaries may be submitted by anyone through the partner4solutions.gov website, *http://www.partner4solutions.gov*, or the *partner4solutions@omb.eop.gov* email address. Pilot ideas may be sent to an independent Collaborative Forum for further development into more detailed concept papers. OMB consults with the Federal Steering Committee in selecting pilot concepts and making funding decisions.

Below are instructions for completing a pilot idea summary. Completed pilot idea summaries should not be more than two pages in length.

PARTNERSHIP FUND FOR PROGRAM INTEGRITY INNOVATION

PILOT IDEA: *Name of Pilot Idea*

1. Pilot Idea: *Summarize the idea in 2–3 sentences.*

2. Programs Affected:

- *Which programs are affected, either directly or indirectly? Ideally, an idea would address multiple programs and bridge multiple programmatic silos.*
- *Are these federal, state, and/or local programs? An ideal submission would involve multiple states and/or communities in the development or eventual implementation of a pilot.*

3. Measurable Impacts: *How does the pilot impact each of the four goals of the Partnership Fund? A pilot should address as many of these goals as possible across multiple programs or test a solution that could later be applied to multiple programs.*

(a) Improving payment accuracy
(b) Improving administrative efficiency
(c) Improving service delivery
(d) Reducing access barriers for eligible beneficiaries

4. Expected Outcomes and Measurement Methodologies:

- *What are the expectations and measures of success in relation to the four goals?*
- *What are the possible quantitative and qualitative measures?*
- *Could these outcomes be extrapolated to a larger environment?*

5. Potential Partners or Sponsors:

- *Which stakeholders and/or key organizations are involved?*
- *Does the proposed pilot have sufficient stakeholder buy-in? Stakeholders could include federal, state, and local governments, and non-governmental organizations.*

6. Estimated Operating Cost of Pilot:

- *How much would the pilot cost to implement?*
- *Are there resources of matching or leveraged funds that could be used to support this pilot?*
- *Is the Partnership Fund the most appropriate funding source for the pilot? All pilot ideas will be considered, but the Partnership Fund is targeting ideas that attempt to cut across multiple programs with multiple objectives, but have struggled to gain footing in existing program silos.*

7. Estimated Impact on Program Costs:

- *What are the anticipated costs and/or savings for the various programs involved in the pilot?*
- *If the pilot were to be scaled up, what are the anticipated costs/savings? Pilot ideas that increase program costs will be considered, but the Partnership Fund must comply with our statutory requirement to maintain overall cost neutrality.*

8. Pilot Implementation Issues:

- *Is this pilot idea ready for immediate implementation, or does it require further refinement?*
- *What is the timeframe in which the pilot would be conducted? The target time period for conducting the first round of pilots is nine-18 months.*
- *What are possible implementation barriers (e.g., privacy issues)?*
- *Is this pilot scalable? Successful ideas will demonstrate strong external validity and scalability.*
- *Could this pilot be implemented under existing legislative authorities or mechanisms?*
- *Are any administrative waivers required?*

PARTNERSHIP FUND FOR PROGRAM INTEGRITY INNOVATION

PILOT IDEA SUMMARY: *Name of Pilot Idea*

1. Pilot Idea:

2. Programs Affected:

3. Measurable Impacts:

(a) Improving payment accuracy
(b) Improving administrative efficiency
(c) Improving service delivery
(d) Reducing access barriers for beneficiaries

4. Expected Outcomes and Measurement Methodologies:

5. Potential Partners or Sponsors:
6. Estimated Operating Cost of Pilot:
7. Estimated Impact on Program Costs:
8. Pilot Implementation Issues:

[FR Doc. 2011–25651 Filed 10–4–11; 8:45 am]

BILLING CODE P

OFFICE OF MANAGEMENT AND BUDGET

Final Guidance on Appointment of Lobbyists to Federal Boards and Commissions

AGENCY: Office of Management and Budget.

ACTION: Notice of Final Guidance.

SUMMARY: The Office of Management and Budget (OMB) is issuing final guidance to Executive Departments and agencies concerning the appointment of federally registered lobbyists to boards and commissions. On June 18, 2010, President Obama issued ''Lobbyists on Agency Boards and Commissions,'' a memorandum directing agencies and departments in the Executive Branch not to appoint or re-appoint federally registered lobbyists to advisory committees and other boards and commissions. The Presidential Memorandum further directed the Director of OMB to ''issue proposed guidance to implement this policy to the full extent permitted by law.'' Proposed guidance was posted on November 2, 2010 and the final guidance was formulated after review of the comments received to the proposed guidance. The Presidential Memorandum is available at *http://www.whitehouse.gov/the-press-office/presidential-memorandum-lobbyists-agency-boards-and-commissions.*

DATES: *Effective Date:* The final guidance will be effective 30 days from the date of issuance in the **Federal Register.**

A. Final Guidance

On June 18, 2010, President Obama signed a Presidential Memorandum directing agencies in the Executive Branch not to appoint or re-appoint federally registered lobbyists to advisory committees and other boards and commissions. That memorandum directed the Office of Management and Budget to propose implementing guidance, which follows in the form of questions and answers:

Q1: Who is affected by the policy directed in the June 18, 2010 Presidential Memorandum (the ''Memorandum'')?

A1: This policy applies to federally registered lobbyists and does not apply to individuals who are registered as lobbyists only at the state level. A lobbyist for purposes of the Memorandum is any individual who is subject to the registration and reporting requirements of the Lobbying Disclosure Act of 1995 (LDA), as amended, 2 U.S.C. 1605, at the time of appointment or reappointment to an advisory board or commission. Agencies may rely on appropriate searches of databases maintained by the House of Representatives and the Senate in identifying federally registered lobbyists.[1] Alternatively, agencies may consider including in their recruitment process for appointing members a way of obtaining written certification from the individual that he or she is not a federally registered lobbyist.

Any individual who previously served as a federally registered lobbyist may be appointed or re-appointed only if he or she has either filed a bona fide de-registration or has been de-listed by his or her employer as an active lobbyist reflecting the actual cessation of lobbying activities or if they have not appeared on a quarterly lobbying report for three consecutive quarters as a result of their actual cessation of lobbying activities.

Q2: Does the policy restrict the appointment of individuals who are themselves not federally registered lobbyists but are employed by organizations that engage in lobbying activities?

A2: No, the policy established by the Memorandum applies only to federally registered lobbyists and does not apply to non-lobbyists employed by organizations that lobby.

Q3: What entities constitute ''boards and commissions'' under the policy?

A3: The policy directed in the Memorandum applies to any committee, board, commission, council, delegation, conference, panel, task force, or other similar group (or subgroup) created by the President, the Congress, or an Executive Branch department or agency to serve a specific function to which appointment is required, regardless of whether it is subject to the Federal Advisory Committee Act, as amended (5 U.S.C. App.). Appointment includes appointment required or permitted by law or regulation, including appointment at the discretion of the department or agency. Additionally, the ban also applies to established workgroups and subcommittees for boards and commissions, which may or may not require formal appointment.

Q4: Does the policy apply to non-Federal members of delegations to international bodies?

A4: Yes, delegations organized to present the United States' position to international bodies are considered to be boards or commissions for the purposes of this policy, regardless of whether they constitute advisory committees for purposes of the Federal Advisory Committee Act, as amended (5 U.S.C. App.). Therefore, agencies should not appoint federally registered lobbyists to these delegations.

Q5: Which ''members'' of those boards and commissions are covered by the policy?

A5: The policy applies to all members of boards and commissions who are not full-time Federal employees, including both those who have been designated to serve in a representative capacity on behalf of an interested group or constituency and those who have been designated to serve as Special Government Employees, and who are appointed by the President or an Executive Branch agency or official. However, the policy is not intended to be inconsistent with provisions of Federal law or international agreements. Accordingly, even where provisions exist that allow private organizations to designate their representatives or require their consultation on appointments, the appointing authority should, to the extent permissible by law, require such organizations to agree to the appointment of individuals who are not federally registered lobbyists.

Members of boards and commissions do not include individuals who are invited to attend meetings of boards or commissions on an ad hoc basis.

Q6: How does the policy apply if a statute or presidential directive provides for appointments to be made by State Governors or by members of Congress?

A6: While the discretion of appointing authorities outside of the Executive Branch will be respected, those appointing authorities should be encouraged to appoint individuals who are not federally registered lobbyists whenever possible.

Q7: How does the policy apply when a statute or presidential directive requires the appointment of a specific representative from an organization and that representative is a federally registered lobbyist?

A7: The policy does not supersede board or commission membership requirements established by statute or presidential directive. However, committee charters in effect at the time of the new policy that require a lobbyist to be appointed as a member of the committee should, wherever possible and at the earliest possible time, be amended to conform to the policy, consistent with statutes and presidential directives.

Q8: How will the guidance affect lobbyists who were serving on boards and commissions at the time the policy was established?

A8: The prohibition on the appointment of federally registered lobbyists to boards and commissions established by the Memorandum applies to appointments and re-appointments made after June 18, 2010. In order to ensure that there is no disruption of ongoing work of boards and commissions, federally registered lobbyists who already were serving on boards and commissions on that date may serve out the remainder of their terms, but may not be reappointed so long as they remain registered lobbyists.

Q9: Does this policy also restrict the participation of lobbyists as members of a subcommittee or other work group that performs preparatory work for its parent board or commission?

A9: Yes, the policy does not permit the appointment of federally registered lobbyists to a subcommittee or any other subgroup that performs preparatory work for a parent board or commission, whether or not its members

[1] Lobbying Disclosure, Office of the Clerk, U.S. House of Representatives: *http://lobbyingdisclosure.house.gov;* LDA Reports, U.S. Senate: *http://www.senate.gov/legislative/Public_Disclosure/LDA_reports.*htm.

are appointed in the same manner as are members to the parent committee. The goal of the Memorandum is to restrict the undue influence of lobbyists on Federal government through their membership on boards and commissions, which would include subcommittees and other bodies regardless of whether those positions require formal appointment.

Q10: Does this policy also restrict the participation of lobbyists as witnesses or experts who appear before boards and commissions or submit advice or materials to them?

A10: No, lobbyists may still appear before or otherwise communicate with a board or commission to provide testimony, information, or input in the same manner as non-lobbyists who are not members of or appointees to the board, commission, or any of its subgroups, to the extent permitted by law and regulation. The purpose of the policy is to prevent lobbyists from being in privileged positions in government. It is not designed to prevent lobbyists or others from petitioning their government. When lobbyists do testify, boards and commissions should make reasonable efforts to ensure that they hear a balance of perspectives and are not gathering information or advice exclusively from registered lobbyists.

Q11: What should an agency do if it appoints to a board or commission an individual who is not a federally registered lobbyist at the time of appointment, but who, after appointment, becomes a federally registered lobbyist?

A11: Agencies should make clear to all board and commission members, whether appointed as representatives or Special Government Employees, that their conduct of activities that would require them to be federally registered lobbyists after appointment would necessitate their resignation or removal from membership on boards or commissions. The appointing officers or their delegates shall ensure, at least annually, that board or commission members are not federally registered lobbyists and, upon reappointment of the members, either shall require each member to certify that he or she is not a federally registered lobbyist or shall check the Federal lobbyist databases to confirm that each member has not registered as a lobbyist since appointment. If an agency finds that, following appointment to a board or commission, a member subsequently has become a federally registered lobbyist or has engaged in activities that would require registration, the agency shall request the resignation of the member.

Q12: Will there be any waivers available for circumstances in which a federally registered lobbyist possesses unique or exceptional value to a board or commission?

A12: The policy makes no provisions for waivers, and waivers will not be permitted under this policy.

Office of Management and Budget

Boris Bershteyn,

General Counsel, Office of Management and Budget.

[FR Doc. 2011–25736 Filed 10–4–11; 8:45 am]

BILLING CODE P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings: October 2011

TIME AND DATES: All meetings are held at 2:30 p.m.

Tuesday, October 4;
Thursday, October 6;
Tuesday, October 11;
Wednesday, October 12;
Thursday, October 13;
Tuesday, October 18;
Wednesday, October 19;
Thursday, October 20;
Tuesday, October 25;
Wednesday, October 26;
Thursday, October 27.

PLACE: Board Agenda Room, No. 11820, 1099 14th St., NW., Washington, DC 20570.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider ''the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition * * * of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto.'' See also 5 U.S.C. 552b(c)(10).

Dated: October 3, 2011.

Lester A. Heltzer,

Executive Secretary.

[FR Doc. 2011–25856 Filed 10–3–11; 4:15 pm]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

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

DATES: Written comments should be received by December 5, 2011 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send e-mail to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION: Request for Clearance for Additional Survey of Master Teaching Fellows (MTFs) as Part of the Evaluation of the National Science Foundation's (NSF) Robert Noyce Teacher Scholarship (Noyce) Program.

Title of Collection: Evaluation of the Robert Noyce Teacher Scholarship Program.

OMB Control No.: 3145–0217.

Expiration Date of Approval: June 30, 2014.

Abstract: The National Science Foundation (NSF) received clearance for the evaluation of the Robert Noyce Teacher Scholarship Program on June 13, 2011 through OMB Control Number: 3145–0217. This included collecting primary data via surveys and interviews with Principal Investigators, Faculty, Noyce Recipients, and K–12 Principals.

The Noyce program operates within NSF's Division of Undergraduate Education, and bridges the higher education and the K–12 system. The Noyce Program encourages talented

science, technology, engineering, and mathematics (STEM) majors and professionals to become K–12 mathematics and science teachers. The program provides funds to institutions of higher education (IHEs) to support scholarships, stipends, and academic programs for undergraduate STEM majors and post-baccalaureate STEM students who commit to teaching in high-need K–12 school districts as a condition of receiving financial support. Additionally, the program provides support to undergraduate freshmen and sophomores who serve as summer interns in STEM educational settings as an introduction to a possible career in teaching.

Under the NSF Teaching Fellowship and Master Teaching Fellowship track, the Noyce program supports STEM professionals who enroll as NSF Teaching Fellows (TFs) in master's degree programs leading to teacher certification by providing academic courses, professional development, and salary supplements as the Teaching Fellows fulfill a four-year teaching commitment in a high need school district. This track also supports exemplary math and science teachers, who have master's degrees, to become Master Teaching Fellows (MTFs) in high need school districts by providing professional development and salary supplements.

Since TFs are supported by the Noyce program in preparing for teacher certification and their early years of teaching, they will take the same survey that will be given to other recipients previously approved by OMB.

NSF has developed a new survey as part of the overall evaluation for the MTFs. The MTF survey will be similar to the other recipient surveys for recipients who are teaching. However, it will focus more on the leadership activities expected of these more experienced teachers. Since MTFs were not supported by the Noyce Program in preparing for certification or their early teaching years, there are no questions in this survey about their teacher preparation program or support during early teaching.

Respondents: Individuals, Federal Government, State, Local or Tribal Government and not-for-profit institutions.

Estimated Number of Respondents: 104.

Burden on the Public: 52 hours.

Dated: September 30, 2011.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2011–25701 Filed 10–4–11; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–89; Order No. 881]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Argyle, Florida post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* October 11, 2011; *deadline for notices to intervene:* October 24, 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 the **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 September 23, 2011, the Commission received a petition for review of the Postal Service's determination to close the Argyle post office in Argyle, Florida. The petition was filed by Blythe D. Gottleib (Petitioner) and is postmarked September 15, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–89 to consider Petitioner's appeal. If Petitioner would like to further explain her 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 October 28, 2011.

Categories of issues apparently raised. Petitioner contends that: (1) The Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); and (2) the Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)).

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 applicable administrative record with the Commission is October 11, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is October 11, 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 are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, 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. Persons, other than 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 October 24, 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 applicable administrative record regarding this appeal no later than October 11, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 11, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Pamela A. Thompson 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**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

September 23, 2011	Filing of Appeal.
October 11, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 11, 2011	Deadline for the Postal Service to file any responsive pleading.
October 24, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
October 28, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 17, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 2, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 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).
January 13, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–25647 Filed 10–4–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–90; Order No. 882]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Pimmit Branch, Falls Church, Virginia post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service:* October 12, 2011; *deadline for notices to intervene:* October 24, 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 the **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 September 27, 2011, the Commission received a petition for review and application for suspension of the Postal Service's determination to close the Pimmit branch in Falls Church, Virginia. The petition was filed by Elaine J. Mittleman (Petitioner) and is postmarked September 22, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–90 to consider Petitioner's appeal. If Petitioner would like to further explain her 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 November 1, 2011.

Issue apparently raised. Petitioner contends that the Postal Service failed to consider the effect of the closing 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 the one 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 applicable administrative record with the Commission is October 12, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is October 12, 2011.

Application for suspension of determination. In addition to their Petition, the Petitioners filed an application for suspension of the Postal Service's determination (*see* 39 CFR 3001.114). Commission rules allow for the Postal Service to file an answer to such application within 10 days after the application is filed. The Postal Service shall file an answer to the application no later than October 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 are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, 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. Persons, other than 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 October 24, 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 an answer to the application for suspension of the Postal Service's determination no later than October 7, 2011.

2. The Postal Service shall file the applicable administrative record regarding this appeal no later than October 12, 2011.

3. Any responsive pleading by the Postal Service to this Notice is due no later than October 12, 2011.

4. The procedural schedule listed below is hereby adopted.

5. Pursuant to 39 U.S.C. 505, Jeremy L. Simmons is designated officer of the Commission (Public Representative) to represent the interests of the general public.

6. The Secretary shall arrange for publication of this notice and order in the **Federal Register.**

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

September 27, 2011	Filing of Appeal.
October 7, 2011	Deadline for the Postal Service to file answer responding to application for suspension
October 12, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 12, 2011	Deadline for the Postal Service to file any responsive pleading.
October 24, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 1, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 21, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 6, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 13, 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).
January 20, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–25681 Filed 10–4–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–88; Order No. 880

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Breaks, Virginia post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service:* October 11, 2011; *deadline for notices to intervene:* October 24, 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 the **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 September 23, 2011, the Commission received a petition for review of the Postal Service's determination to close the Breaks post office in Breaks, Virginia. The petition was filed by Keith Mullins (Petitioner) and is postmarked September 14, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–88 to consider Petitioner's appeal. If Petitioner would like to further explain his 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 October 28, 2011.

Category of issues apparently raised. Petitioner contends that the Postal Service failed to consider the effect of the closing 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 the one 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 applicable administrative record with the Commission is October 11, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is October 11, 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 Web master via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, 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. Persons, other than 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 October 24, 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 applicable administrative record regarding this appeal no later than October 11, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 11, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Natalie Rea Ward 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**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

September 23, 2011	Filing of Appeal.
October 11, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 11, 2011	Deadline for the Postal Service to file any responsive pleading.
October 24, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
October 28, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 17, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 2, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 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).
January 12, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–25648 Filed 10–4–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.™

ACTION: Notice of modification to existing system of records.

SUMMARY: The United States Postal Service® is proposing to modify one of its General Privacy Act Systems of Records: USPS 880.000, Post Office and Retail Services. These modifications reflect the changes that have been made in providing alternate access to customers such as ''Village Post Offices,'' which are operated by community businesses to provide selected postal products and services and Post Office Box™ service at or near the business location.

DATES: The revision will become effective without further notice on November 4, 2011, unless comments received on or before that date result in a contrary determination.

ADDRESSES: Comments may be mailed or delivered to the Records Office, United States Postal Service, 475 L'Enfant Plaza, SW., Room 4541, Washington, DC 20260–2201. Copies of all written comments will be available at this address for public inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jane Eyre, Manager, Records Office, 202–268–2608.

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish their amended systems of records in the **Federal Register** when there is a revision, change, or addition. The Postal Service has reviewed its systems of records and has determined that the Post Office and Retail Services records system should be revised to modify the following sections: System location, categories of individuals covered by the

system, categories of records in the system, purposes, retention and disposal, and system manager(s) and address.

I. Background

Over the past 5 years, the Postal Service has continued to experience a decline in mail volume and has had to reduce costs due to the decline. The Postal Service is seeking to optimize its retail network by reducing its traditional footprint of retail offices and expanding access locations to grocery or drug stores, office supply stores, retail chains, and self-service kiosks. By working with third-party retailers, the Postal Service is creating easier, more convenient access to its products and services when and where its customers want them.

II. Rationale for Changes to USPS Privacy Act Systems of Records

In the ever changing world, consumers want more options for obtaining secure and convenient delivery of their packages. The Postal Service will be providing secure alternate delivery to its customers in the future and is making these proposed changes to reflect those demands. Also, system owners are being updated due to changes in international claims processing.

III. Description of Changes to System of Records

The Postal Service is modifying one system of records: USPS 880.000, Post Office and Retail Services. Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed modification has been sent to Congress and to the Office of Management and Budget for their evaluation. The Postal Service does not expect this amended notice to have any adverse effect on individual privacy rights. The Postal Service proposes amending the system as shown below:

USPS 880.000

SYSTEM NAME:

Post Office and Retail Services.

SYSTEM LOCATION:

[CHANGE TO READ]

USPS Headquarters, Consumer Advocate; Integrated Business Solutions Services Centers; Material Distribution Center; Accounting Service Centers; and USPS facilities, including Post Offices (New Jersey, as an exception, does not store passport information in Post Offices), and contractor locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

* * * * *

[INSERT NEW TEXT]

5. Customers requesting delivery of mail to alternate locations.

CATEGORIES OF RECORDS IN THE SYSTEM:

[CHANGE TO READ]

1. *Customer information:* Name, customer ID(s), customer Personal Identification Numbers (PINs), company name, phone number, mail and e-mail address, record of payment, passport applications and a description of passport services rendered, Post Office box and caller service numbers.

* * * * *

PURPOSE(S):

* * * * *

[CHANGE TO READ]

2. To ensure accurate and secure mail delivery.

* * * * *

RETENTION AND DISPOSAL:

* * * * *

[CHANGE TO READ]

3. Domestic and international Extra Services records are retained 2 years. Records relating to Post Office boxes, caller services, and alternate delivery are retained up to 3 years after the customer relationship ends.

* * * * *

6. Records related to inquiries and claims are retained 3 years from final action on the claim.

SYSTEM MANAGER(S) AND ADDRESS:

[CHANGE TO READ]

President, Mailing and Shipping Services, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

Vice President, Delivery and Post Office Operations, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

Vice President, Controller, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

* * * * *

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2011–25735 Filed 10–4–11; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–240; OMB Control No. 3235–0216]

Rule 19a–1 Extension; Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 19(a) (15 U.S.C. 80a–19(a)) of the Investment Company Act of 1940 (the ''Act'') [1] makes it unlawful for any registered investment company to pay any dividend or similar distribution from any source other than the company's net income, unless the payment is accompanied by a written statement to the company's shareholders which adequately discloses the sources of the payment. Section 19(a) authorizes the Commission to prescribe the form of such statement by rule.

Rule 19a–1 (17 CFR 270.19a–1) under the Act, entitled ''Written Statement to Accompany Dividend Payments by Management Companies,'' sets forth specific requirements for the information that must be included in statements made pursuant to section 19(a) by or on behalf of management companies.[2] The rule requires that the statement indicate what portions of distribution payments are made from net income, net profits from the sale of a security or other property (''capital gains'') and paid-in capital. When any part of the payment is made from capital gains, rule 19a–1 also requires that the statement disclose certain other information relating to the appreciation or depreciation of portfolio securities. If an estimated portion is subsequently determined to be significantly inaccurate, a correction must be made on a statement made pursuant to section 19(a) or in the first report to

[1] 15 U.S.C. 80a.

[2] Section 4(3) of the Act (15 U.S. C. 80a-4(3)) defines ''management company'' as ''any investment company other than a face amount certificate company or a unit investment trust.''

shareholders following the discovery of the inaccuracy.

The purpose of rule 19a–1 is to afford fund shareholders adequate disclosure of the sources from which distribution payments are made. The rule is intended to prevent shareholders from confusing income dividends with distributions made from capital sources. Absent rule 19a–1, shareholders might receive a false impression of fund gains.

Based on a review of filings made with the Commission, the staff estimates that approximately 9200 series of registered investment companies that are management companies may be subject to rule 19a-1 each year,[3] and that each portfolio on average mails two statements per year to meet the requirements of the rule.[4] The staff further estimates that the time needed to make the determinations required by the rule and to prepare the statement required under the rule is approximately 1 hour per statement. The total annual burden for all portfolios therefore is estimated to be approximately 18,400 burden hours.

The staff estimates that approximately one-third of the total annual burden (6,133 hours) would be incurred by a paralegal with an average hourly wage rate of approximately $168 per hour,[5] and approximately two-thirds of the annual burden (12,267 hours) would be incurred by a compliance clerk with an average hourly wage rate of $67 per hour.[6] The staff therefore estimates that the aggregate annual cost of complying with the paperwork requirements of the rule is approximately $1,852,233 ((6,133 hours × $168) + (12,267 hours × $67)).

To comply with state law, many investment companies already must distinguish the different sources from which a shareholder distribution is paid and disclose that information to shareholders. Thus, many investment companies would be required to distinguish the sources of shareholder dividends whether or not the Commission required them to do so under rule 19a–1.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Compliance with the collection of information required by rule 19a-1 is mandatory for management companies that make statements to shareholders pursuant to section 19(a) of the Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: September 29, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25676 Filed 10–4–11; 8:45 am]

BILLING CODE 8011–01–P

[3] This estimate is based on statistics compiled by Commission staff as of May 31, 2011. The number of management investment company portfolios that make distributions for which compliance with rule 19a-1 is required depends on a wide range of factors and can vary greatly across years. Therefore, the calculation of estimated burden hours is based on the total number of management investment company portfolios, each of which may be subject to rule 19a–1.

[4] A few portfolios make monthly distributions from sources other than net income, so the rule requires them to send out a statement 12 times a year. Other portfolios never make such distributions.

[5] Hourly rates are derived from the Securities Industry and Financial Markets Association (''SIFMA''), Management and Professional Earnings in the Securities Industry 2010, modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[6] Hourly rates are derived from SIFMA's Office Salaries in the Securities Industry 2010, modified to account for an 1,800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–317; OMB Control No. 3235–0360]

Extension: Form N–17f–2; Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form N–17f–2 (17 CFR 274.220) under the Investment Company Act is entitled ''Certificate of Accounting of Securities and Similar Investments in the Custody of Management Investment Companies.'' Form N–17f–2 is the cover sheet for the accountant examination certificates filed under rule 17f–2 (17 CFR 270.17f–2) by registered management investment companies (funds'') maintaining custody of securities or other investments. Form N–17f–2 facilitates the filing of the accountant's examination certificates prepared under rule 17f–2. The use of the form allows the certificates to be filed electronically, and increases the accessibility of the examination certificates to both the Commission's examination staff and interested investors by ensuring that the certificates are filed under the proper Commission file number and the correct name of a fund.

Commission staff estimates that on an annual basis it takes: (i) on average 1.25 hours of fund accounting personnel at a total cost of $206.25 to prepare each Form N–17f–2;[1] and (ii) .75 hours of clerical time at a total cost of $49.50 to file the Form N–17f–2 with the Commission.[2] Approximately 243 funds currently file Form N–17f–2 with the Commission. Commission staff estimates that on average each fund files Form N–17f–2 four times annually for a total annual hourly burden per fund of approximately 8 hours at a total cost of $1,023.00 The total annual hour burden for Form N–17f–2 is therefore estimated to be approximately 1944 hours. Based on the total annual costs per fund listed above, the total cost of Form N–17f–2's collection of information requirements is estimated to be approximately $248,589.[3]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not

[1] This estimate is based on the following calculation: 1.25 × $165 (fund senior accountant's hourly rate) = $206.25.

[2] This estimate is based on the following calculation: .75 × $66 (secretary hourly rate) = $48.75.

[3] This estimate is based on the following calculation: 243 funds × $1,023.00 (total annual cost per fund) = $248,589.

derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. Complying with the collections of information required by Form N–17f–2 is mandatory for those funds that maintain custody of their own assets. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The Commission requests written comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: September 29, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25675 Filed 10–4–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29824; File No. 812–13869]

Principal Funds, Inc., *et al.;* Notice of Application

September 29, 2011.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order pursuant to (a) section 6(c) of the Investment Company Act of 1940 (''Act'') granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

SUMMARY OF THE APPLICATION: Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

APPLICANTS: Principal Funds, Inc. (''PFI''), Principal Variable Contracts Funds, Inc. (''PVC,'' each of PFI and PVC a ''Company'' and collectively the ''Companies''), and Principal Management Corporation (''PMC'').

FILING DATES: The application was filed on February 16, 2011, and amended on August 12, 2011. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 24, 2011, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: c/o Principal Financial Group, 680 8th Street, Des Moines, Iowa 50392.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817 or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each Company is organized as a Maryland corporation and is registered under the Act as an open-end management investment company. Each Company consists of multiple series (''Funds''). The Funds are offered directly to the public as well as to certain separate accounts of Principal Life Insurance Company (''Principal Life''). PMC, an Iowa corporation, is an indirect wholly-owned subsidiary of Principal Financial Group, Inc., the ultimate parent entity of Principal Life. PMC is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as the investment manager to the Funds. As investment manager, PMC provides investment advisory and certain corporate administrative services to the Funds.[1]

2. At any particular time, while some Funds are making short-term loans to banks or other entities by entering into repurchase agreements, or purchasing other short-term instruments, either directly or through the Joint Account (as defined below), other Funds may need to borrow money from the same or similar banks for temporary purposes to satisfy redemption requests, to cover unanticipated cash shortfalls such as a trade ''fail'' in which cash payment for a security sold by a Fund has been delayed, or for other temporary purposes.[2]

3. When a Fund borrows money from a bank or under the Credit Agreement, it pays interest on the loan at a rate that is higher than the rate that is earned by other (non-borrowing) Funds on investments in repurchase agreements or other short-term instruments of the same maturity as the bank loan or loan under the Credit Agreement. Applicants assert that this differential represents

[1] Applicants request that the relief apply to: (a) Any Funds; (b) any other registered open-end investment company or series thereof (included in the term ''Funds'') for which PMC or a person controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with PMC serves as investment adviser; and (c) any successor entity to PMC. The term ''successor'' is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization. All entities that currently intend to rely on the requested relief are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions set forth in the application.

[2] Each Fund may deposit uninvested cash balances in a joint trading account administered by PMC (the ''Joint Account'') for purposes of investing those balances in short-term instruments to the extent consistent with each participating Fund's investment objectives, policies and restrictions. In addition, under a ''Cash Management Program,'' PMC may invest a Fund's available cash and cash flows from investments in the Fund in stock index futures contracts or in the Joint Account. Finally, the Companies, on behalf of certain Funds, have entered into a credit agreement with certain lenders where such Funds have access to a joint line of credit (the ''Credit Agreement'').

the profit earned by the lender on loans and is not attributable to any material difference in the credit quality or risk of such transactions.

4. The Companies seek to enter into master interfund lending agreements (''Interfund Lending Agreements'') with each other on behalf of the Funds that would permit each Fund to lend money directly to and borrow money directly from other Funds through a credit facility for temporary purposes (an ''Interfund Loan''). The Companies' money market Funds will not participate as borrowers in the proposed credit facility. Applicants state that the proposed credit facility would both reduce the Funds' potential borrowing costs and enhance the ability of the lending Funds to earn higher rates of interest on their short-term lendings. Although the proposed credit facility would reduce the Funds' need to borrow from banks, the Funds would be free to establish and maintain committed lines of credit or other borrowing arrangements with unaffiliated banks.

5. Applicants anticipate that the proposed credit facility would provide a borrowing Fund with significant savings at times when the cash position of the borrowing Fund is insufficient to meet temporary cash requirements. This situation could arise when shareholder redemptions exceed anticipated volumes and certain Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). However, redemption requests normally are effected immediately. The proposed credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also anticipate that a Fund could use the proposed credit facility when a sale of securities ''fails'' due to circumstances beyond the Fund's control, such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. ''Sales fails'' may present a cash shortfall if the Fund has undertaken to purchase a security using the proceeds from securities sold. Alternatively, the Fund could ''fail'' on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same-day settlement basis, earning a lower return on the investment. Use of the proposed credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity.

7. While bank borrowings could generally supply needed cash to cover unanticipated redemptions and sales fails, under the proposed credit facility, a borrowing Fund would pay lower interest rates than those that would be payable under short-term loans offered by banks. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or purchasing shares of a money market fund. Thus, applicants assert that the proposed credit facility would benefit both borrowing and lending Funds.

8. The interest rate to be charged to the Funds on any Interfund Loan (the ''Interfund Loan Rate'') would be the average of the ''Repo Rate'' and the ''Bank Loan Rate,'' both as defined below. The Repo Rate for any day would be the highest rate available to a lending Fund, directly or through the Joint Account, from investment in overnight repurchase agreements. The Bank Loan Rate for any day would be calculated by PMC each day an Interfund Loan is made according to a formula established by each Fund's board of directors (the ''Board'') and intended to approximate the lowest interest rate at which bank short-term loans would be available to the Funds. The formula would be based upon a publicly available rate (*e.g.,* federal funds plus 25 basis points) and would vary with this rate so as to reflect changing bank loan rates. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund's Board. In addition, each Fund's Board would periodically review the continuing appropriateness of using the formula to determine the Bank Loan Rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds.

9. The proposed credit facility would be administered by one or more investment, administrative and fund accounting personnel from PMC, a portfolio manager for the Companies' money market Funds, which are sub-advised by Principal Global Investors, LLC, an affiliate of PMC, and a representative of the corporate treasury of Principal Life (collectively, the ''Credit Facility Team''). No other portfolio manager of any Fund will serve as a member of the Credit Facility Team. Under the proposed credit facility, the portfolio managers for each participating Fund could provide standing instructions to participate daily as a borrower or lender. The Credit Facility Team on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds. Once it had determined the aggregate amount of cash available for loans and borrowing demand, the Credit Facility Team would allocate loans among borrowing Funds without any further communication from the portfolio managers of the Funds (other than the money market Fund portfolio manager acting in his or her capacity as a member of the Credit Facility Team). All allocations made by the Credit Facility Team will require the approval of at least one member of the Credit Facility Team, who is a high level employee, other than the money market Fund portfolio manager. Applicants anticipate that there typically will be far more available uninvested cash each day than borrowing demand. Therefore, after the Credit Facility Team has allocated cash for Interfund Loans, any remaining cash will be invested by PMC in the Joint Account or pursuant to the Cash Management Program in accordance with the instructions of the portfolio managers.

10. The Credit Facility Team would allocate borrowing demand and cash available for lending among the Funds on what the Credit Facility Team believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by each Fund's Board, including a majority of directors who are not ''interested persons'' of the Fund, as that term is defined in section 2(a)(19) of the Act (''Independent Directors''), to ensure that both borrowing and lending Funds participate on an equitable basis.

11. PMC would: (a) Monitor the Interfund Loan Rate and the other terms and conditions of the loans; (b) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations; (c) ensure equitable treatment of each Fund; and (d) make quarterly reports to each Fund's Board concerning any transactions by the Funds under the proposed credit facility and the Interfund Loan Rate charged.

12. PMC, through the Credit Facility Team, would administer the proposed credit facility as a disinterested fiduciary as part of its duties under the relevant advisory or administrative contract with each Fund and would receive no additional fee as compensation for its services in connection with the administration of the proposed credit facility. PMC may collect standard pricing, record keeping, bookkeeping and accounting fees associated with the transfer of cash and/or securities in connection with repurchase and lending transactions generally, including transactions effected through the proposed credit facility. Such fees would be no higher than those applicable for comparable bank loan transactions.

13. No Fund may participate in the proposed credit facility unless: (a) The Fund has obtained shareholder approval for its participation, if such approval is required by law; (b) the Fund has fully disclosed all material information concerning the credit facility in its prospectus and/or statement of additional information; and (c) the Fund's participation in the credit facility is consistent with its investment objectives, limitations and organizational documents.

14. In connection with the credit facility, applicants request an order under section 6(c) of the Act exempting them from the provisions of sections 18(f) and 21(b) of the Act; under section 12(d)(1)(J) of the Act exempting them from section 12(d)(1) of the Act; under sections 6(c) and 17(b) of the Act exempting them from sections 17(a)(1), 17(a)(2), and 17(a)(3) of the Act; and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) of the Act generally prohibits any affiliated person of a registered investment company, or affiliated person of an affiliated person, from borrowing money or other property from the registered investment company. Section 21(b) of the Act generally prohibits any registered management company from lending money or other property to any person, directly or indirectly, if that person controls or is under common control with that company. Section 2(a)(3)(C) of the Act defines an ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, such other person. Section 2(a)(9) of the Act defines ''control'' as the ''power to exercise a controlling influence over the management or policies of a company,'' but excludes circumstances in which ''such power is solely the result of an official position with such company.'' Applicants state that the Funds may be under common control by virtue of having common investment advisers and/or by having common directors and officers.

2. Section 6(c) of the Act provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants assert that sections 17(a)(3) and 21(b) of the Act were intended to prevent a party with strong potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of such party and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because: (a) PMC, through the Credit Facility Team, would administer the program as a disinterested fiduciary as part of its duties under the relevant advisory or administrative contract with each Fund; (b) all Interfund Loans would consist only of uninvested cash reserves that the lending Fund otherwise would invest in the Joint Account or pursuant to the Cash Management Program; (c) the Interfund Loans would not involve a significantly greater risk than other such investments; (d) the lending Fund would receive interest at a rate higher than it could otherwise obtain through such other investments; and (e) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants assert that the other terms and conditions that applicants propose also would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) of the Act generally prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, from selling securities or other property to the investment company. Section 17(a)(2) of the Act generally prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, from purchasing securities or other property from the investment company. Section 12(d)(1) of the Act generally prohibits a registered investment company from purchasing or otherwise acquiring any security issued by any other investment company except in accordance with the limitations set forth in that section.

5. Applicants state that the obligation of a borrowing Fund to repay an Interfund Loan could be deemed to constitute a security for the purposes of sections 17(a)(1) and 12(d)(1) of the Act. Applicants also state that a pledge of assets in connection with an Interfund Loan could be construed as a purchase of the borrowing Fund's securities or other property for purposes of section 17(a)(2) of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b), and 12(d)(1)(J) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below. Applicants also state that the requested relief from section 17(a)(2) of the Act meets the standards of section 6(c) and 17(b) because any collateral pledged to secure an Interfund Loan would be subject to the same conditions imposed by any other lender to a Fund that imposes conditions on the quality of or access to collateral for a borrowing (if the lender is another Fund) or the same or better conditions (in any other circumstance).

6. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid imposing on investors additional and duplicative costs and fees attendant upon multiple layers of investments. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there will be no duplicative costs or fees to the Funds or their shareholders, and that PMC will receive no additional

compensation for its services in administering the credit facility. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all the participating Funds and their shareholders.

7. Section 18(f)(1) of the Act prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank, provided, that immediately after the borrowing, there is asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' generally includes any bond, debenture, note or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief under section 6(c) from section 18(f)(1) to the limited extent necessary to implement the proposed credit facility (because the lending Funds are not banks).

8. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of a Fund, including combined interfund and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

9. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit an affiliated person of a registered investment company, or any affiliated person of such a person, when acting as principal, from effecting any joint transaction in which the investment company participates, unless, upon application, the transaction has been approved by the Commission. Rule 17d–1(b) under the Act provides that in passing upon an application filed under the rule, the Commission will consider whether the participation of the registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of the other participants.

10. Applicants assert that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to insiders. Applicants assert that the proposed credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants assert that each Fund's participation in the proposed credit facility would be on terms that are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Interfund Loan Rate will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, the Credit Facility Team will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is: (a) More favorable to the lending Fund than the Repo Rate; and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding bank borrowings, any Interfund Loans to the Fund: (a) Will be at an interest rate equal to or lower than the interest rate of any outstanding bank loan; (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral; (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days); and (d) will provide that, if an event of default by the Fund occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the proposed credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the proposed credit facility only on a secured basis. A Fund may not borrow through the proposed credit facility or from any other source if its total outstanding borrowings immediately after such borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter: (a) Repay all of its outstanding Interfund Loans; (b) reduce its outstanding indebtedness to 10% or less of its total assets; or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition (5) shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceed 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the Interfund Loan.

6. No Fund may lend to another Fund through the proposed credit facility if the loan would cause its aggregate outstanding loans through the proposed credit facility to exceed 15% of the lending Fund's current net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan

transactions for purposes of this condition.

9. A Fund's borrowings through the proposed credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions for the preceding seven calendar days or 102% of the Fund's sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the proposed credit facility must be consistent with its investment objectives and limitations and organizational documents.

12. The Credit Facility Team will calculate total Fund borrowing and lending demand through the proposed credit facility, and allocate loans on an equitable basis among the Funds, without the intervention of any portfolio manager of the Funds (other than the money market Fund portfolio manager acting in his or her capacity as a member of the Credit Facility Team). All allocations will require the approval of at least one member of the Credit Facility Team, who is a high level employee, other than the money market Fund portfolio manager. The Credit Facility Team will not solicit cash for the proposed credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers (except to the extent that the money market fund portfolio manager on the Credit Facility Team has access to loan demand data). Any amounts remaining after satisfaction of borrowing demand will be invested in the Joint Account or pursuant to the Cash Management Program in accordance with the instructions of the portfolio managers.

13. PMC will monitor the Interfund Loan Rate and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Board of each Company concerning the participation of the Funds in the proposed credit facility and the terms and other conditions of any extensions of credit under the credit facility.

14. The Board of each Fund, including a majority of the Independent Directors, will:

(a) Review, no less frequently than quarterly, the Fund's participation in the proposed credit facility during the preceding quarter for compliance with the conditions of any order permitting such transactions;

(b) establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review, no less frequently than annually, the continuing appropriateness of the Bank Loan Rate formula; and

(c) review, no less frequently than annually, the continuing appropriateness of the Fund's participation in the proposed credit facility.

15. In the event an Interfund Loan is not paid according to its terms and such default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, PMC will promptly refer such loan for arbitration to an independent arbitrator, selected by the Board of each Fund involved in the loan, who will serve as arbitrator of disputes concerning Interfund Loans.[3] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Board of each Fund setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction by it under the proposed credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transactions, including the amount, the maturity and the Interfund Loan Rate, the rate of interest available at the time each Interfund Loan is made on overnight repurchase agreements and commercial bank borrowings and such other information presented to the Fund's Board in connection with the review required by conditions 13 and 14.

17. PMC will prepare and submit to the Board of each Fund for review an initial report describing the operations of the proposed credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of the proposed credit facility, PMC will report on the operations of the proposed credit facility at each Board's quarterly meetings.

Each Fund's chief compliance officer, as defined in Rule 38a–1(a)(4) under the Act, shall prepare an annual report for its Board each year that the Fund participates in the proposed credit facility, which report evaluates the Fund's compliance with the terms and conditions of the application and the procedures established to achieve such compliance. Each Fund's chief compliance officer will also annually file a certification pursuant to Item 77Q3 of Form N–SAR as such Form may be revised, amended, or superseded from time to time, for each year that the Fund participates in the proposed credit facility, that certifies that the Fund and PMC have established procedures reasonably designed to achieve compliance with the terms and conditions of the application. In particular, such certification will address procedures designed to achieve the following objectives:

(a) That the Interfund Loan Rate will be higher than the Repo Rate, but lower than the Bank Loan Rate;

(b) compliance with the collateral requirements as set forth in the application;

(c) compliance with the percentage limitations on interfund borrowing and lending;

(d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Board of each Fund; and

(e) that the Interfund Loan Rate does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

Additionally, each Fund's independent public accountants, in connection with their audit examination of the Fund, will review the operation of the proposed credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the proposed credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its prospectus and/or statement of additional information all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25677 Filed 10–4–11; 8:45 am]

BILLING CODE 8011–01–P

[3] If the dispute involves Funds with different Boards of Directors, the respective Board of each Fund will select an independent arbitrator that is satisfactory to each Fund.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29825; 812–13575]

Destra Capital Investments LLC and Destra Unit Investment Trust; Notice of Application

September 29, 2011.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A), (B), and (C) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Destra Capital Investments LLC (the ''Depositor''), Destra Unit Investment Trust (the ''Trust''), on behalf of itself and any existing and future series, and any future registered unit investment trust (''UIT'') sponsored by the Depositor (or an entity controlling, controlled by or under common control with the Depositor) and their respective series (the future UITs, together with the Trust, are collectively the ''Trusts,'' the series of the Trusts are the ''Series,'' and the Trusts together with the Depositor are collectively, the ''Applicants''), request an order to permit each Series to acquire shares of registered investment companies or series thereof (the ''Funds'') both within and outside the same group of investment companies, and to permit any Funds that are open-end companies (''Open-end Funds''), their principal underwriters and any broker or dealer registered under the Securities Exchange Act of 1934 (''Broker'') to sell such shares to a Series.

APPLICANTS: The Depositor and the Trust.

FILING DATES: The application was filed on September 15, 2008, and amended on June 1, 2011, and September 23, 2011.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 24, 2011, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, 901 Warrenville Road, Suite 15, Lisle, IL 60532.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is a UIT registered under the Act. Each Series will be a series of a Trust and will offer units for sale to the public (''Units'').[1] Each Series will be created pursuant to a trust agreement which will incorporate by reference a master trust agreement between the Depositor and a financial institution that satisfies the criteria in section 26(a) of the Act (the ''Trustee''). The Depositor is a broker dealer registered under the Securities Exchange Act of 1934 (''Exchange Act'') and member of the Financial Industry Regulatory Authority, Inc. (''FINRA'').

2. Applicants request relief to permit a Series to invest in Funds that are (a) part of the same ''group of investment companies'' (as that term is defined in section 12(d)(1)(G) of the Act) as the Series (''Affiliated Funds''), and (b) not part of the same group of investment companies as the Series (''Unaffiliated Funds''). An Unaffiliated Fund that is a UIT is referred to as an ''Unaffiliated Underlying Trust.'' An Unaffiliated Fund that is a closed-end or open-end management investment company is referred to as an ''Unaffiliated Underlying Fund''. Certain of the Funds may be registered as an open-end investment company or a UIT, but have received exemptive relief in order that their shares may be traded at ''negotiated prices'' on a national securities exchange in the same manner as other equity securities (the ''Exchange-traded Funds''). Shares of Exchange-traded Funds and closed-end Funds will be deposited in a Series at prices which are based on the market value of the securities, as determined by an evaluator. The Depositor will not have discretion as to when portfolio securities of a Series will be sold, except that the Depositor is authorized to sell securities in extremely limited circumstances described in the Series' prospectus. Applicants state that the Depositor is not obligated to maintain a secondary market for Units of each Series, but may seek to do so in the future. Other broker-dealers may or may not maintain a secondary market for Units of a Series.

3. Applicants state that the requested relief will provide investors with a practical, cost-efficient means of investing in a diversified portfolio of securities of investment companies that has been professionally selected by the Depositor.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the value of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, any principal underwriter therefor, and any broker or dealer registered under the Exchange Act, from selling the shares of the investment company to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally. Section 12(d)(1)(C) prohibits an investment company, other investment companies having the same investment adviser, and companies controlled by such investment companies, from acquiring more than 10% of the outstanding voting stock of a registered closed-end management investment company.

2. Section 12(d)(1)(G) provides, in relevant part, that section 12(d)(1) will not apply to securities of a registered

[1] All existing entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

open-end investment company or UIT acquired by a registered UIT if the acquired company and the acquiring company are part of the same group of investment companies, provided that certain other requirements contained in section 12(d)(1)(G) are met. Applicants state that they may not rely on section 12(d)(1)(G) because a Series will invest in Unaffiliated Funds and other securities in addition to Affiliated Funds.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit a Series to purchase or acquire shares of the Funds in excess of the percentage limitations of section 12(d)(1)(A) and (C) and the Open-end Funds, their principal underwriters and any Broker to sell their shares to the Series in excess of Section 12(d)(1)(B).

4. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A), (B), and (C), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

5. Applicants state that the concern about undue control does not arise with respect to a Series' investment in Affiliated Funds, as reflected in section 12(d)(1)(G) of the Act. Applicants also state that the proposed arrangement will not result in undue influence by a Series or its affiliates over Unaffiliated Funds. Applicants have agreed that (a) the Depositor, (b) any person controlling, controlled by or under common control with the Depositor, and (c) any investment company and any issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act, sponsored or advised by the Depositor (or any person controlling, controlled by or under common control with the Depositor) (collectively, the ''Group'') will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. Applicants also note that conditions 2, 3, 5 and 6 set forth below will address the concern about undue influence with respect to the Unaffiliated Funds.

6. As an additional assurance that an Unaffiliated Underlying Fund understands the implications of an investment by a Series under the requested order, prior to a Series' investment in the Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), the Series and the Unaffiliated Underlying Fund will execute an agreement stating, without limitation, that the Depositor and Trustee and the board of directors or trustees of the Unaffiliated Underlying Fund and the investment adviser(s) of the Unaffiliated Underlying Fund, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order (''Participation Agreement''). Applicants note that an Unaffiliated Underlying Fund, including a closed-end Fund or an Exchange-traded Fund, may choose to reject an investment from the Series by declining to execute the Participation Agreement.

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. Applicants state that any sales charges and/or service fees (as those terms are defined in Rule 2830 of the Conduct Rules of the NASD, Inc. (''NASD Conduct Rules'') charged with respect to Units of a Series will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules.[2] In addition, the Trustee or Depositor will waive fees otherwise payable to it by the Series in an amount at least equal to any compensation (including fees paid pursuant to any plan adopted by an Unaffiliated Underlying Fund under rule 12b–1 under the Act) received from an Unaffiliated Fund by the Trustee or Depositor, or an affiliated person of the Trustee or Depositor, other than any advisory fees paid to the Trustee or Depositor or its affiliated person by an Unaffiliated Underlying Fund, in connection with the investment by the Series in the Unaffiliated Fund.

8. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A), except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes. Applicants also represent that a Series' prospectus and sales literature will contain concise, ''plain English'' disclosure designed to inform investors of the unique characteristics of the trust of funds structure, including, but not limited to, its expense structure and the additional expenses of investing in Funds.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) Any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that a Series and an Affiliated Fund might be deemed to be under the common control of the Depositor or an entity controlling, controlled by, or under common control with the Depositor. Applicants also state that a Series and a Fund might become ''affiliated persons'' if the Series acquires more than 5% of the Fund's outstanding voting securities. The sale or redemption by a Fund of its shares to or from a Series therefore could be deemed to be a principal transaction prohibited by Section 17(a) of the Act.[3]

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c)

[2] With respect to purchasing closed-end Fund or Exchange-traded Fund shares, a Series may incur the customary brokerage commissions associated with purchasing any equity security on the secondary market.

[3] Applicants state that to the extent purchases and sales of shares of an Exchange-traded Fund occur in the secondary market (and not through principal transactions directly between a Series and an Exchange-traded Fund), relief from Section 17(a) would not be necessary. The requested relief is intended to cover, however, transactions directly between Exchange-traded Funds and a Series. Applicants are not seeking relief from Section 17(a) for, and the requested relief will not apply to, transactions where an Exchange-traded Fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of a Series because the investment adviser to the Exchange-traded Fund or an entity controlling, controlled by or under common control with the investment adviser is also a depositor to the Series. In addition, the request for relief does not cover principal transactions with closed-end Funds.

the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms of the proposed transactions are fair and reasonable and do not involve overreaching. Applicants note that the consideration paid for the sale and redemption of shares of the open-end Funds and Funds that are UITs will be based on the net asset values of the Funds. Finally, Applicants state that the proposed transactions will be consistent with the policies of each Series and Fund, and with the general purposes of the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The members of the Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Fund, the Group, in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Fund, the Group will vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares.

2. No Series or its Depositor, promoter, principal underwriter, or any person controlling, controlled by, or under common control with any of those entities (each, a ''Series Affiliate'') will cause any existing or potential investment by the Series in an Unaffiliated Fund to influence the terms of any services or transactions between the Series or Series Affiliate and the Unaffiliated Fund or its investment adviser(s), sponsor, promoter, principal underwriter, or any person controlling, controlled by, or under common control with any of those entities.

3. Once an investment by a Series in the securities of an Unaffiliated Underlying Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of directors or trustees of the Unaffiliated Underlying Fund, including a majority of the disinterested board members, will determine that any consideration paid by the Unaffiliated Underlying Fund to the Series or Series Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Underlying Fund; (b) is within the range of consideration that the Unaffiliated Underlying Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Underlying Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

4. The Trustee or Depositor will waive fees otherwise payable to it by the Series in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Underlying Fund under rule 12b–1 under the Act) received from an Unaffiliated Fund by the Trustee or Depositor, or an affiliated person of the Trustee or Depositor, other than any advisory fees paid to the Trustee or Depositor or its affiliated person by an Unaffiliated Underlying Fund, in connection with the investment by a Series in the Unaffiliated Fund.

5. No Series or Series Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Underlying Fund or sponsor to an Unaffiliated Underlying Trust) will cause an Unaffiliated Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is the Depositor or a person of which the Depositor is an affiliated person (each, an ''Underwriting Affiliate,'' except any person whose relationship to the Unaffiliated Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is an ''Affiliated Underwriting.''

6. The board of an Unaffiliated Underlying Fund, including a majority of the disinterested board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Underlying Fund in an Affiliated Underwriting once an investment by a Series in the securities of the Unaffiliated Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The board of the Unaffiliated Underlying Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Series in the Unaffiliated Underlying Fund. The board of the Unaffiliated Underlying Fund will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Underlying Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Underlying Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The board of the Unaffiliated Underlying Fund will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders.

7. An Unaffiliated Underlying Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Series in the securities of the Unaffiliated Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the board of the Unaffiliated Underlying Fund were made.

8. Before investing in an Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), each Series and the Unaffiliated Underlying Fund will execute a Participation Agreement stating, without limitation, that the Depositor and Trustee and the board of directors or trustees of the Unaffiliated

Underlying Fund and the investment adviser(s) to the Unaffiliated Underlying Fund, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Underlying Fund in excess of the limit in section 12(d)(1)(A)(i), a Series will notify the Unaffiliated Underlying Fund of the investment. At such time, the Series also will transmit to the Unaffiliated Underlying Fund a list of the names of each Series Affiliate and Underwriting Affiliate. The Series will notify the Unaffiliated Underlying Fund of any changes to the list of names as soon as reasonably practicable after a change occurs. The Unaffiliated Underlying Fund and the Series will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment, and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Any sales charges and/or service fees charged with respect to Units of a Series will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules.

10. No Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25678 Filed 10–4–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65417; File No. SR–CBOE–2011–089]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Two-Day Settlement on CBOE Stock Exchange

September 28, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 28, 2011, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the rules of the CBOE Stock Exchange (''CBSX'') to permit the specification of bids and offers for delivery on the second business day following the day of the contract. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

According to CBOE Rule 51.7, bids and offers on CBSX may specify delivery on the day of a contract, on the business day following the day of the contract, and on the third business day following the day of the contract.[5] This rule does not permit delivery on the second business day following the day of the contract. Broker-dealers who execute a ''cross'', resulting from the stock component of EFP (effective-for-physical) futures transactions, have requested that CBSX support a two-day settlement period in a similar manner as competing stock exchanges.

Therefore, the Exchange wishes to amend Rule 51.7 to permit delivery on the second business day following the day of the contract in order to provide CBSX Traders with the ability to agree upon delivery on any day from the day of the contract to the third business day following the day of the contract. This additional option provides further flexibility for investors regarding delivery of contracts. Moreover, the addition of two-day settlement puts the Exchange on a more even footing with other exchanges that permit delivery of a contract on second business day following the day of the contract.[6]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act[7] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change perfects the mechanism for a free and open market by providing another option for the delivery of contracts and permitting CBSX Traders to agree upon delivery on any day from the day of the contract to the third business day following the day of the contract. Other exchanges already provide this option.[10]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* CBOE Rule 51.7.

[6] *See* New York Stock Exchange LLC (''NYSE'') chart titled ''Delivery Dates on Exchange Contracts'' at the beginning of the Section titled ''Dealings and Settlements (Rules 45–299C) (the ''NYSE Chart'') *and* NYSE Amex LLC (''Amex'') Equities Rule 14. The ''Seller's Option'' form of delivery described on the NYSE chart stipulates that delivery may occur ''not less than two business days nor more than 180 days'' following the day of the contract. Amex Equities Rule 14 stipulates that delivery may occur ''not less than two business days after trade date and not more than 60 days after trade date.'' While these rules differ from the proposed rule change in that they permit settlement at a later date than the proposed rule, they also permit settlement on the second business day following the trade date (like the proposed rule change).

[7] 15 U.S.C. 78s(b)(1).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *See* Note 6.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder [12] because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[13]

The Exchange has requested that the Commission waive the 30-day operative delay period. The Exchange proposes to add an additional option for settlement delivery consistent with the practices of other exchanges. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[14]

At any time within 60 days of the filing of the 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.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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–CBOE–2011–089 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–CBOE–2011–089. 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. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2011–089 and should be submitted on or before October 26, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25572 Filed 10–4–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65442; File No. SR–FINRA–2011–055]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of the Implementation Date for Expansion of the Order Audit Trail System to All NMS Stocks

September 29, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 27, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as ''constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule'' under Section 19(b)(3)(A)(i) of the Act [3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to establish October 17, 2011, as the implementation date of the amendments to FINRA Rules 7410 and 7470 that the Commission approved on November 12, 2010.[5]

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* Securities Exchange Act Release No. 63311 (November 12, 2010), 75 FR 70757 (November 18, 2010) (SR–FINRA–2010–044).

office of FINRA 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, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is filing the proposed rule change to establish October 17, 2011, as the implementation date for the amendments to the Order Audit Trail System (''OATS'') rules expanding the OATS recording and reporting requirements to all NMS stocks.

On November 12, 2010, the SEC approved SR–FINRA–2010–044, which amended FINRA Rules 7410 and 7470 to expand the OATS recording and reporting requirements to include all NMS stocks.[6] On January 11, 2011, FINRA published *Regulatory Notice* 11–03 announcing that the Commission approved the amendments and that FINRA was publishing a new version of the *OATS Reporting Technical Specifications.* Pursuant to the SEC's approval of SR–FINRA–2010–044 and the timing set forth in *Regulatory Notice* 11–03, the amendments to the OATS Rules were originally scheduled to begin to be phased in on July 11, 2011, six months after the publication of *Regulatory Notice* 11–03 and the revised *OATS Reporting Technical Specifications.* On April 26, 2011, FINRA filed a proposed rule change delaying the beginning of the implementation period until October 3, 2011.[7]

The OATS test environment, which allows firms to voluntarily submit data to FINRA to test the adequacy of their reporting systems, was made available for members beginning on August 22, 2011, so that firms could begin testing the reporting of orders for all NMS stocks. After reviewing the results of firms' reporting in the test environment since that time, FINRA believes that firms, and the quality of the data submitted to OATS, would benefit from an additional two-week period during which firms can continue to test their systems changes. Consequently, FINRA is seeking to delay the implementation of the new OATS recording and reporting requirements for NMS stocks for an additional two weeks, until October 17, 2011, to give firms additional time to make necessary adjustments and changes to their systems, and to test those adjustments and changes in FINRA's test environment. FINRA believes that a two-week delay will help ensure that firms can comply with the expanded OATS recording and reporting requirements on the implementation date. Consequently, FINRA will begin to phase-in the new recording and reporting requirements beginning on October 17, 2011.

FINRA has filed the proposed rule change for immediate effectiveness.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that extending the implementation date of the extension of the OATS Rules to all NMS stocks will ensure that firms have sufficient time to ensure that the necessary changes to their systems are implemented to enable the firms to comply with the new OATS recording and reporting requirements when they become effective. In addition, FINRA believes that extending the implementation date will improve the quality of the data submitted to FINRA once the proposed rule change is implemented.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and paragraph (f)(1) of Rule 19b–4 thereunder.[10] At any time within 60 days of the filing of the 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2011–055 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–FINRA–2011–055. 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

[6] *See* Securities Exchange Act Release No. 63311 (November 12, 2010), 75 FR 70757 (November 18, 2010) (SR–FINRA–2010–044).

[7] *See* Securities Exchange Act Release No. 64369 (April 29, 2011), 76 FR 25399 (May 4, 2011).

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(1).

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 FINRA. 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–FINRA–2011–055 and should be submitted on or before October 26, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25674 Filed 10–4–11; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12860 and #12861]

Kansas Disaster #KS–00059

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 Kansas (FEMA–4035–DR), dated 09/23/2011.

Incident: Flooding.

Incident Period: 06/01/2011 through 08/01/2011.

DATES: *Effective Date:* 09/23/2011.

Physical Loan Application Deadline Date: 11/22/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/25/2012.

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 09/23/2011, 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: Atchison, Doniphan, Leavenworth, Wyandotte.

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 128606 and for economic injury is 128616.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2011–25662 Filed 10–4–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12858 and #12859]

New York Disaster #NY–00113

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA–4031–DR), dated 09/23/2011.

Incident: Remnants of Tropical Storm Lee.

Incident Period: 09/07/2011 through 09/11/2011.

DATES: *Effective Date:* 09/23/2011.

Physical Loan Application Deadline Date: 11/22/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/25/2012.

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 09/23/2011, 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: Broome, Chenango, Delaware, Otsego, Tioga, Tompkins.

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 128588 and for economic injury is 128598.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2011–25666 Filed 10–4–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12815 and #12816

Texas Disaster Number TX–00381

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–4029–DR), dated 09/09/2011.

Incident: Wildfires.

Incident Period: 08/30/2011 and continuing.

DATES: *Effective Date:* 09/23/2011.

Physical Loan Application Deadline Date: 11/08/2011.

EIDL Loan Application Deadline Date: 06/06/2012.

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 Presidential disaster declaration for the State of Texas, dated 09/09/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Harrison, Smith, Upshur.

Contiguous Counties: (Economic Injury Loans Only):

Texas, Camp, Henderson, Panola, Van Zandt, Wood,

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2011–25663 Filed 10–4–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 7635]

60-Day Notice of Proposed Information Collection: DS–230, Application for Immigrant Visa and Alien Registration, OMB Number 1405–0015

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Application for Immigrant Visa and Alien Registration.
- *OMB Control Number:* 1405–0015.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Department of State (CA/VO).
- *Form Number:* DS–230.
- *Respondents:* Immigrant visa applicants.
- *Estimated Number of Respondents:* 672,000 per year.
- *Estimated Number of Responses:* 672,000 per year.
- *Average Hours per Response:* 2 hours.
- *Total Estimated Burden:* 1,344,000 hours per year.
- *Frequency:* Once per respondent.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: The Department will accept comments from the public up to 60 days from October 5, 2011.

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

- *E-mail: ClausSR@state.gov.*
- *Mail (paper, disk, or CD–ROM submissions):* Chief, Legislation and Regulation Division, Visa Services—DS–230 Reauthorization, 2401 E Street, NW., Washington, DC 20520–30106.
- *Fax:* (202) 663–3898.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Stefanie Claus of the Office of Visa Services, U.S. Department of State, 2401 E. Street, NW., L–603, Washington, DC 20522, who may be reached at (202) 663–2910 or *claussr@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The DS–230 is used to determine the eligibility of aliens applying for immigrant visas that have not completed the DS–260, Online Immigrant Visa Form.

Methodology: The information will be collected in person at posts.

Dated: September 20, 2011.

Edward J. Ramotowski,

Deputy Assistant Secretary, Acting, Bureau of Consular Affairs, Department of State.

[FR Doc. 2011–25743 Filed 10–4–11; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of Five Individuals Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of five newly-designated individuals whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

DATES: The designations by the Director of OFAC of the five individuals identified in this notice, pursuant to Executive Order 13224, are effective on September 29, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.:* 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, *tel.:* 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001 terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the

creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or 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 to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On September 29, 2011 the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, five individuals whose property and interests in property are blocked pursuant to Executive Order 13224.

The designees are as follows:

1. NOORZAI, Hajji Faizullah Khan (a.k.a. KHAN, Haji Faizullah; a.k.a. NOOR, Haji Faizullah; a.k.a. NOORI, Haji Faizullah; a.k.a. NOORZAI, Haji Pazullah; a.k.a. NOREZAI, Haji Faizuulah Khan; a.k.a. ''HAJI FIAZULLAH''; a.k.a. ''HAJI MULLAH FAIZULLAH''), Boghra Road, Miralzei Village, Chaman, Baluchistan Province, Pakistan; DOB 1966; alt. DOB 1961; alt. DOB 1968; alt. DOB 1969; alt. DOB 1970; POB Lowy Kariz, Spin Boldak District, Kandahar Province, Afghanistan; alt. POB Kadanay, Spin Boldak District, Kandahar Province, Afghanistan; nationality Afghanistan; Tribe: Noorzai; Subtribe: Miralzai (individual) [SDGT]
2. NOORZAI, Hajji Malik (a.k.a. NOORZAI, Haji Malek; a.k.a. NOORZAI, Hajji Malak; a.k.a. ''HAJI AMINULLAH''; a.k.a. ''HAJI MALUK''); DOB 1957; alt. DOB 1960; nationality Afghanistan; Tribe: Noorzai (individual) [SDGT]
3. REHMAN, Abdur (a.k.a. AL–SINDHI, Abdul Rehman; a.k.a. AL–SINDHI, Abdur Rahman; a.k.a. RAHMAN, Abdur; a.k.a. REHMAN, Abdul; a.k.a. SINDHI, Abdul Rehman; a.k.a. SINDHI, Abdurahman; a.k.a. SINDI, Abdur Rehman; a.k.a. UR–REHMAN, Abd; a.k.a. YAMIN, Abdur Rehman Muhammad; a.k.a. ''ABDULLAH SINDHI''), Karachi, Pakistan; DOB 3 Oct 1965; POB Mirpur Khas, Pakistan; nationality Pakistan; National ID No. 44103–5251752–5 (Pakistan); Passport CV9157521 (Pakistan) issued 8 Sep 2008 expires 7 Sep 2013 (individual) [SDGT]
4. ABBASIN, Abdul Aziz (a.k.a. MAHSUD, Abdul Aziz); DOB 1969; POB Sheykhan Village, Pirkowti Area, Orgun District, Paktika Province, Afghanistan (individual) [SDGT]
5. RAHIM, Fazal (a.k.a. RAHIM, Fazel; a.k.a. RAHIM, Fazil; a.k.a. RAHMAN, Fazil); DOB 5 Jan 1974; alt. DOB 1977; alt. DOB 1975; alt. DOB 24 Jan 1973; POB Kabul, Afghanistan; citizen Afghanistan; Passport R512768 (Afghanistan) issued 25 Mar 2005 expires 12 Feb 2012 (individual) [SDGT]

Dated: September 29, 2011.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2011–25612 Filed 10–4–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of Two Individuals Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of two newly-designated individuals whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

DATES: The designations by the Director of OFAC of the two individuals identified in this notice, pursuant to Executive Order 13224, are effective on September 28, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.:* 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, *tel.:* 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001 terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the

Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or 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 to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On September 28, 2011 the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, two individuals whose property and interests in property are blocked pursuant to Executive Order 13224.

The designees are as follows:

1. IQBAL, Zafar (a.k.a. CHAUDHRY, Zafar Iqbal; a.k.a. IQBAL, Malik Zafar; a.k.a. IQBAL, Muhammad Zafar; a.k.a. IQBAL, Zaffer; a.k.a. SHAHBAZ, Malik Zafar Iqbal; a.k.a. SHEHBAZ, Malik Zafar Iqbal), Masjid al-Qadesia, 4 Lake Road, Lahore, Pakistan; DOB 4 Oct 1953; nationality Pakistan; National ID No. 35202–4135948–7; alt. National ID No. 29553654234; Passport DG5149481 issued 22 Aug 2006 expires 21 Aug 2011; alt. Passport A2815665; Professor; Doctor (individual) [SDGT]
2. BHUTTAVI, Hafiz Abdul Salam (a.k.a. BHATTVI, Hafiz Abdul Salam; a.k.a. BHATTVI, Molvi Abdursalam; a.k.a. BHATTVI, Mullah Abdul Salaam; a.k.a. BHATTWI, Abdul Salam; a.k.a. BHUTVI, Abdul Salam; a.k.a. BHUTVI, Hafiz Abdussalaam; a.k.a. BUDVI, Abdul Salam; a.k.a. BUDVI, Hafiz Abdusalam); DOB 1940; POB Gujranwala, Punjab Province, Pakistan; nationality Pakistan (individual) [SDGT]

Dated: September 28, 2011.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2011–25613 Filed 10–4–11; 8:45 am]

BILLING CODE 4811–AL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0399]

Agency Information Collection (Student Beneficiary Report—REPS (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 November 4, 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. 2900–0399'' 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) 461–7485 or e-mail *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0399.''

SUPPLEMENTARY INFORMATION:

Title: Student Beneficiary Report—REPS (Restored Entitlement Program For Survivors), VA Forms 21–8938 and 21–8938–1.

OMB Control Number: 2900–0399.

Type of Review: Extension of a currently approved collection.

Abstract: Students between the ages of 18–23 who are receiving Restored Entitlement Program for Survivors (REPS) benefits based on schoolchild status complete VA Forms 21–8938 and 21–8938–1 to certify that he or she is enroll full-time in an approved school. REPS benefit is paid to children of veterans who died in service or who died as a result of service-connected disability incurred or aggravated prior to August 13, 1981. VA uses the data collected to determine the student's eligibility for continued REPS benefits.

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 July 25, 2011, at page 44401.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,767.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 5,300.

Dated: September 29, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–25591 Filed 10–4–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0107]

Agency Information Collection (Certificate as to Assets) Activities 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 November 4, 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. 2900–0107'' 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) 461–7485 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0107.''

SUPPLEMENTARY INFORMATION:

Title: Certificate as to Assets, VA Form 21–4709.

OMB Control Number: 2900–0107.

Type of Review: Extension of a currently approved collection.

Abstract: Fiduciaries are required to complete VA Form 214709 to report investment in savings, bonds and other securities that he or she received on behalf of beneficiaries who are incompetent or under legal disability. Estate analysts employed by VA use the data collected to verify the fiduciaries accounting of a beneficiary's estate.

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 July 25, 2011, at pages 44400–44401.

Affected Public: Individuals or households.

Estimated Annual Burden: 863 hours.

Estimated Average Burden per Respondent: 12 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 4,316.

Dated: September 29, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–25589 Filed 10–4–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0004]

Agency Information Collection (Application for Dependency and Indemnity Compensation, Death Pension and Accrued Benefits by a Surviving Spouse or Child): 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 November 4, 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. 2900–0004'' 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) 461–7485 or e-mail *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0004.''

SUPPLEMENTARY INFORMATION:

Titles:

a. Application for Dependency and Indemnity Compensation, Death Pension and Accrued Benefits by a Surviving Spouse or Child (Including Death Compensation if Applicable), VA Form 21–534.

b. Application for Dependency and Indemnity Compensation by a Surviving Spouse or Child—In-service Death Only, VA Form 21–543a.

OMB Control Number: 2900–0004.

Type of Review: Extension of a currently approved collection.

Abstract:

a. VA Form 21–534 is used to determine surviving spouse and/or children of veterans entitlement to dependency and indemnity compensation (DIC), death benefits,(including death compensation is applicable), and any accrued benefits not paid to the veteran prior to death.

b. Military Casualty Assistance Officers complete VA Form 21–534a to assist surviving spouse and/or children of veterans who died on active duty in processing claims for dependency and indemnity compensation benefits. Accrued benefits and death compensation are not payable in claims for DIC.

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 July 25, 2011, at pages 44402–44403.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Form 21–534—76,136 hours.

b. VA Form 21–534a—600 hours.

Estimated Average Burden per Respondent:

a. VA Form 21–534—75 minutes.

b. VA Form 21–534a—15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents:

a. VA Form 21–534—37,700.

b. VA Form 21–534a—23,209.

Dated: September 29, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–25587 Filed 10–4–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0067]

Agency Information Collection (Application for Automobile or Other Conveyance and Adaptive Equipment): 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 November 4, 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. 2900–0067'' 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) 461–7485 or e-mail *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0067.''

SUPPLEMENTARY INFORMATION:

Title: Application for Automobile or other Conveyance and Adaptive Equipment (under 38 U.S.C. 3901–3904), VA Form 21–4502.

OMB Control Number: 2900–0067.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans, servicepersons and their survivors complete VA Form 21–4502 to apply for automobile or other conveyance allowance, and reimbursement for the cost and installation of adaptive equipment. VA uses the information to determine the claimant's eligibility for such benefits.

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 July 25, 2011, at page 44402.

Affected Public: Individuals or households.

Estimated Annual Burden: 388.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1,552.

Dated: September 29, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–25588 Filed 10–4–11; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 76 Wednesday,

No. 193 October 5, 2011

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Removal of the Gray Wolf in Wyoming From the Federal List of Endangered and Threatened Wildlife and Removal of the Wyoming Wolf Population's Status as an Experimental Population; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2011–0039; 92220–1113–0000–C6]

RIN 1018–AX94

Endangered and Threatened Wildlife and Plants; Removal of the Gray Wolf in Wyoming From the Federal List of Endangered and Threatened Wildlife and Removal of the Wyoming Wolf Population's Status as an Experimental Population

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of a public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or USFWS), are proposing to remove the gray wolf (*Canis lupus*) in Wyoming from the List of Endangered and Threatened Wildlife. This rule focuses on the Wyoming portion of the Northern Rocky Mountain (NRM) Distinct Population Segment (DPS), except where discussion of the larger Greater Yellowstone Area (GYA) or NRM metapopulation (a population that exists as partially isolated sets of subpopulations) is necessary to understand impacts to wolves in Wyoming. The best scientific and commercial data available indicate that wolves in Wyoming are recovered and no longer meet the definition of endangered or threatened under the Endangered Species Act of 1973, as amended (Act). Wyoming's wolf population is stable, threats are addressed, and a post-delisting monitoring and management framework has been developed. However, additional changes to Wyoming State law and Wyoming Game and Fish Commission regulations are necessary for implementation. We expect the State of Wyoming to adopt the necessary statutory and regulatory changes within the next several months. If this proposal is finalized, the gray wolf would be delisted in Wyoming, the nonessential experimental population designation would be removed, and future management for this species, except in National Parks and National Wildlife Refuges, would be conducted by the appropriate State or Tribal wildlife agencies. We seek information, data, and comments from the public about this proposal including the post-delisting monitoring and management framework.

DATES: *Public Comments:* We will accept comments received or postmarked on or before January 13, 2012. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Daylight Time on this date.

Public Hearing: We will hold a public hearing on this proposed rule on November 15, 2011, as well as an informational open house immediately preceding the public hearing. For more information, see ''Public Hearing and Open House'' in **SUPPLEMENTARY INFORMATION**.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Enter Keyword or ID box, enter FWS–R6–ES–2011–0039, which is the docket number for this rulemaking. Then, in the Search panel at the top of the screen, under the Document Type heading, check the box next to Proposed Rules to locate this document. You may submit a comment by clicking on ''Submit a Comment.''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, *Attn:* FWS–R6–ES–2011–0039, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, MS 2042–PDM, Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see ''Public Comments'' in **SUPPLEMENTARY INFORMATION** for more information).

FOR FURTHER INFORMATION CONTACT: For information on wolves in the northern Rocky Mountains see *http://www.fws.gov/mountain-prairie/species/mammals/wolf/,* or contact U.S. Fish and Wildlife Service, Mountain-Prairie Region Office, Ecological Services Division, 134 Union Blvd., Lakewood, CO 80228; telephone 303–236–7400. Persons who use a telecommunications device for the deaf (TDD) may 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 any other interested party concerning this proposed rule. Specifically, we request information on the following questions:

(1) Is our description and analysis of the biology, population, and distribution accurate?

(2) Does the proposed rule provide accurate and adequate review and analysis of the factors relating to the threats?

(3) Are the conclusions we reach, including their projection of maintenance of a viable population, logical and supported by the evidence provided?

(4) Did we include all the necessary and pertinent literature to support our assumptions, arguments, and conclusions?

(5) Is it reasonable for us to conclude that Wyoming's approach to wolf management is likely to maintain Wyoming's wolf population above recovery levels?

(6) Is it reasonable for us to conclude that Wyoming's approach to wolf management is likely to provide for sufficient levels of gene flow (either natural or human assisted) to prevent genetic problems from negatively impacting the GYA's population or the larger NRM metapopulation in a manner that would meaningfully impact viability?

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by e-mail or fax or to an address not listed in **ADDRESSES**. If you submit a comment via *http://www.regulations.gov,* your entire comment—including your personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the Mountain-Prairie Region Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing and Open House

Section 4(b)(5)(E) of the Act requires that we hold one public hearing on the proposal, if requested. In anticipation of such a request, we have scheduled an informational meeting (a brief presentation about the proposed rule

with a question-and-answer period) from 4:30 p.m. to 6 p.m., and a public hearing from 6:30 p.m. to 8:30 p.m., on November 15, 2011, at the Robert A. Peck Arts Center, Central Wyoming College, 2660 Peck Avenue, Riverton, WY 82501; 307–855–2000.

Anyone wishing to make an oral statement at the public hearing for the record is encouraged to provide a written copy of their statement to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Speakers can sign up at the informational meeting and hearing if they desire to make an oral statement. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us. If you have any questions concerning the public hearing or need reasonable accommodations to attend and participate in the public hearing, please contact the Denver Regional Office's Ecological Service's Division at 303–236–7400 [see **FOR FURTHER INFORMATION CONTACT** section below], as soon as possible, but no later than 1 week before the hearing date, to allow sufficient time to process requests. Information regarding the proposal is available in alternative formats upon request.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we intend to subject this proposal to peer review. A peer review panel will conduct this assessment. We anticipate this assessment will be completed during the public comment period and posted online at *http://www.regulations.gov* to allow for public review and comment.

We will consider all comments and information received during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

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Background

Delisting Wolves in Wyoming—The Focus of This Rule

This proposed rule focuses on the Wyoming portion of the NRM DPS, except where discussion of the larger GYA or NRM metapopulation is necessary to understand impacts to wolves in Wyoming. This rulemaking is separate and independent from, but additive to, the previous action delisting wolves in the NRM DPS (74 FR 15123, April 2, 2009; 76 FR 25590, May 5, 2011). We believe this approach is appropriate given the Congressional directive to reissue our 2009 delisting, which created a remnant piece of the NRM DPS. This approach is also consistent with our 2009 delisting determination which stated that ''if Wyoming were to develop a Service-approved regulatory framework it would be delisted in a separate rule'' (74 FR 15123, April 2, 2009, p. 15155). This proposal does not depend on, or implicate our previous, separate action to remove the other portions of the NRM DPS from the List of Endangered and Threatened Wildlife. Outside Wyoming, this rule will not affect the status of the gray wolf in the portions of the NRM DPS under State laws or suspend any other legal protections provided by State law.

Previous Federal Actions

In 1967, we determined the eastern timber wolf (*C. l. lycaon*) in the Great Lakes region was threatened with extinction (32 FR 4001, March 11, 1967). In 1973, we added the NRM gray wolf (*C. l. irremotus*) to the U.S. List of Endangered Fish and Wildlife (38 FR 14678, June 4, 1973). Both of these listings were pursuant to the Endangered Species Conservation Act of 1969. In 1974, these subspecies were listed as endangered under the Act of 1973 (39 FR 1158, January 4, 1974). We listed a third gray wolf subspecies, the Mexican wolf (*C. l. baileyi*) as endangered on April 28, 1976 (41 FR 17736) in Mexico and the southwestern United States. In 1976, we listed the Texas gray wolf subspecies (*C. l. monstrabilis*) as endangered in Texas and Mexico (41 FR 24062, June 14, 1976).

Due to questions about the validity of subspecies classification at the time and issues associated with the narrow geographic scope of each subspecies, we published a rule reclassifying the gray wolf as endangered at the species level (*C. lupus*) throughout the coterminous 48 States and Mexico (43 FR 9607, March 9, 1978). The exception was Minnesota, where the gray wolf was reclassified to threatened. This rule also provided assurance that this reclassification would not alter our intention to focus recovery on each population as separate entities. Accordingly, recovery plans were developed for: The Great Lakes in 1978 (revised in 1992) (Service 1978, entire; Service 1992, entire); the NRM region in 1980 (revised in 1987) (Service 1980, entire; Service 1987, entire); and the Southwest in 1982 (Service 1982, entire). A revision to the southwest recovery plan is now under way.

In 1994, we designated portions of Idaho and Montana, and all of Wyoming as nonessential experimental gray wolf populations under section 10(j) of the Act (50 CFR 17.84(i)), including the Yellowstone Experimental Population Area (59 FR 60252, November 22, 1994) and the Central Idaho Experimental Population Area (59 FR 60266,

November 22, 1994). These designations assisted us in initiating gray wolf reintroductions in central Idaho and in Yellowstone National Park (YNP). The Yellowstone Experimental Population Area included the entire State of Wyoming. In 2005 and 2008, we revised these regulations to provide increased management flexibility for this recovered wolf population in States and on Tribal lands with Service-approved post-delisting wolf management plans (70 FR 1286, January 6, 2005; 73 FR 4720, January 28, 2008; 50 CFR 17.84(n)).

The NRM gray wolf population achieved its numerical and distributional recovery goals at the end of 2000 (Service *et al.* 2011, Table 4). The temporal portion of the recovery goal was achieved in 2002 when the numerical and distributional recovery goals were exceeded for the third successive year (Service *et al.* 2011, Table 4). In light of this success, we once reclassified and twice delisted all or part of this population (68 FR 15804, April 1, 2003; 73 FR 10514, February 27, 2008; 74 FR 15123, April 2, 2009). These reclassification and delisting rules were overturned by Federal District courts (*Defenders of Wildlife, et al.* v. *Norton, et al.,* 354 F.Supp.2d 1156 (D. Or. 2005); *National Wildlife Federation, et al.* v. *Norton, et al.,* 386 F.Supp.2d 553 (D. Vt. 2005); *Defenders of Wildlife, et al.* v. *Hall, et al.,* 565 F.Supp.2d 1160 (D. Mont. 2008); *Defenders of Wildlife, et al.* v. *Salazar, et al.,* 729 F.Supp.2d 1207 (D. Mont. 2010). Each of these rulemakings and the subsequent litigation are discussed below.

In 2003, we reclassified the coterminous 48-State listing into three DPSs including a threatened Western DPS, a threatened Eastern DPS, and an endangered Southwestern DPS (68 FR 15804, April 1, 2003). The Western DPS, centered around the recovered NRM gray wolf population, included California, northern Colorado, Idaho, Montana, Oregon, northern Utah, Washington, and Wyoming. This rule also removed the protections of the Act for gray wolves in all or parts of 16 southern and eastern States where the species historically did not occur. Finally, this rule established a special 4(d) rule to respond to wolf-human conflicts in areas not covered by existing nonessential experimental population rules. In 2005, the U.S. District Courts in Oregon and Vermont concluded that the 2003 final rule was ''arbitrary and capricious'' and violated the Act (*Defenders of Wildlife, et al.* v. *Norton, et al.,* 354 F.Supp.2d 1156 (D. Or. 2005); *National Wildlife Federation, et al.* v. *Norton, et al.,* 386 F.Supp.2d 553 (D. Vt. 2005)). Both courts ruled the Service improperly downlisted entire DPSs based just on the viability of a core population. The courts' rulings invalidated the April 2003 changes to the gray wolf listing under the Act.

In 2003, we also published an advanced notice of proposed rulemaking announcing our intention to delist the Western DPS as the recovery goals had been satisfied (68 FR 15879, April 1, 2003). This notice explained that delisting would require consideration of threats, and that the adequacy of State wolf management plans to address threats in the absence of protections of the Act would be a major determinant in any future delisting evaluation.

In 2004, we determined that Montana's and Idaho's laws and wolf management plans were adequate to assure that their shares of the NRM wolf population would be maintained above recovery levels (Williams 2004a, in litt.; Williams 2004b, in litt.). However, we also found the 2003 Wyoming legislation and plan would not ensure maintenance of Wyoming's share of a recovered NRM gray wolf population (Williams 2004c, in litt.). Wyoming challenged this determination, and the United States District Court in Wyoming dismissed the case (*State of Wyoming, et al.* v. *United States Department of Interior, et al.,* 360 F.Supp.2d 1214, (D. Wyoming 2005)). Wyoming's subsequent appeal was unsuccessful (*State of Wyoming, et al.* v. *United States Department of Interior, et al.,* 442 F.Supp.3d 1262 (10th Cir. 2006)). Wyoming lost this case on procedural grounds because it failed to identify a final agency action necessary to confer standing prior to the litigation. To address this procedural shortcoming, in 2005, Wyoming petitioned us to revise the listing status for the gray wolf by recognizing a NRM DPS and to remove it from the Federal List of Endangered and Threatened Species (Freudenthal 2005, entire). In 2006, we announced a 12-month finding that Wyoming's petition (delisting wolves in all of Montana, Idaho, and Wyoming) was not warranted because the 2003 Wyoming State laws and its 2003 wolf management plan did not provide adequate regulatory mechanisms to ensure that Wyoming's share of a recovered NRM wolf population would be conserved (71 FR 43410, August 1, 2006). Wyoming challenged this finding in Wyoming Federal District Court. This challenge was made moot by Wyoming's revisions to its laws and management plan in 2007, which allowed delisting to move forward. On February 27, 2008, a Wyoming Federal District Court issued an order dismissing the case (*State of Wyoming, et al.* v. *United States Department of Interior, et al.,* U.S. District Court Case No. 2:06–CV–00245).

In 2008, we issued a final rule recognizing the NRM DPS and removing it from the List of Endangered and Threatened Wildlife (73 FR 10514, February 27, 2008). This DPS included Idaho, Montana, eastern Oregon, north-central Utah, eastern Washington, and Wyoming. This DPS was smaller than the 2003 Western DPS and more closely approximates the historic range of the originally listed NRM gray wolf in the United States and the areas focused on in both NRM recovery plans (39 FR 1171, January 4, 1974; Service 1980, pp. 3, 7–8; Service 1987, pp. 2, 23). The Service removed protections across the entire DPS after Wyoming revised its wolf management plan and State law. At the time, we concluded this Wyoming framework provided adequate regulatory protections to conserve Wyoming's portion of a recovered wolf population into the foreseeable future (Hall 2007, in litt.).

Environmental litigants challenged this final rule in the U.S. District Court for the District of Montana. The plaintiffs also moved to preliminarily enjoin the delisting. On July 18, 2008, the court granted the plaintiffs' motion for a preliminary injunction and enjoined the Service's implementation of the final delisting rule (*Defenders of Wildlife, et al.,* v. *Hall, et al.,* 565 F.Supp.2d 1160 (D. Mont. 2008)). The court stated that we acted arbitrarily in delisting a wolf population that lacked evidence of natural genetic exchange between subpopulations. The court also stated that we acted arbitrarily and capriciously when we approved Wyoming's 2007 wolf management plan because the State failed to commit to managing for at least 15 breeding pairs, and Wyoming's 2007 statute allowed the Wyoming Game and Fish Commission (WGFC) to diminish the trophy game area if it ''determines the diminution does not impede the delisting of gray wolves and will facilitate Wyoming's management of wolves.'' In light of the court order, on September 22, 2008, we asked the court to vacate the final rule and remand it to us. On October 14, 2008, the court granted our request *(Defenders of Wildlife* v. *Hall,* 9:08–CV–00056–DWM (D. Mont 2008)). The court's rulings invalidated the February 2008 rule designating and delisting the NRM DPS.

Following the July 18, 2008 court ruling, we reexamined the NRM DPS and Wyoming's statutes, regulations, and management plan. This

reevaluation considered several issues not considered in the previous evaluation. We determined that the best scientific and commercial data available demonstrated that: (1) The NRM DPS was not threatened or endangered throughout ''all'' of its range (*i.e.,* not threatened or endangered throughout all of the DPS); and (2) the Wyoming portion of the range represented a significant portion of its range where the species remained in danger of extinction because of the inadequacy of existing regulatory mechanisms. Thus, on April 2, 2009, we published a final rule recognizing the NRM DPS and removing the DPS from the List of Endangered and Threatened Wildlife, except in Wyoming, where wolves continued to be regulated as a nonessential, experimental population under 50 CFR 17.84(i) and (n) (74 FR 15123). The decision to retain the Act's protections only in Wyoming was consistent with a March 16, 2007, Memorandum Opinion issued by the Solicitor of the Department of the Interior, ''The Meaning of 'In Danger of Extinction Throughout All or a Significant Portion of Its Range' '' (M–Opinion) (Department of the Interior 2007, in litt.). The final rule determined that Wyoming's existing regulatory framework did not provide the necessary regulatory mechanisms to assure that Wyoming's share of a recovered NRM wolf population would be conserved if the protections of the Act were removed and stated that, until Wyoming revised its statutes, regulations, and management plan, and obtained Service approval, wolves in Wyoming would remain protected by the Act (74 FR 15123, April 2, 2009).

The April 2009 rule (74 FR 15123, April 2, 2009) was challenged in the U.S. District Court for the District of Montana by environmental litigants and in the U.S. District Court for the District of Wyoming by the State of Wyoming, the Wyoming Wolf Coalition, and Park County, Wyoming. On August 5, 2010, the U.S District Court for Montana ruled on the merits of the case and vacated our April 2009 final rule (*Defenders of Wildlife, et al.* v. *Salazar, et al.,* 729 F. Supp.2d 1207 (D. Mont. 2010)). The court concluded that the NRM DPS must be listed or delisted in its entirety. The court rejected the rule's approach allowing protection of only a portion of the species' range because it was inconsistent with the Act's definition of ''species.'' (The Department of Interior withdrew the M-Opinion on this topic on May 4, 2011 (Department of the Interior 2011, in litt.)). Thus, before delisting could occur, Wyoming had to develop a regulatory framework that was determined by the Service to be adequate to maintain Wyoming's share of a recovered NRM gray wolf population. The court's ruling invalidated the April 2009 rule designating and delisting most of the NRM DPS.

On October 26, 2010, in compliance with the order of the U.S. District Court for Montana, we published a final rule notifying the public that the Federal protections in place prior to the 2009 delisting had been reinstated (75 FR 65574). Wolves in eastern Washington, eastern Oregon, northcentral Utah, the Idaho panhandle, and northern Montana were again listed as endangered. Former special rules designating the gray wolf in the remainder of Montana and Idaho as nonessential experimental populations were likewise reinstated. Additionally, the NRM gray wolf DPS established by the April 2, 2009, final rule was set aside. Because wolves in Wyoming were not delisted by the April 2, 2009 final rule, their listed status was not impacted by the October 26, 2010 rule.

Following the Montana District Court decision, the United States Congress passed, and President Obama signed, H.R. 1473, Public Law 112–10—The Department of Defense and Full Year Continuing Appropriations Act of 2011. Section 1713 of the law directed the Service to reissue its April 2009 delisting rule. The Service complied with this directive on May 5, 2011 (76 FR 25590). The constitutionality of H.R. 1473 was challenged by environmental plaintiffs (*Alliance for the Wild Rockies et al.,* v. *Salazar, et al.,* case no. CV 11–70–M–DWM). The United States District Court for Montana ruled on August 3, 2011, that the law was constitutional. This ruling was appealed to the Ninth Circuit (*Alliance for the Wild Rockies, et al.,* v. *Salazar, et al.,* case no. 11–35670). Plaintiffs also filed an emergency motion for injunction in order to stop Idaho's and Montana's planned fall 2011 hunts, which was denied. As of this writing, a decision on the appeal is pending.

As for the Wyoming challenge to the April 2009 partial delisting rule (74 FR 15123, April 2, 2009), a United States District Court for Wyoming ruled in favor of the three Wyoming plaintiffs on November 18, 2010 (*Wyoming et al.,* v. *U.S. Department of the Interior, et al.,* 2010 U.S. Dist. LEXIS 122829). The court rejected the Service position that recommended the entire State of Wyoming be designated as a trophy game area and found this position to be arbitrary and capricious, as it was not supported by the administrative record. The court concluded that the record indicated only northwestern Wyoming, which has the vast majority of the State's suitable habitat, was biologically essential to maintenance of the NRM population. However, the court did not render an opinion on whether Wyoming's current plan, including the proposed size and location of its 2007 trophy game area, was sufficient. Instead, the court remanded the matter to us to reconsider whether Wyoming's regulatory framework would maintain its share of a recovered wolf population and provide adequate genetic connectivity. Subsequent to this order, the Service and the State reinitiated negotiations on revisions to their wolf management framework that would satisfy the standards of the Act and allow delisting to again move forward. The results of this process led to development of a revised wolf management plan and are incorporated in this proposal.

Reengaging Wyoming and Changes to Their Wolf Management Plan

The April 2009 rule stated that ''until Wyoming revises their statutes, management plan, and associated regulations, and is again Service approved, wolves in Wyoming continue to require the protections of the Act'' (74 FR 15123, April 2, 2009). This rule specifically expressed concern over: (1) The size and permanency of Wyoming's Wolf Trophy Game Management Area (WTGMA); (2) conflicting language within the State statutes concerning whether Wyoming would manage for at least 15 breeding pairs and at least 150 wolves, exactly 15 breeding pairs and 150 wolves, or only 7 breeding pairs and 70 wolves; and (3) liberal depredation control authorizations and legislative mandates to aggressively manage the population down to minimum levels.

In early 2011, we began discussions with Wyoming seeking to develop a strategy for each of these issues. In August 2011, the Service and the State of Wyoming announced the framework of an agreement that we believe will allow us to delist wolves in Wyoming (WGFC 2011, appendix I). Following this announcement, Wyoming revised their 2008 wolf management plan (WGFC 2008, entire) to reflect the terms of this agreement (WGFC 2011, entire). Below we summarize the key points in the agreement relative to the three overarching Service concerns highlighted above.

First, this agreement commits Wyoming to make permanent the existing WTGMA. In total, Wyoming wolves will be permanently managed as game animals or protected (*e.g.,* in

National Parks) in about 40,000 km^2 (15,400 mi^2) in the northwestern portion of the State (15.7 percent of Wyoming), including YNP, Grand Teton National Park, John D. Rockefeller Memorial Parkway, adjacent U.S. Forest Service-designated Wilderness Areas, adjacent public and private lands, the National Elk Refuge, and the Wind River Indian Reservation (Lickfett 2011, in litt.). Wolves will be designated as predatory animals in the remainder of the State (predator area). The above protected and game areas (see Figure 1) include: 100 percent of the portion of the GYA recovery area within Wyoming (Service 1987, Figure 2); approximately 79 percent of the portion of the primary analysis area in Wyoming focused on by the 1994 reintroduction EIS (Service 1994, Figure 1.1); the entire home range for 24 of 27 breeding pairs in Wyoming and 24 of 34 packs in the State (Service *et al.* 2011, Figure 3); and approximately 76 percent of the State's suitable habitat as determined by Oakleaf *et al.* (2006, entire) (including 81 percent of the high-quality habitat (with an 80 percent or greater chance of supporting wolves) and 62 percent of the medium-high-quality habitat (with a 50 to 79 percent chance of supporting wolves) (Oakleaf 2011, in litt.)). This area is of sufficient size to support a recovered wolf population in Wyoming, under the management regime proposed for this area.

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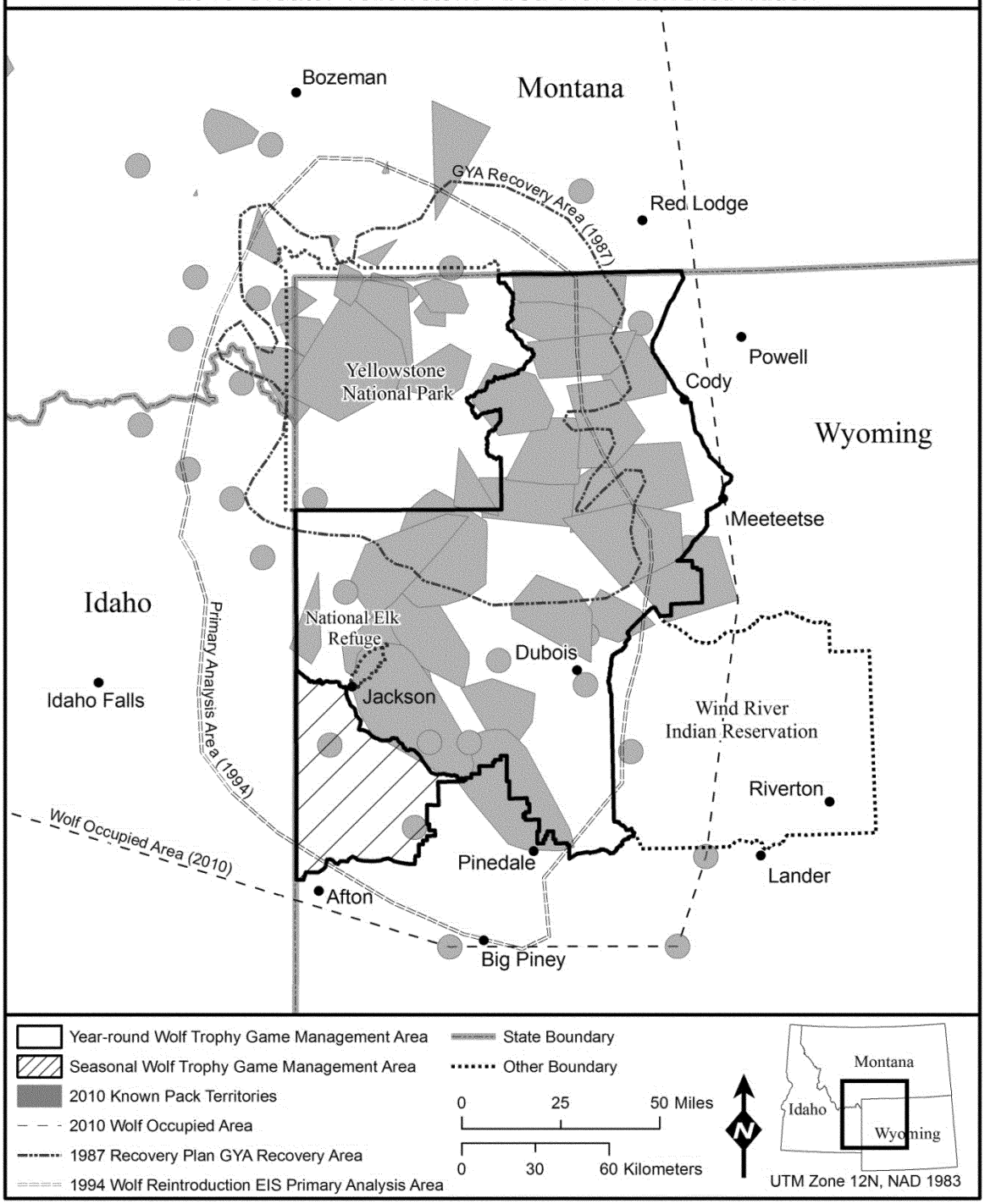
Figure 1. Wolf Trophy Game Management Areas Within Wyoming and 2010 Greater Yellowstone Area Wolf Pack Distribution



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The Service's prior concern that the size of the WTGMA would impact natural connectivity and genetic exchange was also addressed in the agreement. The agreement and the State's wolf management plan clearly articulate a goal for gene flow of at least one effective natural migrant per generation entering into the GYA, as measured over multiple generations (WGFC 2011, pp. 4, 9, 26–29, 54). To address our concerns about genetics and connectivity, Wyoming agreed to a seasonal expansion of the WTGMA. This seasonal adjustment expands the WTGMA approximately 80 kilometers (km) (50 miles (mi)) south for four and a half months during peak wolf dispersal periods (WGFC 2011, pp. 2, 8, 52). We believe this will benefit natural dispersal. Furthermore, Wyoming commits to an adaptive management approach that adjusts management if the above minimum level of gene flow is not documented, as well as to use human-assisted migration if necessary (WGFC 2011, pp. 26–29). Collectively, these measures will ensure that inbreeding depression resulting from

the loss of genetic diversity never threatens the population.

Next, Wyoming agreed to maintain a population of at least 10 breeding pairs and at least 100 wolves in areas under State jurisdiction (WGFC 2011, pp. 1–5, 16–26, 52). Importantly, this commitment does not reflect an intention by Wyoming Game and Fish Department (WGFD) to reduce the population down to this minimum population level. Rather, Wyoming intends to maintain an adequate buffer above minimum population objectives to accommodate management needs (the desire to hunt wolves annually) and ensure uncontrollable sources of mortality (such as disease or take in defense of property) do not drop the population below this minimum population level (WGFC 2011, p. 24). This management strategy will provide for the population's representation, resiliency, and redundancy (Shaffer and Stein 2000, entire) within the GYA as well as improve public acceptance for wolves outside YNP.

The wolf populations in YNP and on the lands of sovereign nations will provide an additional buffer above the minimum recovery goal intended by the step-down management objective of at least 15 breeding pairs and at least 150 wolves Statewide (see ''Recovery Planning and Implementation'' below for more information). From 2001 to the end of 2010, the wolf population in YNP ranged from 96 to 171 wolves, and between 6 to 16 breeding pairs, with an average of 9.8 breeding pairs. While a lower long-term future population level in YNP is predicted (Smith 2010, pers. comm.), YNP will always provide a large, secure wolf population providing a safety margin above the minimum recovery goal. The Wind River Indian Reservation typically contains a small number of wolves (single digits), which sometimes form packs that count toward Tribal population totals. On the whole, we expect the statewide wolf population in Wyoming will be maintained well above minimum recovery levels.

Another substantial improvement is Wyoming's management framework inside the WTGMA. For example, Wyoming has committed to remove current statutory mandates for aggressive management of wolves (WGFC 2011, pp. 24, 52). Current Wyoming law requires aggressive management until the population outside the National Parks falls to six breeding pairs or below. This issue was a major Service concern with Wyoming's existing law, and will be remedied.

Additionally, Wyoming agreed wolves in the permanent or seasonal WTGMA would never be treated as predatory animals (WGFC 2011, pp. 3, 16–17, 23). Existing State laws allow depredating wolves within the WTGMA to be treated as predatory animals under certain circumstances at the discretion of the State Fish and Game Commission (WGFC 2011, pp. 3, 16–17, 23). Wyoming has indicated an intention to modify W.S. 23–1–302(a)(ii) to ensure it does not apply to wolves in the WTGMA. This change is a substantial improvement over current Wyoming law that will help ensure that the wolf population in Wyoming (outside of YNP and the Wind River Indian Reservation) always remains at or above 10 breeding pairs and 100 individuals.

Furthermore, Wyoming intends to establish defense-of-property regulations that are similar to our nonessential experimental population rules (50 CFR 17.84(n)) (WGFC 2011, pp. 4, 22–23, 30–31, 53). Also, management of depredating wolves will be similar to Service management under the Act's protections (WGFC 2011, pp. 4, 22–23, 30–31, 53). Such rules were in place in Montana and Idaho prior to delisting and allowed continued population growth. These management approaches are an additional improvement over the framework Wyoming had in place for most of 2008.

These, and other improvements discussed in more detail below, have addressed the Service's concerns about wolf management in Wyoming and made this proposed delisting rule possible. Wyoming's wolf management plan was recently revised to reflect the new agreement (WGFC 2011, entire). However, conforming changes to Wyoming State law and WGFC regulations are also necessary to implement this plan. Wyoming recognizes statutory and regulatory changes will be required to implement this agreement and intends to pursue these changes. These changes will be made prior to any final decision that delists gray wolves in Wyoming.

Species Description and Basic Biology

Gray wolves (*Canis lupus*) are the largest wild members of the dog family (Canidae). Adult gray wolves range from 18–80 kilograms (kg) (40–175 pounds (lb)) depending upon sex and geographic region (Mech 1974, p. 1). In the NRM region, adult male gray wolves average just over 45 kg (100 lb), but may weigh up to 60 kg (130 lb). Females weigh about 20 percent less than males. Wolves' fur color is frequently a grizzled gray, but it can vary from pure white to coal black (Gipson *et al.* 2002, p. 821).

Gray wolves have a circumpolar range including North America, Europe, and Asia. As Europeans began settling the United States, they poisoned, trapped, and shot wolves, causing this once-widespread species to be eradicated from most of its range in the 48 conterminous States (Mech 1970, pp. 31–34; McIntyre 1995, entire). Gray wolf populations were eliminated from Montana, Idaho, and Wyoming, as well as adjacent southwestern Canada by the 1930s (Young and Goldman 1944, p. 414).

Wolves primarily prey on medium and large mammals. Wolf prey in the NRM region is composed mainly of elk (*Cervus canadensis*), white tailed deer (*Odocoileus virginianus*), mule deer (*Odocoileus hemionus*), moose (*Alces alces*), and (in the GYA) bison (*Bison bison*). Bighorn sheep (*Ovis canadensis*), mountain goats (*Oreamnos americanus*), and pronghorn antelope (*Antilocapra americana*) also are common but less important, at least to date, as wolf prey.

Wolves normally live in packs of 2 to 12 animals. In the NRM region, pack sizes average 7 wolves but are slightly larger in protected areas. A few complex packs have been substantially bigger in some areas of YNP (Smith *et al.* 2006, p. 243; Service *et al.* 2011, Tables 1–3). Packs typically occupy large distinct territories from 518 to 1,295 square kilometers (km^2) (200 to 500 square miles (mi^2)) and defend these areas from other wolves or packs. Once a given area is occupied by resident wolf packs, it becomes saturated and wolf numbers become regulated by the amount of available prey, intra-species conflict, other forms of mortality, and dispersal. Dispersing wolves may cover large areas as they try to join other packs or attempt to form their own pack in unoccupied habitat (Mech and Boitani 2003, pp. 11–17).

Typically, only one male and female in each pack breed and produce pups (Packard 2003, p. 38; Smith *et al.* 2006, pp. 243–4; Service *et al.* 2011, Tables 1–3). Females and males typically begin breeding as 2-year-olds and may annually produce young until they are over 10 years old. In the NRM region, litters are typically born in mid to late April and range from 1 to 7 pups, but average around 5 pups (Service *et al.* 1989–2011, Tables 1–3). Most years, four pups survive until winter (Service *et al.* 1989–2011, Tables 1–3). Wolves can live 13 years (Holyan *et al.* 2005, p. 446), but the average lifespan in the NRM region is less than 4 years (Smith *et al.* 2006, p. 245). Pup production and survival can increase when wolf density is lower and food availability per wolf increases (Fuller *et al.* 2003, p. 186). Pack social structure is very adaptable and resilient. Breeding members can be

quickly replaced either from within or outside the pack, and pups can be reared by another pack member should their parents die (Packard 2003, p. 38; Brainerd *et al.* 2008; Mech 2006, p. 1482). Consequently, wolf populations can rapidly recover from severe disruptions, such as very high levels of human-caused mortality or disease. After severe declines, wolf populations can more than double in just 2 years if mortality is reduced; increases of nearly 100 percent per year have been documented in low-density suitable habitat (Fuller *et al.* 2003, pp. 181–183; Service *et al.* 2011, Table 4).

For detailed information on the biology of this species see the ''Biology and Ecology of Gray Wolves'' section of the April 1, 2003, final rule to reclassify and remove the gray wolf from the list of endangered and threatened wildlife in portions of the conterminous United States (2003 Reclassification Rule) (68 FR 15804).

Recovery Planning and Implementation

This section discusses recovery planning and implementation. Specifically, this section includes a detailed discussion of the recovery criteria including their development, continuous evaluation, and revision as necessary. Finally, this section includes our summary of progress towards recovery including an assessment of whether the criteria are met. This section discusses the entire NRM population because the recovery criteria apply to the entire population.

Recovery Planning and the Development of Recovery Criteria—Shortly after the gray wolf was listed, we formed the Interagency Wolf Recovery Team to complete a recovery plan for the NRM population (Service 1980, p. i; Fritts *et al.* 1995, p. 111). The NRM Wolf Recovery Plan (recovery plan) was approved in 1980 (Service 1980, p. i) and revised in 1987 (Service 1987, p. i). Recovery plans are not regulatory documents, but are instead intended to provide guidance to the Service, States, and other partners on methods of minimizing threats to listed species and on criteria that may be used to determine when recovery is achieved. There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met. For example, one or more criteria may have been exceeded while other criteria may not have been accomplished. In that instance, the Service may judge that the threats have been minimized sufficiently, and the species is robust enough to reclassify from endangered to threatened or to delist. In other cases, recovery opportunities may have been recognized that were not known at the time the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan. Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent that criteria need to be met for recognizing recovery of the species. Recovery of a species is a dynamic process requiring adaptive management that may, or may not, fully follow the guidance provided in a recovery plan.

The 1980 recovery plan's objective was to reestablish and maintain viable populations of the NRM wolf (*C. l. irremotus*) in its former range where feasible (Service 1980, p. iii). This plan did not include recovery goals (*i.e.*, delisting criteria). The 1980 plan covered an area similar to the NRM DPS, as it was once believed to be the range of the purported NRM wolf subspecies. It recommended that recovery actions be focused on the large areas of public land in northwestern Montana, central Idaho, and the GYA. The 1987 revised recovery plan (Service 1987, p. 57) concluded that the subspecies designations may no longer be valid and simply referred to gray wolves in the NRM region. Consistent with the 1980 plan, it also recommended focusing recovery actions on the large blocks on public land in the NRM region.

The 1987 plan specified a recovery criterion of a minimum of 10 breeding pairs of wolves (defined as 2 wolves of opposite sex and adequate age, capable of producing offspring) for a minimum of 3 successive years in each of 3 distinct recovery areas including: (1) Northwestern Montana (Glacier National Park; the Great Bear, Bob Marshall, and Lincoln Scapegoat Wilderness Areas; and adjacent public and private lands); (2) central Idaho (Selway-Bitterroot, Gospel Hump, Frank Church River of No Return, and Sawtooth Wilderness Areas; and adjacent, mostly Federal, lands); and (3) the YNP area (including the Absaroka-Beartooth, North Absaroka, Washakie, and Teton Wilderness Areas; and adjacent public and private lands). That plan recommended that wolf establishment not be promoted outside these distinct recovery areas, but it encouraged connectivity between recovery areas. However, no attempts were made to prevent wolf pack establishment outside of the recovery areas unless chronic conflict required resolution (Service 1994, pp. 1–15, 16; Service 1999, p. 2). Since completion of the 1987 recovery plan, we have expended considerable effort to develop, repeatedly reevaluate, and when necessary modify, the recovery goals (Service 1987, p. 12; Service 1994, Appendix 8 and 9; Fritts and Carbyn 1995, p. 26; Bangs 2002, p. 1; 73 FR 10514, February 27, 2008; 74 FR 15123, April 2, 2009, and this proposed rule).

The 1994 Environmental Impact Statement on The Reintroduction of Gray Wolves to Yellowstone National Park and Central Idaho (EIS) reviewed wolf recovery in the NRM region and the adequacy of the recovery goals to assure that the 1987 goals were sufficient (Service 1994, pp. 6:68–78). We were particularly concerned about the 1987 definition of a breeding pair, since any male and female wolf are 'capable' of producing offspring and lone wolves may not have territories. We also believed the relatively small recovery areas identified in the 1987 plan greatly reduced the amount of area that could be used by wolves and would almost certainly eliminate the opportunity for meaningful natural demographic and genetic connectivity. We conducted a thorough literature review of wolf population viability analysis and minimum viable populations, reviewed the recovery goals for other wolf populations, surveyed the opinions of the top 43 wolf experts in North America (of which 25 responded), and incorporated our own expertise into a review of the NRM wolf recovery goal. We published our analysis in the EIS and a peer-reviewed paper (Service 1994, Appendix 8 & 9; Fritts and Carbyn 1995, pp. 26–38).

Our 1994 analysis concluded that the 1987 recovery goal was, at best, a minimum recovery goal, and that modifications were warranted on the basis of more recent information about wolf distribution, connectivity, and numbers. We also concluded ''Data on survival of actual wolf populations suggest greater resiliency than indicated by theory'' and theoretical treatments of population viability ''have created unnecessary dilemmas for wolf recovery programs by overstating the required population size'' (Fritts and Carbyn 1995, p. 26). Based on our analysis, we redefined a breeding pair as an adult male and an adult female wolf that have produced at least 2 pups that survived until December 31 of the year of their birth, during the previous breeding season. We also concluded that ''Thirty or more breeding pairs comprising some 300+ wolves in a metapopulation (a population that exists as partially isolated sets of subpopulations) with genetic exchange between subpopulations should have a high

probability of long-term persistence'' because it would contain enough individuals in successfully reproducing packs that were distributed over distinct but somewhat connected large areas, to be viable for the longterm (Service 1994, p. 6:75). We explicitly stated the required genetic exchange could occur by natural means or by human-assisted migration management and that dispersal of wolves between recovery areas was evidence of that genetic exchange (Service *et al.* 1994, Appendix 8, 9). In defining a ''Recovered Wolf Population'' we found ''in the northern Rockies a recovered wolf population is 10 breeding pairs of wolves in each of 3 areas for 3 successive years with some level of movement between areas'' (Service 1994, pp. 6–7). We further determined that a metapopulation of this size and distribution among the three areas of core suitable habitat in the NRM DPS would result in a wolf population that would fully achieve our recovery objectives.

For more than 15 years, we have concluded that movement of individuals between the metapopulation segments could occur either naturally or by human-assisted migration management (Service 1994, pp. 7–67). Specifically, the 1994 EIS stated ''The importance of movement of individuals between sub-populations cannot be overemphasized. The dispersal ability of wolves makes such movement likely, unless wolves were heavily exploited between recovery areas, as could happen in the more developed corridor between central Idaho and YNP. Intensive migration management might become necessary if 1 of the 3 sub-populations should develop genetic or demographic problems.'' (Service 1994, pp. 7–67). The finding went on to say that human-assisted migration should not be viewed negatively and would be necessary in other wolf recovery programs (Service 1994, pp. 7–67). Furthermore, we found that the 1987 wolf recovery plan's population goal of 10 breeding pairs of wolves in 3 separate recovery areas for 3 consecutive years was reasonably sound and would maintain a viable wolf population into the foreseeable future. We did caution that the numerical recovery goal was somewhat conservative, and should be considered minimal (Service 1994, pp. 6–75).

We conducted another review of what constitutes a recovered wolf population in late 2001 and early 2002 to reevaluate and update our 1994 analysis and conclusions (Service 1994, Appendix 9). We attempted to resurvey the same 43 experts we had contacted in 1994 as well as 43 other biologists from North America and Europe who were recognized experts about wolves and conservation biology. We asked experts with a wide diversity of perspectives to participate in our review. In total, 53 people provided their expert opinion regarding a wide range of issues related to the NRM recovery goal. We also reviewed a wide range of literature, including wolf population viability analyses from other areas (Bangs 2002, pp. 1–9).

Despite varied professional opinions and a great diversity of suggestions, experts overwhelmingly thought the recovery goal derived in our 1994 analysis was more biologically appropriate than the 1987 recovery plan's criteria for recovery and represented a viable and recovered wolf population. Reviewers also thought genetic exchange, either natural or human-facilitated, was important to maintaining the metapopulation configuration and wolf population viability. Reviewers also believed the proven ability of a breeding pair to show successful reproduction was a necessary component of a biologically meaningful breeding pair definition. Reviewers recommended other concepts/numbers for recovery goals, but most were slight modifications to those we recommended in our 1994 analysis. While experts strongly (78 percent) supported our 1994 conclusions regarding a viable wolf population, they also tended to believe that wolf population viability was enhanced by higher, rather than lower, population levels and longer, rather than shorter, demonstrated timeframes.

A common minority recommendation was an alternative goal of 500 wolves and 5 years. A slight majority of reviewers indicated that even the 1987 recovery goal of only 10 breeding pairs (defined as a male and female capable of breeding) in each of 3 distinct recovery areas may be viable, given the persistence of other small wolf populations in other parts of the world. The results of previous population viability analyses for other wolf populations varied widely, and as we had concluded in our 1994 analysis, reviewers in 2002 concluded theoretical results were strongly dependent on the variables and assumptions used in such models and conclusions often predicted different outcomes than actual empirical data had conclusively demonstrated. Based on that review, we reaffirmed our more relevant and stringent 1994 definition of wolf breeding pairs, population viability, and recovery (Service 1994, p. 6:75; Bangs 2002, pp. 1–9).

We measure the wolf recovery goal by the number of breeding pairs as well as by the number of wolves because wolf populations are maintained by packs that successfully raise pups. We use ''breeding pairs'' (packs that have at least one adult male and at least one adult female and that raised at least two pups until December 31) to describe successfully reproducing packs (Service 1994, p. 6:67; Bangs 2002, pp. 7–8; Mitchell *et al.* 2008, p. 881; Mitchell *et al.* 2010, p. 101). The breeding pair metric includes most of the important biological concepts in wolf conservation, including the potential disruption of human-caused mortality that might affect breeding success in social carnivores (Brainerd *et al.* 2008, p. 89; Wallach *et al.* 2009, p. 1; Creel and Rotella 2010, p. 1). Specifically, we thought it was important for breeding pairs to have: both male and female members together going into the February breeding season; successful occupation of a distinct territory (generally 500–1,300 km^2 (200–500 mi^2) and almost always in suitable habitat; enough pups to replace themselves; offspring that become yearling dispersers; at least four wolves following the point in the year with the highest mortality rates (summer and fall); all social structures and age classes represented within a wolf population; and adults that can raise and mentor younger wolves.

We also have determined that an equitable distribution of wolf breeding pairs and individual wolves among the three States and the three recovery zones is an essential part of achieving recovery. Like peer reviewers in 1994 and 2002, we concluded that NRM wolf recovery and long-term wolf population viability is dependent on its distribution as well as maintaining the minimum numbers of breeding pairs and wolves. While uniform distribution is not necessary, a well-distributed population with no one State/recovery area maintaining a disproportionately low number of packs or number of individual wolves is needed. This approach will maintain wolf distribution in and adjacent to all three recovery areas and most of the region's suitable habitat. Such an approach will facilitate natural connectivity.

Following the 2002 review of our recovery criteria, we began to use States, in addition to recovery areas, to measure progress toward recovery goals (Service *et al.* 2003–2011, Table 4). Because Montana, Idaho, and Wyoming each contain the vast majority of one of the original three core recovery areas, we determined the metapopulation structure would be best conserved by

equally dividing the overall recovery goal between the three States (73 FR 10514, February 27, 2008, p. 10522). This approach made each State's responsibility for wolf conservation fair, consistent, and clear. It avoided any possible confusion that one State might assume the responsibility for maintaining the required number of wolves and wolf breeding pairs in a shared recovery area that was the responsibility of the adjacent State. State regulatory authorities and traditional management of resident game populations occur on a State-by-State basis. We determined that management by State would still maintain a robust wolf population in each core recovery area because they each contain manmade or natural refugia from human-caused mortality (*e.g.,* National Parks, wilderness areas, and remote Federal lands) that guarantee those areas remain the stronghold for wolf breeding pairs and source of dispersing wolves in each State. Recovery targets by State promote connectivity and genetic exchange between the metapopulation segments by avoiding management that focuses solely on wolf breeding pairs in relatively distinct core recovery areas. This approach also will increase the numbers of potential wolf breeding pairs in the GYA because it is shared by all three States. A large and well-distributed population within the GYA is especially important because it is the most isolated recovery segment within the NRM DPS (Oakleaf *et al.* 2005, p. 554; vonHoldt *et al.* 2007, p. 19) and the southern tip of a larger western gray wolf population that now contains more than 14,000 wolves when combined with western Canada (Boitani 2003, p. 322).

The numerical component of the recovery goal represents the minimum number of breeding pairs and individual wolves needed to achieve and maintain recovery. To ensure that the NRM wolf population always exceeds the recovery goal of 30 breeding pairs and 300 wolves, we required that each State manage for at least 15 breeding pairs and at least 150 wolves in mid-winter in accordance with a step-down management objective. This 50 percent safety margin above minimum recovery levels was intended to provide an adequate safety margin recognizing that all wildlife populations, including wolves, can fluctuate widely over a relatively short period of time. Managing for a buffer above the minimum recovery target is consistent with our 1994 determination that the addition of a few extra pairs would add security to the population and should be considered in the post-EIS management planning (Service 1994, pp. 6–75). Additionally, because the recovery goal components are measured in mid-winter when the wolf population is near its annual low point, the average annual wolf population will be higher than these minimal goals.

Because Wyoming, unlike Montana and Idaho, has a large portion of its wolf population in areas outside the State's control (*e.g.,* YNP and the Wind River Indian Reservation), we developed an alternative approach for Wyoming to achieve the desired safety margin above the minimum recovery goal. Specifically, we determined that at least 10 breeding pairs and at least 100 wolves at mid-winter in Wyoming outside YNP and the Wind River Indian Reservation will satisfy Wyoming's contribution to NRM gray wolf recovery. Under this approach, the wolf populations in YNP and the Wind River Indian Reservation will provide the remaining buffer above the minimum recovery goal intended by the step-down management objective employed in Montana and Idaho (*i.e.,* population targets 50 percent above minimum recovery levels).

Wyoming's wolf population will be further buffered because WGFD intends to maintain an adequate buffer above minimum population objectives to accommodate management needs and ensure uncontrollable sources of mortality do not drop the population below the 10 breeding pair and 100 wolf minimum population level. The State of Wyoming is also committed to coordinate with YNP and the Wind River Indian Reservation to contribute to the step-down recovery target of at least 15 breeding pairs and at least 150 wolves statewide, including YNP and the Wind River Indian Reservation. In our view, this alternative approach to the step-down wolf population target in Wyoming is biologically superior to a single statewide standard in that: It provides population stability outside the park, minimizing the chances of a bad year in YNP compromising maintenance of the recovery goal (such a scenario is described in our 2009 delisting rule's analysis of Wyoming's 2007 wolf plan (74 FR 15123, April 2, 2009)); It adds an extra layer of representation, resiliency, and redundancy to the Greater Yellowstone Area's gray wolf population; and it builds public acceptance for a minimum wolf population outside YNP.

To summarize, based on the information above, the current recovery goal for the NRM gray wolf population is: Thirty or more breeding pairs (an adult male and an adult female that raise at least 2 pups until December 31) comprising 300+ wolves well-distributed between Montana, Idaho, and Wyoming functioning as a metapopulation (a population that exists as partially isolated sets of subpopulations) with genetic exchange (either natural or, if necessary, agency-managed) between subpopulations. This overarching NRM recovery goal is stepped-down by State. The step-down recovery target requires Montana and Idaho to each maintain at least 10 breeding pairs and at least 100 wolves by managing for a safety margin of at least 15 breeding pairs and at least 150 wolves in mid-winter. In Wyoming, the step-down recovery target is at least 10 breeding pairs and at least 100 wolves primarily within the State's jurisdiction while the YNP and the Wind River Indian Reservation provide the remainder of the buffer above the minimum recovery goal. Our recovery and post-delisting management goals were designed to provide the NRM gray wolf population with sufficient representation, resilience, and redundancy for their long-term conservation. After evaluating all available information, we conclude that the best scientific and commercial information available indicates the population will remain viable following delisting if the recovery targets continue to be met.

Monitoring and Managing Recovery—In 1989, we formed an Interagency Wolf Working Group (Working Group) composed of Federal, State, and Tribal agency personnel (Bangs 1991, p. 7; Fritts *et al.* 1995, p. 109; Service *et al.* 1989–2009, p. 1). The Working Group conducted four basic recovery tasks (Service *et al.* 1989–2009, pp. 1–2), in addition to the standard enforcement functions associated with the take of a listed species. These tasks were: (1) Monitor wolf distribution and numbers; (2) control wolves that attacked livestock by moving them, conducting other nonlethal measures, or by killing them (Bangs *et al.* 2006, p. 7); (3) conduct research and publish scientific publications on wolf relationships to ungulate prey, other carnivores and scavengers, livestock, and people; and (4) provide accurate science-based information to the public and mass media so that people could develop their opinions about wolves and wolf management from an informed perspective.

The size and distribution of the wolf population is estimated by the Working Group each year and, along with other information, is published in an interagency annual report (Service *et al.*

1989–2009, Table 4, Figure 1). Since the early 1980s, the Service and our cooperating partners have radio-collared and monitored approximately 2,000 wolves in the NRM region to assess population status, conduct research, and to reduce/resolve conflict with livestock. The Working Group's annual population estimates represent the best scientific and commercial data available regarding year-end NRM gray wolf population size and trends, as well as distributional and other information.

Recovery by State—At the end of 2000, the NRM population first met its overall numerical and distributional recovery goal of a minimum of 30 breeding pairs and more than 300 wolves well-distributed among Montana, Idaho, and Wyoming (68 FR 15804, April 1, 2003; Service *et al.* 2011, Table 4). Because the recovery goal must be achieved for 3 consecutive years, the temporal element of recovery was not achieved until the end of 2002 when 663 wolves and 49 breeding pairs were present (Service *et al.* 2003, Table 4). By the end of 2010, the NRM wolf population achieved its numerical and distributional recovery goal for 11 consecutive years (Service *et al.* 2001–2008, Table 4; 68 FR 15804, April 1, 2003; 71 FR 6634, February 8, 2006). By the end of 2010, the NRM gray wolf population included approximately 1,651 wolves (566 in Montana; 705 in Idaho; 343 in Wyoming; 16 in eastern Washington; 21 in eastern Oregon) in 111 breeding pairs (35 in Montana; 46 in Idaho; 27 in Wyoming; 1 in Washington; 2 in Oregon). Distribution at the end of 2010 is illustrated in Figure 2. Population trends through the end of 2010 are illustrated in Figure 3.

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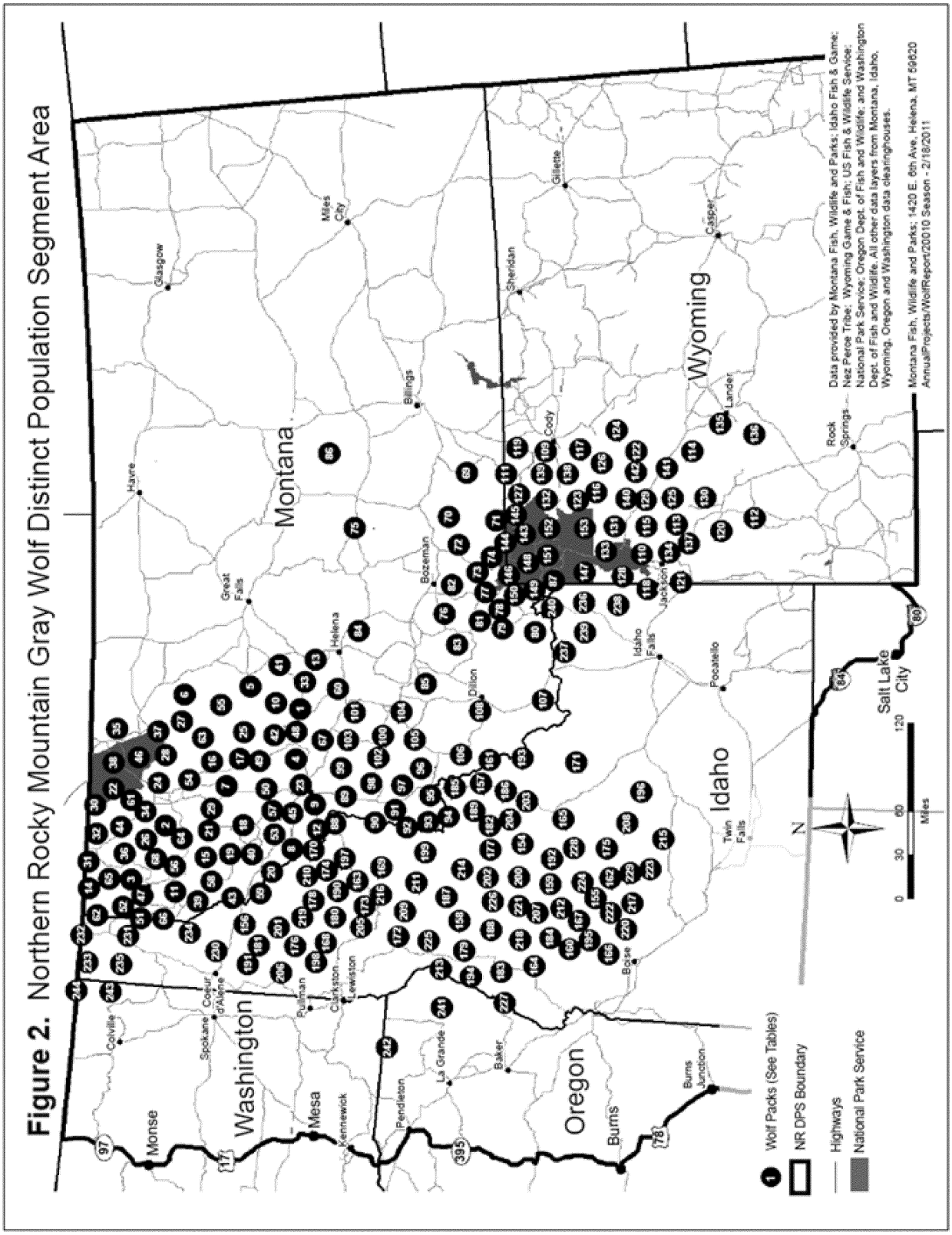

Figure 2. Northern Rocky Mountain Gray Wolf Distinct Population Segment Area

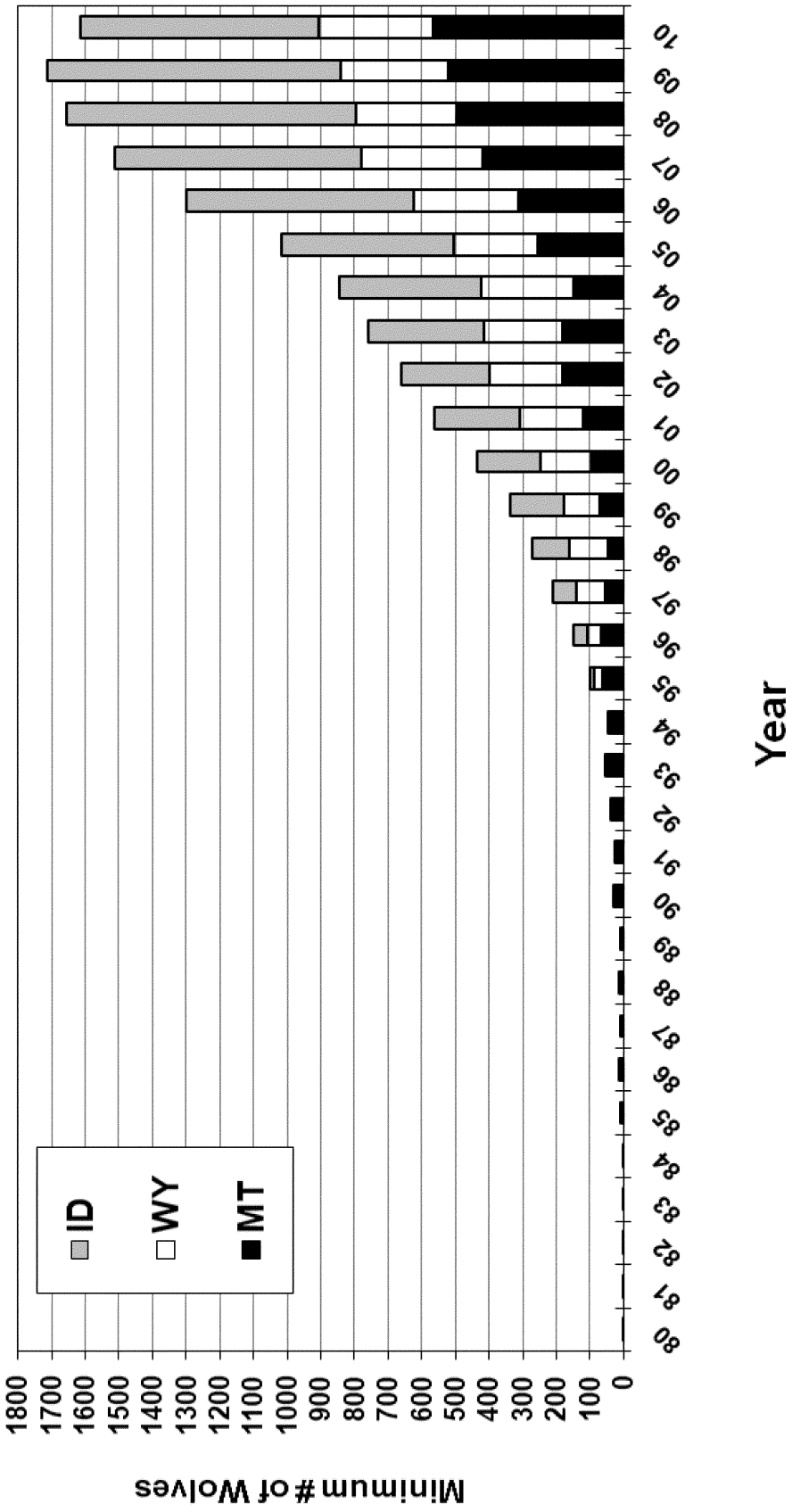

Figure 3. Northern Rocky Mountain Wolf Population Trends in Montana, Idaho and Wyoming: 1980-2010

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Recovery by Recovery Area—As discussed previously, after the 2002 peer review of the wolf recovery efforts, we began using States, in addition to recovery areas, to measure progress toward recovery goals (Service *et al.* 2003–2011, Table 4). However, because the 1987 Recovery Plan (Service 1987, pp. v, 12, 23) included goals for core recovery areas we have included the following discussion on the history of the recovery efforts and status of these core recovery areas, including how the wolf population's distribution and metapopulation structure is important to maintaining its viability and how the biological characteristics of each core recovery area differ (Service *et al.* 2011, Table 4).

The Northwestern Montana Recovery Area's 84,800 km² (33,386 mi²) includes: Glacier National Park; the Great Bear, Bob Marshall, and Lincoln Scapegoat Wilderness Areas; and adjacent public and private lands in northern Montana and the northern Idaho panhandle. Wolves in this recovery area were listed and managed as endangered species. Wolves naturally recolonized this area from Canada. Reproduction first occurred in northwestern Montana in 1986 (Ream *et al.* 1989, entire). The natural ability of wolves to find and quickly recolonize empty habitat (Mech and Boitani 2003, pp. 17–19), the interim control plan (Service 1988, 1999, entire), and the interagency recovery program combined to effectively promote an increase in wolf numbers (Bangs 1991, pp. 7–13). By 1996, the number of wolves had grown to about 70 wolves in 7 known breeding pairs. However, from 1996 through 2004, the estimated number of breeding pairs and wolves in northwestern Montana fluctuated at a low level, partly due to actual population size and partly due to limited monitoring effort. However, since 2005, it has steadily increased (Service *et al.* 2011, Table 4). In 2010, we estimated 374 wolves in 24 breeding pairs in the northwestern Montana recovery area (Service *et al.* 2011, Table 4).

The Northwestern Montana Recovery Area has sustained fewer wolves than the other recovery areas because there is less suitable habitat and it is more fragmented (Oakleaf *et al.* 2005. p. 560; Smith *et al.* 2010, p. 622). Some of the variation in our wolf population estimates for northwestern Montana is also due to the difficulty of counting wolves in the area's thick forests. Wolves in northwestern Montana also prey mainly on white-tailed deer, resulting in smaller packs and territories, which lower the chances of detecting a pack (Bangs *et al.* 1998, p. 878). Increased monitoring efforts in northwestern Montana by Montana Fish, Wildlife and Parks (MFWP) since 2005 were likely responsible for more accurate population estimates. Wolf numbers in 2003 and 2004 also likely exceeded 10 breeding pairs and 100 wolves, but were not documented simply due to less intensive monitoring those years (Service *et al.* 2011, Table 4). By the end of 2010, this recovery area contained more than 10 breeding pairs and 100 wolves for the sixth consecutive year (2005–2010), and probably did so the last 9 years (2002–2010) (Service *et al.* 2011, Table 4).

Routine dispersal of wolves has been documented among northwestern Montana, central Idaho, and adjacent Canadian populations demonstrating that northwestern Montana's wolves are demographically and genetically linked to both the wolf population in Canada and in central Idaho (Pletscher *et al.* 1991, pp. 547–548; Boyd and Pletscher 1999, pp. 1105–1106; Sime 2007, p. 4; vonHoldt *et al.* 2010, p. 4412; Jimenez *et al.* 2011, p. 1). Because of fairly contiguous but fractured suitable habitat, wolves dispersing into northwestern Montana from both directions will continue to join or form new packs and supplement this segment of the overall wolf population (Forbes and Boyd 1996, p. 1082; Forbes and Boyd 1997, p. 1226; Boyd *et al.* 1995, p. 140; vonHoldt *et al.* 2007, p. 19; vonHoldt *et al.* 2010; Thiessen 2007, p. 50; Sime 2007, p. 4, Jimenez *et al.* 2011, p. 1).

Unlike YNP or the central Idaho Wilderness complex, northwestern Montana lacks a large core refugium that contains large numbers of overwintering wild ungulates and few livestock. Therefore, wolf numbers may not ever be as high in northwestern Montana as they are in the central Idaho or the GYA recovery areas. However, that population segment has persisted for nearly 20 years, is robust today, and habitat there is capable of supporting hundreds of wolves (Service *et al.* 2011, Table 4). State management, pursuant to the Montana State wolf management plan (2003), will ensure this population segment continues to thrive (see Factor D).

The Central Idaho Recovery Area's 53,600 km² (20,700 mi²) includes: The Selway-Bitterroot, Gospel Hump, Frank Church River of No Return, and Sawtooth Wilderness Areas; adjacent, mostly Federal lands, in central Idaho; and adjacent parts of southwestern Montana (Service 1994, p. iv). In January 1995, 15 young adult wolves from Alberta, Canada, were released in central Idaho (Bangs and Fritts 1996, p. 409; Fritts *et al.* 1997, p. 7). In January 1996, an additional 20 wolves from British Columbia were released (Bangs *et al.* 1998, p. 787). Central Idaho contains the greatest amount of highly suitable wolf habitat compared to either northwestern Montana or the GYA (Oakleaf *et al.* 2005, p. 559). Consequently, the central Idaho area population has grown substantially and expanded its range since reintroduction. As in the Northwestern Montana Recovery Area, some of the Central Idaho Recovery Area's increase in its wolf population estimate beginning in 2005 was likely due to an increased monitoring effort by Idaho Department of Fish and Game (IDFG). In 2010, the population appears to have declined, but some of the estimated decline was likely due to difficult monitoring conditions in the most remote and inaccessible areas of central Idaho. We estimated 739 wolves in 47 breeding pairs in the central Idaho recovery area at the end of 2010 (Service *et al.* 2011, Table 4). This recovery area has contained at least 10 breeding pairs and 100 wolves for 13 consecutive years (1998–2010) (Service *et al.* 2011; Table 4).

The GYA recovery area (63,700 km² (24,600 mi²)) includes portions of southeastern Montana, eastern Idaho, and northwestern Wyoming. Portions of Wyoming that are occupied by wolves (Figure 1 above) include: most of YNP, Grand Teton National Park, and John D. Rockefeller Memorial Parkway; the Absaroka Beartooth, Bridger, Fitzpatrick, Gros Ventre, Jedediah Smith, North Absaroka, Popo Agie, Teton, Washakie, and Winegar Hole Wilderness Areas; the Dubois Badlands, Owl Creek, Scab Creek, and Whiskey Mountain Wilderness Study Areas; and adjacent public and private lands (Service 1994, p. iv). Much of the wilderness portions of the GYA are primarily used seasonally by wolves due to high elevation, deep snow, and low productivity (in terms of sustaining year-round wild ungulate populations) (Service *et al.* 2011, Figure 3). In 1995, 14 wolves representing 3 family groups from Alberta were released in YNP (Bangs and Fritts 1996, p. 409; Fritts *et al.* 1997, p. 7; Phillips and Smith 1996, pp. 33–43). In 1996, this procedure was repeated with 17 wolves representing 4 family groups from British Columbia. Finally, 10 pups were removed from northwestern Montana in a wolf control action and released in YNP in the spring of 1997 (Bangs *et al.* 1998, p. 787). Two of these pups became breeding adults and their genetic signature is common

both in YNP and the GYA (VonHoldt *et al.* 2008, entire; vonHoldt *et al.* 2010, p. 4421). We estimated 501 wolves were in 37 breeding pairs in the GYA at the end of 2010 (Service *et al.* 2011, Table 4). By the end of 2010, this recovery area had at least 10 breeding pairs and 100 wolves for 11 consecutive years (2000–2010) (Service *et al.* 2011, Table 4).

Wolf numbers in the GYA were relatively stable from 2007 through 2009, as were breeding pairs (Service *et al.* 2011, Table 4). The GYA population grew to 501 wolves and 37 breeding pairs in 2010, primarily because numbers of wolves outside YNP in Wyoming grew while wolves in YNP have declined from 171 wolves in 16 known breeding pairs in 2004 to 97 wolves in 7 breeding pairs in 2010 (Service *et al.* 2005, 2011, Tables 2, 4). This decline likely occurred because: (1) Highly suitable habitat in YNP was saturated with wolf packs; (2) conflict among packs appeared to limit population density; (3) fewer elk occur in YNP than when reintroduction took place (White and Garrott 2006, p. 942; Vucetich *et al.* 2005, p. 259); and (4) suspected outbreaks of disease in 2005 and 2008 (canine distemper (CD) or possibly canine parvovirus (CPV)) reduced pup survival to 20 percent) (Service *et al.* 2006, 2009, 2011, Table 2; Smith *et al.* 2006, p. 244; Smith and Almberg 2007, pp. 17–20: Almberg *et al.* 2010, p. 2058). Since 2008, YNP has also seen a relatively high number of wolves killing other wolves and a high mortality rate among pups. YNP predicts wolf numbers in YNP may decline further and settle into a lower equilibrium long term (Smith 2010, pers. comm.). Additional significant growth in the National Park and Wilderness portions of the Wyoming wolf population above 150 wolves is unlikely because suitable wolf habitat is saturated with resident wolf packs. Maintaining wolf populations safely above recovery levels and promoting demographic and genetic exchange in the GYA segment of the NRM DPS will depend on wolf packs living outside the National Park and Wilderness portions of northwestern Wyoming and southwestern Montana (vonHoldt *et al.* 2010, p. 4422).

Genetic Exchange Relative to our Recovery Criteria—Finally, as noted above, the recovery criteria requires the NRM DPS function as a metapopulation (a population that exists as partially isolated sets of subpopulations) with genetic exchange between subpopulations. The available data conclusively demonstrate that this portion of the recovery criteria (*i.e.,* ''genetic exchange'') is met. Specifically, vonHoldt *et al.* (2010, p. 4412) demonstrated 5.4 effective migrants per generation among all three subpopulations from 1995 through 2004 when the NRM region contained between 101 and 846 wolves. This issue is discussed further in Factor E below.

Conclusion on Progress Towards our Recovery Goals—Given the above best available scientific and commercial information, we consider all prongs of the recovery criteria met. The numeric and distributional components of the overarching recovery goal has been exceeded for 11 consecutive years. Furthermore, Montana, Idaho, and Wyoming have each individually met or exceeded the minimum per-State recovery targets every year since at least 2002 and met or exceeded the step-down management goals every year since at least 2004. It is also worth noting that each of the recovery areas (which were originally used to measure progress towards recovery) have been documented at or above 10 breeding pairs and 100 wolves every year since 2005 (and probably exceeded these levels every year since 2002) (Service *et al.* 2011, Table 4). Finally, the available evidence demonstrates that the NRM gray wolf population is functioning as a metapopulation with robust levels of gene flow between subpopulations. Thus, we consider the population recovered.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. We must consider these same five factors in delisting decisions (50 CFR 424.11(d)). However, in delisting decisions, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting and the removal or reduction of the Act's protections.

In considering what factors might constitute threats, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat, and during the status review, we attempt to determine how significant a threat it is. The threat is significant if it drives or contributes to the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined by the Act. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that the potential threat is likely to materialize and that it has the capacity (*i.e.,* it should be of sufficient magnitude and extent) to affect the species' status such that it meets the definition of endangered or threatened under the Act.

Given the above, the following analysis examines the five factors affecting, or likely to affect, Wyoming wolves within the foreseeable future. This analysis includes a discussion of the larger GYA or NRM metapopulation, which is necessary to understand impacts to wolves in Wyoming.

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

This analysis evaluates the entire State of Wyoming, and within Wyoming we focus primarily on suitable habitat, currently occupied areas, and the WTGMA. Within Wyoming, we also examine unsuitable habitat. Habitat suitability is based on biological features that impact the ability of wolf packs to persist. Outside of Wyoming, this analysis looks at areas between the three recovery areas to inform our understanding of current and future connectivity, with particular focus on the central Idaho to GYA dispersal corridor. We analyze a number of potential threats to wolf habitat including increased human populations and development (including oil and gas), connectivity, ungulate populations, and livestock grazing.

Suitable Habitat—Wolves once occupied or transited all of Wyoming. However, much of the wolf's historical range within this area has been modified for human use. While lone wolves can travel through, or temporarily live, almost anywhere (Jimenez *et al.* 2011, p. 1), much of Wyoming is no longer suitable habitat to

support wolf packs and wolf breeding pairs (Oakleaf *et al.* 2006, p. 559; Carroll *et al.* 2006, p. 32). We have reviewed the quality, quantity, and distribution of habitat relative to the biological requirements of wolves. In doing so, we reviewed two models, Oakleaf *et al.* (2006, pp. 555–558) and Carroll *et al.* (2003, pp. 536–548; 2006, pp. 27–31), to help us gauge the current amount and distribution of suitable wolf habitat in Wyoming. Both models ranked habitat as ''suitable'' if they had characteristics that indicated they might have a 50 percent or greater chance of supporting wolf packs. Suitable wolf habitat was typically characterized in both models as public land with mountainous, forested habitat that contains abundant year-round wild ungulate populations, low road density, low numbers of domestic livestock that are only present seasonally, few domestic sheep, low agricultural use, and few people. Unsuitable wolf habitat was typically just the opposite (*i.e.,* private land, flat open prairie or desert, low or seasonal wild ungulate populations, high road density, high numbers of year-round domestic livestock including many domestic sheep, high levels of agricultural use, and many people). Despite their similarities, these two models had differences in the area analyzed, layers, inputs, and assumptions. As a result, the Oakleaf *et al.* (2006, p. 559) and Carroll *et al.* (2006, p. 33) models predicted different amounts of theoretically suitable wolf habitat in areas examined by both models.

Oakleaf's model was a more intensive effort that looked at potential wolf habitat in the NRM region (Oakleaf *et al.* 2005, p. 555). To comprise its geographic information system layers, the model used roads accessible to two-wheel and four-wheel vehicles, topography (slope and elevation), land ownership, relative ungulate density (based on State harvest statistics), cattle (*Bos sp.*) and sheep density, vegetation characteristics (ecoregions and land cover), and human density. Oakleaf analyzed the characteristics of areas occupied and not occupied by NRM wolf packs through 2000 to predict what other areas in the NRM region might be suitable or unsuitable for future wolf pack formation (Oakleaf *et al.* 2005, p. 555). In total, Oakleaf *et al.* (2006, p. 559) ranked 28,725 km² (11,091 mi²) as suitable wolf habitat in Wyoming.

Carroll's model analyzed a much larger area (all 12 western States and northern Mexico) in a less specific way than Oakleaf's model (Carroll *et al.* 2006, pp. 27–31). Carroll's model used density and type of roads, human population density and distribution, slope, and vegetative greenness to estimate relative ungulate density to predict associated wolf survival and fecundity rates (Carroll *et al.* 2006, p. 29). These factors were used to develop estimates of habitat theoretically suitable for wolf pack persistence. In addition, Carroll predicted the potential effect of increased road development and human density expected by 2025 on suitable wolf habitat (Carroll *et al.* 2006, pp. 30–31). In total, Carroll *et al.* (2006, pp. 27–31) ranked 77,202 km² (29,808 mi²) in Wyoming as suitable habitat. According to the Carroll model, approximately 30 percent of Wyoming would be ranked as suitable wolf habitat (Carroll *et al.* 2006, pp. 27–31).

The Carroll *et al.* (2006, pp. 31–34) model tended to be more generous than the Oakleaf (*et al.* 2006, pp. 558–560) model in identifying suitable wolf habitat. Based on empirical wolf data over our 17 years of experience in Wyoming, we have determined Oakleaf's projections were more realistic. However, due to the large area analyzed, Carroll's model provided a valuable relative measure across the western United States upon which comparisons could be made. The Carroll model did not incorporate livestock density into its calculations as the Oakleaf model did (Carroll *et al.* 2006, pp. 27–29; Oakleaf *et al.* 2005, p. 556). Thus, that model did not consider those conditions where wolf mortality is high and habitat unsuitable because of chronic conflict with livestock. A growing body of literature suggests, per individual, wolves cause more economic damage to livestock than any other large predator in North America (Oakleaf *et al.* 2003, p. 299; Collinge 2008, p. 129; Ashcroft *et al.* 2009, p. 1; Muhly *et al.* 2010, p. 1243; Sommers *et al.* 2010, p. 1425; Breck *et al.* 2011, p. 1). During the past 17 years, Wyoming wolf packs have been unable to persist in areas intensively used for livestock production, primarily because of agency control of problem wolves and illegal killing.

Many of the more isolated primary habitat patches that the Carroll model predicted as currently suitable were predicted to be unsuitable by the year 2025, indicating they were likely on the lower end of what ranked as suitable habitat in that model (Carroll *et al.* 2006, p. 32). Because these areas were typically too small to support breeding pairs and too isolated from the core population to receive enough dispersing wolves to overcome high mortality rates, we do not believe these areas are currently suitable habitat based upon our data on Wyoming wolf pack persistence for the past 17 years (Bangs 1991, p. 9; Bangs *et al.* 1998, p. 788; Service *et al.* 1999–2011, Figure 1).

Despite differences in each model's analysis area, layers, inputs, and assumptions, both models predicted that most suitable wolf habitat in Wyoming was in the GYA, which is the area currently occupied by wolves in Wyoming. These models are useful in understanding the relative proportions and distributions of various habitat characteristics and their relationships to wolf pack persistence. Both models generally support our earlier predictions about wolf habitat suitability in the GYA (Service 1980, p. 9; 1987, p. 7; 1994, p. vii). Because theoretical models only define suitable habitat as those areas that have characteristics with a 50 percent or greater probability of supporting wolf packs, the acreages of suitable habitat that they indicate can be successfully occupied are only estimates.

The Carroll *et al.* (2006, p. 25) model also indicated that the GYA and neighboring population centers had habitat suitable for dispersal between them, and such habitat would remain relatively intact in the future. However, the GYA is the most isolated (Oakleaf *et al.* 2005, p. 554). This conclusion is supported by dispersal and genetic exchange data (vonHoldt *et al.* 2010, p. 4420; Jimenez *et al.* 2011, p. 1). Collectively, the NRM DPS's three core areas are surrounded by large areas of habitat unsuitable for pack persistence (Service *et al.* 1999–2011, Figure 1). We note that some surrounding habitat that is considered unsuitable for pack persistence is still important for maintaining effective migration through natural dispersal.

Overall, we evaluated data from a number of sources on the location of suitable wolf habitat in developing our estimate of currently suitable wolf habitat. Specifically, we considered the recovery areas identified in the 1987 wolf recovery plan (Service 1987, p. 23), the primary analysis areas analyzed in the 1994 EIS for the GYA (63,700 km² (24,600 mi²) (Service 1994, p. iv), information derived from theoretical models by Carroll *et al.* (2006, p. 25) and Oakleaf *et al.* (2006, p. 554), our 17 years of field experience managing wolves in Wyoming, and locations of persistent wolf packs and breeding pairs since recovery has been achieved (Service *et al.* 1999–2011, Figure 1). Collectively, this evidence leads us to concur with the Oakleaf *et al.* (2006, p. 559) model's predictions that the most important habitat attributes for wolf pack persistence are forest cover, public land, high elk density, and low livestock

density. Therefore, we believe that Oakleaf's calculations of the amount and distribution of suitable wolf habitat available for persistent wolf pack formation, in the parts of Wyoming analyzed, represents the most scientifically accurate prediction of suitable wolf habitat in Wyoming (Oakleaf *et al.* 2006, p. 559).

Generally, Wyoming's suitable habitat is located in the northwestern portion of the State. A comparison of actual wolf pack distribution in 2009 and 2010 (Service *et al.* 2010; 2011, Figure 1) to Oakleaf *et al.'s* (2006, p. 559) prediction of suitable habitat, indicates that nearly all suitable habitat in Wyoming is currently occupied and areas predicted to be unsuitable remain largely unoccupied. Of note, the permanent WTGMA (the only portion of Wyoming predicted to have resident wolf packs post-delisting) contains 76 percent of the suitable habitat in Wyoming, which includes 81 percent of Wyoming's high-quality habitat (greater than 0.8) and 62 percent of Wyoming' medium-high-quality habitat (0.5–0.799) (Oakleaf 2011, in litt.).

Although Carroll determined there may be some additional suitable wolf habitat in Wyoming beyond the area Oakleaf analyzed, we believe it is marginally suitable at best, and is insignificant to NRM DPS, GYA, or Wyoming wolf population recovery, because it occurs in small, isolated, and fragmented areas and is unlikely to support many, if any, persistent breeding pairs. While some areas in Wyoming predicted to be unsuitable habitat by the above models have been temporarily occupied and used by wolves or even packs, we still consider these areas as largely unsuitable habitat because wolf packs in such areas have failed to persist long enough to be categorized as breeding pairs and successfully contribute toward recovery. Therefore, we consider such areas as unsuitable habitat and conclude that dispersing wolves attempting to colonize those areas are unlikely to form breeding pairs, persist long enough to raise yearlings that can disperse to facilitate demographic and genetic exchange within the NRM DPS, or otherwise contribute to population recovery.

Unoccupied Suitable Habitat—Habitat suitability modeling indicates that the GYA and central Idaho core recovery areas are atypical of other habitats in the western United States because suitable wolf habitat in these areas occurs in much larger contiguous blocks (Service 1987, p. 7; Larson 2004, p. 49; Carroll *et al.* 2006, p. 35; Oakleaf *et al.* 2005, p. 559). Such core refugia areas provide a steady source of dispersing wolves that populate other adjoining potentially suitable wolf habitat. Some habitat ranked by models as suitable adjacent to this core refugia may be able to support wolf breeding pairs, while other habitat farther away from a strong source of dispersing wolves may not be able to support persistent packs. This fact is important when considering suitable habitat as defined by the Carroll *et al.* (2006, p. 30) and Oakleaf *et al.* (2006, p. 559) models, because wolf populations can persist despite very high rates of mortality only if they have high rates of immigration (Fuller *et al.* 2003, p. 183). Therefore, model predictions regarding habitat suitability do not always translate into successful wolf occupancy and wolf breeding pairs, just as habitat predicted to be unsuitable does not mean such areas will never support wolf breeding pairs.

Strips and smaller (less than 2,600 km^2 (1,000 mi^2)) patches of theoretically suitable habitat (Carroll *et al.* 2006, p. 34; Oakleaf *et al.* 2005, p. 559) (typically, isolated mountain ranges) often possess a higher mortality risk for wolves because of their enclosure by, and proximity to, unsuitable habitat with a high mortality risk (Murray *et al.* 2010, p. 2514; Smith *et al.* 2010, p. 620). In addition, pack territories often form along distinct geological features (Mech and Boitani 2003, p. 23), such as the crest of a rugged mountain range, so useable space for wolves in isolated long narrow mountain ranges may be reduced by half or more. This phenomenon, in which the quality and quantity of suitable habitat is diminished because of interactions with surrounding less-suitable habitat, is known as an edge effect (Mills 1995, pp. 400–401). Edge effects are exacerbated in small habitat patches with high perimeter-to-area ratios (*i.e.,* those that are long and narrow, like isolated mountain ranges) and in species with large territories, like wolves, because they are more likely to encounter surrounding unsuitable habitat (Woodroffe and Ginsberg 1998, p. 2128). Because of edge effects, some habitat areas outside the core areas may rank as suitable in models, but are unlikely to actually be successfully occupied by wolf packs.

For the above reasons, we believe that the Wyoming wolf population will be centered around YNP and the GYA. This was always the intention as indicated by the GYA recovery area identified in the 1987 Recovery Plan and the primary analysis area identified in the 1994 EIS. This core population segment will continue to provide a constant source of dispersing wolves into surrounding areas, supplementing wolf packs and breeding pairs in adjacent, but less secure suitable habitat.

Currently Occupied Habitat—We calculated the currently occupied area in the NRM DPS wolf population by drawing a line around the outer points of radio-telemetry locations of all known wolf pack territories at the end of 2010 (Service *et al.* 2011, Figure 1). Since 2002, most packs have occurred within a consistent area (Service *et al.* 2003–2011, Figure 1), although the outer boundary of the entire NRM wolf population has fluctuated somewhat as peripheral packs establish in unsuitable or marginally suitable habitat and are subsequently lost (Messer 2011, pers. comm.). We define occupied wolf habitat as that area confirmed as being used by resident wolves to raise pups, or that is consistently used by two or more territorial wolves for longer than 1 month (Service 1994, pp. 6:5–6). Typically by the end of a year, only 50 percent of packs meet the criteria to be classified as breeding pairs.

The overall distribution of most Wyoming wolf packs has been similar since 2000, despite a wolf population in the State that has more than doubled (Service *et al.* 2001–2011, Figure 1; Bangs *et al.* 2009, p. 104). This distribution pattern of wolf packs only forming in mountainous forest habitat has persisted through 2010. The wolf population has saturated most suitable habitat in the State. Because packs are unlikely to persist in unsuitable habitat, significant growth in the population's distribution is unlikely. We include unoccupied areas separating areas with resident packs as occupied wolf habitat because these intervening unsuitable habitat areas are important for demographic and genetic connectivity (vonHoldt *et al.* 2010, p. 4412). While these areas are no longer capable of supporting persistent wolf packs, dispersing wolves routinely travel through these areas and packs occasionally occupy them (Service 1994, pp. 6:5–6; Bangs 2002, p. 3; Jimenez *et al.* 2011, p. 1).

Occupied habitat in Wyoming occurs only in the northwestern part of the State (see Figure 1 above). At the end of 2010, ''occupied areas'' (including both pack occupied areas and unsuitable areas between core recovery segments used only for dispersal) were estimated at approximately 46,600 km^2 (18,000 mi^2) in Wyoming (Service *et al.* 2005, Figure 1). Specifically, this occupied area extends slightly further east than the WTGMA, includes about the western-third of the Wind River Indian

Reservation, and extends south to about Big Piney, Wyoming. The occupied portion of Wyoming and the GYA is illustrated in Figure 1 above.

Since 2006, the Wyoming wolf population has stabilized at approximately 300 to 350 wolves (Service *et al.* 2011, Table 4). We believe this largely stable population level and distribution is the result of the wolf population approaching biological limits, given available suitable habitat. The remaining habitat predicted by Carroll's model is often fragmented, occurring in smaller, more isolated patches (Carroll *et al.* 2006, p. 35). These areas have only been occupied by a few breeding pairs that failed to persist (Service *et al.* 2011, Figure 1). Given the above, there is probably limited ability for the Wyoming wolf population to expand significantly beyond its current outer boundaries, even under continued protections of the Act. As demonstrated by the wolf population's demographic stability and relatively constant geographic occupancy in northwestern Wyoming, it is clear that there is sufficient suitable habitat to maintain the Wyoming wolf population well above recovery levels.

Potential Threats Affecting Habitat or Range—Wolves are one of the most adaptable large predators in the world and are unlikely to be substantially impacted by any threat except high levels of human persecution (Fuller *et al.* 2003, p. 163; Boitani 2003, pp. 328–330). Even active wolf dens can be quite resilient to nonlethal disturbance by humans (Frame *et al.* 2007, p. 316). Establishing a recovered wolf population in the NRM region did not require land-use restrictions or curtailment of traditional land uses because there was enough suitable habitat, there were enough wild ungulates, and there were sufficiently few livestock conflicts to recover wolves under existing conditions (Bangs *et al.* 2004, pp. 95–96). Traditional land-use practices in Wyoming are not a threat to wolves in the State, and thus, do not need to be modified to maintain a recovered wolf population into the foreseeable future. We do not anticipate that habitat changes in Wyoming will occur at a magnitude that will threaten wolf recovery in the foreseeable future, because the vast majority of occupied habitat is in public ownership that is managed for uses that are complementary with the maintenance of suitable wolf habitat and viable wolf populations (Carroll *et al.* 2003, p. 542; Oakleaf *et al.* 2005, p. 560).

The 63,714 km^2 (24,600 mi^2) GYA is primarily composed of public lands (Service 1994, p. iv), and represents one of the largest contiguous blocks of suitable habitat within the region. Public lands in National Parks (YNP, Grand Teton National Park, and John D. Rockefeller, Jr. Memorial Parkway), wilderness (the Absaroka Beartooth, North Absaroka, Washakie, and Teton Wilderness Areas), roadless areas, and large blocks of contiguous mountainous forested habitat, are largely unavailable or unsuitable for intensive development. Within the currently occupied portions of Wyoming, land ownership is mostly Federal (77 percent, 57 percent of which is National Park Service or wilderness) with some State (3 percent), Tribal (8 percent), and private lands (12 percent) (Lickfett 2011, in litt.).

The vast majority of suitable wolf habitat and the current wolf population are secure in mountainous forested Federal public land (National Parks, wilderness, roadless areas, and some lands managed for multiple uses by the U.S. Forest Service and Bureau of Land Management) that will not be legally available or suitable for intensive levels of human development (Service 1993, 1996, 2007; Servheen *et al.* 2003; U.S. Forest Service 2006). Furthermore, the ranges of wolves and grizzly bears overlap in many parts of Wyoming and the GYA, and mandatory habitat guidelines for grizzly bear conservation on public lands guarantee, and far exceed, necessary criteria for maintaining suitable habitat for wolves (for an example, see U.S. Department of Agriculture (USDA) 2006). Thus, northwestern Wyoming will continue to provide optimal suitable habitat for a resident wolf population.

The availability of native ungulate populations is a key factor in wolf habitat and range. Wild ungulate prey species are composed mainly of elk, white-tailed deer, mule deer, moose, and bison. Bighorn sheep, mountain goats, and pronghorn antelope also are common, but are not important as wolf prey. In total, Wyoming supports about 50,000 elk and about 90,000 mule deer in northwestern Wyoming (Bruscino 2011, in litt.). All of Wyoming's 35 elk management units are at or above the WGFD numeric objectives for those herds; however, calf/cow ratios in several herd units are below desired levels (WGFD 2010, p. 1). The State of Wyoming has successfully managed resident ungulate populations for decades. With managers and scientists collaborating to determine the source of the potential population fluctuations and appropriate management responses, we feel confident that, although different herds may experience differing population dynamics, the GYA will continue to support large populations of ungulates, and Wyoming will continue to maintain ungulate populations at densities that will continue to support a recovered wolf population well into the foreseeable future.

The presence of cattle and sheep also impact wolf habitat and range. Cattle and sheep are at least twice as numerous as wild ungulates, even on public lands (Service 1994, p. viii). Most wolf packs have at least some interaction with livestock. Wolves and livestock can live near one another for extended periods of time without significant conflict, if agency control prevents the behavior of chronic livestock depredation from becoming widespread in the wolf population. Through active management, most wolves learn that livestock cannot be successfully attacked and do not view them as prey. However, whenever wolves and livestock mix, some livestock and some wolves will be killed. Conflicts between wolves and livestock have resulted in the annual removal of 8 to 15 percent of the wolf population (Bangs *et al.* 1995, p. 130; Bangs *et al.* 2004, p. 92; Bangs *et al.* 2005, pp. 342–344; Service *et al.* 2011, Tables 4, 5; Smith *et al.* 2010, p. 620). Such active control promotes occupancy of suitable habitat in a manner that minimizes damage to private property, and fosters public support to maintain recovered wolf populations without threatening the wolf population viability.

We do not foresee a substantial increase in livestock abundance occurring across northwestern Wyoming that would result in increased wolf mortality, and in fact, the opposite trend has been occurring. In recent years, more than 200,000 hectares (500,000 acres) of public land grazing allotments have been purchased and retired in areas of chronic conflict between livestock and large predators, including wolves (Fischer 2008, in litt.). Assuming adequate regulation of other potential threat factors (discussed below), we do not believe the continued presence of livestock will in any meaningful way threaten the recovered status of the Wyoming wolf population in the foreseeable future.

Although human population growth and development may impact wolf habitat and range, we expect these impacts will be minimal, as the amount of secure suitable habitat is more than sufficient to support wolf breeding pairs well above recovery levels. We expect the region will see: Increased growth and development including conversion of private low-density rural lands to higher density urban and suburban development; accelerated road

development and increasing amounts of transportation facilities (pipelines and energy transmission lines); additional resource extraction (primarily oil and gas, coal, and wind development in certain areas); and increased recreation on public lands (Robbins 2007, entire). Despite efforts to minimize impacts to wildlife (Brown 2006, pp. 1–3), some development will make some areas of Wyoming and the GYA less suitable for wolf occupancy. In the six northwestern Wyoming counties most used by wolves, the human population is projected to increase approximately 15 percent by 2030 (from 122,787 counted in 2010 to 141,000 forecast in 2030) (Carroll *et al.* 2006, p. 536; Wyoming Department of Administration and Information Economic Analysis Division 2008, entire; U.S. Census Bureau 2010, entire). We anticipate similar levels of population growth in the other neighboring areas, because the West as a region is projected to increase at rates faster than any other region (U.S. Census Bureau Population Division 2005). As human populations increase, associated impacts will follow. However, human development will not occur on a scale that could possibly affect the overall suitability of Wyoming or the GYA for wolves, and no foreseeable habitat-related threats will prevent these areas from supporting a wolf population that is capable of substantially exceeding recovery levels.

Most types of intensive human development predicted in the future in Wyoming will occur in areas that have already been extensively modified by human activities and are unsuitable as wolf habitat (Wyoming 2005, Appendix III). Mineral extraction activities are likely to continue to be focused at lower elevations, on private lands, in open habitats, and outside of currently suitable and currently occupied wolf habitat (Robbins 2007, entire). Development on private land near suitable habitats will continue to expose wolves to more conflicts and higher risk of human-caused mortality. However, the rate of conflict is well below the level wolves can withstand, especially given the large amount of secure habitat in public ownership, much of which is protected, that will support a recovered wolf population and will provide a reliable and constant source of dispersing wolves. Furthermore, management programs (Linnell *et al.* 2001, p. 348), research and monitoring, and outreach and education about living with wildlife can somewhat reduce such impacts.

Modeling exercises can also provide insight into future land-use development patterns. While these models have weaknesses (such as an inability to accurately predict economic upturns or downturns, uncertainty regarding investments in infrastructure that might drive development such as roads, airports, or water projects, and an inability to predict open-space acquisitions or conservation easements), we nevertheless think that such models are useful in adding to our understanding of likely development patterns. Carroll *et al.* (2003, p. 541; 2006, p. 32) predicted future wolf habitat suitability under several scenarios through 2025, including potential threats such as increased human population growth and road development. Similarly, in 2005, the Center for the West produced a series of maps predicting growth through 2040 for the West (Travis *et al.* 2005, pp. 2–7). These projections are available at: *http://www.centerwest.org/futures/west/2040.html.* These models predict very little development across occupied and suitable portions of the NRM DPS, Wyoming, or GYA.

Based on these projections, we have determined that increased development will not alter wolf habitat suitability in the NRM DPS, Wyoming, or GYA nearly enough to cause the wolf population to fall below recovery levels in the foreseeable future. We acknowledge that habitat suitability for wolves will change over time with human development, activities, and attitudes, but not to the extent that it is likely to threaten wolf recovery. We do not believe future human population growth will adversely affect wolf conservation. Wolf populations persist in many areas of the world that are far more developed than this region currently is, or is likely to be, in the foreseeable future (Boitani 2003, pp. 322–323). Current habitat conditions are adequate to support a wolf population well above minimal recovery levels and model predictions indicate that development over the next 25 years is unlikely to change habitat in a manner that would threaten the wolf population (Carroll *et al.* 2003, p. 544).

Regarding connectivity between the Wyoming and the GYA wolf to the remainder of the NRM DPS, minimal change in human population growth (Travis *et al.* 2005, pp. 2–7) and habitat suitability (Carroll *et al.* 2003, p. 541; Carroll *et al.* 2006, p. 32) are expected along the Idaho-Montana border between the central Idaho wolf population and the GYA. In fact, projected development is anticipated to include modest expansions concentrated in urban areas and immediately surrounding areas (Travis *et al.* 2005, pp. 2–7). Conversely, in many surrounding rural areas, habitat suitability for wolves will be increased beyond current levels as road densities on public lands are reduced, a process under way in the entire NRM region (Carroll *et al.* 2006, p. 25; Servheen *et al.* 2003; Service 1993, 1996, 2007; Brown 2006, pp. 1–3). Wolves have exceptional dispersal abilities including the ability to disperse long distances across vast areas of unsuitable habitat. Numerous lone wolves have already been documented to have successfully dispersed through these types of developed areas (Jimenez *et al.* 2011, p. 1). History proves that wolves are among the least likely species of land mammal to face a serious threat from reduced connectivity related to projected changes in habitat (Fuller *et al.* 2003, pp. 189–190).

There is more than enough habitat connectivity between occupied wolf habitat in Canada, northwestern Montana, and Idaho to ensure exchange of sufficient numbers of dispersing wolves to maintain demographic and genetic diversity in the NRM wolf metapopulation. We have documented routine movement of radio-collared wolves across the nearly contiguous available suitable habitat between Canada, northwestern Montana, and central Idaho. No foreseeable threats put this connectivity at risk. The GYA is the most physically isolated core recovery area within the NRM DPS, but the GYA has also demonstrated sufficient levels of connectivity to other occupied habitats and wolf populations in the NRM. Within the foreseeable future, only minimal habitat degradation will occur between the GYA and the other recovery areas, as a result of delisting and management of wolves in Wyoming. Overall, we believe this will have only minimal impacts on foreseeable levels of dispersal and connectivity of wolves in the GYA and the State of Wyoming with other wolf populations in the NRM. In short, future connectivity is unlikely to be meaningfully impacted by changes in habitat and range (genetic exchange is discussed in more detail under Factor E below), to an extent that would threaten the recovered status of the Wyoming wolf population in the foreseeable future.

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

Commercial or Recreational Uses—This section discusses both legal and illegal killing for commercial or recreational purposes such as hunting and trapping. All other potential sources of human-caused mortality (*e.g.,* legal or illegal killing for other purposes, agency

or individual actions to address conflicts over wolf-livestock interactions, or wolf kills in the predator area of Wyoming) are discussed in the ''Human-caused predation'' section of Factor C below. First, this section discusses illegal commercial or recreational use. Next, this section focuses on legal hunting and trapping in Wyoming. Finally, this section evaluates regulated hunting and trapping in Idaho and Montana because some wolves and some packs cross State boundaries.

Since the species was listed, killing for commercial or recreational use has been prohibited. While some wolves may have been illegally killed for commercial use of the pelts and other parts, we believe such illegal commercial trafficking is rare. Furthermore, illegal capture of wolves for commercial breeding purposes is also possible, but we have no evidence that it occurs in Wyoming, the GYA, or elsewhere in the NRM DPS. We believe the prohibition against ''take'' provided by Section 9 of the Act has discouraged and minimized the illegal killing of wolves for commercial or recreational purposes. Post-delisting, we believe the State, tribal, and other Federal laws and regulations will continue to provide a strong deterrent to such illegal wolf killing by the public. State, tribal, and other Federal wildlife agencies have well-distributed experienced professional law enforcement officers to help enforce their respective wildlife regulations. Similar regulatory approaches have been effective in the conservation of other resident wildlife such as black bears, mountain lions, elk, and deer. Most hunting and trapping that will occur post-delisting, will be legal, permitted, and regulated by the State of Wyoming or the Wind River Indian Reservation.

Legal regulated harvest will be employed by all States within the GYA where the wolf is delisted. Additionally, the Wind River Indian Reservation may consider legal regulated harvest. Wolf conservation can be compatible with harvest. Wolves can maintain population levels despite very high sustained human-caused mortality rates of 22 to greater than 50 percent (Keith 1983; Ballard *et al.* 1987; Fuller 1989; Fuller *et al.* 2003, pp. 182–184; Creel and Rotella 2010). Mortality rates and population growth rates reported from 2007 to 2010 indicate that the wolf population in Wyoming outside YNP can sustain, on average, a 36 percent mortality rate from human causes (WGFC 2011, p. 12). When populations are maintained below carrying capacity and natural mortality rates remain low, human-caused mortality can replace up to 70 percent of natural mortality (Fuller *et al.* 2003, p. 186). Wolf pups can also be successfully raised by other pack members (Boyd and Jimenez 1994) and breeding individuals can be quickly replaced by other wolves (Brainerd *et al.* 2008, p. 89), which further mitigates the impact of harvest.

Regulated hunting and trapping are commonly used to manage wolves in Canada and Alaska without negative population-level effects (Bangs 2008). Furthermore, all States in the NRM DPS have substantial experience operating regulated harvest as a wildlife management tool for resident species. In 2009, Montana and Idaho conducted a wolf hunt where 257 wolves were killed. Even with this harvest, the population grew in 2009 by almost 5 percent across the NRM, including modest increases in all three States. Collectively, these factors give us every confidence that the States will run hunts such that wolf populations will not be threatened by recreational or commercial uses.

In Wyoming, wolves will be permanently managed as game animals or protected (*e.g.,* in National Parks) in about 40,000 km² (15,400 mi²) in the northwestern portion of the State (15.7 percent of Wyoming), including YNP, Grand Teton National Park, John D. Rockefeller Memorial Parkway, adjacent U.S. Forest Service-designated Wilderness Areas, adjacent public and private lands, the National Elk Refuge, and the Wind River Indian Reservation (Lickfett 2011, in litt.). This area is of sufficient size to support Wyoming wolf population targets, under the management regime proposed for this area.

Wolves will be managed as trophy game animals within the area of northwestern Wyoming identified as the WTGMA (see Figure 1 above). ''Trophy game'' status allows the WGFC and WGFD to regulate methods of take, hunting seasons, and numbers of wolves that could be killed. The boundary and size of the WTGMA will be established by State statute and cannot be diminished through WGFC rule or regulation. The WTGMA will be seasonally expanded approximately 80 km (50 mi) south (see Figure 1 above) from October 15 to the last day of February (28th or 29th) to facilitate natural dispersal of wolves between Wyoming and Idaho. During this timeframe, the trophy game area will be expanded by approximately 3,300 km² (1,300 mi²) (*i.e.,* an additional 1.3 percent of Wyoming) (Lickfett 2011, in litt.).

Within the WTGMA, Wyoming intends to use public harvest of wolves to reduce wolf populations to minimize conflicts with livestock, ungulate herds, and humans (WGFC 2011, pp. 1, 23). The WGFD will develop an annual hunt plan that will take into consideration, but not be limited to, the following when developing a wolf hunting program or extending wolf hunting seasons: wolf breeding seasons; short- and long-range dispersal opportunity, survival, and success in forming new or joining existing packs; conflicts with livestock; and the broader game management responsibilities related to ungulates and other wildlife (WGFC 2011, pp. 2–3, 16, 25, 53). Harvest quotas will be established through WGFD's normal season-setting process. Quotas will be based on the population status of wolves at the end of the previous calendar year, and consider estimated wolf mortality and population growth believed to have occurred during the current calendar year (WGFC 2011, pp. 23–25). All forms of wolf mortality will be considered when setting appropriate harvest levels (WGFC 2011, pp. 23–25). Seasons will close when the mortality quota is reached or if the WGFC deems it necessary to close the season for other reasons. Importantly, the WGFD will not manage wolves at the minimum population objective (WGFC 2011, p. 24). Instead, the WGFD will set harvest levels that maintain an adequate buffer above minimum population objectives to provide management flexibility (WGFC 2011, p. 24).

Wyoming wolf hunting seasons will primarily coincide with fall big game hunting seasons, but may be extended if quotas are not met (WGFC 2011, pp. 23–25, 53). That said, most hunting-related mortality will occur in October and November when human access is greatest and more big game hunters are active (MFWP 2009, p. 3, 5; WGFC 2011, p. 24). Wyoming's wolf management plan indicates that the State expects to delineate approximately 10 to 12 wolf hunting areas within the WTGMA to focus harvest in specific areas (*i.e.,* areas with high wolf–livestock conflict, high human trafficked areas, or areas where ungulate herds are below State management objectives) (WGFC 2011, pp. 1, 16). Persons who legally harvest a wolf within the WTGMA will be required to report the harvest to the WGFD within 24 hours, and check the harvested animal in within 5 days (WGFC 2011, pp. 3, 22–25). Reporting periods for harvested wolves may be extended after inaugural hunting seasons if it is determined that extended reporting periods will not increase the likelihood of overharvest

(WGFC 2011, p. 23). Similar harvest strategies have been successful for countless other wildlife species in Wyoming.

Commercial or recreational trapping is not currently being planned in Wyoming (Mills 2011, in litt.). However, an adaptive management approach, which could include trapping, may occur in the future if hunting is determined to be inadequate to achieve wolf harvest objectives (WGFC 2011, p. 25). We expect trapping will likely be limited as Wyoming's geography suggests other sources of mortality will make the State's wolf population management objectives easily achievable. If trapping is used in the future it will be conducted within the framework of the State's overall demographic targets.

In our 2009 delisting rule (74 FR 15123, April 2, 2009), we determined that Wyoming's proposed 2008 harvest strategy (that was never implemented) was well-designed, biologically sound, and, by itself, it would not have threatened Wyoming's share of the recovered NRM wolf population. Given Wyoming's strong commitment to maintain the population at or above agreed-upon population targets, their intention to consider all forms of wolf mortality when making wolf control management decisions, and numerous safeguards built into their harvest strategy, we are confident that this source of mortality will never compromise the Wyoming wolf population's recovered status.

The Wind River Indian Reservation's management plan indicates wolves will be designated as a game animal post-delisting and hunting and trapping can occur (Shoshone and Arapaho Tribal Fish and Game Department 2007, p. 9). The season timing and length, harvest quota, and other specifics will be determined by the Eastern Shoshone and Northern Arapaho Tribes (Shoshone and Arapaho Tribal Fish and Game Department 2007, p. 9). Harvest strategy will depend on the number of wolves present on Wind River Indian Reservation and the management direction the Tribes wish to take (Shoshone and Arapaho Tribal Fish and Game Department 2007, p. 9). The Tribes have not designated a specific number of individuals or packs for which they will manage (Shoshone and Arapaho Tribal Fish and Game Department 2007, p. 9). Given the small number of wolves, packs, and breeding pairs supported while Act protections were in place, we expect the area will support very modest wolf population levels and distribution. Given this, we expect very limited hunting or trapping on the Wind River Indian Reservation.

No legal hunting or trapping will occur in YNP, Grand Teton National Park, or the National Elk Refuge. In YNP, hunting pressures in adjoining areas are unlikely to impact park wolves as YNP wolves rarely leave the park during the time period when hunting would occur. The wolf population in YNP has ranged from 96 to 171 wolves since 2000. However, the YNP wolf population appears to be declining toward a long-term equilibrium at or slightly below the lower end of this range (Service *et al.* 2000–2010, Table b; Smith 2010, pers. comm.). In Grand Teton National Park and the National Elk Refuge, wolf pack home ranges typically cross outside of these Federal boundaries, thus, hunting pressures in adjoining areas would likely impact these wolves.

Hunting in Idaho and Montana may impact Wyoming wolves because some wolves and some packs cross State boundaries. Both Idaho and Montana designated wolves as game animals Statewide and each State conducted conservative wolf hunts in 2009. In total, Montana hunts took 72 wolves out of the 75 harvest quota and, in Idaho, hunts took 185 wolves out of a quota of 220. Each State closed wolf harvest in individual management zones as their individual quota was achieved. Montana closed its wolf hunt statewide November 16th. In Idaho, a few zones remained open until March 31. Despite a total harvest of 257 wolves in Montana and Idaho, the NRM population still grew in 2009 by almost 5 percent including modest increases in all three States. These hunts distributed wolf harvest across occupied habitat, took into account connectivity and possible dispersal corridors, resulted in good hunter compliance, and improved hunter attitudes about wolves (MFWP 2010, pp. 17–25; IDFG 2010, pp. 13–14; Dickson 2010). As anticipated in our 2009 delisting rule (74 FR 15123, April 2, 2009), Montana and Idaho are now planning more aggressive hunts for fall 2011 to reduce the population below current levels (which are likely at or above long-term carrying capacity of the suitable habitat).

Within the GYA, Idaho's 2011 season has a quota of 30 wolves in the Island Park hunting unit (referred to as the Upper Snake Management Zone in the 2010 annual report) (Idaho Fish and Game Commission (IFGC) 2011). Island Park's season will run from August 30th to December 31st and one wolf can be taken per tag with a limit of two tags per person (IFGC 2011). At the end of 2010, the Island Park unit was occupied by seven packs including five that were counted towards Idaho's totals and two counted towards Wyoming's population totals (Service *et al.* 2011, pp. 81–84 in the Idaho chapter). Four of these five packs were confirmed to qualify as breeding pairs (the reproductive status for other pack was not known) (Service *et al.* 2011, pp. 81–84 in the Idaho chapter). Two of the Idaho packs and both of the Wyoming packs had home ranges that spanned the Idaho-Wyoming stateline (Service *et al.* 2011, pp. 81–84 in the Idaho chapter). To help understand the potential impacts of Idaho's hunt on these wolves, it is instructive to look at the 2009 hunting season. There is no harvest data from 2010 because wolves were not hunted in 2010. During the 2009 season, this zone had a quota of five wolves with an October 1st to December 31st season and a limit of one wolf per person (Service *et al.* 2011, pp. 81–84 in the Idaho chapter). The quota for this unit was met and the unit was closed November 2nd (Service *et al.* 2011, pp. 81–84 in the Idaho chapter). Between the end of 2008 and the end of 2009 (the period impacted by the 2009 wolf hunt), the number of packs in this area increased from two to four and the number of breeding pairs in this unit remained steady at two (Service *et al.* 2008, pp. 76–80 in the Idaho chapter; Service *et al.* 2009, pp. 52–56 in the Idaho chapter).

Thus, this modest hunting level had minimal impact. While it is unclear if the 2011 quota for this unit will be achieved, it is likely this hunting season will reduce the number of wolves, packs, and breeding pairs in this area (this is the State's intention). In the long run, we believe it is likely this area will continue to support a modest number of wolves and packs (one to four packs) some of which will qualify as breeding pairs. This regulated taking in Idaho may minimally impact a small number of Wyoming wolves (*e.g.,* the two packs that are counted in Wyoming's totals that also cross into Idaho). In future years, once the initial desired population level is achieved, such impacts are expected to be minimal.

Idaho's other hunting unit in the GYA area is the southern Idaho unit. Potential hunting impacts in this unit are expected to be zero to low single digits based on past take (one wolf in 2009) and the area's limited wolf population (no confirmed resident wolves, packs or breeding pairs) (Service *et al.* 2011, pp. 71–74 in the Idaho chapter).

Trapping was not authorized in either the Island Park unit or the southern Idaho unit (IFGC 2011). Trapping was

only authorized where hunting alone was not anticipated to be effective in reducing the wolf population (IFGC 2011). Because trapping is typically reserved for more remote, inaccessible areas (IFGC 2011), we do not expect much if any future trapping in this area.

Montana's wolf quota for 2011 within the GYA is 43 wolves including 19 wolves within the Gallatin/Madison unit, 6 wolves within the Highlands/Tobacco Roots/Gravelly/Snowcrest unit, and 18 wolves within the South Central Montana unit (MFWP 2011, pp. 6–7). The South Central Montana unit also includes a subquota of 3 wolves in areas immediately adjacent to YNP in order to limit impacts to park wolves. At the end of 2010, Montana's portion of the GYA contained a minimum of 118 wolves in 19 verified packs, 6 of which qualified as breeding pairs (Service *et al.* 2011, pp. 72–82 in the Montana chapter). Two additional packs are counted in Wyoming's population, but may spend some time in Montana (Service *et al.* 2011, pp. 72–82 in the Montana chapter). Again, a review of the 2009 hunting season may assist in understanding potential impacts of Montana's hunt to wolves in Wyoming and the GYA. In 2009, the MFWP Commission developed a single unit for all of southwest Montana and authorized a quota of 12 wolves (Service *et al.* 20009, pp. 18–25 in the Montana chapter). Wolf take in this unit occurred very rapidly, and was concentrated just north of YNP (Service *et al.* 2009, pp. 18–25 in the Montana chapter). As a result, the backcountry portions of the unit were temporarily closed on October 9th, and permanently closed on October 13th, after 9 wolves were taken (Service *et al.* 20009, pp. 18–25 in the Montana chapter). Four additional wolves were taken in the remainder of the unit. From the end of 2008 to the end of 2009 (the period impacted by the 2009 wolf hunt), the minimum wolf population estimate in Montana's share of the GYA declined from 130 wolves in 18 packs, 11 of which met the breeding pair criteria, to 106 wolves in 17 verified packs, 9 of which qualified as a breeding pair. Both agency control (which increased in 2009) and hunter harvest were factors in these declines.

While it is unclear if Montana's 2011 quotas for this area will be achieved, it is Montana's intention that this hunting season will modestly reduce the number of wolves, packs, and breeding pairs in this area. In the long run, it is likely this area will continue to support a sizeable number of wolves, packs, and breeding pairs. Specifically, in our professional judgment, we believe this area will support at least 8 packs long term, a significant number of which will qualify as breeding pairs. This regulated taking in Montana, in light of the subquotas for areas adjacent to YNP, may impact some Wyoming wolves in some years, but is not expected to be a significant impact.

In summary, illegal commercial and recreational use will remain a negligible source of mortality and legal, State-regulated harvest for commercial and recreational use will be managed in a manner compatible with wolf conservation. Wolves can maintain population levels despite very high sustained human-caused mortality rates. In 2009, Montana and Idaho conducted a wolf hunt where 257 wolves were harvested, and the population still grew by almost 5 percent. Regulated hunting and trapping are commonly used to manage wolves in Canada and Alaska without population-level negative effects (Bangs 2008), and all States in the NRM DPS have substantial experience operating regulated harvest as a wildlife management tool for resident species. In Wyoming, population levels will be carefully monitored; all sources of mortality will be used to set quotas and measure progress toward them; hunting units will be closed when quotas are met, or if otherwise needed (*e.g.,* if overall population objectives are being approached); hunting units will be small to allow targeted control of authorized mortality; and populations will be managed with a buffer above minimum targets. This approach is consistent with the State's management of numerous other species. Trapping will be rare everywhere in the GYA.

On the whole, we anticipate Wyoming (like Idaho and Montana) will gradually reduce populations in the short term with moderately aggressive harvest rates, and that these harvest rates will be reduced over time. Long term, total human-caused mortality (from all sources) in portions of Wyoming under State jurisdiction may average around 36 percent as the State uses regulated harvest to maintain the wolf population in areas under Wyoming's jurisdiction modestly above their minimum population target of at least 100 wolves and at least 10 breeding pairs. Regulated harvest in portions of the GYA outside of Wyoming's jurisdiction is expected to have only minimal impacts on Wyoming's wolf population.

Overutilization for Scientific or Educational Purposes—From 1979 to 2010, the Service and our cooperating partners captured 1,963 wolves for monitoring, nonlethal control, and research purposes with less than 3 percent experiencing accidental death. If Wyoming wolves are delisted, the State, National Parks, and/or Tribes will continue to capture and radio-collar wolves for monitoring and research purposes in accordance with State, Federal, and tribal laws, wolf management plans, regulations, and appropriate agency humane animal care and handling policies. The capture or possession of wolves from within the WTGMA for scientific or educational purposes will be regulated by the WGFC under rules set in Chapter 10 and Chapter 33 of Commission Regulations. We expect that capture-caused mortality by Federal, State, and Tribal agencies, and universities conducting wolf monitoring, nonlethal control, and research will remain below 3 percent of the wolves captured, and will remain an insignificant source of mortality to the wolf population (Murray *et al.* 2010, p. 2519).

We are unaware of any wolves that have been removed from the wild for solely educational purposes in recent years. Wolves that are used for such purposes are typically privately held captive-reared offspring of wolves that were already in captivity for other reasons and are not protected by the Act. However, we or the States and Tribes may get requests to place wolves that would otherwise be euthanized in captivity for research or educational purposes. Such requests have been, and are likely to continue to be, rare. Such requests will not substantially impact human-caused wolf mortality rates.

Factor C. Disease or Predation

This section discusses disease and parasites, natural predation, and human-caused predation. The human-caused mortality section discusses all sources of human-caused mortality not discussed under Factor B's commercial and recreational uses section above. The below analysis focuses on wolves in Wyoming, but considers adjoining portions of the GYA as some wolves and some packs cross State boundaries. Data for other regions is considered where it implies a threat that could someday impact Wyoming or GYA wolves.

Disease—Wolves throughout North America are exposed to a wide variety of diseases and parasites. Many diseases (viruses and bacteria, many protozoa and fungi) and parasites (helminthes and arthropods) have been reported for the gray wolf, and several of them have had significant, but temporary impacts during wolf recovery in the 48 conterminous States (Brand *et al.* 1995, p. 428; Kreeger 2003, pp. 202–214). The EIS on gray wolf reintroduction identified disease impact as an issue, but did not evaluate it further (Service 1994, pp. 1:20–21).

Infectious disease induced by parasitic organisms is a normal feature in the life of wild animals, and the typical wild animal hosts a broad multi-species community of potentially harmful parasitic organisms (Wobeser 2002, p. 160). We fully anticipate that these diseases and parasites will follow the same pattern seen for wolves in other areas of North America (Brand *et al.* 1995, pp. 428–429; Bailey *et al.* 1995, p. 445; Kreeger 2003, pp. 202–204; Atkinson 2006, pp. 1–7; Smith and Almberg 2007, pp. 17–19; Johnson 1995a, 1995b; Almberg *et al.* 2009, p. 3; 2010, p. 2058; Jimenez *et al.* 2010a, p. 1120; 2010b p. 331), and will not significantly threaten wolf population viability. Nevertheless, because these diseases and parasites, and perhaps others, have the potential to impact wolf population distribution and demographics, monitoring implemented by the States, Tribes, and National Park Service will track disease and parasite events. Should such an outbreak occur that results in a population decline, discretionary human-caused mortality (such as hunting, post-delisting) would be adjusted over an appropriate area and time period to ensure wolf population numbers are maintained above recovery levels (WGFC 2011, pp. 21–22, 24).

Canine parvovirus (CPV) infects wolves, domestic dogs (*Canis familiaris*), foxes (*Vulpes vulpes*), coyotes (*Canis latrans*), skunks (*Mephitis mephitis*), and raccoons (*Procyon lotor*). The population impacts of CPV occur via diarrhea-induced dehydration leading to abnormally high pup mortality (Wisconsin Department of Natural Resources 1999, p. 61). Clinical CPV is characterized by severe hemorrhagic diarrhea and vomiting; debility and subsequent mortality is a result of dehydration, electrolyte imbalances, and shock. CPV has been detected in nearly every wolf population in North America including Alaska (Bailey *et al.* 1995, p. 441; Brand *et al.* 1995, p. 421; Kreeger 2003, pp. 210–211; Johnson *et al.* 1994; Almberg *et al.* 2009, p. 2), and exposure in wolves is thought to be almost universal. Currently, nearly 100 percent of the wolves handled by MFWP (Atkinson 2006) and YNP (Smith and Almberg 2007, p. 18; Almberg *et al.* 2009, p. 2) had blood antibodies indicating nonlethal exposure to CPV. CPV might have contributed to low pup survival in the northern range of YNP in 1999. CPV was suspected to have done so again in 2005 and possibly 2008, but evidence points to canine distemper (CD) as being the primary cause of low pup survival during those years (Smith *et al.* 2006, p. 244; Smith 2008; Almberg *et al.* 2010, p. 2058). Pup production and survival in YNP returned to normal levels after each event (Almberg *et al.* 2009, pp. 18–19). The impact of disease outbreaks to the overall NRM wolf population has been localized and temporary, as has been documented elsewhere (Bailey *et al.* 1995, p. 441; Brand *et al.* 1995, p. 421; Kreeger 2003, pp. 210–211). Despite these periodic disease outbreaks, the NRM wolf population increased at a rate of about 20 percent annually from 1996 to 2010 (Service *et al.* 2011, Table 4). Mech *et al.* (2008, p. 824) recently concluded CPV reduced pup survival, subsequent dispersal, and the overall rate of population growth in Minnesota (a population near carrying capacity in suitable habitat). It is possible that at carrying capacity CPV may affect the GYA and Wyoming wolf populations similarly, such that the overall rate of growth may be reduced.

Canine distemper (CD) is an acute, fever-causing disease of carnivores caused by a virus (Kreeger 2003, p. 209). It is common in domestic dogs and some wild canids, such as coyotes and foxes in the NRM region (Kreeger 2003, p. 209). The prevalence of antibodies to this disease in wolf blood in North American wolves is about 17 percent (Kreeger 2003, p. 209), but varies annually and by specific location. Nearly 85 percent of Montana wolf blood samples analyzed in 2005 indicated nonlethal exposure to CD (Atkinson 2006). Similar results were found in YNP (Smith and Almberg 2007, p. 18; Almberg *et al.* 2010, p. 2061). Mortality in wolves has been documented in Canada (Carbyn 1982, p. 109), Alaska (Peterson *et al.* 1984, p. 31; Bailey *et al.* 1995, p. 441), and in a single Wisconsin pup (Wydeven and Wiedenhoeft 2003, p. 7). CD is not a major mortality factor in wolves, because despite high exposure to the virus, affected wolf populations usually demonstrate good recruitment (Brand *et al.* 1995, pp. 420–421). Mortality from CD has only been confirmed on a few occasions in NRM wolves despite their high exposure to it, however, we suspect it contributed to the high pup mortality documented in the northern GYA in spring 1999, 2005, and 2008 (Almberg *et al.* 2010, p. 2061).

CD is likely maintained in the NRM region by multiple hosts and periodic outbreaks will undoubtedly occur every 2–5 years (Almberg *et al.* 2010, p. 2058). However, as documented elsewhere, CD does not threaten wolf populations, and the NRM wolf population increased even during years with localized outbreaks (Almberg *et al.* 2010, p. 2058). YNP biologists (Smith 2008, pers. comm.) believe that wolf deaths mainly occurred from CD when the YNP population was around the historic high of 170 wolves the previous winter. In 2008, wolf packs in Wyoming outside YNP (about 25 packs and 15 breeding pairs) appeared to have normal pup production (Jimenez 2008, pers. comm.), indicating the probable disease outbreak in 2008 was localized to YNP. This suggests CD mortality may be associated with high wolf density, and possibly carrying capacity. Thus, the wolf populations in the GYA may be more affected by CD and other diseases when wolves exist at high densities in suitable habitat (*i.e.,* in YNP).

Lyme disease, caused by a spirochete bacterium, is spread primarily by deer ticks (*Ixodes dammini*). Host species include humans, horses (*Equus caballus*), dogs, white-tailed deer, mule deer, elk, white-footed mice (*Peromyscus leucopus*), eastern chipmunks (*Tamias striatus*), coyotes, and wolves. In wolf populations in the Western Great Lakes region, it does not appear to cause adult mortality, but might be suppressing population growth by decreasing wolf pup survival (Wisconsin Department of Natural Resources 1999, p. 61). Lyme disease has not been documented in the GYA or Wyoming wolf populations.

Mange is caused by a mite (*Sarcoptes scabeii*) that infests the skin. The irritation caused by feeding and burrowing mites results in intense itching, resulting in scratching and severe fur loss, which can lead to secondary infections or to mortality from exposure during severe winter weather (Kreeger 2003, pp. 207–208). Advanced mange can involve the entire body and can cause emaciation, decreased flight distance, staggering, and death (Kreeger 2003, p. 207). In a long-term Alberta wolf study, higher wolf densities were correlated with increased incidence of mange, and pup survival decreased as the incidence of mange increased (Brand *et al.* 1995, pp. 427–428). Mange has been shown to temporarily affect wolf population growth rates and perhaps wolf distribution (Kreeger 2003, p. 208).

Mange has been detected in, and caused mortality to, GYA wolves (Jimenez *et al.* 2010a, p. 1120; Atkinson 2006, p. 5; Smith and Almberg 2007, p. 19). The GYA wolves likely contracted mange from coyotes or fox, whose populations experience occasional outbreaks. Between 2003 and 2008, the percentage of Montana packs with mange fluctuated between 3 and 24 percent of packs. Between 2002 and 2008, the percentage of Wyoming packs

with mange fluctuated between 3 and 15 percent of packs. In these cases, mange did not appear to infest every member of the pack. For example, in 2008, manage was detected in 8 wolves from 4 different packs in YNP, one pack in Wyoming outside YNP, and a couple of packs in previously infested areas of southwestern Montana. Mange has never been confirmed in wolves in Idaho (Jimenez *et al.* 2010a, p. 1123).

In packs with the most severe mange infestations, pup survival appeared low, and some adults died (Jimenez *et al.* 2010a, pp. 1122–1123). In addition, we euthanized several wolves with severe mange for humane reasons and because of their abnormal behavior. We predict that mange in the GYA and State of Wyoming will act as it has in other parts of North America (Brand *et al.* 1995, pp. 427–428; Kreeger 2003, pp. 207–208; Jimenez *et al.* 2010, p. 1123) and not threaten wolf population viability. Wolves are not likely to be infested with mange on a chronic population-wide level (Jimenez *et al.* 2010a, p. 1123).

Dog-biting lice (*Trichodectes canis*) commonly feed on domestic dogs, but can infest coyotes and wolves (Schwartz *et al.* 1983, p. 372; Mech *et al.* 1985, p. 404). The lice can attain severe infestations, particularly in pups. The worst infestations can result in severe scratching, irritated and raw skin, substantial hair loss particularly in the groin, and poor condition. While no wolf mortality has been confirmed from dog-biting lice, death from exposure or secondary infection following self-inflicted trauma caused by inflammation and itching, appears possible. The first confirmed NRM wolves with dog-biting lice were members of the Battlefield pack in the Big Hole Valley of southwestern Montana in 2005 and 2006, and one wolf in south-central Idaho in 2006 and 2007; but these infestations were not severe (Service *et al.* 2006, p. 15; Atkinson 2006, p. 5; Jimenez *et al.* 2010b). The source of this infestation is unknown, but was likely domestic dogs. Lice have been documented in the NRM DPS since 2005, and infestations are likely to continue to be occasionally documented in the future. Lice may contribute to the death of some individual wolves, but they will not threaten the GYA or Wyoming wolf population (Jimenez *et al.* 2010b, p. 332).

Rabies, canine heartworm (*Dirofilaria immitus*), blastomycosis, brucellosis, neosporsis, leptospirosis, bovine tuberculosis, canine herpesvirus (Almberg *et al.* 2010), canine coronavirus, viral papillomatosis, hookworm, tapeworm (*Echinococcus granulosus*) (Foreyt *et al.* 2008, p. 1), lice, scaroptic mange, coccidiosis, and canine adenovirus/hepatitis have all been documented in wild gray wolves, but their impacts on future wild wolf populations are not likely to be significant (Brand *et al.* 1995, pp. 419–429; Johnson 1995a, b, pp. 5–73, 1995b, pp. 5–49; Mech and Kurtz 1999, p. 305; Wisconsin Department of Natural Resources 1999, p. 61; Kreeger 2003, pp. 202–214; Atkinson 2006, pp. 1–7; Almberg *et al.* 2010, p. 3; Jimenez *et al.* 2010a, p. 1123; 2010b, p. 332). Canid rabies caused local population declines in Alaska (Ballard and Krausman 1997, p. 242), and may temporarily limit population growth or distribution where another species, such as arctic foxes (*Alopex lagopus*), act as a reservoir for the disease. We have not detected rabies in NRM wolves. Range expansion could provide new avenues for exposure to several of these diseases, especially canine heartworm, rabies, bovine tuberculosis, and possibly new diseases such as chronic wasting disease and West Nile virus, further emphasizing the need for vigilant disease monitoring programs.

Because several of the diseases and parasites are known to be spread by wolf-to-wolf contact, their incidence may increase if wolf densities increase. However, because wolf densities are already high and may be peaking (Service *et al.* 2011, Table 1, Figure 1), wolf-to-wolf contacts will not likely lead to a continuing increase in disease prevalence. The wolves' exposure to these types of organisms may be most common outside of the core population areas, where domestic dogs are most common, and lowest in the core population areas—because wolves tend to flow out of, not into, saturated habitats. Despite this dynamic, most Wyoming and GYA wolves will continue to have exposure to most diseases and parasites in the system. Diseases or parasites have not been a significant threat to wolf population recovery to date, and we have no reason to believe that they will become a significant threat to the viability of GYA and Wyoming populations in the foreseeable future.

In terms of future disease monitoring, States have committed to monitor the NRM wolf population for significant disease and parasite problems. State wildlife health programs often cooperate with Federal agencies and universities and usually have both reactive and proactive wildlife health monitoring protocols. Reactive strategies consist of periodic intensive investigations after disease or parasite problems have been detected through routine management practices, such as pelt examination, reports from hunters, research projects, or population monitoring. Proactive strategies often involve ongoing routine investigation of wildlife health information through collection and analysis of blood and tissue samples from all or a sub-sample of wildlife carcasses or live animals that are handled. We do not believe that diseases or changes in disease monitoring will threaten recovered wolf populations in the GYA or State of Wyoming.

Natural Predation—No wild animals routinely prey on gray wolves (Ballard *et al.* 2003, pp. 259–260). From 1982 to 2004, about 3.1 percent of all known wolf morality in the NRM DPS resulted from interspecific strife (Murray *et al.* 2010, p. 2519). Occasionally wolves have been killed by large prey such as elk, deer, bison, and moose (Mech and Nelson 1989, p. 207; Smith *et al.* 2006, p. 247; Mech and Peterson 2003, p. 134), but those instances are few. Since the 1980s, about a dozen NRM wolves have died from wounds received while attacking prey (Smith *et al.* 2006, p. 247). That level of natural mortality does not significantly affect wolf population viability or stability. Since NRM wolves have been monitored, only a few wolves have been confirmed killed by other large predators. At least two adults were killed by mountain lions, and one pup was killed by a grizzly bear (Jimenez *et al.* 2009, p. 76). Wolves in the NRM region inhabit the same areas as mountain lions, grizzly bears, and black bears, but conflicts rarely result in the death of either species. Wolves evolved with other large predators, and no other large predators in North America, except humans, have the potential to significantly impact wolf populations.

Other wolves are the largest cause of natural predation among wolves. Numerous mortalities have resulted from territorial conflicts between wolves, and about 3 percent of wolf deaths are caused by territorial conflict in the NRM wolf population (Murray *et al.* 2010, p. 2519). Wherever wolf packs occur, including the NRM DPS, some low level of wolf mortality will result from territorial conflict. Wolf populations tend to regulate their own densities; consequently, territorial conflict is highest in saturated habitats like YNP. This cause of mortality is infrequent except at carrying-capacity and does not result in a level of mortality that would significantly affect a wolf population's viability in Wyoming, the GYA, or the NRM DPS.

Human-caused Predation—This section discusses all sources of human-

caused mortality except hunter harvest and trapping. Hunting and trapping are discussed in the ''Commercial and Recreational Uses'' section of Factor B above. Potential impacts of human-caused mortality to natural connectivity and gene flow are discussed in the ''Genetic Considerations'' section of Factor E below.

Humans kill wolves for a number of reasons. For example, some wolves are killed to resolve conflicts with livestock (Fritts *et al.* 2003, p. 310; Woodroffe *et al.* 2005, pp. 86–107, pp. 345–347). Occasionally, wolf killings are accidental (*e.g.,* wolves are hit by vehicles, mistaken for coyotes and shot, or caught in traps set for other animals) (Bangs *et al.* 2005, p. 346). Other wolf killings are intentional, illegal, and are never reported to authorities. A few wolves have been killed by people who stated that they believed their physical safety was being threatened. The overall NRM wolf mortality rate of 26 percent since reintroduction is comprised of: Illegal kills (10 percent), control actions to resolve conflicts (10 percent), natural causes including disease/parasites and intraspecific strife (3 percent), and accidental human causes such as vehicle collisions and capture mortality (3 percent). Eighty percent of the overall NRM wolf mortalities are human-caused (Murray *et al.* 2010; Smith *et al.* 2010; USFWS et al. 2011, p. 7). While human-caused mortality, including both illegal killing and agency control, has not prevented population recovery, it has affected NRM wolf distribution (Bangs *et al.* 2004, p. 93) preventing successful pack establishment and persistence in open prairie or high desert habitats (Bangs *et al.* 1998, p. 788; Bangs *et al.* 2009, p. 107; Service *et al.* 1989–2011, Figure 1).

Wolf populations can maintain themselves despite very high sustained human-caused mortality rates of 22 to greater than 50 percent (Keith 1983; Ballard *et al.* 1987; Fuller 1989; Fuller *et al.* 2003, pp. 182–184; Creel and Rotella 2010). Mortality rates and population growth rates reported from 2007 to 2010 indicate that the wolf population in Wyoming outside YNP can sustain, on average, a 36 percent mortality rate from human causes (WGFC 2011, p. 12). When populations are maintained below carrying capacity and natural mortality rates and self-regulation of the population remain low, human-caused mortality can replace up to 70 percent of natural mortality (Fuller *et al.* 2003, p. 186). Wolf pups can also be successfully raised by other pack members (Boyd and Jimenez 1994), and breeding individuals can be quickly replaced by other wolves (Brainerd *et al.* 2008, p. 89), which can serve to mitigate the impacts of human-caused mortality. Collectively, these factors indicate that wolf populations are quite resilient to moderate human-caused mortality, if it is adequately regulated.

As part of the interagency wolf monitoring program and various research projects, over 20 percent of the NRM wolf population has been monitored since the 1980s (Smith *et al.* 2010, p. 620; Murray *et al.* 2010, p. 2514). From 1984 through 2004, annual adult survival averaged about 75 percent, which typically allows wolf population growth (Hensey and Fuller 1983, p. 1; Keith 1983, p. 66; Fuller *et al.* 2003, p. 182; Smith *et al.* 2010, p. 620; Murray *et al.* 2010, p. 2514). Wolves in the largest blocks of remote habitat without livestock, such as central Idaho or YNP, had annual survival rates around 80 percent (Smith *et al.* 2006, p. 245; Smith *et al.* 2010, p. 620). Wolves outside of large remote areas had survival rates as low as 54 percent in some years (Smith *et al.* 2006, p. 245; Smith *et al.* 2010, p. 626). The highest mortality rates are localized in areas we consider largely unsuitable for pack persistence.

Wolf mortality resulting from control of problem wolves, which includes legal take by private individuals under defense of property regulations, was estimated to remove an average of 10 percent of adult radio-collared wolves annually since reintroduction, but that rate has steadily increased as the wolf population has expanded beyond suitable habitat and caused increased conflicts with livestock (USFWS *et al.* 2011, Table 4, 5). Defense of property take, authorized by experimental population rules (Service 1994, pp. 2:13–14; 59 FR 60252, November 22, 1994; 59 FR 60266, November 22, 1994; 70 FR 1286, January 6, 2005; 73 FR 4720, January 28, 2008; 50 CFR 17.84(i) & (n)), makes up a small percentage of these control actions. Specifically, such take represented about 7 percent of problem wolves legally removed from 1995 to 2010 and about 9 percent of such removals from 2008 to 2010. In spite of these mortality rates, wolf numbers increased at a rate of about 24 percent annually 1995–2008 (the period when the population was presumed below carrying capacity). Since 2008, the NRM population has largely stabilized.

After delisting, human-caused mortality, and its authorization or regulation, will differ in various parts of Wyoming. In total, wolves will be permanently managed as game animals or protected (*e.g.,* in National Parks) in about 40,000 km^2 (15,400 mi^2) in northwestern Wyoming (15.7 percent of Wyoming), including YNP, Grand Teton National Park, John D. Rockefeller Memorial Parkway, adjacent U.S. Forest Service-designated Wilderness Areas, adjacent public and private lands, the National Elk Refuge, and the Wind River Indian Reservation. This area is of sufficient size to support Wyoming population targets, under the management regime proposed for this area.

Wolves will be managed as trophy game animals within the area of northwestern Wyoming identified as the WTGMA (see Figure 3). ''Trophy game'' status allows the WGFC and WGFD to regulate methods of take, hunting seasons, types of allowed take, and numbers of wolves that could be killed. The boundary and size of the WTGMA will be established by State statute and cannot be diminished through WGFC rule or regulation.

The WTGMA will be seasonally expanded approximately 80 km (50 mi) south (see Figure 3) from October 15 to the last day of February (28th or 29th) to facilitate natural dispersal of wolves between Wyoming and Idaho. During this timeframe, the trophy game area will be expanded by approximately 3,300 km^2 (1,300 mi^2) (*i.e.,* an additional 1.3 percent of Wyoming). Management within the WTGMA is described below, followed by management in other portions of Wyoming.

After delisting, Wyoming will allow property owners inside the WTGMA to immediately kill a wolf doing damage to private property (WGFC 2011, pp. 3, 4, 22, 30–31, 32). WGFC regulation defines ''doing damage to private property'' as ''the actual biting, wounding, grasping, or killing of livestock or domesticated animal, or chasing, molesting, or harassing by gray wolves that would indicate to a reasonable person that such biting, wounding, grasping, or killing of domesticated animals is likely to occur at any moment'' (WGFC 2011, pp. 22, 60). These regulations will define ''owner'' as ''the owner, lessee, immediate family, employee, or other person who is charged by the owner with the care or management of livestock or domesticated animals'' (WGFC 2011, p. 22). Wolves killed under authority of this regulation shall be reported to a WGFD representative within 72 hours (WGFC 2011, pp. 22, 31). These regulations are similar to the experimental population rules in place in Montana and Idaho after the population achieved recovery levels (70 FR 1286, January 6, 2005; 73 FR 4720, January 28, 2008; 50 CFR 17.84(n)). While in place in Montana and Idaho, these rules were sufficiently protective

to allow continued population expansion (Service *et al.* 2011, Table 4). We conclude that these rules will not compromise the State of Wyoming's ability to meet the agreed-upon population objectives (at least 10 breeding pairs and at least 100 wolves outside YNP and sovereign tribal lands) assuming the State manages for an adequate buffer above these minimum levels as Wyoming intends to do (WGFC 2011, p. 24).

Additionally, the WGFD may issue ''lethal take permits'' authorizing property owners to kill not more than two wolves in areas experiencing chronic wolf depredation within the WTGMA (WGFC 2011, pp. 22–23). The Wyoming wolf plan defines ''chronic wolf depredation'' as ''a geographic area limited to a specific parcel of private land or a specific grazing allotment described on the permit within the WTGMA where gray wolves have repeatedly (twice or more within a 2-month period immediately preceding the date on which the owner applies for a lethal take permit) harassed, injured, maimed or killed livestock or domesticated animals'' (WGFC 2011, pp. 22–23, 60). Wolves killed under the authority of a lethal take permit shall be reported to the WGFD representative specified on the permit within 24 hours (WGFC 2011, pp. 3, 22–23). Lethal take permits shall expire 45 days after the date they are issued, but will be renewable for up to a year if wolf conflicts persist (WGFC 2011, pp. 22–23, 32). Depending upon population levels, Wyoming can suspend or cancel existing lethal take permits or halt issuance of new lethal take permits (WGFC 2011, pp. 22–23, 32). These regulations are similar to the experimental population rules in place in Montana and Idaho after the population achieved recovery levels (70 FR 1286, January 6, 2005; 73 FR 4720, January 28, 2008; 50 CFR 17.84(n)). While in place in Montana and Idaho, these rules were sufficiently protective to allow continued population expansion (Service *et al.* 2011, Table 4). Additionally, we employed a similar approach on private lands in Wyoming, but not on public lands, and this was sufficiently protective to allow for continued population growth of Wyoming's wolf population outside YNP (Service *et al.* 2002–2011, Table 2a; Service *et al.* 2011, Figure 2 in Wyoming chapter).

Some other minor sources of human-caused predation may also occur inside the WTGMA. For example, accidental mortality sometimes occurs from such sources as vehicle collisions. Because these types of mortalities are rare and have little impact on wolf populations, they were authorized by our experimental population rule with little to no impact on wolf populations. Take in self-defense or defense of others is also exceedingly rare, and is expected to remain rare post-delisting. We expect take from these sources will remain rare post-delisting with little impact on the wolf population.

While wolves were listed, illegal killing removed an estimated 10 percent of the population annually. Following our previous delisting, there was no indication that illegal mortality levels changed from those occurring while wolves were delisted. After delisting, WGFD law enforcement personnel will investigate all wolves killed outside the framework established by State statute and WGFC regulation, and appropriate law enforcement and legal action will be taken. We expect illegal killing will continue at current levels post-delisting.

Within the WTGMA, WGFD may also control wolves when they determine a wild ungulate herd is experiencing unacceptable impacts or to address wolf-ungulate conflicts at State-operated elk feedgrounds (WGFC 2011, pp. 5, 39–41). Wolf control to address unacceptable impacts to wild ungulates requires a determination that wolf predation is a significant factor in the population or herd not meeting the State population management goals or recruitment levels established for the population or herd (WGFC 2011, pp. 5, 39–41). All of Wyoming's 35 elk management units are at or above the State's numeric objectives for those herds; however, calf/cow ratios in several herd units are below desired levels (WGFD 2010, p. 1). Five of the State's ten moose herds are below objectives (WGFD unpublished data). Although Wyoming has not yet put forward any proposals to control wolves to address unacceptable impacts to ungulate herds, such take is possible. WGFD may also take wolves that displace elk from feedgrounds in the WTGMA if it results in one of the following conflicts: (1) Damage to private stored crops; (2) elk commingling with domestic livestock; or (3) displacement of elk from feedgrounds onto highway rights-of-way causing human safety concerns (WGFC 2011, pp. 5, 39–41). Because Wyoming will consider all forms of wolf mortality when making ungulate-related wolf control management decisions (WGFC 2011, pp. 21, 23–24), these mortality sources will not compromise the State's ability to maintain wolf management objectives.

In the predator area, wolves will experience unregulated human-caused mortality, although mortality in this area will be monitored through mandatory reporting within 10 days of the kill (WGFC 2011, pp. 3, 8, 17, 23, 29). Wolves are unlike coyotes, in that wolf behavior and reproductive biology have resulted in wolves historically being extirpated in the face of extensive human-caused mortality. As we have previously concluded (71 FR 43410, August 1, 2006; 72 FR 6106, February 8, 2007; 73 FR 10514, February 27, 2008; 74 FR 15123, April 2, 2009), wolves are unlikely to survive in portions of Wyoming where they are regulated as predatory animals. This conclusion was validated in 2008 after our previous delisting became effective and most of the wolves in the predator area were killed within a few weeks of losing the Act's protection. We expect that wolf packs in the predator area of Wyoming will not persist.

Despite this anticipated mortality, the portions of Wyoming outside the predator area are large enough to support Wyoming's management goals and a recovered wolf population (Figure 1 illustrates wolf pack distribution relative to Wyoming's WTGMA). Our 2009 delisting rule confirmed this conclusion, but expressed two concerns (74 FR 15123, April 2, 2009). First, the rule expressed concern that mortality in the predator area would be high and this would inhibit natural genetic exchange. This issue is discussed in the ''Genetic Considerations'' portion of Factor E below.

The second concern expressed in our 2009 delisting rule (74 FR 15123, April 2, 2009) was that lone wolves, breeding pairs, or packs from the trophy game area may periodically and temporarily disperse into the predator area and suffer high mortality rates. The 2009 rule concluded that a large predator area ''substantially increases the odds that these periodic dispersers will not survive, thus, impacting Wyoming's wolf population'' (74 FR 15123, April 2, 2009). We continue to conclude that no wolf packs or breeding pairs will persist in the predator area of Wyoming, some packs that have entire or partial territories in the predator area will likely not persist (3 of Wyoming's 27 breeding pairs, and 6 of the State's 30 packs have entire or partial territories in the predator area), and some wolves that primarily occupy the WTGMA will be killed when dispersing into the predator area. However, Wyoming's overall management strategy has been improved to such an extent that such mortality can occur without compromising the recovered status of the population in Wyoming.

Such losses were a substantial concern when State law required WGFD to aggressively manage the population down to minimal levels. However, Wyoming has committed to remove current statutory mandates for aggressive management down to minimum levels. Furthermore, Wyoming has agreed to maintain a population that remains at or above 10 breeding pairs and at or above 100 wolves in areas under their jurisdiction. To accomplish this, Wyoming intends to maintain an adequate buffer above minimum population objectives to accommodate an annual wolf hunt and unpredicted mortality associated with control actions, as well as, to ensure that uncontrollable sources of mortality do not drop the population below this minimum population level (WGFC 2011, p. 24). Collectively, the plan assures that unregulated human-caused mortality in the predator area will not compromise the recovered status of the Wyoming wolf population.

The Shoshone and Arapaho Tribal Fish and Game Department will manage all wolves occurring on the Wind River Indian Reservation according to their approved wolf management plan (King 2007, in litt.; Shoshone and Arapaho Tribal Fish and Game Department 2007, entire). The plan allows any enrolled member on tribal land to shoot a wolf in the act of attacking livestock or dogs on tribal land, provided the enrolled member provides evidence of livestock or dogs recently (less than 24 hours) wounded, harassed, molested, or killed by wolves, and a designated agent is able to confirm that the livestock or dogs were wounded, harassed, molested, or killed by wolves (Shoshone and Arapaho Tribal Fish and Game Department 2007, p. 8). ''In the act of attacking'' means the actual biting, wounding, grasping, or killing of livestock or dogs, or chasing, molesting, or harassing by wolves that would indicate to a reasonable person that such biting, wounding, grasping, or killing of livestock or dogs is likely to occur at any moment (Shoshone and Arapaho Tribal Fish and Game Department 2007, p. 8). The plan also allows the tribal government to remove ''wolves of concern'' (Shoshone and Arapaho Tribal Fish and Game Department 2007, p. 8). ''Wolves of concern'' are defined as wolves that attack livestock, dogs, or livestock herding and guarding animals once in a calendar year or any domestic animal twice in a calendar year (Shoshone and Arapaho Tribal Fish and Game Department 2007, p. 8).

Criteria to determine when take will be initiated are: (1) Evidence of the attack, (2) reason to believe that additional attacks will occur, (3) no evidence of unusual wolf attractants, and (4) any certain animal husbandry practices have been implemented (Shoshone and Arapaho Tribal Fish and Game Department 2007, p. 8). In situations with chronic wolf depredation, enrolled members may acquire written authorization from the tribes to shoot wolves on tribal land after at least two separate confirmed depredations by wolves on livestock, livestock herding or guarding animals, or dogs, and the tribes have determined that wolves are routinely present and pose a significant risk to the owner's livestock (Shoshone and Arapaho Tribal Fish and Game Department 2007, p. 8). Other forms of authorized human-caused mortality include take in defense of human life, take needed to avoid conflicts with human activities, incidental take, accidental take, scientific take, or take for humane reasons (such as to aid or euthanize sick, injured, or orphaned wolves) (Shoshone and Arapaho Tribal Fish and Game Department 2007, p. 8).

These regulations are similar to experimental population rules currently in place on the Wind River Indian Reservation (70 FR 1286, January 6, 2005; 73 FR 4720, January 28, 2008; 50 CFR 17.84(n)). This type of take has not proven a limiting factor for the area. Furthermore, as stated in our 2007 approval letter, suitable habitat on the Wind River Indian Reservation is occasionally used by wolves, but is not considered essential to maintaining a recovered wolf population in Wyoming, and any wolves that establish themselves on tribal lands will be in addition to those necessary for management by the State of Wyoming for maintaining a recovered wolf population (King 2007, in litt.).

In YNP, human-caused mortality has been, and is expected to continue to be, very rare because park regulations are very protective of wildlife with few exceptions for authorized human-caused mortality. Accidental mortality or defense of life mortality may occur, but as in the rest of Wyoming, we expect these sources of mortality will be exceedingly rare. Another rare, but potential source of human-caused mortality is agency action to remove habituated wolves that pose a threat to human safety after nonlethal efforts have failed to correct the behavior. In 2003, YNP developed a plan for the management of habituated wolves in YNP (YNP 2003, entire). YNP policies indicate ''removal of nuisance animals may be undertaken to reduce a threat to public health or safety'' (YNP 2003, p. 8). Further, management policies (YNP 2003, p. 8) state, ''Where visitor use or other human activities cannot be modified or curtailed, the Service may directly reduce the animal population by using several animal population management techniques * * *'' that include ''destruction of animals by NPS personnel or their authorized agents.'' This is important in YNP because the unusually high exposure wolves have to people in YNP increases the likelihood of unpredictable wolf behavior (YNP 2003, p. 9). To address such situations, YNP has developed a management plan which calls for increased public education, monitoring, aversion conditioning, and, if necessary, wolf removal (YNP 2003, pp. 4, 9–12). This approach, endorsed by the Service in 2003 (YNP 2003, p. 13), is authorized by existing experimental population rules (50 CFR 17.84(i)(3)(v)).

State, Tribal, and Federal (YNP) management in Wyoming will ensure that human-caused mortality never threatens the recovered status of the population. As discussed above, wolf populations can maintain themselves despite sustained human-caused mortality rates of between 22 to greater than 50 percent (Keith 1983; Ballard *et al.* 1987; Fuller 1989; Fuller *et al.* 2003, pp. 182–184; Creel and Rotella 2010), with Wyoming-specific data from 2007 to 2010 indicating that the wolf population in Wyoming outside YNP can sustain, on average, a 36 percent mortality rate from human causes (WGFC 2011, p. 12). While wolves were listed, total human-caused mortality rates averaged about 23 percent annually. Wolves have a very high natural resilience to regulated human-caused mortality (Fuller *et al.* 2003, pp. 182–190). For example, in 2009, more than 600 wolves died from all sources of mortality (agency control including defense of property, regulated harvest (for the first time), illegal and accidental killing, and natural causes), and the population still grew by almost 5 percent.

After delisting, most human-caused predation in Wyoming will be similar to that which was in place under either the 1994 experimental population rules (now governing most of Wyoming) or the 2005 experimental population rules (59 FR 60252, November 22, 1994; 59 FR 60266, November 22, 1994; 70 FR 1286, January 6, 2005; 73 FR 4720, January 28, 2008; 50 CFR 17.84(i) & (n)), as modified in 2008, governing management over most of Idaho and Montana in recent years. While some allowed take will be more liberal (*e.g.,* mortality in the predator area), resulting in greater overall rates of human-caused

predation post-delisting, the increase will not compromise the State's ability to maintain the population above recovery levels. All sources of mortality will be monitored and considered in State management decisions. Many sources of authorized take can be limited, if necessary, to keep the population above recovery levels (*e.g.,* the State can suspend lethal take permits, agency control actions, or hunting seasons). Finally, recognizing some mortality will occur from uncontrollable sources (*e.g.,* some wolves that primarily occupy the WTGMA will be lost when they go on routine dispersal events into the predator area), Wyoming no longer intends to aggressively manage the population down toward minimal levels (an approach we previously indicated was unacceptable), and, in fact, intends to maintain an adequate buffer above minimum population objectives. Collectively, this information indicates that human-caused predation will be managed to assure the Wyoming population's recovered status is never compromised.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

This section provides an analysis of State, tribal, and Federal regulatory mechanisms to determine if they are adequate to maintain the species' recovered status in the absence of the Act's protections. By definition, potential threats only require regulation if they represent a threat in the absence of regulation. This section focuses on likely future population levels anticipated to be maintained, noting that human-caused mortality is the most significant issue influencing these levels. In short, if human-caused mortality is adequately regulated and population targets are sufficient to allow for other potential unforeseen or uncontrollable sources of mortality, no other potential threats are likely to compromise the population's viability. This section does not go into detail about each individual threat factor or source of mortality. Instead it includes an overview with a focus on the regulatory mechanism that addresses each threat factor or source of mortality. For a more detailed discussion of any one potential threat, see the supporting discussion under the specific applicable Factor (*i.e.,* A, B, C, or E).

National Park Service—Twenty percent of the currently occupied portions of Wyoming (defined in Factor A above) and 23 percent of areas that are protected or where wolves are regulated as game animals occur within a National Park (see Figure 1 above). From 2001 to the end of 2010, the wolf population in YNP ranged from 96 to 171 wolves, and between 6 to 16 breeding pairs, with an average of 9.8 breeding pairs. While some wolves and some wolf packs also occur in Grant Teton National Park and John D. Rockefeller Memorial Parkway, these wolves and wolf packs usually have a majority of their home range in areas under the State of Wyoming's jurisdiction; thus, these wolves are only subject to National Park Service regulation when on National Park Service lands.

The National Park Service Organic Act (16 U.S.C. 1 *et seq.*) and the National Park Service management policies on wildlife generally require the agency to conserve natural and cultural resources and the wildlife present within National Parks. National Park Service management policies require that native species be protected against harvest, removal, destruction, harassment, or harm through human action, although certain parks may allow some harvest in accordance with State management plans (NPS 2006, p. 44). No population targets for wolves will be established for the National Parks. Instead, management emphasis in National Parks after delisting will focus on continuing to minimize the human impacts on wolf populations (YNP 2003, pp. 9–12). Thus, because of their responsibility to preserve all native wildlife, units of the National Park System are often the most protective of wildlife. In the case of the wolf, the National Park Service Organic Act and National Park Service policies will continue to provide protection following the proposed Federal delisting. Natural sources of mortality (*e.g.,* disease) will occasionally impact wolf populations in National Parks, but, in light of adequate regulation of intentional human-caused mortality, impacts from these occasional events will be temporary and not threaten the population.

National Wildlife Refuges—Each unit of the National Wildlife Refuge System was established for specific purposes. The National Elk Refuge was established in 1912 as a ''winter game (elk) reserve'' (37 Stat. 293, 16 U.S.C. 673), and the following year Congress designated the area as ''a winter elk refuge'' (37 Stat. 847). In 1921, all lands included in the refuge, or that might be added in the future, were reserved and set apart as ''refuges and breeding grounds for birds'' (Executive Order (E.O.) 3596), which was affirmed in 1922 (E.O. 3741). In 1927, the refuge was expanded to provide ''for the grazing of, and as a refuge for, American elk and other big game animals'' (44 Stat. 1246, 16 U.S.C. 673a). These purposes apply to all or most of the lands now within the refuge. In accordance with the National Wildlife Refuge System Administration Act of 1966 as amended (16 U.S.C. 668dd–668ee) by the National Wildlife Refuge System Improvement Act of 1997, the Service, which manages the National Elk Refuge, recently announced a notice of intent to prepare a Comprehensive Conservation Plan for the refuge. Comprehensive Conservation Plans guide management of wildlife and their habitats on refuges (75 FR 65370, October 22, 2010). This process is ongoing.

The refuge's nearly 25,000 acres provide a winter home for one of the largest wintering concentrations of elk; in addition to the large elk herds, a free-roaming bison herd winters at the refuge (75 FR 65370, October 22, 2010). Wolves occurring on the National Elk Refuge will be monitored, and refuge habitat management will maintain the current prey base for them (Kallin 2011, pers. comm.; Smith 2007, pers. comm. as cited by WGFC 2011, p. 18). Wolf trapping or hunting will not be authorized on the refuge (Kallin 2011, pers. comm.). Because of the relatively small size of the refuge, all of the wolves and all of the packs that occur on the refuge will also spend significant amounts of time on adjacent State-managed lands. Thus, much like Grand Teton National Park and John D. Rockefeller Memorial Parkway, these wolves are only subject to National Wildlife Refuge regulation during the small portion of their time spent on the National Elk Refuge.

Tribal Lands—Wolves will be managed as game animals on the Wind River Indian Reservation. The Eastern Shoshone and Northern Arapaho Tribes govern this area and the Shoshone and Arapaho Tribal Fish and Game Department and the Service's Lander Wyoming Management Assistance Office manage wildlife occurring on the reservation. Wolf management on the Wind River Indian Reservation is guided by the Service-approved ''Wolf Management Plan for the Wind River Reservation'' (King 2007, in litt.; Shoshone and Arapahoe Tribal Fish and Game Department 2007, entire). Suitable habitat on the Wind River Indian Reservation supports a small wolf population. While this area sometimes supports packs, it has never supported a breeding pair. The Wind River Indian Reservation is not considered essential to maintaining a recovered wolf population in Wyoming, and any wolves that establish themselves on tribal lands will be in addition to those necessary for management by the State

of Wyoming for maintaining a recovered wolf population (King 2007, in litt.).

Forest Service—Federal law indicates Forest Service land shall be managed to provide habitat for fish and wildlife including wolves and their prey. Specifically, under the National Forest Management Act of 1976, as amended (16 U.S.C. 1600–1614), the Forest Service shall strive to provide for a diversity of plant and animal communities when managing national forest lands. Similarly, the Multiple Use and Sustained Yield Act (16 U.S.C. 528) indicates National Forests are to be managed for ''wildlife and fish purposes'' among other purposes, and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) says public lands are to be ''managed in a manner… that will provide food and habitat for fish and wildlife and domestic animals.''

Wilderness areas are afforded the highest protections of all Forest Service lands. The Wilderness Act of 1964 (16 U.S.C. 1131–1136) states the following: (1) New or temporary roads cannot be built; (2) there can be no use of motor vehicles, motorized equipment, or motorboats; (3) there can be no landing of aircraft; (4) there can be no other form of mechanical transport; and (5) no structure or installation may be built. The following wilderness areas occur in the WTGMA: all of the Absaroka Beartooth, Fitzpatrick, Gros Ventre, Jedediah Smith, North Absaroka, Washakie, Teton, and Winegar Hole Wilderness Areas as well as the northern half of the Bridger Wilderness Area.

Wilderness study areas are designated by Federal land management agencies (*e.g.,* USDA Forest Service) as those having wilderness characteristics and being worthy of congressional designation as a wilderness area. The following wilderness study areas occur in the WTGMA: The Dubois Badlands, Owl Creek, and Whiskey Mountain Wilderness Study Areas. Individual National Forests that designate wilderness study areas manage these areas to maintain their wilderness characteristics until Congress decides whether to designate them as permanent wilderness areas. This means that individual wilderness study areas are protected from new road construction by Forest Plans. Therefore, activities such as timber harvest, mining, and oil and gas development are much less likely to occur because the road networks required for these activities are unavailable. However, because these lands are not congressionally protected, they could experience changes in management prescription with Forest Plan revisions.

This regulatory framework has been adequate to achieve wolf recovery in Wyoming and across the entire NRM DPS without additional land use restrictions. The Forest Service has a demonstrated capacity and a proven history of providing sufficient habitat for wolves and their prey and the Forest Service lands will continue to be adequately regulated to provide for the needs of wolves and their prey.

While the Forest Service manages and regulates habitat and factors impacting habitat, the Forest Service typically defers to States on hunting decisions (43 U.S.C. 1732(b)). The primary exception to this deference is the Forest Service's authority to identify areas and periods when hunting is not permitted (43 U.S.C. 1732(b)). However even these decisions are to be developed in consultation with the States. Thus, human-caused mortality and the adequacy of the associated regulatory framework are discussed under the ''State Regulatory Mechanisms'' section below, as well as ''Commercial and Recreational Uses'' section of Factor B, and the ''Human-caused Predation'' section of Factor C.

State Regulatory Mechanisms—Portions of the Wyoming WTGMA under State jurisdiction will be managed according to the WGFC 2011 Wyoming Gray Wolf Management Plan (WGFC 2011, entire). This plan is consistent with an agreement between the Service and the State of Wyoming (WGFC 2011, appendix I). While the below summary reflects this plan, conforming changes to Wyoming State law and WGFC regulations are necessary to implement this plan. We expect these statutory and regulatory changes will be made within the next several months. If the statutory or regulatory changes deviate significantly from the changes in law that we expect Wyoming to make, we may need to reopen the comment period to provide the public an opportunity to review and comment once these changes are finalized. Should Wyoming fail to make the changes necessary to support a recovered wolf population, delisting will not occur and this proposal will be withdrawn.

Within Wyoming's WTGMA (see Figure 1 above), wolves will be managed as a game animal, which allows the WGFC and WGFD to regulate methods of take, hunting seasons, types of allowed take, and numbers of wolves. The boundary and size of the WTGMA and its seasonal expansion, as set forth in the agreement between the Service and the State and reflected in Wyoming's revised wolf management plan, will be established by State statute, which cannot be changed through WGFC rule or regulation. This area is of sufficient size to support Wyoming population targets, assuming implementation of Wyoming's management plan for this area. In consideration of, and to address, Service concerns about genetics and connectivity, Wyoming included a seasonal expansion of the WTGMA in their management plan. From October 15 through the end of February, the WTGMA will expand approximately 80 km (50 mi) south (see Figure 1 above). This seasonal expansion will benefit natural dispersal (for a more detailed discussion of genetic connectivity, see the ''Genetic Considerations'' section of Factor E below).

Wolves that occur in the remainder of Wyoming under State jurisdiction will be classified as predators. Predatory animals are regulated by the Wyoming Department of Agriculture under Title 11, Chapter 6 of the Wyoming Statutes. Under these regulations, wolves in predator areas can be killed with very few restrictions. As we have previously concluded (71 FR 43410, August 1, 2006; 72 FR 6106, February 8, 2007; 73 FR 10514, February 27, 2008; 74 FR 15123, April 2, 2009), wolves are unlikely to survive in portions of Wyoming where they are regulated as predatory animals. However, portions outside the predator area are large enough to support Wyoming's management goals and a recovered wolf population (this issue is discussed further in the ''Human-caused Predation'' section of Factor C above as well as the ''Genetic Considerations'' portion of Factor E below).

Within the WTGMA, wolves will be managed by the WGFC and the WGFD. The WGFC will direct the management of wolves, and the WGFD will assume management authority of wolves (WGFC 2011, p. 1). The State of Wyoming has a relatively large and well-distributed professional fish and game agency that has the demonstrated skills and experience to successfully manage a diversity of resident species, including large carnivores. The WGFD and WGFC are similarly qualified to manage a recovered wolf population. State management of wolves will follow the classic State-led North American model for wildlife management which has been extremely successful at restoring, maintaining, and expanding the distribution of numerous populations of other wildlife species, including other large predators, throughout North America (Geist 2006, p. 1; Bangs 2008).

Within the WTGMA, Wyoming has agreed to maintain a population of at least 10 breeding pairs and at least 100 wolves in areas under State jurisdiction. This minimum population objective is incorporated into Wyoming's wolf management plan and will be institutionalized in Wyoming State statute and regulation. To ensure this target is never inadvertently compromised, Wyoming intends to maintain an adequate buffer above minimum population objectives (WGFC 2011, p. 24). Additionally, Wyoming is planning that any future population reduction will be gradual to ensure population targets are not compromised while the State gathers information on the vulnerability of wolves under a State management regime. All sources of mortality will be considered in management decisions. These objectives have been institutionalized into Wyoming's wolf management plan, will be reflected in all WGFD and WGFC planning decisions, and will be reflected in WGFC regulations.

Wolves taken outside the framework established by State statute and WGFC regulation will be considered to have been taken illegally and will be investigated by WGFD law enforcement personnel (WGFC 2011, p. 25). Appropriate law enforcement and legal action will be taken, which could include fines, jail terms, and loss of hunting privileges (WGFC 2011, p. 25). We believe that these measures constitute adequate regulatory mechanisms to address the threat of illegal killing of wolves.

Given the State of Wyoming's demonstrated capacity to manage similar wildlife, their commitment to manage wolves at or above agreed-upon minimum population levels, along with an overall approach that we conclude will allow the State to meet its objectives, we view the State of Wyoming's proposed management strategy as an adequate regulatory mechanism. However, as noted above, additional statutory and regulatory changes must occur for this plan to be implemented as currently designed. We expect these changes will be made over the next several months and prior to any final delisting of gray wolves in Wyoming.

Because some GYA wolves and some GYA packs cross State lines, Montana's and Idaho's regulatory framework are also discussed here. Furthermore, management in these States can impact dispersal across the entire region.

Montana statutes and administrative rules categorize the gray wolf as a ''Species in Need of Management'' under the Montana Nongame and Endangered Species Conservation Act of 1973 (MCA 87–5–101 to 87–5–123). Montana law defines ''species in need of management'' as ''The collection and application of biological information for the purposes of increasing the number of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and maintain those levels. The term includes the entire range of activities that constitute a modern scientific resource program, including, but not limited to research, census, law enforcement, habitat improvement, and education. The term also includes the periodic or total protection of species or populations as well as regulated taking.'' Classification as a ''Species in Need of Management'' and the associated administrative rules under Montana State law create the legal mechanism to protect wolves and regulate human-caused mortality (including regulated public harvest) beyond the immediate defense of life/property situations. Some illegal human-caused mortality likely still occurs, and is to be prosecuted under State law and Commission regulations. Montana's Fish, Wildlife, and Parks Commission determine harvest quotas annually.

The IFGC has authority to classify wildlife under Idaho Code 36–104(b) and 36–201. The gray wolf was classified as endangered by the State until March 2005, when the IFGC reclassified the species as a big game animal under Idaho Administrative Procedures Act (13.01.06.100.01.d). As a big game animal, State regulations adjust human-caused wolf mortality to ensure recovery levels are exceeded. Title 36 of the Idaho statutes has penalties associated with illegal take of big game animals. These rules are consistent with the legislatively adopted Idaho Wolf Conservation and Management Plan (IWCMP) (Idaho 2002) and big game hunting regulations currently in place. The IWCMP states that wolves will be protected against illegal take as a big game animal under Idaho Code 36–1402, 36–1404, and 36–202(h). The IFGC determines harvest quotas annually.

Montana, Idaho, and Wyoming are committed to implement wolf management in a manner that also encourages connectivity among wolf populations (Groen *et al.* 2008, entire; WGFC 2011, pp. 26–29, 52, 54). Both Montana's and Idaho's 2009 and 2011 hunts consider and minimize impacts to natural connectivity. Additionally, the States have committed to implement agency-managed genetic exchange (moving individual wolves or their genes into the affected population segment), should it ever be needed (Groen *et al.* 2008, entire; WGFC 2011, pp. 26–29, 52, 54).

Montana's and Idaho's regulatory frameworks are sufficient to ensure impacts in Montana and Idaho to the Wyoming wolf population will be minimal. Should management needs be identified in future years, both States have regulatory authority to modify management to meet this population need. All three States have a strong incentive to maintain the NRM DPS and its subpopulations well above minimal population levels.

Environmental Protection Agency—The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*) provides for Federal regulation of pesticide distribution, sale, and use. All pesticides distributed or sold in the United States must be registered (licensed) by the Environmental Protection Agency. Before the Environmental Protection Agency may register a pesticide, the applicant must show, among other things, that using the pesticide according to specifications ''will not generally cause unreasonable adverse effects on the environment.'' No poisons can currently be legally used to poison wolves in the United States because of Environmental Protection Agency restrictions. However, sodium cyanide (only in M–44 devices) and Compound 1080 (sodium fluoroacetate used only in livestock protection collars) are legal toxicants for use on other non-wolf canids. Sodium cyanide was reregistered for use in M–44 devices in 1994 (Environmental Protection Agency 1994, entire). Compound 1080 (sodium fluoroacetate) was registered for use in livestock protection collars in 1995 (Environmental Protection Agency 1995, entire). The Large Gas or Denning Cartridge was registered for use in 2007 (Environmental Protection Agency 2007, entire).

All three products have label restrictions imposed by the Environmental Protection Agency consistent with a Service 1993 Biological Opinion to protect endangered species (Environmental Protection Agency 1994, p. 4; Environmental Protection Agency 1995, pp. 27, 32–38). It is a violation of Federal law to use a pesticide in a manner inconsistent with its labeling, and the courts consider a label to be a legal document (Environmental Protection Agency 2011, p. 1). The Environmental Protection Agency's regulation of these and other toxicants has been adequate to prevent any meaningful impacts to wolf populations in Wyoming, the GYA, or the NRM DPS.

These restrictions constitute an adequate regulatory mechanism of this potential issue.

Collectively, the above regulatory framework will be considered adequate to maintain recovered wolf populations and to prevent relisting once Wyoming makes the necessary changes to State law and regulation required to implement Wyoming's wolf management plan. Before delisting occurs, this regulatory framework will be formally established in management plans, regulations, and statute. These regulations will protect wolf populations (in the case of the National Park Service) or manage them adequately above population targets to ensure potential unforeseen or uncontrollable sources of mortality do not compromise population targets. While no wolves are expected to persist in the predator area, this area is not necessary for wolf conservation in Wyoming. Impacts could also occur in adjacent portions of Montana and Idaho, but these impacts are expected to be minor (few wolf packs are transboundary) and can be regulated through limits on human-caused mortality, if necessary. Additionally, agency capacity and past practice with wolves and other game species provide confidence that targets will be met. Finally, while not relied upon, we believe the threat of relisting provides additional certainty the objectives will never be compromised.

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

This section discusses public attitudes toward wolves, genetics, poison, climate change, catastrophic events, and potential impacts of human-caused mortality to pack structure. This analysis focuses on Wyoming, but considers information from beyond Wyoming when such information helps inform our understanding of an issue and its potential impact to wolves in Wyoming or the GYA.

Public Attitudes Toward the Gray Wolf—Human attitudes toward wolves were the main reason the wolf was listed under the ESA because those attitudes resulted in Federal, State, and local governments promoting wolf extirpation by whatever means possible, including widespread poisoning, even in National Parks (see also Poisoning section below). Those attitudes were largely based on the real and perceived conflicts between humans and wolves, primarily in the context of livestock and pet depredation, hunting of ungulates, and concerns for human safety.

Public hostility toward wolves led to the government-sanctioned persecution that extirpated the species from the NRM DPS in the 1930s. Negative attitudes toward wolves remain deeply ingrained in some individuals and continue to affect human tolerance of wolves. Many papers recently addressed the concept of recent human tolerance of wolves and how those attitudes might affect wolf restoration (Kellert *et al.* 1996, p. 977; Kellert 1999; p. 167; Zimmermann *et al.* 2001, p. 137; Ench and Brown 2002, p. 16; Williams *et al.* 2002, p. 1; Ericsson and Heberlein 2003, p. 149; Fritts *et al.* 2003, pp. 289–316; Bruskotter *et al.* 2007, p. 211; Karlsson and Sjostrom 2007, p. 610; Stronena *et al.* 2007, p. 1; Herberlein and Ericsson 2008, p. 391; Bruskotter *et al.* 2009, p. 119; Wilson and Bruskotter 2009, p. 353; Bruskotter 2010b, p. 1; Bruskotter *et al.* 2010a, p. 941; Bruskotter *et al.* 2010b, p. 30; Houston *et al.* 2010, p. 2; Treves and Martin 2010, p. 1; Treves *et al.* 2010, p. 2; for additional references see USFWS 1994, Appendix 3; 76 FR 26086, May 5, 2011).

These public attitudes began to shift in the mid-20th century because of increased urbanization and increasing national concerns about environmental issues. However, huge decreases in wolf abundance due to wolf extirpation in the last century, lack of first-hand experience with wolves and the damage they can cause, and increasing urbanization has resulted in most Americans holding favorable attitudes towards wolves. These same societal shifts in human attitudes have occurred in other parts of the world (Boitani 2003, p. 321). The huge shift in human attitudes and the resulting treatment of wolves compared to 100 years ago is evident by the shift in policies throughout North America and other parts of the world from extirpation to restoration (Boitani 2003, pp. 322–323; Boitani and CuCiucci 2010, pp. 19–21). Today, a majority of Americans view wolves favorably for a multitude of reasons. Wolves are considered beneficial to ecosystem health. And it is now considered appropriate to reverse wolf extirpation, a perceived historic wrong (Houston *et al.* 2010, p. 27).

Despite the variety of opinions, research is scarce on what factors increase human tolerance of wolves and how those translate into conservation success by preventing excessive rates of human-caused mortality (Bath and Buchanan 1980; Williams *et al.* 2002; Ericsson *et al.* 2003; Fritts *et al.* 2003). The groups most supportive of wolf conservation are often members of environmental organizations and urban residents. These individuals often view wolf reintroduction as restoring an ecological balance. However, favorable attitudes toward wolves decrease as people experience, or think they might soon experience, living with wolves (Huston *et al.* 2010, p. 1).

Typically, the groups most likely to oppose wolf recovery are livestock producers, hunters, and rural residents within or near potential wolf habitat. These individuals face a higher probability of directly suffering competition or damage from wolves. Numerous public attitudes surveys indicate human attitudes toward wolves improve when there is local participation in wildlife management through regulated harvest and defense of life and property regulations. Surveys also show improvement in attitudes when people can pursue traditional activities, like hunting and grazing, without restrictions (For references see Service 1994, Appendix 3; Williams *et al.* 2002; IDFG 2008; Houston *et al.* 2010; 76 FR 26086, May 5, 2011). Wolf conservation can be successful even in areas with high human density, if management policies factor-in human concerns (Linnell *et al.* 2001, p. 345).

A 1994 summary of human values surveys (USFWS 1994, Appendix 3) found that the overriding concern of those living with wolves is the financial and emotional loss that occurs when wolves kill livestock. Further illustrating the connection between financial cost/benefit and attitudes, one survey found Alaskan trappers (who legally harvest wolves for their pelts) had the most accurate knowledge of wolves and viewed wolves the most favorably (Kellert 1985). Toward this end, compensation programs for wolf-livestock depredations have benefited attitudes toward wolves. Wyoming intends to continue such programs in trophy game portions of the State.

Allowing landowners to defend their property may have also ameliorated some of the concern related to potential wolf-livestock conflicts. For example, from 1995 through 2004, the highest rate of illegal killing occurred in northwestern Montana, where wolves were listed as endangered and legal protection was highest, compared to central Idaho and the GYA where wolves were managed under more liberal experimental population regulations. However, the difference in habitat security might also explain the differences in rates of human-caused mortality (Smith *et al.* 2010, p. 630). Upon delisting, Wyoming intends to implement regulations similar to our experimental population regulations. State management provides a larger and more effective local organization and a

more familiar means for dealing with these conflicts (Mech 1995, pp. 275–276; Williams *et al.* 2002, p. 582; Bangs *et al.* 2004, p. 102; Bangs *et al.* 2009, pp. 112–113). We anticipate this approach will continue to benefit public attitudes post-delisting.

Additionally, hunter's perceptions of wolves vastly improve when opportunity for hunting is allowed (IDFG 2007, p. 54). IDFG and MFWP biologists (Dickson 2010; Maurier 2010, pp. 1–2; IDFG 2007, pp. 43–47) reported that many big game hunters coming through mandatory hunter check stations in 2008 were extremely agitated and angry about wolves. In 2009, when wolves were delisted and there was a fair-chase hunting season, few hunters complained. In 2010, when the court order had relisted wolves, local frustration and negative opinions about wolves erupted to previously unforeseen levels. Hunters and most hunter organizations were again very upset and frustrated; some went as far as to call for illegal killing by shooting, and a few even called for poisoning wolves.

Similarly, in Wisconsin in 2006 (before wolves were delisted for 19 months in 2007–2008), 17 illegal kills were discovered, including 9 killed during the 9-day firearm deer season. When wolves were delisted in 2007 and lethal control of problem wolves was allowed by the State, illegal kills decreased to 11 overall with only 1 during the firearm deer season, and 5 of these were deemed to be accidental shootings outside of regular wolf range. Notably, the wolf population steadily increased throughout this period (Wydeven 2010). Although the small sample size does not allow any firm conclusions, we believe this example illustrates that local human tolerance of wolves is the most critical factor in long term wolf conservation. Keeping a large, recovered wolf population listed under the ESA fuels negative attitudes rather than resolving them (Bangs *et al.* 2009, pp. 112–113).

Regulated public harvest has also been successfully used for a host of other species to garner local public tolerance for restoration efforts (Geist 2006, p. 285). The success of this approach is illustrated by the conservation of mountain lions and black bears, which were also once persecuted throughout most of North America. These species were recovered by State and tribal fish and game agencies and hunters with much less controversy than the recovery of wolves. The recovery of those other species included regulated public harvest from the beginning of restoration efforts. Likewise, the Canadian Provinces restored wolf populations throughout large portions of their historic range by ''harvesting'' them back to fully recovered levels (Pletscher *et al.* 1991, p. 545). In 2009 and 2010, Sweden used hunters to cap the population at 220 wolves, in part, to promote public tolerance for wolf restoration (Liberg 2010, pers. comm.).

We believe public tolerance of wolves will improve as wolves are delisted and hunters start to see wolves as a trophy animal with value. We believe this process has already begun in other delisted areas; however, it will likely take time for the full effects of this increased control over the resource and the related sense of ownership before tangible benefits in improved public opinion and less extreme rhetoric are realized. Public acceptance is highest where wolves never disappeared and where wolf populations are typically healthy (or perhaps just with much longer periods of exposure to wolves) (Houston *et al.* 2010, pp. 19–20). However, it has not been determined whether this is due more to increased knowledge and experience dealing with wolves or relaxed local management policies (including liberal public harvest and defense of property regulations) to address local conflicts.

The State of Wyoming has developed a strategy that will not only provide for wolf recovery, but also allow consideration of the diverse opinions and attitudes of its citizens. Wyoming's plan promotes wolf occupancy of suitable habitat in a manner that minimizes damage to private property, allows for continuation of traditional western land-uses such as grazing and hunting, and allows for direct citizen participation in, and funding for, State wolf management (in the form of State defense of property and hunting regulations). With the continued help of private conservation organizations, Wyoming and the Tribes will continue to foster public support to maintain a recovered wolf population. The WGFD has staff dedicated to providing accurate and science-based public education, information, and outreach (WGFC 2011, pp. 41–42). Wyoming's comprehensive approach to wolf management provides us with confidence that human attitudes toward wolves should not again threaten wolves in Wyoming.

As noted above, wolf conservation is dependent on human tolerance (Boitiani 2003, p. 317; Fritts *et al.* 2003, p. 289) and on the rate of human-caused mortality (Fuller *et al.* 2003, pp. 184–185) far more than any other factor. Regarding the former, State management will likely improve tolerance of wolves as the public appreciates increased State control (less Federal control), and increased management flexibility, including hunting. When one considers that current human attitudes were sufficient to achieve wolf restoration, and that we expect State management to improve these attitudes, we no longer view this as a threat to wolves in Wyoming.

Furthermore, to the extent any impact from human tolerance (or lack thereof) is realized, it will affect human-caused mortality. Wyoming's plan provides assurance that human-caused mortality will be adequately regulated to ensure recovery is never compromised. Thus, we no longer consider human attitudes to be a threat to the gray wolf in Wyoming.

Genetic Considerations—Overall, NRM wolves are as genetically diverse as their vast, secure, healthy, contiguous, and connected populations in Canada (Forbes and Boyd 1997, p. 1089; vonHoldt *et al.* 2007, p. 19; vonHoldt *et al.* 2008, p. 267) and, thus, genetic diversity is not a wolf conservation issue in the NRM DPS at this time (Hebblewhite *et al.* 2010, p. 4383; vonHoldt *et al.* 2010, pp. 4412, 4416, 4421). This current genetic health is the result of deliberate management actions by the Service and its cooperators since 1995 (Bradley *et al.* 2005, p. 1504). Furthermore, genetic data collected from 1995 to 2004 demonstrate that all subpopulations within the NRM DPS maintained high genetic diversity during the first 10 years after reintroduction (vonHoldt *et al.* 2010, p. 4423, Hebblewhite *et al.* 2010, p. 4384). Genetic diversity has likely changed little since 2004. Below we analyze whether genetics will become a threat to wolves in Wyoming or the GYA within the foreseeable future.

Wolves have an unusual ability to rapidly disperse long distances across virtually any habitat and select mates to maximize genetic diversity. Only extremely large bodies of water or vast deserts appear to restrict wolf dispersal (Linnell *et al.* 2005). Wolves are among the least likely species to be affected by inbreeding when compared to nearly any other species of land mammal (Fuller *et al.* 2003, pp. 189–190; Paquet *et al.* 2006, p. 3; Liberg 2008, p. 1). Wolves avoid inbreeding by dispersing to find unrelated mates (Bensch *et al.* 2006, p. 72; vonHoldt *et al.* 2007, p. 1). This social pattern is a basic function of wolf populations and occurs regardless of the numbers, density, or presence of other wolves (Mech and Boitani 2003, pp. 11–180; Jimenez *et al.* 2011, p. 14).

As a general rule, genetic exchange of at least one effective migrant (*i.e.,* a breeding migrant that passes on its genes) per generation is viewed as sufficient to prevent the loss of alleles and minimize loss of heterozygosity within subpopulations (Mills 2007, p.193). This level of gene flow allows for local evolutionary adaptation while minimizing negative effects of genetic drift and inbreeding depression (Mills 2007, p. 193). The northwestern Montana and central Idaho core recovery areas are well-connected to each other and to large wolf populations in Canada through dispersal (Boyd *et al.* 1995, p. 136; Boyd and Pletscher 1999, pp. 1100–1101; Hebblewhite *et al.* 2010, p. 4383; vonHoldt *et al.* 2010, pp. 4422–4423; Jimenez *et al.* 2011, p. 23).

The GYA is the most isolated core recovery area within the NRM DPS (Oakleaf *et al.* 2005, p. 554; vonHoldt *et al.* 2007, p. 19). From 1992 to 2008, we documented five radio-collared wolves naturally entering the GYA, two of which are confirmed to have bred (Service *et al.* 2011, p. 2; Jimenez *et al.* 2011, p. 23). The first wolf dispersed from northwestern Montana to the eastern side of the GYA in 1992 when only 41 wolves and 4 breeding pairs were in the region (Pletscher *et al.* 1997, p. 464). Because this dispersal predated the 1995–1996 reintroductions, this wolf did not breed as there were no other wolves present for it to breed with. In 2002, a central Idaho wolf dispersed to the eastern side of the GYA and became the breeding male of the Greybull pack near Meeteetse, Wyoming. In 2006, another central Idaho wolf dispersed to the northern edge of the GYA (south of Bozeman, Montana); it is unknown if this wolf bred. In 2007, two wolves from central Idaho dispersed to the eastern side of GYA. One of these dispersers joined a pack near Dubois, Wyoming; its reproductive status is unknown. The other 2007 disperser joined a pack near Sunlight Basin, Wyoming, and bred. Because only 20 to 30 percent of the NRM wolf population has been radio-collared, it is reasonable to assume that approximately three times the documented number of radio-collared wolves dispersed into the GYA. On average, about 35 percent of dispersing wolves reproduce (Jimenez *et al.* 2011, p. 12). Because a wolf generation is approximately 4 years, dispersal data indicates that more than one effective migrant per generation has likely entered into the GYA wolf population. Specifically, these data indicate we may have averaged around one-and-a-half effective migrants per generation since reintroduction, with a large portion of this dispersal occurring in recent years when the central Idaho population was above 500 wolves.

Genetics data have only been analyzed from 1995 to 2004 when the NRM gray wolf population was between 101 and 846 wolves (including a minimum population estimate of 14 to 452 wolves in central Idaho) and still growing (average 27 percent annual growth rate). During this period, the NRM region demonstrated a minimum of 3.3 to 5.4 effective migrants per generation among all three subpopulations (vonHoldt *et al.* 2010, p. 4412). Within this range, the 3.3 effective migrants per generation reflect natural dispersal, while the 5.4 effective migrants per generation include human-assisted migration (Stahler 2011, in litt.). Within the GYA, natural dispersal data demonstrates that six wolves in four packs appear to have descended from one central Idaho disperser (the 2002 disperser discussed in the above paragraph who was the breeding male of the Greybull pack near Meeteetse, Wyoming) (vonHoldt *et al.* 2010, p. 4412, Supporting Table S5; Stahler 2011, in litt.). These data demonstrate a minimum of 0.42 natural effective migrants entering the GYA per generation during the 10-year study period (Stahler 2011, in litt.). Because only about 30 percent of the NRM wolf population was sampled, the minimum estimate of effective migrants per generation was likely a significant underestimate (Hebblewhite *et al.* 2010, p. 4384; vonHoldt *et al.* 2010, pp. 4422–4423; Stahler 2011, in litt.). While additional analysis may be needed to determine how much of an underestimate this represents (Stahler 2011, in litt.), Hebblewhite *et al.* (2010, p. 4384) suggest this estimate is ''almost certainly low by at least half.''

Both of the above information sources (documented dispersal rates and genetic analysis) reflect past dispersal patterns when the population was at different levels and the Act's protections remained in place. Post-delisting, populations will no longer be growing, may go through a period of population reduction before leveling off, and management will likely result in higher mortality rates for both dispersers and resident wolves. Thus, past dispersal data is unlikely to be reflective of future effective migration rates. Below we discuss factors likely to influence future effective migration post-delisting.

A more detailed look at dispersal data, although reflective of the situation while listed, may provide insights into likely dispersal after delisting. NRM gray wolf dispersal data from 1995 to 2008 indicated that: wolves routinely dispersed at all population levels and from packs of all sizes (10 percent of the wolf population dispersed annually); some dispersers moved long distances despite the occurrence of empty suitable habitat nearby (23 percent of these dispersers traveled greater than or equal to 100 miles, a distance that separates routinely occupied areas in the GYA and central Idaho); wolves dispersed in all directions (19 percent of dispersers traveled east as would be necessary to get from central Idaho to the GYA); dispersal occurred year round, but peaked in winter (more than half of all dispersal occurred in the 4 months of November through February); dispersal was a long, meandering process (dispersal events averaged 5.5 months); disperser survival rates were lower than for resident wolves (70 versus 80 percent); and 35 percent of dispersing wolves reproduced (Jimenez *et al.* 2011, pp. 9–12). While these data could be used to model likely future effective migration, natural changes to the wolf population and post-delisting management across the NRM region will impact these variables and impact the resulting projections. Below we discuss factors that are likely to change these variables in future years.

Several geographic and biological factors influence migration in the GYA. For example, physical barriers (such as high-elevation mountain ranges that are difficult to traverse in winter) appeared to discourage dispersal through Grand Teton National Park's western boundary. As most wolves disperse in winter, they tended to travel through low-elevation valleys where wild prey concentrations were highest due to lower snow depths. Limited social openings in YNP wolf packs also directed wolves dispersing from Idaho and Montana around YNP. To date, the high density and reproductive output of wolves in YNP has created a unidirectional flow of dispersing wolves out of the Park (vonHoldt *et al.* 2007, p. 270; vonHoldt *et al.* 2010, p. 4413; Wayne and Hedrick 2010). This is because young dispersing wolves seek to establish territories in less saturated habitats, and wolves from outside YNP are unable to establish residency inside areas that appear saturated. The lack of dispersal into YNP is likely to change as the wolf population continues its decline into a lower long-term equilibrium (Smith 2010, pers. comm.). We expect that at lower YNP population densities, wolves from outside YNP will be increasingly successful at dispersing into YNP.

Population levels across the NRM DPS could impact natural rates of gene

flow. For example, because 10 percent of wolves disperse annually, an Idaho wolf population of around 500 wolves long term (a level we continue to think is likely) will produce many more dispersers than a population closer to minimum recovery targets. While the wolf population will almost certainly be reduced post-delisting, all three States in the NRM metapopulation plan to manage wolf populations comfortably above minimum recovery levels to allow for wolf hunting opportunities, in anticipation of uncontrollable sources of mortality, and to ensure relisting never occurs. Based on the available suitable habitat including remote or protected areas, management direction being employed or planned by the States, and State projections, we conclude that the overall NRM population is likely to be maintained well above recovery levels (perhaps around 1,000 wolves across the NRM DPS). Overall, we believe State management of population levels alone is unlikely to reduce the overall rate of natural dispersal enough to threaten adequate levels of effective migration. However, if the population is maintained near the minimum recovery target of 150 wolves per State, a scenario we view as extremely unlikely, we would expect dispersal to noticeably decrease. As discussed below, if genetic exchange drops below one effective migrant per generation, the States will implement a human-assisted migration program (*i.e.*, translocating wolves).

Human-caused wolf mortality is another key factor in determining whether dispersers become effective (*i.e.,* a breeding migrant that passes on its genes). In short, wolves must be able to traverse suitable and unsuitable habitat between the key recovery areas and survive long enough to find a mate in suitable habitat and reproduce. While managed under the Act, dispersers had a 70 percent survival rate. However, State and tribal wolf management is likely to reduce survival of dispersing wolves. Across the NRM DPS, we expect mortality rates to increase post-delisting due to hunting, slightly more liberal defense of property allowances and, in Wyoming, control of wolves on State-managed elk feeding grounds and removal in the predator area of the State.

As noted above, wolves can maintain population levels despite sustained human-caused mortality rates of 22 to greater than 50 percent (Keith 1983; Ballard *et al.* 1987; Fuller 1989; Fuller *et al.* 2003, pp. 182–184; Creel and Rotella 2010). In Wyoming outside YNP, mortality rates and population growth rates from 2007 to 2010 suggest that the Wyoming wolf population can sustain, on average, a 36 percent mortality rate from human causes (WGFC 2011, p. 12). Because States intend to initially reduce wolf populations and ultimately maintain level populations in balance with prey populations, it seems reasonable to assume that there will be high mortality across the entire region for the next several years, but that the population will stabilize within a sustainable level over the long term. Furthermore, we expect human-caused mortality will likely continue to be low in remote and protected areas, and will increase in unsuitable habitat which dispersers must traverse to move between subpopulations.

The management approaches of all three NRM States take into account and limit hunting impacts during important dispersal periods, including the breeding, denning, and pup rearing periods (later winter through early fall). Across Montana, Idaho, and Wyoming, most hunting-related mortality will occur in October and November when big game seasons are scheduled and most big game hunters are in the field. In Montana in 2009, 78 percent of harvested wolves were opportunistically harvested by hunters who were primarily hunting elk, deer, or both (MFWP 2009, p. 3). In both 2009 and 2011, Montana's wolf seasons were scheduled to run through the end of December, or when quotas were met (MFWP 2011, entire). In 2009, Idaho's wolf season was open until December 31st or until the quota was met, but was extended through the end of March for all units that did not meet their quota. The 2009 hunting season was not extended in any areas important for dispersal. In 2011, Idaho's wolf hunting season runs through March for most units, but ends December 31st for those areas thought important for dispersal (*i.e.,* the Beaverhead and Island Park units) (IFGC 2011, entire). Such considerations are consistent with States' commitments to preserve genetic diversity by ensuring the continuation of natural dispersal among the subpopulations through effective management of the timing and location of human-caused mortality (Groen *et al.* 2008, entire). Additionally, State management restricts problem wolf control to recent depredation events, which are uncommon during peak dispersal periods.

The State of Wyoming has indicated their hunting seasons will occur primarily in conjunction with fall hunting seasons, but may be extended beyond that period, if necessary, to achieve management objectives (WGFC 2011, pp. 2–3, 16, 25, 53). Wyoming will develop a hunt plan each year that will take into consideration, but will not be limited to, the following when considering extending their hunting program: wolf breeding seasons; short- and long-range dispersal opportunity, survival, and success in forming new or joining existing packs; conflicts with livestock; and the broader game management responsibilities related to ungulates and other wildlife (WGFC 2011, pp. 2–3, 16, 25, 53).

In Wyoming, survival of dispersing wolves will also be reduced in portions of the State where wolves will be classified as predators. In the predator area, human-caused mortality will be unregulated; therefore, wolf survival rates will decline. This finding is consistent with past Service findings (71 FR 43410, August 1, 2006; 72 FR 6106, February 8, 2007; 73 FR 10514, February 27, 2008; 74 FR 15123, April 2, 2009), and was validated in 2008 when most of the wolves in the predator area were killed within a few weeks of temporarily losing the Act's protection. However, we believe roaming dispersers will be less prone to unregulated removal than resident packs, whose locations and ranges are easily detected.

In total, wolves will be permanently protected or managed as game animals in about 39,900 km² (15,400 mi²) (15.7 percent of Wyoming) in northwestern Wyoming, including YNP, Grand Teton National Park, John D. Rockefeller Memorial Parkway, adjacent U.S. Forest Service-designated Wilderness Areas, adjacent public and private lands, the National Elk Refuge, and the Wind River Indian Reservation. The permanent WTGMA incorporates nearly all of Wyoming's current wolf packs and includes the vast majority of the State's suitable habitat. Additionally, the WTGMA will be seasonally expanded approximately 80 km (50 mi) south along the western border of Wyoming (see Figure 1 above) from October 15 to the end of February (28th or 29th). During this period of peak dispersal, the trophy game area will be expanded by approximately 3,300 km² (1,300 mi²) (*i.e.,* an additional 1.3 percent of Wyoming). Maintenance of genetic exchange and connectivity were the primary considerations in Wyoming's agreement to increase protection for wolves within this area during winter months. This seasonal expansion will benefit natural dispersal.

Within the WTGMA, Wyoming may also control wolves to address wolf-ungulate conflicts at State-operated elk feeding grounds (WGFC 2011, pp. 5, 39–41). Wyoming maintains 22 winter elk feeding grounds including 10 within the permanent WTGMA, 3 within the seasonal WTGMA, and 9 within the

permanent predator area. These areas attract and could potentially hold dispersing wolves. Many dispersing wolves in Wyoming, and even some established breeding pairs, temporarily leave their primary territories to visit the elk feed grounds in winter. As noted above, within the predator area, take would occur without limit and would be unregulated. Within the WTGMA, WGFD may take wolves that displace elk from feeding grounds in the WTGMA if such displacement results in one of the following conflicts: (1) Elk damage to private stored crops; (2) elk commingling with domestic livestock; or (3) elk displaced from feeding grounds moving onto highway rights-of-way and causing human safety concerns. Such take will likely further reduce survival of dispersing wolves (WGFC 2011, pp. 5, 39–41).

Human-caused mortality may also provide a potential benefit to genetic exchange. Specifically, State management practices will periodically create localized disruptions of wolf pack structure or modified wolf density in select areas of suitable habitat that will create social vacancies or space for dispersing wolves to fill. This outcome will likely increase reproductive success rates for dispersers that enter the GYA.

Generally, genetic connectivity across the NRM DPS has increased with time, and it will remain a high-priority issue for the Service and our partner wildlife agencies. A process to identify, maintain, and improve linkage of wildlife movement areas between the large blocks of public land in the region is ongoing (Servheen *et al.* 2003, p. 3). This interagency effort involves 9 State and Federal agencies working on linkage facilitation across private lands, public lands, and highways (Interagency Grizzly Bear Committee 2001, pp. 1–2; Brown 2006, pp. 1–3). Key partners include the Forest Service, National Park Service (NPS), Bureau of Land Management, U.S. Geological Survey, and States of Idaho, Montana, Washington, and Wyoming. To date, this effort has included: (1) Development of a written protocol and guidance document on how to implement linkage zone management on public lands (Public Land Linkage Taskforce 2004, pp. 3–5); (2) production of several private land linkage management documents (Service 1997; Parker and Parker 2002, p. 2); (3) analyses of linkage zone management in relation to highways (Geodata Services Inc. 2005, p. 2; Waller and Servheen 2005, p. 998); and (4) periodic workshops discussing implementation of management actions for wildlife linkage. The objective of this work is to maintain and enhance movement opportunities for all wildlife species across the region. Although this linkage work is not directly associated with the wolf population, it will benefit wolves after delisting.

Recognizing there is some uncertainty concerning the level of genetic exchange that will occur post-delisting, Wyoming has agreed to monitor for gene flow and take adaptive measures, as appropriate, to achieve a long-term goal of at least one effective migrant per generation. Wyoming, in coordination with Montana and Idaho, intends to collect genetic samples continuously, and test the samples every 3 to 5 years to search for dispersers and their offspring (WGFC 2011, pp. 26–29). Success in achieving the objective of one effective migrant per generation will be measured over multiple generations (WGFC 2011, pp. 26–29). If the desired level of genetic connectivity is not documented, Wyoming, in coordination with Idaho and Montana, will review genetic monitoring protocols and revise them, if necessary, to improve the State's ability to detect effective migrants (WGFC 2011, pp. 26–29).

Furthermore, population management will be modified if strategies implemented by the State of Wyoming are identified as a meaningful factor that is preventing the connectivity objective from being met. In addition, outside experts will be consulted, as necessary or appropriate, to assist in identifying appropriate changes to regional management. Specifically, Wyoming will: (1) Conduct an evaluation of all sources of mortality, in coordination with other partners as appropriate, with a focus on those within Wyoming's jurisdiction (and the jurisdiction of other partners, as appropriate), to determine which sources of mortality, and the extent to which those sources, are most meaningfully impacting genetic connectivity; and (2) modify population management objectives, in coordination with other partners, as appropriate, based on the above evaluation, as necessary, to achieve the desired level of gene flow (WGFC 2011, pp. 26–29). The extent of actions taken will depend on the level of gene flow as it relates to the genetic connectivity objectives. For example, if the data indicates gene flow is close to the objective, minor modifications to management will be implemented (WGFC 2011, pp. 26–29). However, if very low levels of gene flow are documented over numerous generations, more extreme management measures will be implemented (WGFC 2011, pp. 26–29). This adaptive approach will implement specific and appropriate remedial actions as directed by the available data (WGFC 2011, pp. 26–29).

Human-assisted migration will be used, as necessary, to maintain levels of genetic exchange and connectivity for both the GYA (including Wyoming) and the larger NRM metapopulation (Groan *et al.* 2008, p. 2; WGFC 2011, pp. 26–29). Human intervention in maintaining recovered populations is necessary for many conservation-reliant species and a well-accepted practice in dealing with population concerns (Scott *et al.* 2005). The 1994 wolf reintroduction EIS indicated that intensive genetic management might become necessary if any of the subpopulations developed genetic or demographic problems (Service 1994, pp. 6–74). The 1994 EIS stated that other wildlife management programs rely upon such agency-managed genetic exchange, and that the approach should not be viewed negatively (Service 1994, pp. 6–75). Human-assisted genetic exchange is a proven technique that has created effective migrants in the NRM DPS. An example of successful managed genetic exchange in the NRM population was the release of 10 wolf pups and yearlings translocated from northwestern Montana to YNP in the spring of 1997. Two of those wolves became breeders and their genetic signature is common throughout YNP and the GYA (vonHoldt *et al.* 2010, p. 4422). Wolves could easily be moved again in the highly unlikely event that inbreeding or other problems ever threatened wolves in the GYA or any other area. Agency-managed genetic exchange could focus on such proven established methods, or use other novel means of introducing genes into a recovery area (*e.g.*, artificial insemination of wolves). At this time, such approaches remain unnecessary.

Maintenance of the GYA at very low population levels is unlikely to be a meaningful concern in its own right. Overall, we expect the GYA population will be managed for a long-term average of around 300 wolves across portions of Montana, Idaho, and Wyoming. While exact numbers are difficult to predict and may fluctuate by area and by year, the following information provides some perspective. In Wyoming, the State will maintain a population above 100 wolves and 10 breeding pairs on lands under State jurisdiction and, in most years, will maintain a population buffer above this minimum population level. The wolf population in YNP has ranged from 96 to 171 wolves since 2000. However, the YNP wolf population appears to be declining toward a long-term equilibrium at, or

slightly below, the lower end of this range (Service *et al.* 2000–2010, Table b; Smith 2010, pers. comm.). In Montana's share of the GYA, minimum population estimates have ranged from 55 to 130 wolves since recovery was achieved in 2002 (Service *et al.* 2003–2011, Table 1b). During this period, the GYA constituted between 20 to 42 percent of Montana's statewide wolf population estimate. At the end of 2010, this area included a minimum population estimate of 118 wolves. Montana's planned quota for this area in the 2011 hunting season is 43 wolves. In Idaho's share of the GYA, minimum population estimates have ranged from 0 to 40 wolves since recovery was achieved in 2002 (Service *et al.* 2003–2011, Table 2). At the end of 2010, this area included a minimum population estimate of 40 wolves. Idaho's planned 2011 hunt includes a quota of 30 wolves in this area (IFGC 2011, entire). Collectively, these data suggest a long-term average of around 300 wolves in the GYA, including sizable populations in YNP, portions of Wyoming under State jurisdiction, and portions of the GYA in Montana and Idaho.

In all but the most extreme cases, small wolf populations are unlikely to be threatened solely by the loss of genetic diversity (Boitani 2003, p. 330). Review of the scientific literature shows that, throughout the world, truly isolated wolf populations that are far smaller and far less genetically diverse than the GYA population have persisted for many decades and even centuries (Fritts and Carbyn 1995, p. 33; Boitani 2003, pp. 322–23, 330–335; Fuller *et al.* 2003, pp. 189–190; Liberg 2005, pp. 5–6; 73 FR 10514, February 27, 2008; Boitani and Giucci 2010, pp. 19–21). As with all models, theoretical predictions rely upon the quality and accuracy of input data. In most cases, theoretical predictions of genetic factors impacting wolf population viability have proven poor predictors of actual status of very small wolf populations (Fritts and Carbyn 1995; Boitani 2003; Fuller *et al.* 2003, pp. 189–190). For example, a wolf population on Isle Royale National Park that started from 2 or 3 founders in 1949 and remained very small (less than 50 wolves, long-term effective population size 3.8) has persisted until the present time (Boitani 2003, p. 330) and maintains comparable demographic properties to outbred populations of wolves (Fuller *et al.* 2003). While some have speculated that YNP's small founder population, maintenance at low levels, and relative isolation might eventually affect population dynamics, this now appears doubtful (Ware 2009, abstract; Raikkonen *et al.* 2010). In the Kenai Peninsula of Alaska, the wolf population has remained relatively stable for the past 30 years despite being isolated, small (less than 200 wolves), liberally hunted and trapped, and exposed to typical wolf diseases and parasites. The Kenai population is not threatened (Peterson *et al.* 1994, p. 1) and remains genetically fit (Talbot and Scribner 1997, pp. 20–21). Such information leads us to believe actual wolf population persistence in small isolated situations is a better predictor of future outcomes than theoretical models. Regardless, the GYA wolf population will never be as small or as isolated as the Kenai population.

The GYA wolf population will not be threatened by lower genetic diversity in the foreseeable future because of the current high level of genetic diversity in the NRM DPS, proven connectivity between subpopulations, wolf dispersal capabilities, the strong tendency of wolves to outbreed by choosing unrelated mates, and the likely long-term population and distribution levels of wolves in the NRM DPS. In addition to these natural factors, the States of Montana, Idaho, and Wyoming have committed to monitor for natural genetic connectivity, modify management as necessary to facilitate natural connectivity, and, if necessary, implement a human-assisted migration program to achieve at least one effective migrant per generation. In fact, in our professional judgment, even if no new genes entered into the GYA (a near impossibility), genetic diversity is likely many decades, and perhaps a century or more, away from becoming an issue and even then, it would be unlikely to threaten the GYA population.

Poison—Poisoning is a potentially significant factor in maintenance of the wolf population as it can be an effective and inexpensive method to kill wolves. Wolf extirpation in the United States and many other areas of the world occurred primarily through extensive use of poisons. Wolf populations began to recover in many areas only when certain poisons were banned, despite continued human-caused mortality by shooting and trapping (Fritts *et al.* 2003, p. 311; Fuller *et al.* 2003, pp. 162–163, 189; Boitani 2003, p. 329). Poison was once commonly used by Federal and State agencies and the public throughout the western United States for control of coyotes and other predators. However, many poisons (such as strychnine, Compound 1080, cyanide, and other toxins) for predatory animal management were banned or their use severely limited (Executive Order 11643; Fagerstone *et al.* 2004).

Today, no poisons can legally be used against wolves in the United States because of Environmental Protection Agency restrictions (described above). While steps could be taken to allow registration and limited use, the process is complex, time consuming (5–10 years), and would likely never allow widespread use for a host of reasons, including public disdain for poisoning predators (Fritts *et al.* 2003, p. 311; Fagerstone *et al.* 2004, p. 76) and concerns over secondary nontarget poisoning. Furthermore, within the WTGMA, poison is prohibited by Wyoming Statute 23–3–304(a). Sodium cyanide (only in M–44 devices), Compound 1080 (sodium fluoroacetate used only in livestock protection collars), and denning cartridges (active ingredients of sodium nitrate and charcoal) are legal toxicants for use on other canids. In all three cases, Environmental Protection Agency label restrictions preclude use on wolves (Environmental Protection Agency 1994, pp. 2, 4; Environmental Protection Agency 1995, pp. 28–29; Environmental Protection Agency 2007, p. 3). Poisons (including strychnine, Compound 1080, cyanide, and Temic (an agricultural poison used for insect control)) have occasionally illegally killed dogs and wolves in the NRM region. Such illegal killing has been exceedingly rare and has not affected the wolf population's recovery (Murray *et al.* 2010, p. 2514; Service *et al.* 2011, Table 4, Figure 1). We believe this source of mortality will remain rare into the foreseeable future.

We believe that only a concerted agency-driven or otherwise large-scale campaign to employ poison could threaten the recovered wolf population in Wyoming, the GYA, or the larger NRM DPS. However, this circumstance is highly unlikely in the foreseeable future. Even in unregulated areas like the predator area, widespread poisoning is unlikely in the foreseeable future, as these types of highly toxic and dangerous poisons would have to be legally registered and widely available. Overall, we believe this potential threat is strictly theoretical in nature and is unlikely to ever again threaten this wolf population.

Climate Change—Next to humans, wolves had the largest natural distribution of any land mammal in recent history. Wolves are extremely adaptable and prey on every type of ungulate in their worldwide northern hemisphere range. In North America, wolves once ranged from central Mexico to the Arctic Ocean and from coast to coast. It would be virtually impossible that environmental, habitat, or prey species changes due to the

environmental effects of climate change could affect such an adaptable, resilient, and generalist predator.

While there is much debate about the rates at which carbon dioxide levels, atmospheric temperatures, and ocean temperatures will rise, the Intergovernmental Panel on Climate Change (IPCC), a group of leading climate scientists commissioned by the United Nations, concluded there is a general consensus among the world's best scientists that climate change is occurring (IPCC 2001, pp. 2–3; IPCC 2007, p. 4). The twentieth century was the warmest in the last 1,000 years (Inkley *et al.* 2004, pp. 2–3), with global mean surface temperature increasing by 0.4 to 0.8 degrees Celsius (0.7 to 1.4 degrees Fahrenheit). These increases in temperature were more pronounced over land masses as evidenced by the 1.5 to 1.7 degrees Celsius (2.7 to 3.0 degrees Fahrenheit) increase in North America since the 1940s (Vincent *et al.* 1999, p. 96; Cayan *et al.* 2001, p. 411). According to the IPCC, warmer temperatures will increase 1.1 to 6.4 degrees Celsius (2.0 to 11.5 degrees Fahrenheit) by 2100 (IPCC 2007, pp. 10–11).

The magnitude of warming in the NRM region has been greater, as indicated by an 8-day advance in the appearance of spring phenological indicators in Edmonton, Alberta, since the 1930s (Cayan *et al.* 2001, p. 400). The hydrologic regime in the NRM region also has changed with global climate change, and is projected to change further (Bartlein *et al.* 1997, p. 786; Cayan *et al.* 2001, p. 411; Stewart *et al.* 2004, pp. 223–224). Under global climate change scenarios, the NRM region may eventually experience milder, wetter winters and warmer, drier summers (Bartlein *et al.* 1997, p. 786). Additionally, the pattern of snowmelt runoff may also change, with a reduction in spring snowmelt (Cayan *et al.* 2001, p. 411) and an earlier peak (Stewart *et al.* 2004, pp. 223–224), so that a lower proportion of the annual discharge will occur during spring and summer.

Even with these changes, environmental, habitat, or prey changes resulting from climate change should not threaten the Wyoming wolf population. Wolves are habitat generalists, and next to humans are the most widely distributed land mammal on earth. Wolves live in every habitat type in the Northern Hemisphere that contains ungulates, and once ranged from central Mexico to the Arctic Ocean in North America. The NRM region is roughly in the middle of historic wolf distribution in North America. Because historic evidence suggests gray wolves and their prey survived in hotter, drier environments, including some near-desert conditions, we expect wolves could easily adapt to the warmer and drier conditions that are predicted with climate change, including any northward expansion of diseases, parasites, new prey, or competitors or reductions in species currently at or near the southern extent of their range.

Environmental or habitat changes resulting from changing climatic conditions have the potential to impact wolf prey. Declining moose populations in the southern GYA may result from global warming (Service 2008), a conclusion that has been reached in other parts of the southern range of moose in North America. Climate change has affected elk nutrition, elk herd demographics, and the proportion of migratory and nonmigratory elk in the GYA, but not to the extent that such wolf prey could disappear (Middleton *et al.* 2011, Chapter 1). However, the extent and rate to which most ungulate populations will be impacted is difficult to foresee with any level of confidence. One logical consequence of climate change could be a reduction in the number of elk, deer, moose, and bison that die overwinter, thus maintaining a higher prey base for wolves (Wilmers and Getz 2005, p. 574; Wilmers and Post 2006, p. 405). Furthermore, increased over-winter survival would likely result in overall increases and more resiliency in ungulate populations, thereby providing more prey for wolves.

Catastrophic Events—Here we analyze a number of possible catastrophic events including fire, volcanic activity, and earthquake. Fire is a natural part of the Yellowstone system; however, 20th century forest management that included extensive wildfire suppression efforts, promoted heightened potential for a large fire event. The 1988 fires, the largest wildfire in YNP's recorded history, burned a total of 3,213 km^2 (793,880 acres) or 36 percent of the Park. However, large mobile species such as wolves and their ungulate prey usually are not meaningfully adversely impacted. Surveys after the 1988 fires found that 345 dead elk, 36 deer, 12 moose, 6 black bears, and 9 bison died in GYA as a direct result of the conflagration (YNP 2011, p. 3). YNP's fire management policy (YNP 2004, entire) indicates natural wildfires should be allowed to burn, so long as parameters regarding fire size, weather, and potential danger are not exceeded. Those fires that do exceed the standards, as well as all human-caused fires, are to be suppressed (YNP 2004, entire). Regarding impacts to wolves, YNP concluded ''wolves are adapted to landscapes strongly influenced by fire, the primary forest disturbance agent within the GYE, are highly vagile, and are adaptable to changing ecological conditions * * * [and] fires will provide significant long-term benefits to gray wolves by maintaining natural ecosystem processes'' (YNP 2004, Appendix I). Future fires are likely in the GYA system. Overall, we agree wolves are adaptable and will benefit from fires in the long term. Long-term, wildfires often lead to an increase in ungulate food supplies and an increase in ungulate numbers. While minor, localized, short-term impacts are likely, fire will not threaten the viability of the wolf population in either the GYA or Wyoming.

The GYA has also experienced several exceedingly large volcanic eruptions in the past 2.1 million years. The three super eruptions occurred 2.1 million, 1.3 million, and 640,000 years ago (Lowenstern *et al.* 2005, pp. 1–2). Such a similar event would devastate the GYA ecosystem. While one could argue ''we are due'' for such an event, scientists with the Yellowstone Volcano Observatory maintain that they ''see no evidence that another such cataclysmic eruption will occur at Yellowstone in the foreseeable future * * * [and that] recurrence intervals of these events are neither regular nor predictable'' (Lowenstern *et al.* 2005, p. 6). We share this view and do not consider such an event likely within the foreseeable future.

More likely to occur is a nonexplosive lava flow eruption or a hydrothermal-explosion. There have been 30 nonexplosive lava flows in YNP over the last 640,000 years, most recently 70,000 years ago (Lowenstern *et al.* 2005, p. 2). During such an eruption, flows ooze slowly over the surface, moving a few hundred feet per day for several months to several years (Lowenstern *et al.* 2005, p. 2). Any renewed volcanic activity at YNP would most likely take this form (Lowenstern *et al.* 2005, p. 3). In general, such events would have localized impacts and be far less devastating than a large eruption (although such an event could also cause fires; fire as a threat is discussed above). Hydrothermal explosions, triggered by sudden changes in pressure of the hydrothermal system, also occasionally impact the region. More than a dozen large hydrothermal-explosion craters formed between about 14,000 and 3,000 years ago (Lowenstern *et al.* 2005, p. 4). The largest hydrothermal-explosion crater documented in the world is along the

north edge of Yellowstone Lake in an embayment known as Mary Bay; this 2.6-km (1.5-mile) diameter crater formed about 13,800 years ago (Lowenstern *et al.* 2005, p. 4). We do not consider either a nonexplosive lava flow eruption or a hydrothermal-explosion likely within the foreseeable future, but even if one of these did occur, the impact to wolves or their prey would likely be localized, temporary, and would not threaten the viability of the wolf population in either the GYA or Wyoming.

Earthquakes also occur in the region. The most notable earthquake in YNP's recent history was a magnitude 7.5 in 1959 (Lowenstern *et al.* 2005, p. 3). Similarly, a magnitude 6.5 earthquake hit within YNP in 1975 (Lowenstern *et al.* 2005, p. 3). The 1959 earthquake killed 28 people, most of them in a massive landslide triggered by the quake (Lowenstern *et al.* 2005, p. 3). Such massive landslides and other earthquake-related impacts could also affect wildlife. But as with other potential catastrophic events, the impact of a large earthquake to wolves or prey would likely be localized, temporary, and would not threaten the viability of the wolf population in either the GYA or Wyoming.

The habitat model/population viability analysis by Carroll *et al.* (2003, p. 543) analyzed environmental stochasticity and predicted it was unlikely to threaten wolf persistence in the GYA. We also considered catastrophic and stochastic events that might reasonably occur in the State of Wyoming, the GYA, or the NRM DPS within the foreseeable future, to the extent possible. Most catastrophic events discussed above are unlikely to occur within the foreseeable future. Other events that might occur within the foreseeable future would likely cause only localized and temporary impacts that would not threaten the viability of the wolf population in either the GYA or Wyoming.

Impacts to Wolf Pack Social Structure as a Result of Human-caused Mortality—When human-caused mortality rates are low, packs contain older individuals. Such larger complex pack structures are most common in National Parks and large, remote wilderness areas. These types of social structures will continue unaltered in those areas after wolves are delisted. In 2010, approximately 20 percent of the estimated 1,651 wolves in the NRM DPS lived primarily in National Parks or Wilderness areas. However, wolves in much of the NRM DPS constantly interact with livestock and people. In these areas, wolves experience higher rates of human-caused mortality, which alters pack structure but does not reduce population viability or their ability to reproduce (Brainerd *et al.* 2008, p. 89) or produce dispersers (Jimenez *et al.* 2011, p. 1).

Wolf packs frequently have high rates of natural turnover (Mech 2007, p. 1482) and quickly adapt to changes in pack social structure (Brainerd *et al.* 2008, p. 89). Higher rates of human-caused mortality outside protected areas will result in different wolf pack size and structure than in protected areas. However, wolf populations in many parts of the world, including most of North America, experience various levels of human-caused mortality and the associated disruption in natural processes and wolf social structure, without ever being threatened (Boitani 2003, pp. 322–323). Therefore, while human-caused mortality may alter pack structure, we have no evidence that indicates this issue is a significant concern for wolf conservation.

Since 1987, we have removed more than 1,000 problem wolves in the NRM region and have monitored the effect of removing breeding adults and other pack members on wolf pack structure and subsequent breeding. Those effects were minor and would certainly not affect wolf population recovery (Brainerd *et al.* 2008, p. 89). Although defense of property laws in Wyoming are similar to current nonessential experimental regulations, human-caused mortality may increase slightly after delisting. In addition, regulated hunting will be allowed, which will increase wolf mortality rates. History has proven that adequate wolf reproduction and survival can occur to sustain wolf populations, despite prolonged periods of high rates of human-caused mortality (Bointani 2003, pp. 322–323). The Wyoming wolf population will be managed so that human-caused mortality will not threaten the population.

Conclusion (Including Cumulative Impacts)

According to 50 CFR 424.11(d), we may delist a species if the best available scientific and commercial data indicate that: (1) The species is extinct; (2) the species is recovered and is no longer endangered or threatened; or (3) if the original scientific data used at the time the species was classified were in error. The second criterion (*i.e.,* the species has recovered and is no longer endangered or threatened) applies for wolves in Wyoming.

Wolves in Wyoming and across the NRM DPS are recovered. All prongs of the recovery criteria are satisfied. The numeric and distributional components of the overarching recovery goal have been exceeded for 11 consecutive years. Furthermore, Montana, Idaho, and Wyoming have each individually met or exceeded the minimum per-State recovery targets every year since at least 2002, and met or exceeded the step-down management goals every year since at least 2004. Each of the recovery areas (which were originally used to measure progress towards recovery) has been documented at or above 10 breeding pairs and 100 wolves every year since 2005 (and probably exceeded these levels every year since 2002) (Service *et al.* 2011, Table 4). Finally, the available evidence demonstrates the NRM gray wolf population is functioning as a metapopulation with gene flow between subpopulations. Thus, we consider the population recovered.

Still, however, before we can delist, we must consider the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting. Under section 3 of the Act, a species is ''endangered'' if it is in danger of extinction throughout all or a significant portion of its range and is ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. In considering what factors might constitute ''threats,'' we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. The information must include evidence sufficient to suggest that the potential threat is likely to materialize and that it has the capacity (*i.e.,* it should be of sufficient magnitude and extent) to affect the species' status such that it meets the definition of endangered or threatened under the Act.

Most of the factors evaluated above in the ''Summary of Factors Affecting the Species'' are not expected to meaningfully impact the wolf population in Wyoming, the GYA, or the NRM region. As long as populations are maintained above minimal recovery levels, wolf biology (namely the species' reproductive capacity) and the availability of large, secure blocks of suitable habitat will maintain strong source populations capable of withstanding all other foreseeable threats. In terms of habitat, the amount and distribution of suitable habitat in public ownership provides, and will continue to provide, large core areas that contain high-quality habitat of sufficient size to anchor a recovered wolf population. Our analysis of land-

use practices shows these areas will maintain their suitability well into the foreseeable future. While disease and parasites can temporarily impact population stability, as long as populations are managed above recovery levels, these factors are not likely to threaten the wolf population at any point in the foreseeable future. Natural predation is also likely to remain an insignificant factor in population dynamics into the foreseeable future. Additionally, we conclude that other natural or manmade factors like public attitudes towards wolves, climate change, catastrophic events, and impacts to wolf pack social structure are unlikely to threaten the wolf population within the foreseeable future. While poisoning is a potentially significant factor in the maintenance of the wolf population, no poisons can be legally used to poison wolves in the United States and we do not foresee or anticipate a change in poison regulation that would allow more widespread wolf poisoning.

Human-caused mortality is the most significant issue to the long-term conservation status of the wolf population in Wyoming, the GYA, and the entire NRM DPS. Therefore, managing this source of mortality (*i.e.,* overutilization for commercial and recreational purposes as well as human-caused predation) remains the primary challenge to maintaining a recovered wolf population into the foreseeable future. Fortunately, wolf populations have an ample natural resiliency to high levels of human-caused mortality, if population levels and controllable sources of mortality are adequately regulated. For example, in 2009, more than 600 NRM wolves died from all sources of mortality (agency control including defense of property, regulated harvest, illegal and accidental killing, and natural causes), and the population still grew by almost 5 percent. From 1995 to 2008, the NRM wolf population grew by an average of about 20 percent annually, even in the face of an average annual human-caused mortality rate of 23 percent (Smith *et al.* 2010, p. 620). Overall, wolf populations can maintain themselves despite sustained human-caused mortality rates of 22 to greater than 50 percent (Keith 1983; Ballard *et al.* 1987; Fuller 1989; Fuller *et al.* 2003, pp. 182–184; Creel and Rotella 2010). Mortality rates and population growth rates reported from 2007 to 2010 indicate that the wolf population in Wyoming outside YNP can sustain, on average, a 36 percent mortality rate from human causes (WGFC 2011, p. 12). Furthermore, after severe declines, wolf populations can more than double in just 2 years if mortality is reduced; in the NRM DPS, increases of nearly 100 percent per year have been documented in low-density suitable habitat (Fuller *et al.* 2003, pp. 181–183; Service *et al.* 2011, Table 4).

Human-caused mortality can include both controllable sources and sources of mortality that will be difficult to limit. Controllable sources of mortality are discretionary and can be limited by the managing agency. They include permitted take in chronic depredating areas, sport hunting, and agency action to address impacts to ungulates. Sources of mortality that will be difficult to limit, or may be uncontrollable, occur regardless of population levels and include things like defense of property mortality, illegal take, accidental mortality (such as vehicle collisions), and mortality in the predator area of Wyoming.

The original recovery goal called for a three-part metapopulation of at least 30 breeding pairs and at least 300 wolves equitably distributed between Montana, Idaho, and Wyoming. We have determined that Wyoming's share of this recovery goal will be satisfied by Wyoming's commitment to maintain at least 10 breeding pairs and at least 100 wolves in areas primarily within the State's jurisdiction. All sources of mortality will be considered in management decisions to ensure the management objectives are met. Furthermore, Wyoming intends to maintain an adequate buffer above minimum population objectives to accommodate management needs and ensure uncontrollable sources of mortality do not drop the population below this minimum population level. Thus, in most years, the minimum recovery goal for the State of Wyoming will be exceeded in areas under Wyoming's jurisdiction alone, allowing YNP and the Wind River Indian Reservation to provide an additional buffer above the minimum recovery target. Additionally, Wyoming is planning a gradual population reduction to ensure population targets are not compromised while the State gathers information on the vulnerability of wolves under a State management regime. This graduated approach to population reductions and long-term stabilization of the population, with an adequate buffer above minimum population targets, provides us with confidence that the population in areas under State jurisdiction will be maintained at-or-above 10 breeding pairs, and at-or-above 100 wolves.

All three States within the NRM DPS are required to manage comfortably above the minimum recovery level of at least 10 breeding pairs and at least 100 wolves. In Montana and Idaho, we required the Statewide population level to be managed at least 50 percent above this target. Because Wyoming, unlike Montana and Idaho, has a large portion of its wolf population in areas outside the State's control (*e.g.,* YNP and the Wind River Indian Reservation), we developed an alternative approach to achieve the desired safety margin above the minimum recovery goal. Specifically, the wolf populations in YNP and the Wind River Indian Reservation will provide the remaining buffer above the minimum recovery goal intended by the step-down management objective employed in Montana and Idaho (*i.e.,* population targets 50 percent above minimum recovery levels). From 2001 to the end of 2010, the wolf population in YNP ranged from 96 to 171 wolves, and between 6 to 16 breeding pairs, with an average of 9.8 breeding pairs. However, recent population levels may be higher than the long-term carrying capacity of YNP, as the park predicts their wolf numbers may decline further and settle into a lower equilibrium long term (Smith 2010, pers. comm.). Regardless, YNP will always represent a large core refugium that contains a substantial number of overwintering wild ungulates and few livestock with low levels of human-caused mortality. These factors guarantee that the area will remain a secure stronghold for the Wyoming wolf population. Thus, YNP will always provide a large, secure wolf population providing a safety margin above the minimum recovery goal.

The Wind River Indian Reservation will further buffer the population, although the area's contribution to recovery levels has always been, and is likely to remain, very modest. The Wind River Indian Reservation typically contains a small number of wolves (single digits), which sometimes form packs that count toward Tribal population totals. None of these packs have ever met the breeding pair definition.

In total, Wyoming wolves will be permanently managed as game animals or protected (*e.g.,* in National Parks) in about 40,000 km^2 (15,400 mi^2) in the northwestern portion of the State (15.7 percent of Wyoming), including YNP, Grand Teton National Park, John D. Rockefeller Memorial Parkway, adjacent U.S. Forest Service-designated Wilderness Areas, adjacent public and private lands, the National Elk Refuge, and the Wind River Indian Reservation (Lickfett 2011, in litt.). This area (see Figure 1) includes: 100 percent of the

portion of the GYA recovery area within Wyoming (Service 1987, Figure 2); approximately 79 percent of the Wyoming portion of the primary analysis area that the 1994 reintroduction EIS focused on (Service 1994, Figure 1.1); the entire home range for 24 of 27 breeding pairs in Wyoming and 24 of 34 packs in the State (Service *et al.* 2011, Figure 3); and approximately 76 percent of the State's suitable habitat (including 81 percent of the high-quality habitat (greater than 0.8) and 62 percent of the medium-high-quality habitat (0.5–0.799) (Oakleaf 2011, in litt.)). Although wolves will not persist in the predator area, these protected and managed portions of Wyoming are of sufficient size to support a recovered wolf population in Wyoming.

Genetic diversity is not a wolf conservation issue in the NRM DPS at this time because the NRM wolves are as genetically diverse as the vast, secure, healthy, contiguous, and connected populations in Canada. However, the GYA is the most isolated core recovery area within the NRM DPS. Thus, the States have agreed to monitor for natural genetic connectivity, modify management as necessary to facilitate natural connectivity, and, if necessary, implement a human-assisted migration program to achieve at least one effective migrant per generation. These factors, and wolves' natural dispersal and reproductive capacity, ensures the GYA wolf population will not be threatened by low genetic diversity in the foreseeable future.

Further buffering the genetic and general health of the GYA population is the fact that we expect the GYA population will be managed for a long-term average of around 300 wolves across portions of Montana, Idaho, and Wyoming. This total will be subdivided across the GYA, including sizable populations in YNP, portions of Wyoming under State jurisdiction, and portions of the GYA in Montana and Idaho. This added representation, resiliency, and redundancy across the entire GYA provides further assurance that this wolf population will not become threatened again within the foreseeable future.

We considered all potential threats, including all sources of mortality, currently facing the species and those reasonably likely to affect the species in the foreseeable future throughout Wyoming and the GYA. Collectively, the available information indicates that the Wyoming wolf population, in addition to the GYA wolf population, is recovered, is likely to remain recovered, and is unlikely to again become threatened with extinction within the foreseeable future. Thus, in accordance with 50 CFR 424.11(d), we propose to delist wolves in Wyoming. This rulemaking is separate and independent from, but additive to, the previous action delisting of wolves in the remainder of the NRM DPS (all of Idaho, all of Montana, eastern Oregon, eastern Washington, and north-central Utah) (74 FR 15123, April 2, 2009; 76 FR 25590, May 5, 2011).

This proposed rule is premised on agreed upon and anticipated changes to Wyoming State law and WGFC regulations necessary to implement the Wyoming wolf management plan. We expect these statutory and regulatory changes will be made within the next several months. Depending on the exact nature of the changes, we may need to reopen the comment period to provide the public an opportunity to review and comment once these changes are finalized. Should Wyoming fail to make the changes necessary to support a recovered wolf population, delisting will not occur and this proposal will be withdrawn.

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us to implement a system in cooperation with the States, to monitor for at least 5 years the status of all species that have recovered and been removed from the Lists of Endangered and Threatened Wildlife and Plants (50 CFR 17.11 and 17.12). The primary goal of post-delisting monitoring is to ensure that the recovered species does not deteriorate, and if an unanticipated decline is detected, to take measures to halt the decline to avoid relisting the species as threatened or endangered. If relisting is ever warranted, as directed by section 4(g)(2) of the Act, we will make prompt use of the Act's emergency listing provisions if we determine the wolf faces a significant risk to its well-being.

Wolves have been monitored in the NRM DPS for over 20 years. The NRM region was intensively monitored for wolves even before wolves were documented in Montana in the mid-1980s (Weaver 1978; Ream and Mattson 1982, pp. 379–381; Kaminski and Hansen 1984, p. v). Numerous Federal, State, and Tribal agencies, universities, and special interest groups assisted in those various efforts. Since 1979, wolves have been monitored using standard techniques including collecting, evaluating, and following up on suspected observations of wolves or wolf signs by natural resource agencies or the public; howling or snow tracking surveys conducted by the Service, cooperators, volunteers, and interested special interest groups; and by capturing, radio-collaring, and monitoring wolves. We only consider wolves and wolf packs as confirmed when Federal, State, or Tribal agency verification is made by field staff that can reliably identify wolves and wolf signs.

At the end of the year, we compile agency-confirmed wolf observations to estimate the number and location of adult wolves and pups that were likely alive on December 31 of that year. These data are then summarized by packs to indicate overall population size, composition, and distribution. This level of wildlife monitoring is intensive and provides relatively accurate estimates of wolf population distribution and structure (Service *et al.* 2011, Table 1–4, Figure 1–4). The USFWS Annual Reports have documented all aspects of the wolf management program including staffing and funding, legal issues, population monitoring, control to reduce livestock and pet damage, research (predator-prey interactions, livestock/wolf conflict prevention, disease and health monitoring, publications, etc.) and public outreach.

Post-delisting, Wyoming will likewise monitor and report on wolf populations. The WGFD will monitor breeding pairs and total number of wolves in Wyoming in order to document their number, distribution, reproduction, and mortality (WGFC 2011, pp. 17–21). The WGFD will be responsible for monitoring these parameters in areas under State jurisdiction. The Shoshone and Arapahoe Tribal Fish and Game Department and the Service's Lander Fish and Wildlife Conservation Office will continue to monitor wolves on the Wind River Indian Reservation; the National Park Service will continue to monitor wolves inside YNP and Grand Teton National Park; and the Service will continue to monitor wolves on the National Elk Refuge (Shoshone and Arapahoe Tribal Fish and Game Department 2007, p. 9; WGFC 2011, pp. 17–21). These agencies have agreed to share information regarding the status of wolves within their respective jurisdictions in Wyoming (WGFC 2011, pp. 17–21). These agencies will continue to use the monitoring techniques and strategies that have been used to estimate the NRM wolf population for more than 20 years. We fully recognize and anticipate that monitoring techniques may change through time as new knowledge becomes available and as the parties responsible for monitoring gain additional experience at wolf management and conservation. For

example, we anticipate parties responsible for monitoring may use other survey methods and data that are biologically equivalent to the breeding pair definition (Mitchell *et al.* 2008, entire). Information from the Service, the National Park Service, the Wind River Indian Reservation, and the State of Wyoming will be published by WGFD in an annual wolf report. Similar reports have been published annually since 1989 by the Service and our partners (Service *et al.* 1989–2008).

For the post-delisting monitoring period, the best source of that information will be the State's annual report or other wolf reports and publications. We intend to post those annual State wolf reports on our Web site (*http://www.fws.gov/mountain-prairie/species/mammals/wolf/*) by approximately April 1 of each following year. We also intend to annually publish an assessment of the status of the wolf population in the NRM DPS during the post-delisting monitoring period. This assessment will consider the numbers of packs, breeding pairs, and total numbers of wolves in mid-winter by State and by recovery area as well as any changes in threats. This information will inform whether a formal status review is necessary.

Specifically, the following scenarios will lead us to initiate a formal status review to determine if relisting is warranted:

(1) If the wolf population falls below the minimum recovery level of 10 breeding pairs and 100 wolves in Wyoming statewide (including YNP and the Wind River Indian Reservation) at the end of any one year;

(2) If the wolf population segment in Wyoming in areas under the State's jurisdiction (*i.e.,* excluding YNP and the Wind River Indian Reservation) falls below 10 breeding pairs or 100 wolves at the end of the year for 3 consecutive years;

(3) If the wolf population in Wyoming falls below 15 breeding pairs or 150 wolves, including YNP and the Wind River Indian Reservation, for 3 consecutive years; or

(4) If a change in State law or management objectives would significantly increase the threat to the wolf population.

Status review or relisting decisions will be based on the best scientific and commercial data available. If a formal status review is triggered during the post-delisting monitoring period by these triggers or the triggers noted for the remainder of the DPS in our 2009 delisting rule (74 FR 15123, April 2, 2009), the review will evaluate the status of the entire NRM DPS to determine if relisting is warranted. In the unlikely event such a review is ever necessary, the review would attempt to identify why a particular area is not meeting its population objectives. For example, if the wolf population in Wyoming falls below 15 breeding pairs or 150 wolves including YNP and the Wind River Indian Reservation for 3 consecutive years when the Wyoming wolf population under State jurisdiction is at least 10 breeding pairs and 100 wolves, the status review would focus on factors impacting wolves in YNP and the Wind River Indian Reservation. Adaptive management strategies may be recommended in this review, but Wyoming would not be required to contribute more than 10 breeding pairs and 100 wolves outside YNP and the Wind River Indian Reservation.

All such reviews will be made available for public review and comment, including peer review by select species experts. If relisting is ever warranted, as directed by section 4(g)(2) of the Act, we will make prompt use of the Act's emergency listing provisions if necessary to prevent a significant risk to the well-being of the NRM DPS. Additionally, if any of these scenarios occur during the mandatory post-delisting monitoring period of at least 5-years, the post-delisting monitoring period will be extended 5 additional years from that point.

Effects of the Proposed Rule

This proposal, if made final, would remove the protections of the Act for all gray wolves in Wyoming. This rulemaking is separate and independent from, but additive to, the previous action delisting wolves in the remainder of the NRM DPS (all of Idaho, all of Montana, eastern Oregon, eastern Washington, and north-central Utah) (74 FR 15123, April 2, 2009; 76 FR 25590, May 5, 2011). Additionally, this proposal, if made final, would remove the special regulations under section 10(j) of the Act designating Wyoming as a nonessential experimental population area for gray wolves. These regulations currently are found at 50 CFR 17.84(i) and 17.84(n).

The Service is also proposing actions for wolves in the eastern United States that are separate from this proposed rulemaking. For more information on those actions, please see our **Federal Register** publications of May 5, 2011 (76 FR 26086) and August 26, 2011 (76 FR 53379). Both today's proposed rule and the eastern United States proposed rule would, if finalized, amend the listing for ''Wolf, gray'' under ''MAMMALS'' in the List of Endangered and Threatened Wildlife. The remaining protections of the gray wolf under the Act do not extend to gray wolf-dog hybrids.

Required Determinations

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 **ADDRESSES**. To better help us revise the proposed rule, your comments should be as specific as possible. For example, you should tell us the specific 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.

Paperwork Reduction Act

The OMB regulations at 5 CFR part 1320 implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The OMB regulations at 5 CFR 1320.3(c) define a collection of information as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, 10 or more persons. Furthermore, 5 CFR 1320.3(c)(4) specifies that ''ten or more persons'' refers to the persons to whom a collection of information is addressed by the agency within any 12-month period. For purposes of this definition, employees of the Federal Government are not included. We may not conduct or sponsor and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

This rule does not contain any collections of information that require approval by OMB under the Paperwork Reduction Act. As proposed under the Post-Delisting Monitoring section above, gray wolves in Wyoming will be monitored by Wyoming Game and Fish Department, Sovereign Tribal Nations in Wyoming, the National Park Service, and the Service. We do not anticipate a need to request data or other information from 10 or more persons during any 12-month period to satisfy monitoring information needs. If it becomes necessary to collect information from 10 or more non-Federal individuals, groups, or

organizations per year, we will first obtain information collection approval from the OMB.

National Environmental Policy Act

We have determined that an Environmental Assessment or an Environmental Impact Statement, as defined under the authority of the NEPA of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), Executive Order 13175, and 512 DM 2, we intend to coordinate this rulemaking with the affected Tribes (Eastern Shoshone and Northern Arapahoe Tribes). We will endeavor to consult with Native American tribes and Native American organizations in order to both (1) Provide them with a complete understanding of the proposed changes, and (2) understand their concerns with those changes. We intend to fully consider their comments during the development of a final rule. If requested, we will conduct additional consultations with Native American tribes and multitribal organizations subsequent to a final rule in order to facilitate the transition to State and tribal management of gray wolves within Wyoming.

References Cited

A complete list of references cited is available: (1) On the Internet at *http://www.regulations.gov* or *http://www.fws.gov/mountain-prairie/species/mammals/wolf/* or (2) upon request from the Denver Regional Office, Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT** above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

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 further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 76 FR 53379, August 26, 2011, as follows:

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.

§ 17.11 [Amended]

2. Amend § 17.11(h) by revising the entries for ''Wolf, gray'' under MAMMALS in the List of Endangered and Threatened Wildlife as follows:

a. Remove the words ''TX, and WY'' from the first entry and add in their place the words ''and TX''; and

b. Remove the last entry, ''Wolf, gray [Northern Rocky Mountain DPS],'' in its entirety.

§ 17.84 [Amended]

3. Amend § 17.84 by removing and reserving both paragraphs pertaining to ''Gray wolf (*Canis lupus*)'': (i) and (n).

Dated: September 23, 2011.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–25359 Filed 10–4–11; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List 29 Mollusk Species as Threatened or Endangered With Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2011–0076; MO–92210–0–0008]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List 29 Mollusk Species as Threatened or Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service announce a 90-day finding on a petition to list 29 mollusk species and subspecies as threatened or endangered, under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing 26 of the 29 species and subspecies may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the 26 species and subspecies to determine if listing any of them is warranted. To ensure that the status review is comprehensive, we are requesting scientific and commercial data and other information regarding these 26 species and subspecies. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in the Act.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before December 5, 2011. After this date, you must submit information directly to the Field Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we may not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for docket [Docket No. FWS–R8–ES–2011–0076] and then follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, *Attn:* [Docket No. FWS–R8–ES–2011–0076]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all information received on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Solicited section below for more details).

FOR FURTHER INFORMATION CONTACT: Listing Coordinator, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825; telephone 916–414–6600; or facsimile 916–414–6712. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

When we make a finding that a petition presents substantial information indicating that listing a species or subspecies may be warranted, we are required to promptly review the status of the species or subspecies (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the 26 petitioned species and subspecies of mollusk for which we find substantial information herein to indicate that listing as threatened or endangered may be warranted. We request such information from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1) The species' or subspecies' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy (especially reasons why they should or should not be considered listable entities under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) (see Listable Entity Evaluation, below);

(c) Historical and current range including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The factors that are the basis for making a listing determination for a species or subspecies under section 4(a) of the Act, which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

Please include sufficient information with your submission (such as full references) to allow us to verify any scientific or commercial information you include.

If, after the status review, we determine that listing any of the 26 species and subspecies of mollusk is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act), as per section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species or subspecies. Therefore, within each of the geographical ranges currently occupied by the 26 species and subspecies of mollusk, we also request data and information on:

(1) What may constitute ''physical or biological features essential to the conservation of the species;''

(2) Where these features are currently found; and

(3) Whether any of these features may require special management considerations or protection.

In addition, we request data and information on ''specific areas outside the geographical area occupied by the species'' that are ''essential to the conservation of the species.'' Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public

review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we received and used in preparing this finding is available for you to review at *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

Petition History

On March 17, 2008, we received a petition (dated March 13, 2008) from five conservation organizations: The Center for Biological Diversity (CBD), Conservation Northwest, the Environmental Protection Information Center, the Klamath-Siskiyou Wildlands Center, and Oregon Wild. The petition asked us to list 32 species and subspecies of snails and slugs (mollusks) in the Pacific Northwest as threatened or endangered under the Act. Additionally, the petition requested that we designate critical habitat concurrent with listing. The petition clearly identified itself as a petition and included the requisite identification information for the petitioners, as required by 50 CFR 424.14(a). In a June 27, 2008, letter to the petitioners, we responded that we had reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the species as per section 4(b)(7) of the Act was not warranted. We also stated that we could not address their petition at that time due to court orders and judicially approved settlement agreements for other listing and critical habitat determinations under the Act that required nearly all of our listing and critical habitat funding for fiscal year 2008.

On April 13, 2009, we received a signed e-mail from CBD providing updated taxonomic information regarding some of the 32 petitioned mollusk species (Curry 2009, pp. 1–2). The e-mail indicated that two of those species had been formally described (see Listable Entity Evaluation, below), two others had been combined into a single species that had been formally described, and that three additional petitioned species had been combined into a single species that had been formally described. The e-mail provided a citation to the article making these taxonomic changes, and asked us to consider the revised species for listing as threatened or endangered under the Act. We treated this e-mail as an amendment to the original petition. Therefore, the amended petition asks us to list 29 species and subspecies of mollusks.

Overview of the 29 Mollusk Species and Subspecies

The 29 species and subspecies of mollusk included in the petition are endemic (native and restricted) to the Pacific Northwest, occurring in western Washington, Oregon, and Northern California. Fourteen of the petitioned species and subspecies are aquatic and 15 are terrestrial (13 land snails and 2 slugs). They exist primarily in small, isolated populations, all of which are protected under the Northwest Forest Plan's Survey and Manage Program. Fourteen of the species and subspecies are known from 10 or fewer sites.

Listable Entity Evaluation

Section 3(16) of the Act defines the term ''species'' to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' Entities that meet the Act's definition of a ''species'' can be considered for listing under the Act and are, therefore, referred to as ''listable entities.'' Listable entities can then be listed if they are determined to meet the definition of an endangered species or a threatened species. The petitioner requested that we list 29 species and subspecies of mollusk (the ''petitioned mollusks''); 15 of which have been formally described as species, 4 formally described as subspecies, and 10 that have not been formally described.

Prior to making a determination of whether the petition presents substantial information to indicate whether listing may be warranted, we must address the question of whether the petition presents substantial information to indicate whether the petitioned mollusks are listable entities. Nineteen of the 29 petitioned mollusks are listable entities because they are formally described as species or subspecies in recognized scientific journals. We may also consider some or all of the remaining 10 petitioned mollusks to be listable entities if information submitted with the petition or in our files indicates that treatment of these mollusks as listable entities may be warranted.

The petition cited several documents from Federal agencies demonstrating a long history of treating these 10 petitioned mollusks as species (Burke *et al.* 1999, Sect. 12, pp. 1–16; Burke *et al.* 1999, Sect. 15, pp. 1–10; Furnish and Monthey 1999, Sect. 2, pp. 2–10; Furnish and Monthey 1999, Sect. 4, pp. 3–15; Furnish and Monthey 1999, Sect. 5, pp. 1–8; Duncan 2005b, pp. 3–15; Duncan 2005c, pp. 1–19; Duncan 2005e, pp. 3–9; USDA and USDI 2007, pp. 92–94, 250, 251, 257–259, 263, 264, 266–269). The documents describe each of these 10 mollusks and their habitats. The documents also include formal reviews of management actions taken by the agencies, and their impacts on these 10 mollusks (as well as on the 19 formally described mollusks). Based on our review of the information in the petition, we conclude the reports present a clear indication that each of these 10 petitioned mollusks has been treated as a species by Federal land management agencies, even without formal description and recognition as a species. Accordingly, we find that the petition presents substantial information indicating that the 10 petitioned mollusks that have not yet been formally described may be species as defined by the Act and may thus be listable entities. Therefore, in addition to the 19 formally described species and subspecies, we consider whether the petition presents scientific or commercial information to indicate whether listing any of the 10 petitioned mollusks that have not yet been formally described may be warranted.

This finding addresses 29 mollusk species and subspecies, as identified in the table below.

LIST OF 29 SPECIES AND SUBSPECIES INCLUDED IN THIS FINDING

Common name	Scientific name	Formally described?	Finding: substantial information?
Basalt juga	*Juga n. sp. 2*	No	Yes.
Big Bar hesperian	*Vespericola pressleyi*	Yes	Yes.
Canary duskysnail	*Colligyrus convexus*	Yes	Yes.
Chelan mountainsnail	*Oreohelix n. sp. 1*	No	Yes.
Cinnamon juga	*Juga n. sp. 3*	No	Yes.
Columbia duskysnail	*Lyogyrus n. sp. 1*	No	Yes.
Columbia Oregonian	*Cryptomastix hendersoni*	Yes	Yes.
Crater Lake tightcoil	*Pristiloma arcticum crateris*	Yes	No.
Dalles sideband	*Monadenia fidelis minor*	Yes	Yes.
Diminutive pebblesnail	*Fluminicola n. sp. 3*	No	Yes.
Evening fieldslug	*Deroceras hesperium*	Yes	Yes.
Goose Valley pebblesnail	*Fluminicola anserinus*	Yes	Yes.
Hat Creek pebblesnail	*Fluminicola umbilicatus*	Yes	Yes.
Hoko vertigo	*Vertigo n. sp. 1*	No	Yes.
Keeled jumping-slug	*Hemphillia burringtoni*	Yes	Yes.
Knobby rams-horn	*Vorticifex n. sp. 1*	No	Yes.
Masked duskysnail	*Lyogyrus n. sp. 2*	No	Yes.
Nerite pebblesnail	*Fluminicola n. sp. 11*	No	Yes.
Nugget pebblesnail	*Fluminicola seminalis*	Yes	Yes.
Potem Creek pebblesnail	*Fluminicola potemicus*	Yes	Yes.
Puget Oregonian	*Cryptomastix devia*	Yes	Yes.
Shasta chaparral	*Trilobopsis roperi*	Yes	Yes.
Shasta hesperian	*Vespericola shasta*	Yes	Yes.
Shasta pebblesnail	*Flumenicola multifarius*	Yes	Yes.
Shasta sideband	*Monadenia troglodytes troglodytes*	Yes	Yes.
Siskiyou sideband	*Monadenia chaceana*	Yes	No.
Tall pebblesnail	*Fluminicola n. sp. 2*	No	Yes.
Tehama chaparral	*Trilobopsis tehamana*	Yes	No.
Wintu sideband	*Monadenia troglodytes wintu*	Yes	Yes.

The Survey and Manage Program and Special Status Species Programs

All of the petitioned mollusks are protected on Federal lands by the Northwest Forest Plan's (NWFP's) Survey and Manage Program (U.S. Department of Agriculture (USDA) and U.S. Department of the Interior (USDI) 2007, pp. 92–94, 249–269). The Survey and Manage Program was developed because of concerns that the NWFP would not adequately protect many species that were rare, isolated, or rare and isolated, and that could be impacted by forest management practices. The program was also developed to address concerns that additional management measures would be required to conserve the species (USDA and USDI 2001, p. 7). The program requires pre-disturbance surveys and mitigation, strategic surveys, management, and an annual species review (USDA and USDI 1994, p. 9; Olson *et al.* 2007, pp. iii, 1, 2). The Survey and Manage Program has not been managed continuously since 2001 due to a number of lawsuits and a 2007 decision to discontinue the program (USDA and USDI 2007, pp. xi, xii, xx). However, as result of a challenge to the 2007 decision, a settlement agreement was finalized in July 2011 that reinstated the Survey and Manage Program as it had been implemented in 2001 (*Conservation Northwest* v. *Rey,* 2009, Case No. C–08–1067–JCC (W.D. Wash.)). Many of the petition's claims, particularly as they relate to Factor D (existing regulatory mechanisms), are related to the status of the Survey and Management Program, which had been discontinued at the time of the petition.

Many of the petitioned species are recognized as sensitive species or as special status species by the U.S. Forest Service (USFS) and Bureau of Land Management (BLM), respectively (USDA and USDI 2007, pp. 25, 92–94). We refer to these programs collectively as special status species programs. The goal of these programs is to avoid the need to list a given species under the Endangered Species Act, but we do not have information in our files to show exactly what this may entail with regard to any of the petitioned mollusks addressed by a special status species program. Inclusion or removal of individual species and subspecies in the special status species program is left to the discretion of the agency's regional decision makers (USDA and USDI 2007, pp. 25, 65).

The Aquatic Conservation Strategy (ACS) is a habitat management program established under the Northwest Forest Plan for protecting aquatic and riparian habitat on Federal land (USDA and USDI 1994, pp. 9, 10; CBD *et al.* 2008, p. 32). The ACS includes four components: Riparian reserves, key watersheds, watershed analysis, and watershed restoration. Riparian reserves are comprised of aquatic features and their protected riparian buffers. Buffers differ in size, dependent on the type of aquatic habitat. Under the ACS, Federal land managers establish requirements for timber management, road building, grazing, and recreation management within established riparian reserves. The strategy identifies key watersheds to be managed for at risk salmonids, or where high water quality is considered important. Information for managing reserves and key watersheds is obtained and updated through systematic procedures of watershed analysis, and that information may also be used for watershed restoration (USDA and USDI 1994, pp. 9, 10).

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or a threatened species due to one or more of the five factors described in section

4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

In making this 90-day finding, we evaluated whether information regarding threats to each of the petitioned mollusks, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. With one exception, all potential threats addressed in our analyses were alleged in the petition. The exception is the potential impact of plans to raise the Shasta Dam on the Shasta sideband, Shasta chaparral and Wintu sideband; we addressed this potential threat based on information in our files. All supporting documents used were either cited in the petition or in our files. Substantial information need only be found for one of the five factors described in section 4(a)(1) of the Act to reach a ''substantial'' finding for a given petitioned mollusk. As discussed above, we will conduct a 12-month review of petitioned mollusks for which a ''substantial'' finding is reached, and during that review we will consider all available information relating to all five factors. We ask that information relating to any of the five factors be submitted per the instructions listed above in the Information Solicited section, regardless of whether a substantial finding was determined for that factor.

Basalt juga (*Juga (Oreobasis) n. sp. 2*)

The basalt juga is believed to be limited to springs in the central and eastern Columbia River Gorge in Oregon and Washington (Duncan 2005b, pp. 9–10). It has 28 known occurrences and has been documented on the Gifford-Pinchot and Mount Hood National Forests, in the Columbia River Gorge National Scenic Area, and on private land. Duncan (2005b, p. 8) reported it to be sensitive to water pollution, low oxygen, increased water temperatures, and sedimentation. Population numbers are declining according to Frest and Johannes (1995a, p. 179).

Factor A: The petition asserts that the basalt juga is threatened by highway and railway development, logging, grazing, and water diversions (CBD *et al.* 2008, p. 55). Information cited by the petition supports these claims with regard to water diversions, and notes that some of those diversions are for purposes of grazing and logging (Oregon Natural Heritage Information Center (ORNHIC) 2004a, p. 2). The immediacy of the primary threat (water diversions) is considered ''moderate,'' which means the threat is likely to be operating within 2 to 5 years of the ORNHIC publication in 2004 (Master *et al.* 2002, pp. 14, 15, ORNHIC 2004a, p. 2). The cited source also mentions past impacts from road construction, logging and grazing, but does not indicate the extent to which these pose present threats. The petition notes, however, that documents obtained through the Freedom of Information Act (FOIA) indicate that the species was detected at four timber sales and three road maintenance projects (CBD *et al.* 2008, p. 55). Impacts to springs in the Columbia Gorge due to diversions, highway construction, and logging are common on both private and public lands, and likely to continue (Frest and Johannes 1995a, p. 185).

Consequently, based on our evaluation of the information presented in the petition and in our files, we determined the petition presents substantial information to indicate that listing the basalt juga may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factors B and C: The petition did not present any information, nor do we have any information in our files, to indicate that these factors may pose a threat to the species.

Factor D: The petition asserts that basalt juga is threatened by inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy. The basalt juga is currently considered a special status species (USDA and USDI 2007, p. 93). As a special status species, the basalt juga should receive special management consideration on Federal lands; however, maintenance of special species status is left to the discretion of the Federal land managers. As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented.

Factor E: The petition asserts that basalt juga is threatened by climate change (CDB *et al.* 2008, pp. 26, 27). The petition and our files contain information indicating that climate change is expected to cause significant reductions in both the volume and persistence of winter snowpack throughout the western United States (Knowles *et al.* 2006, p. 4545). Such reductions have already been documented in the Columbia Gorge (Knowles *et al.* 2006, pp. 4545, 4546; ISAB 2007, p. 12). This trend is expected to continue, thereby further reducing summer water availability (Field *et al.* 2007, pp. 620, 627; ISAB 2007, p. 15). Such a reduction in available surface water may result in increased water diversions from groundwater and springs, but the extent to which springs supporting the basalt juga may be affected by potential increased water diversions is unclear. Reduced snow runoff and lower flow levels may result in water temperature increases (Field *et al.* 2007, p. 620; ISAB 2007, p. 16). Potential water temperature increases may be deleterious to the basalt juga, but the extent to which springs supporting the basalt juga may be affected by temperature increases is unclear, and this will likely depend on the size and depth of groundwater reservoirs, and on the flow rates of both groundwater and surface water into spring pools. However, watersheds fed by very large and deep groundwater systems are relatively uncommon in the Columbia Basin (ISAB 2007, p. 32). The basalt juga is dependent on cold, highly oxygenated water (Duncan 2005b, p. 11), so temperature increases could be deleterious.

The petition and our files also contain information indicating that climate change is also expected to further increase the frequency and intensity of wildfires in the Columbia Basin (ISAB 2007, p. 22; CDB *et al.* 2008, pp. 27, 28). Wildfire affected much of the basalt juga's range in 1993 (Frest and Johannes 1995a, p. 179; Duncan 2005b, p. 12; CDB *et al.* 2008, p. 55). The removal of cover plants by wildfires can reduce shading and increase soil erosion, thereby increasing water temperatures and sedimentation in springs occupied by the species.

Basalt juga Summary: Based on our evaluation of the information presented in the petition and in our files, we have determined that substantial information exists to indicate that listing the basalt juga may be warranted due to the present or threatened destruction, modification or curtailment of its habitat or range (Factor A) resulting from water pollution and diversions. Because we have found that the petition presents substantial information indicating that listing the basalt juga may be warranted, we are initiating a status review to determine whether listing under the Act is warranted.

Big Bar Hesperian (*Vespericola pressleyi*)

The Big Bar hesperian is a terrestrial snail known from 27 locations in the Trinity National Forest, in Trinity County, California (Burke *et al.* 1999, Sect. 16 p. 1; USDA and USDI 2007, p. 93). It is an old-growth and riparian associate according to Frest and Johannes (1993, p. 40) and it is known to inhabit forests of conifer and hardwood trees in permanently damp or moist areas within 200 meters (m) (656 feet (ft)) of seeps, springs, and stable streams (Kelley *et al.* 1999, p. 73).

Factor A: The petition asserts that the Big Bar hesperian is threatened by habitat alteration due to grazing and logging (CBD *et al.* 2008, p. 69). Information cited in the petition (Burke *et al.* 1999, Sect. 16, pp. 1, 6) indicates that overgrazing may adversely impact the species due to the potential for trampling and the removal of vegetation necessary for food, shade, and subsurface dampness. However, neither the petition nor our files contained any information about the presence of grazing activities within the species' habitat that would allow us to assess the likelihood of these types of impacts occurring. Burke *et al.* (1999, p. 6) also indicate that removal of trees or downed wood, such as through logging activities, may adversely affect the species due to increased sun and wind exposure with resulting soil moisture losses. Information cited in the petition indicated that habitat loss is occurring now and affecting the majority of the species (Master *et al.* 2002, pp. 14, 15; ORNHIC 2004b, p. 2).

Therefore, based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the Big Bar hesperian may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factors B and C: The petition did not present any information, nor do we have any information in our files, to indicate that these factors may pose a threat to the species.

Factor D: The petition asserts that Big Bar hesperian is threatened by inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy. The Big Bar hesparian is currently considered a special status species (USDA and USDI 2007, p. 93). As a special status species, the Big Bar hesperian should receive special management consideration on Federal lands; however, maintenance of special species status is left to the discretion of the Federal land managers. As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented.

Factor E: The petition asserts that Big Bar hesperian is threatened by fire, pesticide application, recreation, and invasive species (CBD *et al.* 2008, pp. 26, 69). The petition notes that part of the snail's habitat was destroyed by fire in 2001 (CBD *et al.* 2008, p. 69; USFWS 2001, p. 2). Additional information cited by the petition indicates that pesticides, recreational activities involving motor vehicles, and invasive species may negatively impact some populations, but the source does not provide clear information regarding the extent of these activities in the species' range (Burke *et al.* 1999, Sect. 16, pp. 1, 6).

The petition asserts that climate change could adversely affect the Big Bar hesperian (CBD *et al.* 2008, p. 26). Information in our files indicates that climate change is causing earlier melting and significant reductions in snowpack throughout the western United States, including northern California (Kapnick and Hall 2010, pp. 3446, 3448). The consequent lengthening of summer drought and associated increases in mean annual air temperature are positively correlated with increased tree mortality rates in old-growth forests, including forests in northern California (Van Mantgem *et al.* 2009, pp. 522, 523). Continuation of these trends could potentially result in loss of the damp forest conditions required by the Big Bar hesperian (Burke *et al.* 1999, Sect. 16, pp. 5, 6); however, the exact extent of these potential changes upon the species is unknown.

Big Bar hesperian Summary: Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the Big Bar hesperian may be warranted due to the present or threatened destruction, modification or curtailment of its habitat or range (Factor A) resulting from grazing and logging activities. Because we have found that the petition presents substantial information indicating that listing the Big Bar hesparian may be warranted, we are initiating a status review to determine whether listing under the Act is warranted.

Canary Duskysnail (*Colligyrus convexus*) (previously referred to as *Lyogyrus* n. sp. 3)

The canary duskysnail is an aquatic snail known from one (USDA and USDI 2007, p. 260) to seven sites (Hershler *et al.* 2003, p. 284) in the Pit River drainage in Shasta County, California. Of five population sites listed in the California Natural Diversity Database (CNDDB), one is located in the Lassen National Forest and another is in McArthur-Burney Falls State Park (CNDDB 2008, pp. 2, 5). Others are on private land. Because the CNDDB (2008, pp. 2, 5) and Hershler *et al.* (2008, p. 284) provide maps of known sites, and because Hershler *et al.* (2008) is published by a peer-reviewed journal, we consider these sources to more accurately reflect the actual number of sites occupied by the canary duskysnail. The canary duskysnail is known to inhabit cold, clear, well-oxygenated, unpolluted water (Frest and Johannes 1995b, p. 3; Furnish and Monthey 1999, Sect. 4, p. 8).

Factor A: The petition asserts that the canary duskysnail's habitat has been severely degraded by human activities, including mining, logging, grazing, chemical pollution, road and railroad construction, and water diversions (CBD *et al.* 2008, p. 38). The petition also asserts that dams, diversions, and spring developments have caused historical habitat loss and these activities continue to threaten the species. The petition cites the BLM's management recommendations for this species, which indicate that the species is directly threatened by grazing and road and railroad construction (both of which cause water pollution and excessive sedimentation), and water diversions, which lower water levels and decrease available habitat (Furnish and Monthey 1999, Sect. 4, p. 14). The Pit River is listed on the State of California's list of water quality limited segments because of organic enrichment and high nutrient levels from grazing and agriculture (California Environmental Protection Agency (CEPA) 2002, p. 143), so water pollution may constitute a threat. In their 2004 publication, the Oregon Natural Heritage Information Center concluded that threats to the canary duskysnail are moderate to severe, and imminent (ORNHIC 2004a, p. 2).

The petition also alleges that the canary duskysnail faces threats from mining, logging, chemical pollution, dams, spring and recreational development activities (CBD *et al.* 2008, p. 38). Many of these are mentioned in the BLM's management recommendations (Furnish and

Monthey 1999, Sect. 4, p. 13), but that document implies that these are practices that have negatively impacted habitats of several mollusk species in the Pit River in the past, and does not identify the activities as current threats. The document lists threats specifically applicable to the canary duskysnail as grazing, spring diversions, and road and railroad construction (Furnish and Monthey 1999, Sect. 4, p. 14). Additionally, the petition claims that recent proposals for relicensing hydroelectric developments on the Pit River pose imminent threats to existing populations, but we were unable to confirm that claim based on a review of the Final Environmental Impact Statement (FERC 2004a, pp. xvi–xviii).

Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the canary duskysnail may be warranted due to the present or threatened destruction, modification or curtailment of its habitat or range.

Factors B and C: The petition did not present any information, nor do we have any information in our files, to indicate that these factors may pose a threat to the species.

Factor D: The petition asserts that Canary duskysnail is threatened by inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy. The Canary duskysnail is not currently considered a special status species (USDA and USDI 2007, p. 93). As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented.

Factor E: The petition asserts that climate change is a threat to the canary duskysnail (CBD *et al.* 2008, pp. 26, 27). Information in our files indicates that climate change is causing significant reductions in both the volume and persistence of winter snowpack throughout the western United States, including northern California (Knowles *et al.* 2006, pp. 4545, 4546; Kapnick and Hall 2010, pp. 3446, 3454). The reduction and earlier melting of the snowpack is likely to continue, and this may result in a reduction in the amount of water that is available during summer months (Kapnick and Hall 2010, pp. 3446, 3454). Such a reduction in available surface water may result in increased water diversions from groundwater and springs, but the extent to which springs supporting the canary duskysnail may be affected by potential increased water diversions is unclear. Reduced snow runoff and lower flow levels may also result in water temperature increases (Field *et al.* 2007, pp. 620, 629). Although potential water temperature increases could negatively impact the canary duskysnail, this species occurs in large, cold, perennial springs, and the extent to which the springs that support the canary duskysnail may be affected by this potential threat is unclear.

The petition also states that those petitioned species existing only in small, isolated colonies are threatened by increased vulnerabilities of small, isolated populations to extinction from limited gene flow and stochastic (chance) events (CBD *et al.* 2008, pp. 28, 29). The petition provided no information, and we do not have information in our files regarding the size of most local populations of this species, which would affect their susceptibility to inbreeding depression. We also do not have information regarding the likelihood of damaging stochastic events capable of threatening the species. The petition does not provide any information regarding the potential threat from isolation and limited distribution, and we do not consider isolation and limited distribution, in and of itself, to be a threat to the canary duskysnail.

Canary duskysnail Summary: Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the canary duskysnail may be warranted due to the present or threatened destruction, modification or curtailment of its habitat or range (Factor A) resulting from railroad and road construction, grazing, water diversions and water pollution. Because we have found that the petition presents substantial information indicating that listing the canary duskysnail may be warranted, we are initiating a status review to determine whether listing under the Act is warranted.

Chelan Mountainsnail (*Oreohelix n. sp. 1*)

The Chelan mountainsnail is a terrestrial snail known from at least 104 sites in or near the Wenatchee National Forest in Chelan County, Washington (USDA and USDI 2007, pp. 93, 263, 264). Eighty-six of those known sites are on Federal land. The Chelan mountainsnail is known to inhabit grassy underbrush in, or adjacent to, arid transition forests of Douglas-fir or ponderosa pine, often in depressions that allow slightly more moisture accumulation than surrounding areas (Burke *et al.* 1999, Sect. 12, pp. 8, 9; Duncan 2005c, pp. 1, 9). The species is sometimes found in association with schist talus (broken rock), according to Frest and Johannes (1995a, p. 113).

The number of known occupied sites for this species has increased significantly in recent years. In 1995 the species was known from only a single location (Frest and Johannes 1995a, p. 113). In 1999, 14 sites were known, 7 of which had been destroyed by fire (Burke *et al.* 1999, Sect. 12, p. 6; ORNHIC 2004b, p. 1). By 2005, 97 sites had been identified (Duncan 2005c, p. 9), and by 2007 104 sites were known (USDA and USDI 2007, p. 93). Information in our files indicates that approximately 150 occupied sites were found during Forest Service surveys in 1999 and 2000 (Murphy 2000, p. 2), but it is not clear how many of these new sites, if any, are accounted for in the 104 sites that were generally known in 2007 (USDA and USDI 2007, p. 93). It also is not clear how many of the sites found by Murphy were occupied at the time by live snails (Murphy 2000, p. 2; Tarr 2010, p. 2).

In sites containing live snails, the number of individuals appears to be low. Duncan (2005c, p. 12) reported that most sites known in 2005 contained only 1 individual, although a survey of 18 plots in the vicinity of an unreported number of previously documented sites found a total of 186 snails, thereby ''suggesting that local populations may be somewhat more numerous than previously expected.''

Factor A: The petition asserts that timber harvest is a threat to this species (CBD *et al.* 2008, p. 64). Logging may negatively impact this species by causing soil compaction and microhabitat alteration and large machinery used for logging can also directly crush individual snails (Duncan 2005c, p. 10). Frest and Johannes (1995a, p. 113) indicate that logging has occurred and is likely to continue throughout most of this species' potential range. According to the petition, National Forest Survey and Manage documents indicate that the Chelan mountainsnail was detected at a timber sale and at a thinning and prescribed burning project (CBD *et al.* 2008, p. 64). The prescribed burn presumably occurred on the Wenatchee National Forest in 2005 (Duncan 2005c, p. 12). The species appears to prefer areas with a somewhat more open canopy, thereby allowing for a more lush grass understory (Duncan 2005c, p.

11), so it is not clear that tree removal, in and of itself, would pose a threat.

The petition also states that ingrowth of understory vegetation may constitute a threat by reducing habitat quality and increasing the risk of wildfire (CBD *et al.* 2008, p. 63). Although Duncan (2005c, p. 14) supports this claim, she does not explain how such ingrowth would reduce habitat quality, nor does the author indicate whether such ingrowth is currently occurring or is likely to occur across the snail's range. We address the risk of fire below under *Factor E.*

Information in our files supports claims by the petitioner that heavy grazing may negatively impact the species by compacting soils and removing the snail's grassy underbrush habitat (Duncan 2005c, p. 14). According to Frest and Johannes (1995a, p. 113) grazing has occurred and is likely to continue to occur throughout most of the species' range. Road building and talus removal associated with road building and maintenance have impacted at least one occupied site by removing suitable habitat. These activities had been ongoing for several years in the early 1990s (Frest and Johannes 1995a, p. 113), and may reasonably be expected to continue in the future (Duncan 2005c, p. 10). We therefore determine there is substantial information in the petition and in our files to indicate that grazing and road building and maintenance activities may be threats to the Chelan mountainsnail, such that listing may be warranted.

Factors B and C: The petition did not present any information, nor do we have any information in our files, to indicate that these factors may pose a threat to the species.

Factor D: The petition asserts that Chelan mountainsnail is threatened by inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy. The Chelan mountainsnail is currently considered a special status species (USDA and USDI 2007, p. 93). As a special status species, the Chelan mountainsnail should receive special management consideration on Federal lands; however, maintenance of special species status is left to the discretion of the Federal land managers. As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented.

Factor E: The petition asserts that high-intensity fire is a threat to this species, because the species is adapted to the historical low-intensity seasonal fire regime, but not to modern fires (CBD *et al.* 2008, p. 63). The likelihood of high-intensity fire in the future may be heightened by climate change (Westerling *et al.* 2006, pp. 940, 941). High-intensity fire may negatively impact this species by removing habitat, directly killing individual snails, and isolating remaining populations (Duncan 2005c, p. 14). The Tyee Fire of 1994 destroyed seven occupied sites, which as of 2005, were still not known to have been recolonized (Duncan 2005c, p. 9).

We do not have information in our files to indicate that the effects of climate change may pose a threat to the Chelan mountainsnail in other ways, since it is already adapted to relatively arid habitats (Duncan 2005c, p. 11).

The petition lists recreational activities such as off-road vehicle use as a threat (CBD *et al.* 2008, p. 64), but we have no information in our files to indicate that such activities are occurring or are likely to occur within the range of the Chelan mountainsnail to an extent that they may pose a threat to the species.

The petition also indicates that the Chelan mountainsnail may be threatened by limited gene flow (inbreeding depression) and stochastic (chance) events (CBD *et al.* 2008, pp. 28, 29). We consider the potential threat from chance events to be low because the Chelan mountainsnail is now known from approximately 100 sites (USDA and USDI 2007, p. 93), and approximately 150 additional sites may have been located (Murphy 2000, p. 2). Although population numbers at each site appear to be low (Duncan 2005c, p. 12) (which would tend to increase the possibility of inbreeding depression) (Lande 1999, pp. 11, 12), the petition does not provide any information regarding the potential threat from isolation and limited distribution, and we do not consider isolation and limited distribution, in and of itself, to constitute a threat to the Chelan mountainsnail.

Chelan mountainsnail Summary: Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the Chelan mountainsnail may be warranted due to the present or threatened destruction, modification or curtailment of its habitat or range (Factor A) resulting from logging, grazing, and road building and maintenance activities. We are initiating a status review to determine whether listing under the Act is warranted.

Cinnamon Juga (*Juga n. sp. 3*)

The cinnamon juga is an aquatic snail known from four (USDA and USDI 2007, p. 93) to eight sites (Frest and Johannes 1999, p. 90) in the Shasta Springs complex (a network of hydrologically connected springs), on the upper Sacramento River, Siskiyou County, California. None of the sites are on Federal land (USDA and USDI 2007, p. 258). It is believed to be restricted to large, cold, perennial springs with sand-cobble or basalt bedrock substrate (Furnish and Monthey 1999, Sect. 2, p. 5). There is one record of an occurrence in the Sacramento River itself, but this apparently involved a subaqueous spring (Frest and Johannes 1999, p. 90). The species is dependent on high levels of dissolved oxygen, and is sensitive to pollution, elevated temperatures, and sedimentation, according to Furnish and Monthey (1999, Sect. 2, p. 5).

Factor A: The petition asserts that the species may be threatened by water diversions, grazing, and water pollution (CBD *et al.* 2008, p. 55). Information cited by the petition and in our files indicates that diversions may adversely impact the species by removing habitat and reducing water flow (Frest and Johannes 1999, p. 90; Furnish and Monthey 1999, Sect. 2, p. 7; USDA and USDI 2007, p. 258). Our information also indicates that grazing may pose a threat by polluting water, increasing siltation, and raising water temperatures (Furnish and Monthey 1999, Sect. 2, p. 7; USDA and USDI 2007, p. 258). Additionally, logging may pose a threat to the species by increasing siltation in occupied habitat (Furnish and Monthey 1999, Sect. 2, p. 7), and groundwater withdrawal has caused the extinction or local extirpation of ecologically similar species by lowering water tables (USDA and USDI 2007, p. 258).

The petition also asserts that development may be a threat to the cinnamon juga, and notes that occupied springs have been negatively impacted by railroad construction (CBD *et al.* 2008, p. 56). The petition did not provide information and we did not find information in our files indicating that development is likely to impact the cinnamon juga. We did not find information to indicate how past impacts from railroad development represent a present or continuing threat, except as discussed below under Factor E with regard to road and trackside spraying, and catastrophic chance events.

Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the cinnamon juga may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factors B and C: The petition did not present any information, nor do we have any information in our files, to indicate that these factors may pose a threat to the species.

Factor D: The petition asserts that cinnamon juga is threatened by inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy (CBD *et al.* 2008 p. 29). The cinnamon juga is not currently considered by the USFS or BLM to be a special status species (USDA and USDI 2007, pp. 93, 258). It is also unlikely to receive significant protection from the Aquatic Conservation Strategy (ACS), since the ACS only applies to Federal lands (USDA and USDI 1994, p. 9; CBD *et al.* 2008, p. 32), and the cinnamon juga is not known to occur on such lands (USDA and USDI 2007, p. 258). As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented.

Factor E: The petition asserts that climate change is a threat to the cinnamon juga (CBD *et al.* 2008, p. 26). Climate change is causing significant reductions in both the volume and persistence of winter snowpack throughout the western United States, including northern California (Knowles *et al.* 2006, pp. 4545, 4546; Kapnick and Hall 2010, pp. 3446, 3454). The reduction and earlier melting of snowpack is likely to continue, and this may result in a reduction in the amount of water that is available during summer months (Kapnick and Hall 2010, pp. 3446, 3454). Such a reduction in available surface water may also result in increased water diversions from groundwater and springs, but the extent to which springs supporting the cinnamon juga may be affected by potential increased water diversions is unclear. Reduced snow runoff and lower flow levels may also result in water temperature increases (Field *et al.* 2007, pp. 620, 629). Although potential water temperature increases could negatively impact the cinnamon juga, this species occurs in large, cold, perennial springs, and the extent to which the springs that support the cinnamon juga may be affected by this potential threat is unclear.

The restriction of the cinnamon juga to only eight known sites in the same general area leaves it potentially susceptible to catastrophic chance events, such as the 1991 train derailment and subsequent spill of the herbicide metam sodium into the nearby upper Sacramento River at Cantara Bend (Furnish and Monthey 1999, Sect. 2, p. 8). Runoff from normally scheduled road and trackside herbicide spraying may also impact the species (Frest and Johannes 1999, p. 90).

Although the petition states that ''recreation'' may also constitute a threat (CBD *et al.* 2008, p. 56) we found no supporting information in the petition or our files to indicate which recreational activities might be involved, or how they might pose a threat to the species.

Cinnamon juga Summary: Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the cinnamon juga may be warranted due to the present or threatened destruction, modification or curtailment of its habitat or range (Factor A) resulting from water diversion and groundwater withdrawal, grazing, and logging activities. We are initiating a status review to determine whether listing under the Act is warranted.

Columbia Duskysnail (*Lyogyrus n. sp. 1*)

The Columbia duskysnail is an aquatic snail known from 64 sites in the central and eastern Columbia Gorge in Multnomah, Clackamas and Hood River Counties, Oregon, and Klickitat and Skamania Counties, Washington (Frest and Johannes 1999, p. 70; Duncan 2005b, p. 9; USDA and USDI 2007, p. 93). Fifty-two of the sites are on Federal land (USDA and USDI 2007, p. 93). It is believed to be restricted to soft-bottomed, slow-flowing areas of cold, well oxygenated springs and spring-influenced streams tributary to the Columbia River (Duncan 2005b, p. 10). The Columbia duskysnail often occurs in very small springs, according to Frest and Johannes (1995a, p. 185). All *Lyogyrus* species are believed to be intolerant of oxygen deficits, elevated water temperatures, and sedimentation (Duncan 2005b, pp. 10, 11).

Factor A: The petition asserts that this species may be threatened by water diversions, road and railroad construction, and logging (CBD *et al.* 2008, p. 57). Information cited by the petition and in our files indicates that diversions may adversely affect the species by removing and disturbing habitat; road construction and maintenance may disrupt flows and produce sediment; and logging may increase soil erosion and decrease shading (Frest and Johannes 1995a, p. 185; Furnish and Monthey 1999, Sect. 4, pp. 13, 14; Duncan 2005b, pp. 11, 12). Such modifications are relatively common in the Columbia Gorge, and because they leave less undisturbed habitat in small springs (such as those preferred by the Columbia duskysnail) their relative ecological impacts tend to be larger (Frest and Johannes 1995a, p. 185). The petitioners state that this snail was detected at 15 timber sales and 7 road maintenance projects (CBD *et al.* 2008, p. 57). Three of the timber sales included specified mitigation measures to protect the species.

The petition also alleges that there are threats from dams and grazing (CBD *et al.* 2008, p. 57), but we did not find information in the petition or our files to indicate that these activities constitute continuing threats.

Based on our evaluation of the information presented in the petition and in our files, we determined the petition presents substantial information to indicate that listing the Columbia duskysnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factors B and C: The petition did not present any information, nor do we have any information in our files, to indicate that these factors may pose a threat to the species.

Factor D: The petition asserts that Columbia duskysnail is threatened by inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy. The Columbia duskysnail is currently considered a special status species (USDA and USDI 2007, p. 93). As a special status species, the Columbia duskysnail should receive special management consideration on Federal lands; however, maintenance of special species status is left to the discretion of the Federal land managers. As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented.

Factor E: The petition asserts that climate change is a threat to the Columbia duskysnail (CBD *et al.* 2008,

p. 26). Climate change is causing significant reductions in both the volume and persistence of winter snowpack throughout the western United States, including northern California (Knowles *et al.* 2006, pp. 4545, 4546; Kapnick and Hall 2010, pp. 3446, 3454). The reduction and earlier melting of the snowpack is likely to continue, and this may result in a reduction in the amount of water that is available during summer months (Kapnick and Hall 2010, pp. 3446, 3454). Such a reduction in available surface water may result in increased water diversions from groundwater and springs, but the extent to which springs supporting the Columbia duskysnail may be affected by potential increased water diversions is unclear. Reduced snow runoff and lower flow levels may also result in water temperature increases (Field *et al.* 2007, pp. 620, 629). Although potential water temperature increases could negatively impact the Columbia duskysnail, the extent to which the springs that support the Columbia duskysnail may be affected by this potential threat is unclear.

Climate change is also expected to further increase the frequency and intensity of wildfires in the Columbia Basin (ISAB 2007, p. 22). Removal of cover plants by a wildfire could threaten the Columbia duskysnail by reducing shading and increasing soil erosion, thereby increasing water temperatures and sedimentation in springs occupied by the species. A conservation assessment for the Columbia duskysnail commissioned by the USFS and BLM lists ''fires'' as a threat (Duncan 2005b, p. 12).

The same conservation assessment lists ''recreation'' as a threat (Duncan 2005b, p. 12), but does not elaborate on the specific activities referred to or how they may threaten the species. The petition also states that recreation is a threat, and claims that the Columbia duskysnail was detected at two recreational projects (CBD *et al.* 2008, p. 57).

The petition also states generally that the species is threatened by ''spraying'' (presumably of pesticides) and by the vulnerability of small isolated populations to inbreeding depression and deleterious chance events (CBD *et al.* 2008, pp. 28, 29, 57). We did not find information to indicate that pesticide spraying occurs in the vicinity of the Columbia duskysnail at levels that may threaten the species. We also did not find information to indicate that Columbia duskysnail populations are so small and isolated that inbreeding depression or stochastic events may threaten the species.

Columbia duskysnail Summary: Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the Columbia duskysnail may be warranted due to the present or threatened destruction, modification or curtailment of its habitat or range (Factor A) resulting from water diversions, road construction and maintenance, and logging activities. We are initiating a status review to determine whether listing under the Act is warranted.

Columbia Oregonian (*Cryptomastix hendersoni*)

The Columbia Oregonian is a terrestrial snail known from 22 to 45 sites (Duncan 2005d, pp. 6, 7; USDA and USDI 2007, p. 92). Seventeen or 18 locations are on Federal land, in the Mount Hood National Forest, Clackamas County, Oregon (Duncan 2005d, p. 7; USDA and USDI 2007, p. 92). The remaining locations are in the vicinity of the Columbia River in Wasco and Sherman Counties, Oregon, and in Klickitat County, Washington (Duncan 2005d, p. 6). The snail is believed to inhabit the semiarid habitat along the Columbia River by inhabiting moist microclimates along the margins of streams, seeps, and springs (Kelley *et al.* 1999, p. 9; Duncan 2005d, p. 7). In the Mount Hood National Forest, the Columbia Oregonian is known to occur in moist areas under closed canopy forests of western hemlock (Burke *et al.* 1999, Sect. 2, p. 7). Its population trends (numbers of both sites and individuals) are downward, according to ORNHC (2004c, p. 2).

Factor A: The petition asserts that the Columbia Oregonian is threatened by habitat loss due to development, logging, grazing, and agriculture, as well as by water pollution, diversions, and impoundments (CBD *et al.* 2008, p. 41). Information cited by the petition and in our files indicates that Columbia Oregonian populations near the Columbia River may be threatened by loss of habitat and groundwater withdrawals due to urban development, and by loss of perennial flow of nearby springs and streams due to agricultural diversions and impoundments (Frest and Johannes 1995a, p. 89; Duncan 2005d, p. 9). Information presented in the petition also indicates that grazing may threaten these populations, due to impacts from trampling and pollution (Frest and Johannes 1995a, p. 89; Duncan 2005d, p. 9). Additionally, information presented in the petition indicates that populations on Mount Hood may be threatened by loss of woody debris and removal of tree canopy due to logging (Duncan 2005d, p. 9), which may reduce the suitability of microclimate habitat. Therefore, we have determined that the petition presents substantial information to indicate that listing the Columbia Oregonian may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factors B and C: The petition did not present any information, nor do we have any information in our files, to indicate that these factors may pose a threat to the species.

Factor D: The petition asserts that Columbia Oregonian is threatened by inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy (CBD *et al.* 2008, p. 26). The Columbia Oregonian is currently considered a special status species (USDA and USDI 2007, p. 93). As a special status species, the Columbian Oregonian should receive special management consideration on Federal lands; however, maintenance of special species status is left to the discretion of the Federal land managers. As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented.

Factor E: The petition asserts that the Columbia Oregonian is threatened by climate change, fire, roadside spraying of pesticides, invasive species, and recreation (CBD *et al.* 2008, pp. 26, 41). The petition and our files contain information indicating that climate change could cause significant reductions in both the volume and persistence of winter snowpack throughout the western United States (Knowles *et al.* 2006, p. 4545). Such reductions have already been documented in the Columbia Gorge and in the vicinity of Mt. Hood (Knowles *et al.* 2006, pp. 4545, 4546). The reduction and earlier melting of the snowpack is likely to continue, and this may result in earlier and more severe drying of soils (Westerling *et al.* 2006, p. 942). Because this species requires moist microclimates (Duncan 2005d, p. 7), a reduction in soil moisture could threaten the species.

Climate change is also expected to further increase the frequency and intensity of wildfires in the Columbia Basin (ISAB 2007, p. 22). Large fires

may pose a threat to the species by directly killing snails and degrading useable habitat (Duncan 2005d, p. 9). Modern fires can effectively sterilize large areas of snails (Frest and Johannes 1995a, p. 55). For example, major brush fires impacted known occupied sites in 1994 (Frest and Johannes 1995a, p. 89).

Water pollution from roadside herbicide spraying may also threaten the species, which is dependent on clean water from seeps, springs, and streams to maintain moist microhabitats (Frest and Johannes 1995a, p. 89; Duncan 2005d, pp. 3, 7, 9).

The petition states that ''recreation'' threatens the species, but does not specify the type of recreation or the nature of the threat (CBD *et al.* 2008, p. 41). Two documents cited by the petition are used to support the petition's claim, but they fail to specify the nature of the recreation or threat (Frest and Johannes 1995a, p. 89; Duncan 2005d, p. 9). We do not have information in our files to indicate that recreational activities pose a threat to the species.

The petition also states that the Columbia Oregonian is threatened by nonnative species (CBD *et al.* 2008, p. 41). Burke *et al.* (1999, Sect. 2, p. 8) notes that ''[n]onnative plants and animals may be a threat and should be managed when a need is identified,'' but does not otherwise indicate that nonnative plants or animals are currently affecting the persistence or survival of the Columbia Oregonian in any of its known locations. We do not have information in our files to indicate that nonnative species may be a threat to the Columbia Oregonian.

Columbia Oregonian Summary: Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the Columbia Oregonian may be warranted due to the present or threatened destruction, modification or curtailment of its habitat or range (Factor A) resulting from water diversions and impoundments, as well as to groundwater withdrawals, grazing and logging activities. We are initiating a status review to determine whether listing under the Act is warranted.

Crater Lake Tightcoil (*Pristiloma arcticum crateris*)

The Crater Lake tightcoil is small terrestrial snail known from 209 sites in the Oregon Cascades (USDA and USDI 2007, p. 93). All occupied sites occur on Federal land, including Crater Lake National Park, and the Umpqua, Winema, Deschutes, and Mount Hood National Forests (Kelley *et al.* 1999, p. 57; Duncan 2004, pp. 7, 9). The Crater Lake tightcoil has been found in wetland areas in perennially moist forested areas; often in non-acidic fens or sedge habitats near open water (Duncan 2004, pp. 7, 8). This subspecies has been found at elevations ranging from 838 to 1,950 m (2,750 to 6,400 ft) (Duncan 2004, p. 8). Sites are generally in areas that experience snow cover for long periods (Duncan 2004, p. 8).

Factor A: The petition states that habitat-based threats to the Crater Lake tightcoil include water diversions from meadow habitats, logging, grazing, heavy equipment operation, and ''construction'' (presumably of roads) (CBD *et al.* 2008, p. 65). The petition cites three supporting documents, but two of them (Frest and Johannes 2000, p. 226; and Burke *et al.* 1999, Sect. 13, p. 1) were written when the subspecies was only known from three to eight sites. The third document cited by the petition, a conservation assessment (Duncan 2004, pp. 9), indicates that 160 occupied sites were known at the time, but its summary of threats is nearly identical (with minor changes) to the threats description of Burke *et al.* (1999, Sect. 13, p. 1). The preface of Duncan 2004 (p. 3) indicates that the purpose of that document was to convert management recommendations originally made for the Survey and Manage Program (such as those produced by Burke *et al.* (1999)) into conservation assessments fitted to the Special Status/Sensitive Species Program (SSSP). There is no indication that the hundreds of newly documented occupied locations of the subspecies were taken into account when repeating the threats assessment of Burke *et al.* (1999, Sect. 13, p. 1) in the 2004 conservation assessment (Duncan 2004, p. 4).

Two years after the completion of Duncan's (2004) report, 49 additional occupied sites were identified (USDA and USDI 2007, p. 264). The new occurrences increased the known number of occupied sites by 25 percent, and also expanded the known distribution, indicating that the subspecies straddles the Cascade Mountains with a relatively continuous distribution. The following year (2007), the environmental impact statement for the removal of the Survey and Manage program concluded that there is sufficient habitat to support stable populations of this species in the area covered by the Northwest Forest Plan, in the absence of both Survey and Manage and Special Species Status programs (USDA and USDI 2007, pp. xiv, 93, 264) (see Factor D, below). We have no additional information to indicate that there may be habitat-related threats across the now-larger known range of this species.

Factors B and C: The petition did not present any information, nor do we have any information in our files, to indicate that these factors may pose a threat to the species.

Factor D: The petition asserts that Crater Lake tightcoil is threatened by inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy. This mollusk is currently considered a special status species (USDA and USDI 2007, p. 93). As a special status species, the Crater Lake tightcoil should receive special management consideration on Federal lands; however, maintenance of special species status is left to the discretion of the Federal land managers. As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented.

The petition also states that this mollusk is threatened by the Western Oregon Plan Revision (WOPR), a set of revisions to the Northwest Forest Plan proposed for BLM lands in western Oregon (CBD *et al.* 2008, p. 34). However, the BLM withdrew this proposal in 2009 (USDA 2009, p. 1). We are unaware of any plans to reinstate the WOPR, therefore we do not have information to assess if or how the WOPR may impact the species.

Factor E: The petition asserts that climate change is a threat to the Crater Lake tightcoil (CBD *et al.* 2008, p. 26). The petition and our files contain information indicating that climate change is expected to cause significant reductions in both the volume and persistence of winter snowpack throughout the western United States (Knowles *et al.* 2006, p. 4545). Such reductions have already been documented in the Oregon Cascades (Knowles *et al.* 2006, pp. 4545, 4546). If reduced snowpack results in a reduction of soil moisture, the Crater Lake tightcoil, which requires perennially moist habitat (Duncan 2004, p. 8), could be impacted. However, neither the petition nor our files contain any information about the extent soil drying could occur within the Crater Lake tighcoil's habitat or what impact that drying would have to the species.

The petition states that the Crater Lake tightcoil may be threatened by fire and recreational activities that compact

the substrate, such as snowmobiling and off-road vehicles (CBD *et al.* 2008, pp. 26, 27, 65). However, the subspecies appears well distributed on both sides of the Cascade Mountains (USDA and USDI 2007, p. 264), and is known from over 200 sites. And, any potential threat from recreational activities would likely be dispersed relative to the species' range. While fire and recreational activities could impact individual areas (Burke *et al.* 1999, Sect. 13, p. 1; Duncan 2004, p. 11), we do not have information in our files to indicate that they may pose threats to the subspecies given the high number and wide distribution of known occurrences.

Crater Lake Tightcoil Summary: The reinstatement of the Survey and Manage Program, the withdrawal of the WOPR proposal, and the discovery of over 200 well-distributed additional occupied sites since 2000 (when several of the petition's cited sources were written), have addressed the concerns raised by the petition. Based on our evaluation of the information presented in the petition and in our files, we have determined the petition does not present substantial information to indicate that listing the Crater Lake tightcoil may be warranted.

Dalles Sideband (*Monadenia fidelis minor*)

The Dalles sideband is a small, terrestrial snail known from 98 occupied sites distributed along the Columbia Gorge and Deschutes River in Wasco County, Oregon, and Klickitat County, Washington (Kelly *et al.* 1999, p. 37). Ninety-seven of the occupied sites are on Federal land (USDA and USDI 2007, p. 93). During the summer months, the Dalles sideband is usually found in moist rock talus a short distance from streams or springs, and during the wet seasons it is usually found in moist woody debris or other litter, according to Burke *et al.* (1999, Sect. 9, p. 3).

Factor A: The petition states that the Dalles sideband was detected at six timber sales, a road maintenance project, and a grazing allotment (CBD *et al.* 2008, p. 61). The subspecies is likely to be negatively impacted by activities that decrease moisture within the microhabitats it occupies (Burke *et al.* 1999, Sect. 9, p. 1). Timber, road maintenance, and grazing activities could result in reduced soil moisture due to compaction of soil and removal of vegetation (Burke *et al.* 1999, Sect. 9, pp. 1, 5). We determined the petition presents substantial information to indicate that listing the Dalles sideband may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factor B: The petition states that the Dalles sideband is threatened by overcollection (CBD *et al.* 2008, p. 61). Although Burke *et al.* (1999, Sect. 9, p. 1) does mention overcollection as a potential threat, they do not provide information explaining the nature or extent of collection activities. Currently, 98 occupied sites are known (USDA and USDI 2007, p. 93), as compared to the 15 occupied sites known when the Burke *et al.* (1999, Sect. 9, p. 1) report was published. We do not have information in our files to indicate whether the level of collection activities referenced by Burke *et al.* (1999, Sect. 9, p. 1) may be a threat to the species, given the increased number of known occupied sites.

Factor C: The petition did not present any information, nor do we have any information in our files, to indicate that this factor may pose a threat to the species.

Factor D: The petition asserts that Dalles sideband is threatened by inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy. The Dalles sideband is currently considered a special status species (USDA and USDI 2007, p. 93). As a special status species, this mollusk should receive special management consideration on Federal lands; however, maintenance of special species status is left to the discretion of the Federal land managers. As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented.

Factor E: The petition asserts that climate change is a threat to the Dalles sideband (CBD *et al.* 2008, p. 26). Information cited by the petition and in our files indicates that climate change is expected to cause significant reductions in both the volume and persistence of winter snowpack throughout the western United States (Knowles *et al.* 2006, p. 4545). Such reductions have already been documented in the Oregon Cascades (Knowles *et al.* 2006, pp. 4545, 4546). If reduced snowpack resulted in a reduction of soil moisture, the Dalles sideband could be impacted. However, neither the petition nor our files contain any information about the extent soil drying could occur within the Dalles sideband habitat or what impact that drying would have to the species.

The petition also asserts that the Dalles sideband may be threatened by fire (CBD *et al.* 2008, p. 61). Climate change is expected to further increase the frequency and intensity of wildfires in Oregon, particularly in the Oregon Cascades (Westerling *et al.* 2006, pp. 940, 942). Large fires may pose a threat to the species by directly killing snails and degrading occupied habitat (Duncan 2005a, p. 4).

The petition indicates that the Dalles sideband may be threatened by limited gene flow (inbreeding depression) and stochastic (chance) events (CBD *et al.* 2008, pp. 28, 29). We consider the threat from chance events to be very low because the species is known from 98 locations. The petition does not present any information regarding the level of gene flow, nor do we have any information in our files regarding the level of gene flow between those sites, or the species' susceptibility to inbreeding depression.

The petition also states that the Dalles sideband is threatened by pesticide application and recreation activities (CBD *et al.* 2008, p. 61). Although Burke *et al.* (1999, Sect. 9, p. 1) do mention these activities as potential threats, they do so based on the conclusion that such activities often constitute threats for land snails in general, rather than based on information specific to the Dalles sideband.

Dalles Sideband Summary: Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the Dalles sideband may be warranted due to the present or threatened destruction, modification or curtailment of its habitat or range (Factor A) resulting from timber, road maintenance and grazing activities that may result in reduced soil moisture due to compaction of soil and removal of vegetation. We are initiating a status review to determine whether listing under the Act is warranted.

Diminutive Pebblesnail (*Fluminicola n. sp. 3*)

The diminutive pebblesnail (sometimes referred to as the Klamath Rim pebblesnail (Frest and Johannes 1999, p. 25)) is a small aquatic snail known from six sites in two large spring complexes (Fall Creek and Jenny Creek watersheds) in the middle Klamath River Drainage, in Jackson County, Oregon (Frest and Johannes 2000, p. 267). Three of the six known sites for the diminutive pebblesnail occur on Federal land (USDA and USDI 2007, p. 93). This species is found only in areas of gravel-boulder substrate with very

cold, unpolluted water, according to Frest and Johannes (2000, p. 267).

Factor A: The petition asserts that the diminutive pebblesnail is threatened by logging, grazing, water diversions, water pollution, development, and road construction (CBD *et al.* 2008, p. 44). Information cited by the petition and in our files indicates that the species may be threatened by logging (which can lead to siltation and increased water temperatures), water diversions (which reduce available water and habitat), grazing (which can increase water temperatures, pollute water, and increase siltation), water pollution from agricultural runoff, and road building (which can also produce siltation) (Frest and Johannes 2000, p. 268; ORNHIC 2004d, p. 2; Banish 2010, p. 1). Part of the flow from the spring complexes supporting the diminutive pebblesnail is diverted for the City of Yreka, California, municipal water supply (Frest and Johannes 2000, p. 268). Irrigation diversions are also common, as is grazing on much of the larger Fall Creek and Jenny Creek system. The petition also claims ''development'' is a threat (CBD *et al.* 2008, p. 44), but we do not have information in our files to indicate that development may pose a threat to the species.

We have determined the petition presents substantial information to indicate that listing the diminutive pebblesnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factors B and C: The petition did not present any information, nor do we have any information in our files, to indicate that these factors may pose a threat to the species.

Factor D: The petition asserts that the diminutive pebblesnail is threatened by inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy. This mollusk currently considered a special status species (USDA and USDI 2007, p. 93). As a special status species, the diminutive pebblesnail should receive special management consideration on Federal lands; however, maintenance of special species status is left to the discretion of the Federal land managers. As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented.

The petition also states that this mollusk is threatened by the WOPR, a set of revisions to the Northwest Forest Plan proposed for BLM lands in western Oregon (CBD *et al.* 2008, p. 34). However, the BLM withdrew this proposal in 2009 (USDA 2009, p. 1). We are unaware of any plans to reinstate the WOPR, therefore we do not have information to assess if or how the WOPR may impact the species.

Factor E: The petition asserts that climate change is a threat to the diminutive pebblesnail (CBD *et al.* 2008, p. 26). Climate change is causing significant reductions in both the volume and persistence of winter snowpack throughout the western United States, including northern California (Knowles *et al.* 2006, pp. 4545, 4546; Kapnick and Hall 2010, pp. 3446, 3454). The reduction and earlier melting of the snowpack is likely to continue, and this may result in a reduction in the amount of water that is available during summer months (Kapnick and Hall 2010, pp. 3446, 3454). Reduced snow runoff and lower flow levels may also result in water temperature increases (Field *et al.* 2007, pp. 620, 629). Although potential change in water availability and temperatures could negatively impact mollusks, the extent to which the diminutive pebblesnail may be affected by this potential threat is unclear.

The petition also indicates the diminutive pebblesnail may be threatened by limited gene flow (inbreeding depression) and stochastic (chance) events (CBD *et al.* 2008, pp. 28, 29). Although the petition and our files do not have information regarding the number of diminutive pebblesnail individuals at each occupied site (which would affect the threat of inbreeding depression), the clustering of all known populations in only two spring complexes may leave them vulnerable to any catastrophic events that might affect one or both of those complexes, such as the 1991 herbicide spill at Cantara Bend resulting in the near complete removal of aquatic mollusk populations throughout the upper Sacramento River (Frest and Johannes 1995b, pp. 72, 73).

Diminutive pebblesnail Summary: Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the diminutive pebblesnail may be warranted due to the present or threatened destruction, modification or curtailment of its habitat or range (Factor A) resulting from logging, water diversions, grazing, water pollution from agricultural runoff, and road building. We are initiating a status review to determine whether listing under the Act is warranted.

Evening Fieldslug (*Deroceras hesperium*)

The evening fieldslug is a terrestrial slug (with a small, thin shell) known from 20 sites, 4 of which are believed to be locally extinct, and 14 of which occur on Federal land (Duncan 2005a, p. 9; USDA and USDI 2007, p. 92). Occupied sites are scattered across the Oregon Cascades and northern Coast Range, extending north through western Washington and into Vancouver Island, British Columbia (Duncan 2005a, p. 4, 8). The evening fieldslug typically inhabits low elevation, perennially wet meadows in forested habitats, according to Duncan (2005a, p. 4).

Factor A: The petition asserts that habitat loss is the greatest threat to this species (CBD *et al.* 2008, p. 42). Information cited by the petition and in our files indicates that this species may be threatened by activities that lower the water table or reduce soil moisture, including spring diversions, grazing, and logging (Duncan 2005a, p. 10). Reduced soil moisture can lead to desiccation, which is the primary cause of land snail mortality (Frest and Johannes 1993, p. 3). The petition also claims that natural hydrological changes and ingrowth of woody plants into meadow habitats may threaten the species. Although Duncan (2005c, p. 10) supports this claim, the author does not provide information to indicate how the loss of habitat due to such natural processes may or may not be balanced by creation of new wet-meadow habitat. Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the evening fieldslug may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factor B: The petition did not present any information, nor do we have any information in our files, to indicate that this factor may pose a threat to the species.

Factor C: The petition presents information to indicate that predation may be a threat (CBD *et al.* 2008, p. 43). While Duncan (2005a, p. 4) does state that natural threats may include exposure to predators, the author did not characterize predation as a primary threat, nor did the author provide information to indicate the specific predators involved or the extent of their impact to the species.

Factor D: The petition asserts that evening fieldslug is threatened by

inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy. The mollusk is currently considered a special status species (USDA and USDI 2007, p. 93). As a special status species, the evening fieldslug should receive special management consideration on Federal lands; however, maintenance of special species status is left to the discretion of the Federal land managers. As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented.

The Aquatic Conservation Strategy is unlikely to provide significant protections, because the evening fieldslug is not an aquatic or riparian species (Duncan 2005a, p. 4).

The petition also states that this mollusk is threatened by the WOPR, a set of revisions to the Northwest Forest Plan proposed for BLM lands in western Oregon (CBD *et al.* 2008, p. 34). However, the BLM withdrew this proposal in 2009 (USDA 2009, p. 1). We are unaware of any plans to reinstate the WOPR, therefore we do not have information to assess if or how the WOPR may impact the species.

Factor E: The petition asserts that climate change is a threat to the evening fieldslug (CBD *et al.* 2008, p. 26). Information cited by the petition and in our files indicates that climate change is expected to cause significant reductions in both the volume and persistence of winter snowpack throughout the western United States (Knowles *et al.* 2006, p. 4545). Such reductions have already been documented in the Oregon Cascades (Knowles *et al.* 2006, pp. 4545, 4546). If reduced snowpack resulted in a reduction of soil moisture, the evening fieldslug could be impacted. However, neither the petition nor our files contain any information about the extent soil drying could occur within the evening fieldslug habitat or what impact that drying would have to the species.

The petition states that the evening fieldslug may be threatened by recreation such as off-road vehicle use (CBD *et al.* 2008, p. 43). Although Duncan (2005a, p. 10) supports this claim, we do not have any information in our files to indicate whether off-road vehicle use is occurring at or near enough to occupied sites to pose a threat.

The petition indicates that the evening fieldslug may be threatened by limited gene flow (inbreeding depression) and stochastic (chance) events (CBD *et al.* 2008, pp. 28, 29). We consider the threat from chance events to be low because the occupied locations are so widely scattered. Population size would be a contributing factor to susceptibility of inbreeding depression; however, we do not have any information regarding the size of most local populations.

Evening fieldslug Summary: Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the evening fieldslug may be warranted due to the present or threatened destruction, modification or curtailment of its habitat or range (Factor A) resulting from activities that lower the water table or reduce soil moisture, including spring diversions, grazing, and logging. We are initiating a status review to determine whether listing under the Act is warranted.

Goose Valley Pebblesnail (*Fluminicola anserinus,* Previously *Fluminicola n. sp. 18*)

The Goose Valley pebblesnail is a small aquatic snail known from four sites (three springs and a section of creek) in the lower Pit River drainage, Shasta County, California (Hershler *et al.* 2007, pp. 376, 409, 410; USDA and USDI 2007, p. 92). Two of the four sites appear to be located on Federal land (Shasta National Forest) (Hershler *et al.* 2007, pp. 376, 409), although the environmental impact statement for the removal of the Survey and Manage Program indicates that only one site is on Federal land (USDA and USDI 2007, p. 92). The Goose Valley pebblesnail is believed to be limited to small perennial springs and spring headwaters, and require cold, unpolluted, highly oxygenated water (Furnish and Monthey 1999, Sect. 2, pp. 2, 3, 5, 6).

Factor A: The petition asserts that the Goose Valley pebblesnail is threatened by water diversions, impoundments, spring developments, grazing, and water pollution (CBD *et al.* 2008, p. 50). Information cited by the petition and in our files indicates that water diversions (conducted for irrigation, fish hatcheries, and livestock) pose a potential threat by removing flowing water and thus habitat; whereas impoundments can slow current, thereby increasing water temperature and sedimentation (Hershler *et al.* 2003, p. 277; ORNHIC 2004e, p. 2). Information in our files also indicates that grazing may pose a threat as a result of increased sedimentation, pollution and temperatures caused by livestock use of springs (ORNHIC 2004e, p. 2). Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the Goose Valley pebblesnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factors B and C: The petition did not present any information, nor do we have any information in our files, to indicate that these factors may pose a threat to the species.

Factor D: The petition asserts that Goose Valley pebblesnail is threatened by inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy. The mollusk is currently considered a special status species (USDA and USDI 2007, p. 93). As a special status species, the Goose Valley pebblesnail should receive special management consideration on Federal lands; however, maintenance of special species status is left to the discretion of the Federal land managers. As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented.

The Aquatic Conservation Strategy (ACS) is a set of standards established under the Northwest Forest Plan for protecting aquatic and riparian habitat on Federal land (USDA and USDI 1994, p. 9; CBD *et al.* 2008, p. 32). The ACS includes four components: Riparian reserves, key watersheds, watershed analysis, and watershed restoration. Since the Goose Valley pebblesnail is an aquatic mollusk occurring in part on Federal lands, the ACS may provide some protection from potential threats. Those protections would likely be limited for populations of the Goose Valley pebblesnail occupying private lands, however.

Factor E: The petition asserts that climate change is a threat to the Goose Valley pebblesnail (CBD *et al.* 2008, p. 26). Climate change is causing significant reductions in both the volume and persistence of winter snowpack throughout the western United States, including northern California (Knowles *et al.* 2006, pp. 4545, 4546; Kapnick and Hall 2010, pp. 3446, 3454). The reduction and earlier melting of the snowpack is likely to continue, and this may result in a reduction in the amount of water that is available during summer months

(Kapnick and Hall 2010, pp. 3446, 3454). Such a reduction in available surface water may to result in increased water diversions from groundwater and springs, but the extent to which the Goose Valley pebblesnail may be affected by potential increased water diversions is unclear. Reduced snow runoff and lower flow levels may also result in water temperature increases (Field *et al.* 2007, pp. 620, 629). Although potential water temperature increases could negatively impact the Goose Valley pebblesnail, how the status of the Goose Valley pebblesnail may be affected by this potential threat is unknown.

Because the Goose Valley pebblesnail is known from only four locations, the species may also be threatened by deleterious stochastic (chance) events such as the 1991 spill of the herbicide metam sodium into the nearby upper Sacramento River at Cantara Bend due to a train derailment (Furnish and Monthey 1999, Sect. 2, p. 8). An occupied location on the upper Sacramento River (Frest and Johannes 1995b, pp. 45, D19) was apparently extirpated by the 1991 Cantara Spill (Frest and Johannes 1995b, pp. 72, 73; ORNHIC 2004e, p. 2; Hershler *et al.* 2007, p. 410).

Goose Valley pebblesnail Summary: Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the Goose Valley pebblesnail may be warranted due to the present or threatened destruction, modification or curtailment of its habitat or range (Factor A) resulting from water diversions, impoundments, and grazing activity that can increase water temperatures and sedimentation. We are initiating a status review to determine whether listing under the Act is warranted.

Hat Creek Pebblesnail (*Fluminicola umbilicatus*)

The Hat Creek pebblesnail is a small aquatic snail that was formally named and described in 2007 (Hershler *et al.* 2007, p. 407). This species combines two taxa (groups) of snails that had often previously been treated as separate species, but had never been formally described. Those taxa were the umbilicate pebblesnail (*Fluminicola n. sp. 19*) and the Lost Creek pebblesnail (*Fluminicola n. sp. 20*) (Frest and Johannes 1999, pp. 55, 59), both of which were petitioned for listing (CBD *et al.* 2008, pp. 50, 51). The Hat Creek pebblesnail occurs at three sites near Lost Creek and Hat Creek, in Shasta County, California (ORNHIC 2004f, p. 1; ORNHIC 2004g, p. 1; Hershler *et al.* 2007, p. 410). All three sites appear to be within the Lassen National Forest (ORNHIC 2004f, p. 1; ORNHIC 2004g, p. 1; Hershler *et al.* 2007, p. 407), although a table in the environmental impact statement for the removal of the Survey and Manage Program indicates that none of the locations are on Federal land (USDA and USDI 2007, p. 92). The Hat Creek pebblesnail is believed to occur in cold water springs and spring runs (Frest and Johannes 1995, pp. 56, 60). *Fluminicola* species in general require cold, unpolluted, well-oxygenated water with little sedimentation, according to Furnish and Monthey (1999, Sect. 2, pp. 5, 7).

Factor A: The petition asserts that the Hat Creek pebblesnail may be threatened by water pollution, water diversions, impoundments, spring developments, grazing, logging, mining, and road construction (CBD *et al.* 2008, pp. 50, 51). Information cited by the petition and in our files indicates that water diversions (conducted for irrigation, fish hatcheries, and livestock) may pose a potential threat to the mollusk by removing flowing water, and thus habitat; and that impoundments may pose a threat by increasing water temperature and sedimentation (Hershler *et al.* 2003, p. 277; ORNHIC 2004f, p. 2; ORNHIC 2004g, p. 2). Information in our files also indicates that grazing may pose a threat due to increased sedimentation, pollution, and temperatures caused by livestock use of springs (ORNHIC 2004f, p. 2; ORNHIC 2004g, p. 2). Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the Hat Creek pebblesnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factors B and C: The petition did not present any information, nor do we have any information in our files, to indicate that these factors may pose a threat to the species.

Factor D: The petition asserts that the Hat Creek pebblesnail is threatened by inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy. The Hat Creek pebblesnail is not currently considered a special status species (USDA and USDI 2007, p. 93) and would not receive any special management consideration on Federal lands. As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented.

The Aquatic Conservation Strategy (ACS) is a set of standards established under the Northwest Forest Plan for protecting aquatic and riparian habitat on Federal land (USDA and USDI 1994, p. 9; CBD *et al.* 2008, p. 32). The ACS includes four components: Riparian reserves, key watersheds, watershed analysis, and watershed restoration. Since the Hat Creek pebblesnail is an aquatic mollusk occurring in part on Federal lands, the ACS may provide some protection from potential threats. Those protections would likely be limited for any populations of the Hat Creek pebblesnail occupying private lands, however.

Factor E: The petition asserts that climate change is a threat to the Hat Creek pebblesnail (CBD *et al.* 2008, p. 26). Climate Change is causing significant reductions in both the volume and persistence of winter snowpack throughout the western United States, including northern California (Knowles *et al.* 2006, pp. 4545, 4546; Kapnick and Hall 2010, pp. 3446, 3454). The reduction and earlier melting of the snowpack is likely to continue, and this may result in a reduction in the amount of water that is available during summer months (Kapnick and Hall 2010, pp. 3446, 3454). Such a reduction in available surface water may result in increased water diversions from groundwater and springs, but the extent to which springs supporting the Hat Creek pebblesnail may be affected by potential increased water diversions is unclear. Reduced snow runoff and lower flow levels may also result in water temperature increases (Field *et al.* 2007, pp. 620, 629). Although potential water temperature increases could negatively impact the Hat Creek pebblesnail, the extent to which the springs that support the mollusk may be affected by this potential threat is unclear.

Because only three locations are known to be occupied by the Hat Creek pebblesnail, the species may also be susceptible to stochastic (chance) events such as the 1991 spill of the herbicide metam sodium into the nearby upper Sacramento River at Cantara Bend due to a train derailment (Furnish and Monthey 1999, Sect. 2, p. 8).

Hat Creek pebblesnail Summary: Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the

Hat Creek pebblesnail may be warranted due to the present or threatened destruction, modification or curtailment of its habitat or range (Factor A) resulting from water diversions and impoundments, and grazing. We are initiating a status review to determine whether listing under the Act is warranted.

Hoko Vertigo (*Vertigo n. sp. 1*)

The Hoko vertigo is a small terrestrial snail known from two sites near the Hoko River in Clallam County, Washington (Burke *et al.* 1999, p. 4; USFWS 2009, pp. 3–5). One site is on private commercial timber land, and the other site is on State park land (USFWS 2009, pp. 3–5). The Hoko vertigo typically occurs on the bark of old riparian hardwood trees, particularly alders, according to Burke *et al.* (1999, Sect. 15, pp. 1, 5). A table in the environmental impact statement for the removal of the Survey and Manage program indicates that there is one occupied site for the snail on Federal land (USDA and USDI 2007, p. 93), but this was apparently a mistake, as the discussion of the snail elsewhere in the document indicates that the single known location lies on non-Federal land (USDA and USDI 2007, p. 266).

Factor A: The petition asserts that the Hoko vertigo may be threatened by logging (CBD *et al.* 2008, p. 68). Information cited by the petition and in our files indicates that logging may pose a threat to this species by destroying forest habitat and increasing the exposure of remaining habitat to drier air (Burke *et al.* 1999, Sect. 15, p. 6). Much of the area in the vicinity of the occupied sites has been recently logged (Burke *et al.* 1999, Sect. 15, p. 6). Consequently, based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the Hoko vertigo may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factor B and C: The petition did not present any information, nor do we have any information in our files, to indicate that these factors may pose a threat to the species.

Factor D: The petition asserts that the Hoko vertigo is threatened by inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy. The Hoko vertigo is currently considered a special status species (USDA and USDI 2007, p. 93). As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented. However, the Survey and Manage Program is unlikely to provide significant protection to this species because the Hoko vertigo is not known to occur on Federal lands.

The Aquatic Conservation Strategy (ACS) is a set of standards established under the Northwest Forest Plan for protecting aquatic and riparian habitat on Federal land (USDA and USDI 1994, p. 9; CBD *et al.* 2008, p. 32). The ACS is unlikely to provide significant protections to this species, because the Hoko vertigo is not known to occur on Federal lands.

Factor E: The petition asserts that the Hoko vertigo is threatened by wildfire, and that wildfires will become more frequent with climate change (CBD *et al.* 2008, pp. 27, 68). Information cited by the petition mentions wildfire as a presumed threat, but does not provide information regarding the likelihood of wildfires within the species' range (Burke *et al.* 1999, Sect. 15, p. 6). As the petition notes, however, the extremely limited distribution of the Hoko vertigo makes it more vulnerable to damaging events such as wildfires (Burke *et al.* 1999, Sect. 15, p. 6; CBD *et al.* 2008, p. 68).

The petition and our files contain information indicating that global climate change is producing warmer summer temperatures, combined with longer periods of summer drought in the western U.S., which is increasing the vulnerability of western U.S. forests to wildfire (Westerling *et al.* 2006, p. 940). Wildfire frequency and total area burned increased after the mid-1980s to levels several times those during the period 1970–1986 (Westerling *et al.* 2006, p. 941). These changes cannot be explained solely by land-use history considerations such as fire suppression (Westerling *et al.* 2006, p. 940). The Olympic Peninsula includes some of the forests most likely to suffer increased wildfires in response to climate change (Westerling *et al.* 2006, p. 942, fig. 4).

The petition indicates that the Hoko vertigo may be threatened by limited gene flow (inbreeding depression) and stochastic (chance) events (CBD *et al.* 2008, pp. 28, 29). We do not have any information in our files to indicate the size of local populations, which would affect their susceptibility to inbreeding depression. We also do not have any information in our files regarding the likelihood of damaging stochastic events, other than for wildfire, which is discussed above. Burke *et al.* (1999, Sect. 15, p. 6) mention damaging floods as a possible threat, but do not indicate the likelihood of such events.

The petition also states that the species may be threatened by recreation, pesticides, invasive species, and the harvesting of special forest products such as mosses and lichens (CBD *et al.* 2008, p. 68). Burke *et al.* (1999, Sect. 15, p. 6) mention all these as possible threats, but provide no indication that any of these potential threats are, or will occur, in areas occupied by the species. Information in our files indicates that English ivy (*Hedera helix*), an invasive species present on the Olympic Peninsula (Hoh River Trust, 2008, p. 14 and Appendix D, pp. 19–20), can cover the bark of trees in infested areas (King County 2002, p. 1), potentially depriving the Hoko vertigo of its preferred habitat. Invasive infestation by *H. helix* could therefore pose a threat to the Hoko vertigo.

Hoko vertigo Summary: Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the Hoko vertigo may be warranted due to the present or threatened destruction, modification or curtailment of its habitat or range (Factor A) resulting from logging. We are initiating a status review to determine whether listing under the Act is warranted.

Keeled Jumping-Slug (*Hemphillia burringtoni*)

The keeled jumping-slug (also known commonly as the Burrington jumping-slug) is a terrestrial slug known from 62 sites in Clallam, Jefferson, Grays Harbor, Mason, Pacific and Skamania Counties, Washington, and Clatsop County, Oregon (Wainwright and Duncan 2005, pp. 5, 6; USDA and USDI 2007, p. 92). Twenty-four of the occupied sites are on Federal land (USDA and USDI 2007, p. 92). According to Wainwright and Duncan (2005, p. 3), it has a small shell, visible through a slit in its mantle, and may avoid predators by using its tail to flip itself off of objects (hence the name ''jumping-slug''). The species is believed to occur in moist to wet forests with dense canopy cover (heavy shading) (Wainwright and Duncan 2005, p. 6).

Factor A: The petition asserts that the keeled jumping-slug may be threatened by logging (CBD *et al.* 2008, p. 54). Information cited by the petition and in our files indicates that logging may pose a threat to this species by destroying forest habitat (Burke *et al.* 1999, Sect. 6, p. 9; ORNHIC 2004h, p. 2; Wainwright and Duncan 2005, p. 9). According to

the petition the keeled jumping-slug was detected at four timber sales, as well as three restoration projects and a road maintenance project (CBD *et al.* 2008, p. 54).

The petition also claims that agriculture, urbanization, and recreational developments may threaten the species (CBD *et al.* 2008, p. 54). A document cited by the petition did mention agricultural conversion among threats generally applicable to four related species of jumping slugs, including the keeled jumping slug (Burke *et al.* 1999, Sect. 6, p. 2) but did not mention it among threats specifically applicable to the keeled jumping-slug alone (Burke *et al.* 1999, Sect. 6, pp. 9, 10). Documents cited by the petition do mention housing development and recreational development as a threat to the species (Burke *et al.* 1999, Sect. 6, p. 9; Wainwright and Duncan 2005, p. 9), but they do not explain the nature of the recreational developments or provide information to indicate where urbanization and recreational development are occurring in relation to occupied sites that are vulnerable to these activities.

Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the keeled jumping-slug may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factor B: The petition did not present any information, nor do we have any information in our files, to indicate that this factor may pose a threat to the species.

Factor C: The petition states that the species may be threatened by predation (CBD *et al.* 2008, p. 54), but the document cited in support of this claim only indicates that predation might threaten a related species called the warty jumping-slug (*Hemphillia glandulosa*) (Wainwright and Duncan 2005, p. 15).

Factor D: The petition asserts that keeled jumping-slug is threatened by inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy. The keeled jumping-slug is currently considered a special status species (USDA and USDI 2007, p. 93). As a special status species, this mollusk should receive special management consideration on Federal lands; however, maintenance of special species status is left to the discretion of the Federal land managers. As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented.

The ACS is a set of standards established under the Northwest Forest Plan for protecting aquatic and riparian habitat on Federal land (USDA and USDI 1994, p. 9; CBD *et al.* 2008, p. 32). The ACS includes four components: Riparian reserves, key watersheds, watershed analysis, and watershed restoration. Since the keeled jumping slug is a terrestrial mollusk occurring in part on Federal riparian lands, the ACS may provide some protection from potential threats. Those protections would likely be limited for populations of the keeled jumping slug occupying private lands, however.

Factor E: The petition asserts that the keeled jumping-slug is threatened by wildfires, and that these are likely to become more frequent with climate change (CBD *et al.* 2008, pp. 54, 27). Information cited by the petition or in our files indicates that global climate change is producing warmer summer temperatures, combined with longer periods of summer drought in the western United States, which is increasing the vulnerability of the western U.S. forests to wildfire (Westerling *et al.* 2006, p. 940). Wildfire frequency and total area burned increased after the mid-1980s to levels several times those during the period 1970–1986 (Westerling *et al.* 2006, p. 941). These changes cannot be explained solely by land-use history considerations, such as fire suppression (Westerling *et al.* 2006, p. 940). However, sources cited by the petition and in our files only mention wildfire among threats generally applicable to four related species of jumping slugs, including the keeled jumping-slug (Burke *et al.* 1999, Sect. 6, p. 2; Wainwright and Duncan 2005, p. 2). They do not mention wildfire as a threat specifically applicable to the keeled jumping-slug alone (Burke *et al.* 1999, Sect. 6, pp. 9, 10; ORNHIC 2005h, p. 2; Wainwright and Duncan 2005, p. 9). While the petition provided general information about fire frequencies and climate change in the Pacific Northwest, it did not include any information about the effects of fire on the keeled jumping-slug or about predicted changes in fire frequency within the species range.

The petition indicates that the keeled jumping-slug may be threatened by limited gene flow (inbreeding depression) and stochastic (chance) events (CBD *et al.* 2008, pp. 28, 29). Population size would affect susceptibility to inbreeding depression; however, we lack information regarding the size of most local populations. We also lack information regarding the likelihood of damaging stochastic events, other than for wildfire, which is discussed above. The petition also states that the keeled jumping-slug may be threatened by invasive species (CBD *et al.* 2008, p. 54). Wainwright and Duncan (2005, p. 9) mention this as a possibility, but do not provide information to indicate which invasive species are involved, exactly how they may pose a threat, or the extent to which these species co-occur with the keeled jumping-slug.

Keeled Jumping Slug Summary: Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the keeled jumping-slug may be warranted due to the present or threatened destruction, modification or curtailment of its habitat or range (Factor A) resulting from logging. We are initiating a status review to determine whether listing under the Act is warranted.

Knobby Rams-Horn (*Vorticifex n. sp. 1*)

The knobby rams-horn is an aquatic snail known from two sites located on private land in Shasta County, California (USDA and USDI 2007, pp. 94, 268). Those sites are part of a large, pristine spring complex in the Pit River drainage (Frest and Johannes 1995, pp. 58, D38). Knobby rams-horns are believed to occur on rocky substrates in cold, clear water with high dissolved oxygen levels (Frest and Johannes 1999, p. 99).

Factor A: The petition asserts that the knobby rams-horn may be threatened by road building, logging, grazing, mining, and water diversions (CBD *et al.* 2008, p. 71). Information cited by the petition and in our files indicates that road building (which can cause sedimentation that smothers eggs and covers the rocky substrate on which the snails' food grows) and water diversions (which can remove habitat and reduce water flow) may pose threats to the knobby rams-horn (Furnish and Monthey 1999, Sect. 4, pp. 3, 4, 14). The petition (CBD *et al.* 2008, p. 71) also presents information indicating that logging, grazing, mining, and dam construction activities may also pose threats to the species, but the cited source only refers to these threats generally when discussing several species at once (Furnish and Monthey 1999, Sect. 4, p. 13). When discussing direct actions that specifically threaten

the knobby rams-horn, the only habitat-based threats mentioned by the source are road building and water diversions (Furnish and Monthey 1999, Sect. 4, p. 14).

Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the knobby rams-horn may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factors B and C: The petition did not present any information, nor do we have any information in our files, to indicate that these factors may pose a threat to the species.

Factor D: The petition asserts that the knobby rams-horn is threatened by inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy. The knobby rams-horn is not currently considered a special status species (USDA and USDI 2007, p. 93) and, unless subsequently assigned such status, would therefore not receive special management consideration on Federal lands (were it to be found on such lands). As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented.

The ACS is a set of standards established under the Northwest Forest Plan for protecting aquatic and riparian habitat on Federal land (USDA and USDI 1994, p. 9; CBD *et al.* 2008, p. 32). The ACS is unlikely to provide significant protection for this species, because the knobby rams-horn is not known to occur on Federal land.

Factor E: The petition asserts that climate change is a threat to the knobby rams-horn (CBD *et al.* 2008, p. 26). Climate change is causing significant reductions in both the volume and persistence of winter snowpack throughout the western United States, including northern California (Knowles *et al.* 2006, pp. 4545, 4546; Kapnick and Hall 2010, pp. 3446, 3454). The reduction and earlier melting of the snowpack is likely to continue, and this may result in a reduction in the amount of water that is available during summer months (Kapnick and Hall 2010, pp. 3446, 3454). Such a reduction in available surface water may result in increased water diversions from groundwater and springs, but the extent to which springs supporting the knobby rams-horn may be affected by potential increased water diversions is unclear. Reduced snow runoff and lower flow levels may also result in water temperature increases (Field *et al.* 2007, pp. 620, 629). Although potential water temperature increases could negatively impact the knobby rams-horn, this species occurs in large, cold perennial springs, and the extent to which the springs that support this mollusk may be affected by this potential threat is unclear.

The petition also indicated that the knobby rams-horn is threatened by the vulnerability of small, isolated populations to inbreeding depression and deleterious stochastic events (CBD *et al.* 2008, pp. 28, 29). We lack information regarding local population sizes, and therefore cannot determine the likelihood of inbreeding depression. However, because the knobby rams-horn occupies only two known sites on private land the species may be threatened by deleterious stochastic events such as the 1991 spill of the herbicide metam sodium into the nearby upper Sacramento River at Cantara Bend due to a train derailment (Furnish and Monthey 1999, Sect. 4, pp. 13, 14).

The petition states that the species may be threatened by chemical pollution (CBD *et al.* 2008, p. 71), but the petition did not provide information directly indicating that pollution may be a threat, nor did we find such information in our files (except as discussed above with regard to accidental spills).

Knobby ram's-horn Summary: Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the knobby ram's-horn may be warranted due to the present or threatened destruction, modification or curtailment of its habitat or range (Factor A) resulting from road building and water diversions. We are initiating a status review to determine whether listing under the Act is warranted.

Masked Duskysnail (*Lyogyrus n. sp. 2*)

The masked duskysnail is an aquatic snail known from three or four sites at two large lakes in Washington State (Duncan 2005e, p. 3; USDA and USDI 2007, p 93). One lake (Curlew Lake) is in Ferry County, while the other (Fish Lake) is in Chelan County, and is partially within the Wenatchee National Forest (Duncan 2005e, p. 3). Three of the occupied sites are on Federal land (USDA and USDI 2007, p. 93). The masked duskysnail appears to require cool water, oxygenated mud substrates, and water plants (Furnish and Monthey 1999, Sect. 5, p. 2).

Factor A: The petition asserts that threats to the masked duskysnail include urbanization, water pollution and eutrophication from various sources, and (possibly) water diversions (CBD *et al.* 2008, p. 58). Information cited by the petitioner or that is in our files indicates that water pollution and eutrophication from pesticides, petroleum products, and nitrogenous compounds may threaten the species, but characterizes urbanization as a threat only because it increases the likelihood of impacts from pollution (Frest and Johannes 1995a, p. 186; Furnish and Monthey 1999, Sect. 5, p. 2; Duncan 2005e, p. 3). Eutrophication problems have resulted in citizen complaints and the initiation of cleanup programs in both lakes where this species occurs (Duncan 2005e, p. 8). Water diversions constitute a less serious threat due to the large size of the lakes in which the masked duskysnail resides (Furnish and Monthey 1999, Sect. 5, p. 2; Duncan 2005e, p. 3).

Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the masked duskysnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factors B and C: The petition did not present any information, nor do we have any information in our files, to indicate that these factors may pose a threat to the species.

Factor D: The petition asserts that the masked duskysnail is threatened by inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy. The masked duskysnail is currently considered a special status species (USDA and USDI 2007, p. 93). As a special status species, this mollusk should receive special management consideration on Federal lands; however, maintenance of special species status is left to the discretion of the Federal land managers. As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented.

The ACS is a set of standards established under the Northwest Forest Plan for protecting aquatic and riparian habitat on Federal land (USDA and USDI 1994, p. 9; CBD *et al.* 2008, p. 32).

The ACS includes four components: Riparian reserves, key watersheds, watershed analysis, and watershed restoration. Since the masked duskysnail is an aquatic mollusk occurring in part on Federal lands, the ACS may provide some protection from potential threats. Those protections would likely be limited for populations of the masked duskysnail occupying private lands, however.

Factor E: The petition asserts that climate change is a threat to the masked duskysnail (CBD *et al.* 2008, p. 26). Information cited by the petition (CBD *et al.* 2008, p. 81) indicates that global climate change may result in increased air and surface water temperatures in central and northern Washington (ISAB 2007, p. 32). The maximum water temperature preferred by the masked duskysnail is 18 degrees Celsius (°C) (65 degrees Fahrenheit (°F)) (Duncan 2005e, p. 6). It is unclear from information presented by the petition and in our files whether the water temperatures in Curlew or Fish Lakes are likely to exceed that limit within the foreseeable future.

The petition indicates that the masked duskysnail may be threatened by limited gene flow (inbreeding depression) and stochastic (chance) events (CBD *et al.* 2008, pp. 28, 29). We have little information regarding the size of local populations, but the population at Fish Lake was apparently described as ''dense'' in the 1970s. Large or ''dense'' populations tend to be less susceptible to inbreeding depression (Lande 1999, p. 11). The limitation of the species to only two populations leaves each population potentially vulnerable to deleterious stochastic events, such as chemical spills, but we lack information to indicate that any such events may occur within the foreseeable future.

The petition states that the masked duskysnail is potentially threatened by invasive nonnative fish, or by chemical treatments to remove such fish (CBD *et al.* 2008, p. 58). Although Duncan (2005e, p. 7) supports this claim, we have no information as to the likelihood of either occurrence.

Masked duskysnail Summary: Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the masked duskysnail may be warranted due to the present or threatened destruction, modification or curtailment of its habitat or range (Factor A) resulting from water pollution from pesticides, petroleum products, and nitrogenous compounds. We are initiating a status review to determine whether listing under the Act is warranted.

Nerite Pebblesnail (*Fluminicola n. sp. 11*)

The nerite pebblesnail (sometimes referred to as the Fredenburg pebblesnail (Frest and Johannes 1999, p. 29)) is a small aquatic snail known from approximately 19 sites in the Fall and Jenny Creek watersheds, located in the middle Klamath River Drainage, Jackson County, Oregon (Frest and Johannes 2000, p. 181; USDA and USDI 2007, p. 92). Fifteen of the 19 known sites occur on Federal land (USDA and USDI 2007, p. 93). The species has been found in large, cold springs with gravel-boulder substrate and ''exceptional water quality'' (Frest and Johannes 2000, p. 265).

Factor A: The petition asserts that this species may be threatened by logging, water diversions, and grazing (CBD *et al.* 2008, p. 46). Information cited by the petition and in our files indicates that these activities may constitute threats, because logging can produce water siltation and increased water temperatures; diversions can reduce available water and habitat; and grazing can increase water temperatures, pollute water, and increase siltation (Frest and Johannes 2000, p. 265; ORNHIC 2004j, p. 2). Part of the flow from the spring complexes supporting the nerite pebblesnail is diverted for the City of Yreka, California, municipal water supply (Frest and Johannes 2000, p. 265). Irrigation diversions are also common, as is grazing on much of the larger Fall Creek and Jenny Creek system. Logging has been extensive in the surrounding watershed (Frest and Johannes 2000, p. 265).

Based on our evaluation of the information presented in the petition and in our files, we determined the petition presents substantial information to indicate that listing the nerite pebblesnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factors B and C: The petition did not present any information, nor do we have any information in our files, to indicate that these factors may pose a threat to the species.

Factor D: The petition asserts that the nerite pebblesnail is threatened by inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy. The nerite pebblesnail is currently considered a special status species (USDA and USDI 2007, p. 93). As a special status species, this mollusk should receive special management consideration on Federal lands; however, maintenance of special species status is left to the discretion of the Federal land managers. As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented.

The ACS is a set of standards established under the Northwest Forest Plan for protecting aquatic and riparian habitat on Federal land (USDA and USDI 1994, p. 9; CBD *et al.* 2008, p. 32). The ACS includes four components: Riparian reserves, key watersheds, watershed analysis and watershed restoration. Since the nerite pebblesnail is an aquatic mollusk occurring in part on Federal lands, the ACS may provide some protection from potential threats. Those protections would likely be limited for populations of the nerite pebblesnail occupying private lands, however.

The petition also states that this mollusk is threatened by the WOPR, a set of revisions to the Northwest Forest Plan proposed for BLM lands in western Oregon (CBD *et al.* 2008, p. 34). However, the BLM withdrew this proposal in 2009 (USDA 2009, p. 1). We are unaware of BLM's plans to reinstate the WOPR; therefore, we do not have the information to assess if, or how, WOPR may impact the species.

Factor E: The petition asserts that climate change is a threat to the nerite pebblesnail (CBD *et al.* 2008, p. 26). Climate change is causing significant reductions in both the volume and persistence of winter snowpack throughout the western United States, including northern California (Knowles *et al.* 2006, pp. 4545, 4546; Kapnick and Hall 2010, pp. 3446, 3454). The reduction and earlier melting of the snowpack is likely to continue, and this may result in a reduction in the amount of water that is available during summer months (Kapnick and Hall 2010, pp. 3446, 3454). Such a reduction in available surface water may result in increased water diversions from groundwater and springs, but the extent to which springs supporting the nerite pebblesnail may be affected by potential increased water diversions is unclear. Reduced snow runoff and lower flow levels may also result in water temperature increases (Field *et al.* 2007, pp. 620, 629). Although potential water temperature increases could negatively impact the mollusk, this species occurs in large, cold, perennial springs, and the extent to which the springs that support

the nerite pebblesnail may be affected by this potential threat is unclear.

The petition also presents information to indicate that the nerite pebblesnail may be threatened by limited gene flow (inbreeding depression) and stochastic (chance) events (CBD *et al.* 2008, pp. 28, 29). Although we do not have information in our files regarding the number of nerite pebblesnails at each occupied site (which would affect the threat of inbreeding depression), the clustering of all known populations in only two spring complexes does leave them vulnerable to any catastrophic events that might affect one or both of those complexes, such as the 1991 herbicide spill at Cantara Bend resulting in the near complete removal of aquatic mollusk populations throughout the upper Sacramento River (Frest and Johannes 1995b, pp. 72, 73; ORNHIC 2004j, p. 2).

Nerite pebblesnail Summary: Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the nerite pebblesnail may be warranted due to the present or threatened destruction, modification or curtailment of its habitat or range (Factor A) resulting from logging, water diversions, and grazing. We are initiating a status review to determine whether listing under the Act is warranted.

Nugget Pebblesnail (*Fluminicola seminalis*)

The nugget pebblesnail is an aquatic snail known from 15 to 22 sites, 5 of which are on Federal land, in the Pit and McCloud River drainages in Shasta County, California (Furnish and Monthey 1999, Sect. 3, p. 5; USDA and USDI 2007, p. 92). The species is believed to have been extirpated over most of its former range in the Sacramento River by the 1991 Cantara herbicide spill (Frest and Johannes 1995b, p. 50; Furnish and Monthey 1999, Sect. 3, p. 5). According to Furnish and Monthey (1999, Sect. 3, p. 5), the nugget pebblesnail is typically found on gravel-cobble substrate in large creeks and rivers, but also occurs on mud substrates in large spring pools. It is believed to prefer cool, clear, flowing water (Frest and Johannes 1995b, p. 50). *Fluminicola* species in general require cold, unpolluted, well-oxygenated water with little sedimentation, according to Furnish and Monthey (1999, Sect. 2, pp. 5, 7).

Factor A: The petition asserts that the nugget pebblesnail is threatened by water pollution, logging, dams, diversions, spring developments, road and railroad construction, urbanization, mining, and grazing (CBD *et al.* 2008, p. 52). Information cited by the petition and in our files indicates that water diversions, spring developments, and impoundments may threaten the species by removing flowing water and thus habitat (Furnish and Monthey 1999, Sect. 3, pp. 2, 3; Hershler *et al.* 2003, p. 277). Grazing, logging, and other sources of water pollution and sedimentation also pose potential threats (Furnish and Monthey 1999, Sect. 3, pp. 2, 3). The Pit River is listed on the State of California's list of water quality limited segments because of organic enrichment and high nutrient levels from grazing and agriculture (CEPA 2002, p. 143). Mining and road and railroad construction are also potential sources of excessive sedimentation, but we were unable to find information regarding the extent to which such activities occur in the vicinity of the nugget pebblesnail (Furnish and Monthey 1999, Sect. 3, p. 6). We did not find information to support the petition's claim that urbanization constitutes a threat to this species.

Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the nugget pebblesnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factors B and C: The petition did not present any information, nor do we have any information in our files, to indicate that these factors may pose a threat to the species.

Factor D: The petition asserts that the nugget pebblesnail is threatened by inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy. The nugget pebblesnail is currently considered a special status species (USDA and USDI 2007, p. 93). As a special status species, this mollusk should receive special management consideration on Federal lands; however, maintenance of special species status is left to the discretion of the Federal land managers. As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented.

The ACS is a set of standards established under the Northwest Forest Plan for protecting aquatic and riparian habitat on Federal land (USDA and USDI 1994, p. 9; CBD *et al.* 2008, p. 32). The ACS includes four components: Riparian reserves, key watersheds, watershed analysis, and watershed restoration. Since the nugget pebblesnail is an aquatic mollusk occurring in part on Federal lands, the ACS may provide some protection from potential threats. Those protections would likely be limited for populations of the nugget pebblesnail occupying private lands, however.

Factor E: The petition asserts that climate change is a threat to the nugget pebblesnail (CBD *et al.* 2008, p. 26). Climate change is causing significant reductions in both the volume and persistence of winter snowpack throughout the western United States, including northern California (Knowles *et al.* 2006, pp. 4545, 4546; Kapnick and Hall 2010, pp. 3446, 3454). The reduction and earlier melting of the snowpack is likely to continue, and this may result in a reduction in the amount of water that is available during summer months (Kapnick and Hall 2010, p. 3446, 3454). Such a reduction in available surface water may result in increased water diversions from groundwater and springs, but the extent to which springs supporting the nugget pebblesnail may be affected by potential increased water diversions is unclear. Reduced snow runoff and lower flow levels may also result in water temperature increases (Field *et al.* 2007, pp. 620, 629). Although potential water temperature increases could negatively impact the nugget pebblesnail, the extent this mollusk may be affected by this potential threat is unclear.

The petition indicates that the nugget pebblesnail may be threatened by limited gene flow (inbreeding depression) and stochastic (chance) events (CBD *et al.* 2008, pp. 28, 29). Frest and Johannes (1995b, p. 50) indicate that local populations ''can be very abundant locally,'' which would make inbreeding depression less likely (Lande 1999, p. 11). However, since the species has been extirpated over much of its former range by the Cantara herbicide spill (Furnish and Monthey 1999, Sect. 3, p. 5; ORNHIC 2004k, p. 2), it has demonstrated itself to be susceptible to stochastic events.

The petition also states that fire may threaten the species. The Burney Fire of 1992 is described by several sources as having (in conjunction with subsequent salvage logging) caused significant impacts to populations of nugget pebblesnails (Furnish and Monthey 1999, Sect. 3, pp. 6, 8; ORNHIC 2004k, p. 2). We therefore consider large fires to constitute a possible threat.

Although the petition indicates that the nugget pebblesnail may be threatened by recreation, we were not able to find information supporting that claim.

Nugget pebblesnail Summary: Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the nugget pebblesnail may be warranted due to the present or threatened destruction, modification or curtailment of its habitat or range (Factor A) resulting from water diversions, impoundments, pollution and sedimentation. We are initiating a status review to determine whether listing under the Act is warranted.

Potem Creek Pebblesnail (*Fluminicola potemicus*)

The Potem Creek pebblesnail is an aquatic snail known from 12 sites in the upper Sacramento River system and Pit River tributaries in Shasta County, California (ORNHIC 2004l, pp. 1, 6; USDA and USDI 2007, p. 92). Three of the sites are on Federal land. The Potem Creek pebblesnail is known to occur on muddy substrates in spring runs that are small, perennial, cold, and shallow (ORNHIC 2004l, pp. 1, 3). According to Furnish and Monthey (1999, Sect. 2, p. 5), *Fluminicola* species in general require cold, unpolluted, and well oxygenated water with little sedimentation.

Factor A: The petition asserts that the Potem Creek pebblesnail is threatened by water diversions, impoundments, spring developments, grazing, logging, mining, road construction, and pollution. Information cited by the petition and in our files indicates that water diversions and impoundments may threaten the Potem Creek pebblesnail by removing flowing water and thus habitat (Frest and Johannes 1995b, p. 43; Hershler *et al.* 2003, p. 277; ORNHIC 2004l, p. 2). Use of springs and channel bottoms by livestock may also threaten the species by polluting the water (ORNHIC 2004l, p. 2). Road construction may impede flows (resulting in less snail habitat), and cause sedimentation resulting in smothered substrates and impaired egg survivorship (Furnish and Monthey 1999, Sect. 2, pp. 3, 7; ORNHIC 2004l, p. 2). Because the Potem Creek pebblesnail is only known to occur at 12 sites, any such impacts to even a few such sites could pose a threat to the species as a whole. Logging and mining activities may cause excessive sedimentation and thereby impair survivorship of Potem Creek pebblesnail eggs (Furnish and Monthey 1999, Sect. 2, p. 7; ORNHIC 2004l, p. 2).

Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the Potem Creek pebblesnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factors B and C: The petition did not present any information, nor do we have any information in our files, to indicate that these factors may pose a threat to the species.

Factor D: The petition asserts that the Potem Creek pebblesnail is threatened by inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy. The Potem Creek pebblesnail is not currently considered a special status species (USDA and USDI 2007, p. 93), and therefore would not receive special management consideration on Federal lands. As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented.

The ACS is a set of standards established under the Northwest Forest Plan for protecting aquatic and riparian habitat on Federal land (USDA and USDI 1994, p. 9; CBD *et al.* 2008, p. 32). The ACS includes four components: Riparian reserves, key watersheds, watershed analysis, and watershed restoration. Since the Potem Creek pebblesnail is an aquatic mollusk occurring in part on Federal lands, the ACS may provide some protection from potential threats. Those protections would likely be limited for populations of the Potem Creek pebblesnail occupying private lands, however.

Factor E: The petition asserts that climate change is a threat to the Potem Creek pebblesnail (CBD *et al.* 2008, p. 26). Climate change is causing significant reductions in both the volume and persistence of winter snowpack throughout the western United States, including northern California (Knowles *et al.* 2006, pp. 4545, 4546; Kapnick and Hall 2010, pp. 3446, 3454). The reduction and earlier melting of the snowpack is likely to continue, and this may result in a reduction in the amount of water that is available during summer months (Kapnick and Hall 2010, p. 3446, 3454). Such a reduction in available surface water may result in increased water diversions from groundwater and springs, but the extent to which springs supporting the Potem Creek pebblesnail may be affected by potential increased water diversions is unclear. Reduced snow runoff and lower flow levels may also result in water temperature increases (Field *et al.* 2007, pp. 620, 629). Although potential water temperature increases could negatively impact the Potem Creek pebblesnail, this species occurs in large, cold, perennial springs, and the extent to which the springs that support the mollusk may be affected by this potential threat is unclear.

The petition also indicates that the Potem Creek pebblesnail may be threatened by limited gene flow (inbreeding depression) and stochastic events (CBD *et al.* 2008, pp. 28, 29). We do not have any information regarding the number of Potem Creek pebblesnails at each occupied site (which would affect the threat of inbreeding depression). However, the fact that the species occupies only 12 known sites, all of which are in the same general area in which a major deleterious event occurred historically (the 1991 metam sodium spill into the upper Sacramento River). This indicates that the species may be susceptible to stochastic events (Furnish and Monthey 1999, Sect. 2, p. 7).

Potem Creek pebblesnail Summary: Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the Potem Creek pebblesnail may be warranted due to the present or threatened destruction, modification or curtailment of its habitat or range (Factor A) resulting from water diversions, impoundments, grazing, road construction, logging and mining. We are initiating a status review to determine whether listing under the Act is warranted.

Puget Oregonian (*Cryptomastix devia*)

The Puget Oregonian (*Cryptomastix devia*) is a terrestrial snail known from approximately 177 sites in Washington and Oregon, 148 of which are on Federal land (Kogut and Duncan 2005, pp. 4–5; USDA and USDI 2007, p. 92). Most occupied sites are located in the Cowlitz and Cispus River drainages of the Gifford Pinchot National Forest, in southwestern Washington State. The Puget Oregonian is characterized by the Oregon Natural Heritage Program as ''in strong decline throughout its range,'' with only 13 to 40 occupied sites considered to have good viability (ORNHIC 2004q, pp. 1, 2). The Puget

Oregonian is believed to be associated with big-leaf maple (*Acer macrophyllum*) in mature to old-growth moist conifer forests that have over 70 percent canopy cover (Kogut and Duncan 2005, pp. 5, 6).

Factor A: The petition asserts that the Puget Oregonian is threatened by logging, urbanization, and agricultural conversion (CBD *et al.* 2008, pp. 39, 40). Information presented by the petition indicates that the Puget Oregonian may be threatened by loss of habitat due to logging and conversion for agriculture or development (Kogut and Duncan 2005, p. 1). Forest Service documents obtained by the petitioners indicate the snail was detected in nine timber sales and a commercial thinning project, thereby demonstrating that logging occurs within the species range (CBD *et al.* 2008, p. 39). The petition states that mitigation measures were likely taken under the Survey and Manage Program for all of the sales, but their information only specifically mentions mitigation for a single project.

The petition also states that grazing threatens the species (CBD *et al.* 2008, p. 39). Presumably, the petition refers to the threat posed to the species by the grazing of areas that have already been logged (Frest and Johannes 1995a, p. 229; ORNHIC 2004q, p. 2). Since we lack evidence that grazing is threatening the species in areas that haven't first been logged, and since the Puget Oregonian is dependent on mature forests with extensive canopy cover, we consider grazing to be covered by the term ''conversion for agriculture,'' rather than an independent threat.

Factor B: The petition did not present any information, nor do we have any information in our files, to indicate that this factor may pose a threat to the species.

Factor C: The petition indicates that predation may constitute a threat (CBD *et al.* 2008, p. 40). While Kogut and Duncan (2005, pp. 1, 8) do state that vertebrate and invertebrate predators (including predatory snails and ground beetles specifically adapted for feeding on snails) may concentrate in isolated small habitat patches where Puget Oregonian snails would be most vulnerable, they do not characterize predation as a primary threat, and do not offer substantial information to indicate that it is impacting the species. We have no information in our files to indicate that predation is a potential threat to this species. Neither the petition nor the information in our files identifies disease as a potential threat to the species.

Factor D: The petition asserts that the Puget Oregonian is threatened by inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy. The Puget Oregonian is currently considered a special status species (USDA and USDI 2007, p. 93). As a special status species, this mollusk should receive special management consideration on Federal lands; however, maintenance of special species status is left to the discretion of the Federal land managers. As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented.

The ACS is a set of standards established under the Northwest Forest Plan for protecting aquatic and riparian habitat on Federal land (USDA and USDI 1994, p. 9; CBD *et al.* 2008, p. 32). The ACS includes four components: Riparian reserves, key watersheds, watershed analysis, and watershed restoration. Since the Puget Oregonian is a terrestrial mollusk occurring in part on Federal riparian lands, the ACS may provide some protection from potential threats. Those protections would likely be limited for populations of the Puget Oregonian occupying private lands, however.

The petition also states this mollusk is threatened by the WOPR, a set of revisions to the Northwest Forest Plan proposed for BLM lands in western Oregon (CBD *et al.* 2008, p. 34). However, the BLM withdrew this proposal in 2009 (USDA 2009, p. 1). We are unaware of any BLM plans to reinstate the WOPR; therefore, we do not have the information to assess if, or how, WOPR may impact the species.

Factor E: The petition (CBD *et al.* 2008, p. 40) presents information to indicate that high-intensity fire may pose a threat to the species by removing habitat, directly killing individual snails, and isolating remaining populations (Kogut and Duncan 2005, p. 1).

The petition also claims that Puget Oregonian is threatened by climate change (CBD *et al.* 2008, pp. 26, 27), and notes that the likelihood of high-intensity fire in forests occupied by the Puget Oregonian may be heightened by climate change, due to increased summer temperatures and lengthened summer drought (Westerling *et al.* 2006, pp. 940–942). Additionally, summer water stress due to climate change in western forests, including the heart of the species' distribution in the Cowlitz and Cispus River drainages, is currently causing increased tree mortality (Van Mantgem *et al.* 2009, pp. 521–522) which may lead to changes in forest structure and composition and decreased canopy cover that may pose a threat to the Puget Oregonian (Kogut and Duncan 2005, pp. 5, 6; Van Mantgem *et al.* 2009, p. 523). Finally, climate change is increasing the susceptibility of western forests to various species of forest pests with the capacity to kill large stands of mature trees (Logan *et al.* 2003, p. 130). Specifically, the Douglas-fir beetle (*Dendroctonus pseudotsugae*), which infests and kills Douglas-fir throughout the range of the Puget Oregonian, tends to undergo large outbreaks following droughts (Schmitz and Gibson 1996, p. 1).

The petition indicates that the Puget Oregonian may be threatened by limited gene flow (inbreeding depression) and stochastic events (CBD *et al.* 2008, pp. 28, 29). Although only one to three individual snails have typically been found at occupied sites (Kogut and Duncan 2005, p. 6), we consider actual population numbers likely to be higher, since ''populations'' of one to three individuals would be unlikely to persist. Moreover, Kogut and Duncan (2005, p. 6) note that individuals of this species may easily be overlooked. We do not have any information in our files regarding the size of most local populations, which would affect their susceptibility to inbreeding depression. We also do not have any information in our files regarding the likelihood of damaging stochastic events, other than for wildfire, which is covered above.

The petition also states that the Puget Oregonian may be threatened by competition with invasive slugs, harvest of special forest products such as mushrooms and moss, and recreation (camping) (CBD *et al.* 2008, pp. 39, 40). Although invasive slugs and harvest of special forest products are mentioned by Kogut and Duncan (2005, p. 1) as possible concerns, we lack information to indicate that their influence on Puget Oregonian populations is significant enough to constitute a threat. Similarly, while the petitioner's claims that a Puget Oregonian population was detected at a campground (CBD *et al.* 2008, p. 39), neither the petition nor our files contain any information that demonstrates how the species may be threatened by camping or other recreational activities.

Puget Oregonian Summary: Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the Puget Oregonian

may be warranted due to the present or threatened destruction, modification or curtailment of its habitat or range (Factor A) resulting from logging and conversion for agriculture; and other natural or manmade factors affecting its current existence (Factor E) resulting from high intensity fire, and from increased tree mortality due to various causes associated with climate change. While we expect the reinstatement of the Survey and Manage Program to help address threats to the species resulting from logging and agricultural conversion on Federal land, information indicating that population numbers are in decline throughout the species' range, and that only 13 to 40 populations are considered to have good viability (ORNHIC 2004q, pp. 1, 2) leads us to conclude that information presented by the petition regarding the overall level of threat to the species; including threats from logging, agricultural conversion, high intensity fire, and climate change; is substantial. We are initiating a status review to determine whether listing under the Act is warranted.

Shasta Chaparral (*Trilobopsis roperi*)

The Shasta chaparral is a terrestrial snail known from 146 occurrences in Shasta County, California, 140 of which are on Federal land (Burke *et al.* 1999, Sect. 14 p. 5; USDA and USDI 2007, p. 93). The Shasta chaparral has been found within 100 m (328 ft) of limestone rockslides, draws, or caves with a cover of shrubs or oak (Kelley *et al.* 1999, p. 61). Forest litter and coarse woody debris are considered necessary to provide food and temporary cover from the semi-xeric (dry) conditions of the surrounding environment, according to Burke *et al.* (1999, Sect. 14, p. 6).

Factor A: Information in our files indicates that the Shasta chaparral may be threatened by a proposal to raise Shasta Dam, which if carried out, would likely inundate important habitat and occupied sites (USBR 2007, p. ES 6; Terry 2008, p. 1).

The petition states that the Shasta chaparral is threatened by road building and maintenance, limestone quarrying and mining, recreation, and urbanization in the Redding area (CBD *et al.* 2008, p. 66). Although these claims are supported by Frest and Johannes (2000, p. 319), that document relies on the assumption that only five occupied sites exist. However, information in our files shows that 146 such sites are now known, and Frest and Johannes (2000, p. 319) do not elaborate regarding the extent or locations of the listed activities in relation to occupied sites or potential habitat, we do not consider the information supporting these claims to be substantial.

Based on our evaluation of the information presented in the petition and in our files, we determined the petition presents substantial information to indicate that listing the Shasta chaparral may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factor B: The petition states that the Shasta chaparral is threatened by overcollecting (CBD *et al.* 2008, p. 66). Although Burke *et al.* (1999, Sect. 14, p. 1) do mention this as a potential threat, they do not provide substantial information to indicate that collecting is taking place at a level that could threaten this species.

Factor C: The petition did not present any information, nor do we have any information in our files, to indicate, that this factor may pose a threat to the species.

Factor D: The petition asserts that the Shasta chaparral is threatened by inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy. The Shasta chaparral is currently considered a special status species (USDA and USDI 2007, p. 93). As a special status species, this mollusk should receive special management consideration on Federal lands; however, maintenance of special species status is left to the discretion of the Federal land managers. As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented.

The ACS is unlikely to provide significant protections, because the Shasta chaparral is not an aquatic or riparian species (Burke *et al.* 1999, Sect. 14, p. 6).

Factor E: The petition asserts that the Shasta chaparral is threatened by wildfire that will become more frequent with climate change (CBD *et al.* 2008, pp. 27, 66). The Shasta chaparral depends on forest litter and woody debris to provide microclimate conditions with lower temperatures and higher humidity than surrounding areas, so high-intensity fire could pose a threat to the species by removing those refugia (Burke *et al.* 1999, Sect. 14, pp. 6, 7). The petition and our files contain information indicating that global climate change is producing warmer summer temperatures, combined with longer periods of summer drought in the western U.S., which is increasing the vulnerability of western U.S. forests to wildfire (Westerling, *et al.* 2006, p. 940). Wildfire frequency and total area burned increased after the mid-1980s to levels several times those during the period 1970–1986 (Westerling, *et al.* 2006, p. 941). These changes cannot be explained solely by land-use history considerations such as fire suppression (Westerling *et al.* 2006, p. 940).

The petition states that the Shasta chaparral is threatened by pesticide application (CBD *et al.* 2008, p. 66). Although Burke *et al.* (1999, Sect. 14, p. 7) do mention herbicide use as a potential threat, they do not provide information to indicate what herbicides, if any, are used in or near sites occupied by this species, or in what amounts, or to what extent the Shasta chaparral may be susceptible to the herbicides used.

The petition also indicates that the Shasta chaparral may be threatened by limited gene flow (inbreeding depression) and stochastic events (CBD *et al.* 2008, pp. 28, 29). We lack information regarding the size of most local populations of these subspecies, which would affect their susceptibility to inbreeding depression. We also lack information regarding the likelihood of damaging stochastic events capable of threatening the subspecies, other than for wildfire, which is covered above.

Shasta chaparral Summary: Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the Shasta chaparral may be warranted due to the present or threatened destruction, modification or curtailment of its habitat or range (Factor A) resulting from the potential raising of Shasta Dam. We are initiating a status review to determine whether listing under the Act is warranted.

Shasta Hesperian (*Vespericola shasta*)

The Shasta hesperian is a terrestrial snail known from 78 sites in Shasta County, California (Burke *et al.* 1999, Sect. 17 p. 1; USDA and USDI 2007, p. 94). Seventy-two of those occupied sites are federally owned (USDA and USDI 2007, p. 94). The Shasta hesperian is considered an old-growth and riparian associate (Frest and Johannes 1993, p. 41) and is believed to inhabit damp ground at the margins of streams (Burke *et al.* 1999, Sect. 17 p. 1).

Factor A: The petition asserts that the Shasta hesperian is threatened by habitat loss due to timber harvest and grazing (CBD *et al.* 2008, p. 70). The petition presents information to indicate that the Shasta hesperian may be

threatened by logging and grazing, both of which can directly remove habitat and also alter hydrology, thereby increasing the likelihood of both flooding and loss of soil moisture (Burke *et al.* 1999, Sect. 17, p. 7). The petition states that the species was detected at a timber sale and a fuels reduction project (CBD *et al.* 2008, p. 70).

Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the Shasta hesperian may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factors B and C: The petition did not present any information, nor do we have any information in our files, to indicate that these factors may pose a threat to the species.

Factor D: The petition asserts that the Shasta hesperian is threatened by inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy. The Shasta hesperian is currently considered a special status species (USDA and USDI 2007, p. 93). As a special status species, this mollusk should receive special management consideration on Federal lands; however, maintenance of special species status is left to the discretion of the Federal land managers. As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented.

The ACS is a set of standards established under the Northwest Forest Plan for protecting aquatic and riparian habitat on Federal land (USDA and USDI 1994, p. 9; CBD *et al.* 2008, p. 32). The ACS includes four components: Riparian reserves, key watersheds, watershed analysis, and watershed restoration. Since the Shasta hesperian is a terrestrial mollusk occurring in part on Federal riparian lands, the ACS may provide some protection from potential threats. Those protections would likely be limited for populations of the Shasta hesperian occupying private lands, however.

Factor E: The petition asserts that the Shasta hesperian is threatened by wildfire that will become more frequent with climate change (CBD *et al.* 2008, pp. 27, 28). The petition and our files contains information indicating that global climate change is producing warmer summer temperatures, combined with longer periods of summer drought in the western U.S., which is increasing the vulnerability of western U.S. forests to wildfire (Westerling *et al.* 2006, p. 940). Wildfire frequency and total area burned increased after the mid-1980s to levels several times those during the period 1970–1986 (Westerling *et al.* 2006, p. 941). These changes cannot be explained solely by land-use history considerations such as fire suppression (Westerling *et al.* 2006, p. 940). Although no information cited by the petition or in our files provided direct examples of wildfire impacts to the Shasta hesperian, the petition does note that, according to Survey and Manage documents, this mollusk was directly affected by at least one underburn or fuel reduction project (CBD *et al.* 2008, p. 28).

The petition asserts that climate change is a threat to the Shasta hesperian (CBD *et al.* 2008, p. 26). The petition provides information indicating that climate change is expected to cause significant reductions in both the volume and persistence of winter snowpack throughout the western United States (Knowles *et al.* 2006, p. 4545). Such reductions have already been documented in the Oregon Cascades (Knowles *et al.* 2006, pp. 4545, 4546). If reduced snowpack resulted in a reduction of soil moisture, the Shasta hesperian, which requires damp ground at the margins of streams (Burke *et al.* 1999, Section 17, p. 1), could be impacted. However, neither the petition nor our files contain information about the extent soil drying could occur within the Shasta hesperian's habitat or what impact that drying would have to the species.

The petition states that chemical pollution may threaten the species (CBD *et al.* 2008, p. 70). Burke *et al.* (1999, Sect. 14, p. 7) mentions this as a possible threat due to the danger of large spills, such as the 1991 Cantara spill of herbicide into the upper Sacramento River, and to the potential for numerous smaller spills ''that could come from roads and railroads.'' We do not have information to indicate that the likelihood of such spills, or to estimate their impact to a terrestrial snail such as the Shasta hesperian.

The petition states that invasive species may threaten the Shasta hesperian (CBD *et al.* 2008, p. 70). Although Burke *et al.* (1999, Sect. 17, p. 7) mention this as a possibility, they do not provide information to indicate the invasive species involved or their likely impacts.

The petition also indicates that the Shasta hesperian may be threatened by limited gene flow (inbreeding depression) and stochastic events (CBD *et al.* 2008, pp. 28, 29). We lack information regarding the size of most local populations of this species, which would affect their susceptibility to inbreeding depression. We also lack information regarding the likelihood of damaging stochastic events capable of threatening the species, other than for wildfire which is covered above. However, given the large number of known occurrences (78), the threat from stochastic events is likely low.

Shasta hesperian Summary: Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the Shasta hesperian may be warranted due to the present or threatened destruction, modification or curtailment of its habitat or range (Factor A) resulting from logging and grazing activities. We are initiating a status review to determine whether listing under the Act is warranted.

Shasta Pebblesnail (*Fluminicola multifarius*)

The Shasta pebblesnail was formally named and described in 2007 (Hershler *et al.* 2007, pp. 415–419). This species combines four groups of snails previously considered likely to be species but never formally described. Those were the Sacramento pebblesnail (*Fluminicola n. sp. 1,* from Frest and Johannes 1995b, pp. 42, D14) (not the same as *Fluminicola n. sp. 1* from USDA and USDI 2007, p. 250) and three provisional species discussed in Frest and Johannes 1999 (pp. 39–50): The flat top pebblesnail (*Fluminicola n.* sp. 15), the Shasta Springs pebblesnail (*Fluminicola n.* sp. 16), and the disjunct pebblesnail (*Fluminicola n.* sp. 17). The latter three of these groups were included under the Northwest Forest Plan's Survey and Manage Program (USDA and USDI 2007, pp. 169, 252), and were included as separate species in the original petition (CBD *et al.* 2008, pp. 45–48). However, in a letter dated April 13, 2009 (Curry 2009, pp. 1, 2), the petitioners informed us that these three groups had been combined into a single species, which had been formally described by Hershler *et al.* (2007). The letter amended the original petition by petitioning for the listing of the combined entity—the Shasta pebblesnail.

Neither the petition nor the 2009 amending letter includes information on the group formerly known as the Sacramento pebblesnail. We know that a survey of mollusks in the upper

Sacramento River found the Sacramento pebblesnail at 13 sites (Frest and Johannes 1995b, p. 42), but we lack information regarding whether this erstwhile species was known from additional areas. We are therefore proceeding with our discussion of the Shasta pebblesnail by combining our information regarding the flat top, Shasta Springs, and disjunct pebblesnails with such data as we have in our files regarding the Sacramento pebblesnail.

The Shasta pebblesnail is an aquatic snail known from at least 36 sites (including the 13 sites mentioned above that are occupied by the group formerly known as the Sacramento pebblesnail) in the upper Sacramento River watershed in Shasta County, California (Frest and Johannes 1995b, p. 42; Furnish and Monthey 1999, Sect. 2, p. 5; USDA and USDI 2007, p. 92). Two sources indicate that all occupied sites of those groups previously known as the flat top, disjunct, and Shasta Springs pebblesnails are on private land (Furnish and Monthey 1999, Sect. 2, p. 5; USDA and USDI 2007, p. 92). However, a third source indicates that ''some'' sites occupied by the group previously known as the Shasta Springs pebblesnail are on the Shasta National Forest (Frest and Johannes 1999, p. 44). We have no information regarding land ownership for sites occupied by the group previously known as the Sacramento pebblesnail. According to Furnish and Monthey (1999, Sect. 2, pp. 2, 5), the Shasta pebblesnail lives in cold perennial springs, and is highly sensitive to water pollution, oxygen deficits, elevated water temperatures, and sedimentation.

Factor A: The petition asserts that the Shasta pebblesnail is threatened by habitat loss due to water diversions, impoundments, spring developments, grazing, logging, mining, road construction, and pollution (CBD *et al.* 2008, pp. 45, 48, 49). Information cited in the petition or in our files indicates that the Shasta pebblesnail may be exposed to, and threatened by, water diversions and by water pollution, including eutrophication and sedimentation, resulting from a variety of sources such as logging and grazing (Furnish and Monthey 1999, Sect. 2, p. 7; USDA and USDI 2007, p. 252). Water diversions can reduce flows, and reduce available habitat, while eutrophication can decrease oxygen, and sedimentation can cover substrates needed for feeding and egg-laying. Water impoundments have also been identified as a potential threat (Furnish and Monthey 1999, Sect. 2, p. 7), but we do not have information in our files to indicate that their impacts are ongoing, as opposed to being completely historical in nature.

Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the Shasta pebblesnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factors B and C: The petition did not present any information, nor do we have any information in our files, to indicate that these factors may pose a threat to the species.

Factor D: The petition asserts that the Shasta pebblesnail is threatened by inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy. The Shasta pebblesnail is not currently considered a special status species (USDA and USDI 2007, p. 93) and therefore would not receive special management consideration on Federal lands. As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented.

The Aquatic Conservation Strategy (ACS) is a set of standards established under the Northwest Forest Plan for protecting aquatic and riparian habitat on Federal land (USDA and USDI 1994, p. 9; CBD *et al.* 2008, p. 32). The ACS includes four components: Riparian reserves, key watersheds, watershed analysis, and watershed restoration. Since the Shasta pebblesnail is an aquatic mollusk occurring in part on Federal lands, the ACS may provide some protection from potential threats. Those protections would likely be limited for populations of the Shasta pebblesnail occupying private lands, however.

Factor E: The petition asserts that climate change is a threat to the Shasta pebblesnail (CBD *et al.* 2008, p. 26). Climate change is causing significant reductions in both the volume and persistence of winter snowpack throughout the western United States, including northern California (Knowles *et al.* 2006, pp. 4545, 4546; Kapnick and Hall 2010, pp. 3446, 3454). The reduction and earlier melting of the snowpack is likely to continue, and this may result in a reduction in the amount of water that is available during summer months (Kapnick and Hall 2010, pp. 3446, 3454). Such a reduction in available surface water may result in increased water diversions from groundwater and springs, but the extent to which springs supporting the Shasta pebblesnail may be affected by potential increased water diversions is unclear. Reduced snow runoff and lower flow levels may also result in water temperature increases (Field *et al.* 2007, pp. 620, 629). Such increases could pose a threat to the Shasta pebblesnail, which is highly sensitive to elevated water temperatures (Furnish and Monthey 1999, Sect. 2, pp. 2, 5).

The petition indicates the Shasta pebblesnail may be threatened by limited gene flow (inbreeding depression) and stochastic events (CBD *et al.* 2008, pp. 28, 29). The size of local populations would affect their susceptibility to inbreeding depression; however, we lack information regarding the size of most local populations of this species. We also lack information regarding the likelihood of damaging stochastic events capable of threatening the species.

Shasta pebblesnail Summary: Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the Shasta pebblesnail may be warranted due to the present or threatened destruction, modification or curtailment of its habitat or range (Factor A) resulting from water diversions and water pollution. We are initiating a status review to determine whether listing under the Act is warranted.

Shasta Sideband (*Monadenia troglodytes troglodytes*) and Wintu Sideband (*M. t. wintu*)

The Shasta sideband and Wintu sideband are terrestrial snails inhabiting the vicinity of Shasta Lake, in Shasta County, California (Burke *et al.* 1999, Sect. 11, pp. 1, 5). The Shasta sideband is known from nine sites, most of which are located along the McCloud River Arm of the lake (Burke *et al.* 1999, Sect. 11, p. 5; USDA and USDI 2007, p. 93). Eight of the nine sites are on Federal land (USDA and USDI 2007, p. 93). The Wintu sideband occurs at eight sites, most of which are along the Pit River arm of the lake (Burke *et al.* 1999, Sect. 11, p. 5; USDA and USDI 2007, p. 93). Seven of those eight sites are on Federal land (USDA and USDI 2007, p. 93). Both subspecies are apparently restricted to limestone outcrops or related substrates, and are associated with caves, talus, or rocky outcrops in open, brushy, and late-successional pine-oak woodland areas (Burke *et al.* 1999, Sect. 11, p. 5). Forest litter and coarse woody debris are

considered necessary to provide food and temporary cover.

Factor A: The petition asserts that the Shasta and Wintu sidebands are threatened by habitat loss due to logging, road construction and maintenance, and recreation (CBD *et al.* 2008, pp. 61, 62). We did not find information to support these claims, although Burke *et al.* (1999, p. 7) note that forest management activities have significantly impacted other mollusk species. Information provided by the petition cites an environmental impact statement indicating that both subspecies may be threatened by road building and maintenance (Burke *et al.* 1999, Sect. 11, pp. 6, 10). Burke *et al.* (1999, p. 6) also state that habitat alteration, including recreation development, may constitute a threat, but they do not provide information on the extent to which this activity is actually occurring or is likely to occur in sites occupied by either subspecies.

Substantial information in our files also indicates that these mollusks may be threatened by a proposal to raise Shasta Dam, which if carried out, would be likely to inundate important habitat and occupied sites (USBR 2007, p. ES 6; Terry 2008, p. 1).

Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the Shasta sideband and Wintu sideband may be warranted due to the present or threatened destruction, modification, or curtailment of their habitat or range.

Factor B: The petition states that both subspecies are threatened by overcollecting (CBD *et al.* 2008, pp. 61, 62). Although Burke *et al.* (1999, Sect. 11, p. 6) do mention this as a potential threat, they do not elaborate on whether collection is taking place at a level that could threaten either subspecies.

Factor C: The petition did not present any information, nor do we have any information in our files, to indicate that this factor may pose a threat to either subspecies.

Factor D: The petition asserts that Shasta sideband and Wintu sideband are threatened by inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy. Both mollusk species are currently considered special status species (USDA and USDI 2007, p. 93). As special status species, these mollusks should receive special management consideration on Federal lands; however, maintenance of special species status is left to the discretion of the Federal land managers. As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented.

The Aquatic Conservation Strategy is unlikely to provide significant protections for these organisms, because the Shasta sideband and Wintu sideband are not aquatic or riparian subspecies (Burke *et al.* 1999, Sect. 11, p. 5).

Factor E: The petition asserts that the Shasta sideband and Wintu sideband are threatened by wildfire that will become more frequent with climate change (CBD *et al.* 2008, pp. 27, 28, 61, 62). The petition and our files contain information indicating that global climate change is producing warmer summer temperatures, combined with longer periods of summer drought in the western United States, which is increasing the vulnerability of western U.S. forests to wildfire (Westerling *et al.* 2006, p. 940). Wildfire frequency and total area burned increased after the mid-1980s, to levels several times those of 1970–1986 (Westerling *et al.* 2006, p. 941). These changes cannot be explained solely by land-use history considerations such as fire suppression (Westerling *et al.* 2006, p. 940). While the petition provided general information about fire frequencies and climate change in the Pacific Northwest, it did not include any information about the effects of fire on these subspecies or about predicted climate change-induced changes in fire frequency within the subspecies' ranges.

The petition states that the Shasta and Wintu sidebands are threatened by pesticide application (CBD *et al.* 2008, pp. 61, 62). Although Burke *et al.* (1999, Sect. 6, p. 6) mention herbicide use as a potential threat, they do not provide information to indicate what herbicides, if any, are used in the vicinity of the mollusks, or in what amounts, or to what extent the Shasta or Wintu sidebands may be susceptible to the herbicides used.

The petition also indicates the Shasta and Wintu sidebands may be threatened by limited gene flow (inbreeding depression) and stochastic events (CBD *et al.* 2008, pp. 28, 29). We lack information regarding the size of most local populations of these subspecies, which would affect their susceptibility to inbreeding depression. We also lack information regarding the likelihood of damaging stochastic events capable of threatening the subspecies, other than for wildfire, which is covered above.

Shasta sideband and Wintu sideband Summary: Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the Shasta sideband and Wintu sideband may be warranted due to the present or threatened destruction, modification or curtailment of its habitat or range (Factor A) resulting from road building and the potential raising of the Shasta dam. We are initiating a status review to determine whether listing under the Act is warranted.

Siskiyou Sideband (*Monadenia chaceana*)

The Siskiyou sideband is a terrestrial snail known from 223 sites scattered widely across southwestern Oregon and northwestern California, of which 206 are federally managed (USDA and USDI 2007, pp. 93, 261). According to Burke *et al.* (1999, Sect. 7 p. 4), it occupies moist microhabitats in late-successional forest and talus slopes or rocky areas.

Factor A: The petition (CBD *et al.* 2008, p. 59) asserts that the Siskiyou sideband may be threatened by logging, which can ''alter the necessary microclimate conditions that allow populations to persist'' (USDA and USDI 2007, p. 261). According to Frest and Johannes (1993, p. 3) logging specifically reduces canopy cover; decreases shade; increases ground temperature; decreases soil moisture; compacts the soil; removes cover objects, such as woody debris; and increases wind, all of which contribute to desiccation. Burke *et al.* (1999, Sect. 7, p. 7) reaffirm that forest management activities that affect shade have significantly impacted other species of this genus in the Pacific Northwest. The petition states that the mollusk has been identified at three timber sales (CBD *et al.* 2008, p. 53). The petition also documents that the Forest Service and BLM addressed the effects of forest management practices on the 223 locations and concluded that, due to those potential impacts, the Survey and Manage and Special Species Status programs were necessary to conserve the mollusk (USDA and USDI 2007, pp. 93, 262). However, as discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the Survey and Manage program has since been reinstated. Given that 206 of the 223 known occupied sites are on Federal land where the Survey and Manage Program applies, we consider the logging-related concerns raised by the petition to be adequately addressed by this Program.

The petition also states that the Siskiyou sideband is threatened by urban and agricultural expansion, talus mining, and road construction (CBD *et al.* 2008, p. 60). Although the petition cites Frest and Johannes (2000, p. 308) to support these claims, Frest and Johannes (2000, p. 308) state that the species is known from only six sites. Given that the Siskiyou sideband is now known to occupy more than 223 sites, and that the information presented in the petition only speaks to potential threats to 6 of the 223 locations, the available information does not indicate that the species may be threatened by those activities.

Factor B: The petition states that the Siskiyou sideband is threatened by overcollection (CBD *et al.* 2008, p. 24). Although Burke *et al.* (1999, Sect. 7, p. 6) do mention overcollection as a potential threat, they do not provide information that explains the nature or extent of collection activities. Because only 33 occupied sites were known when Burke's report was published, and because we have no information to indicate that overcollection is occurring at the additional 190 sites, the available information does not indicate that the levels of collection may pose a threat now that 223 occupied sites have been identified (USDA and USDI 2007, p. 93).

Factor C: The petition did not present any information, nor do we have any information in our files, to indicate that this factor may pose a threat to the species.

Factor D: The petition asserts that Siskiyou sideband is threatened by inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy. The Siskiyou is currently considered a special status species (USDA and USDI 2007, p. 93). As a special status species, this mollusk should receive special management consideration on Federal lands; however, maintenance of special species status is left to the discretion of the Federal land managers. As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented.

The ACS is a set of standards established under the Northwest Forest Plan for protecting aquatic and riparian habitat on Federal land (USDA and USDI 1994, p. 9; CBD *et al.* 2008, p. 32). The ACS includes four components: Riparian reserves, key watersheds, watershed analysis, and watershed restoration. Since the Siskiyou sideband is a terrestrial mollusk, occurring in part on Federal riparian lands, the ACS may provide some protection from potential threats. Those protections would likely be limited for populations of the Siskiyou sideband occupying private lands, however.

The petition also states that this mollusk is threatened by the WOPR, a set of revisions to the Northwest Forest Plan proposed for BLM lands in western Oregon (CBD *et al.* 2008, p. 34). However, the BLM withdrew this proposal in 2009 (USDA 2009, p. 1). We are unaware of any BLM plans to reinstate the WOPR; therefore, we do not have the information to assess if, or how, WOPR may impact the species.

Factor E: The petition asserts that climate change is a threat to the Siskiyou sideband (CBD *et al.* 2008, p. 26). Information cited by the petition or in our files indicates that climate change is expected to cause significant reductions in both the volume and persistence of winter snowpack throughout the western United States (Knowles *et al.* 2006, p. 4545). Such reductions have already been documented in the Oregon Cascades (Knowles *et al.* 2006, pp. 4545, 4546). If reduced snowpack resulted in a reduction of soil moisture, the Siskiyou sideband, which requires moist habitat (Duncan 2004, p. 8), could be impacted. However, neither the petition nor our files contain information to indicate the extent to which soil drying could occur within the Siskiyou sideband's habitat or what impact that drying would have on the species.

The petition also claims the Siskiyou sideband may be threatened by prescribed burns (CBD *et al.* 2008, p. 59). The environmental impact statement for the removal of the Survey and Manage Program notes that prescribed burns are typically conducted during the spring or fall, when individuals of the species are more likely to be active and exposed. By contrast, summer wildfires occur when the Siskiyou sideband is more likely to be aestivating (similar to hibernating) in a secure location (USDA and USDI 2007, p. 261). The coincidence of prescribed burns within the mollusk's active periods could pose a threat to local populations within the area of the burn; however, neither the petition nor our files contains any information about the likelihood of prescribed burns being conducted within the species' range.

The petition also claims that the Siskiyou sideband may be threatened by limited gene flow (inbreeding depression) and stochastic events (CBD *et al.* 2008, pp. 28, 29). We do not have any information regarding the size of most local populations of this species, which would affect their susceptibility to inbreeding depression. We also do not have information regarding the likelihood of damaging stochastic events capable of threatening the species, other than for wildfire which is discussed above. Additionally, since the Siskiyou sideband is known from 223 occupied sites, any stochastic event would be unlikely to impact a large enough number of populations to threaten the species.

Siskiyou Sideband Summary: The reinstatement of the Survey and Manage Program, the withdrawal of the WOPR proposal, and the discovery of over 200 additional occupied sites since 2000, when some of the petition's cited sources were written, have addressed the concerns raised by the petition. Based on our evaluation of the information presented in the petition and in our files, we have determined the petition does not present substantial information to indicate that listing the Siskiyou sideband may be warranted.

Tall Pebblesnail (*Fluminicola n. sp. 2*)

The tall pebblesnail is an aquatic snail known from only a single site: Harriman Spring, along the margin of Upper Klamath Lake, Klamath County, Oregon (Duncan 2005b, p. 10; USDA and USDI 2007, p. 92). Harriman Spring is on private land adjacent to Winema National Forest lands. Like other *Fluminicola* species, the tall pebblesnail appears to require cold, unpolluted, well-oxygenated water (Duncan 2005b, pp. 10, 11).

Factor A: The petition asserts that the tall pebblesnail is threatened by habitat loss or impairment resulting from grazing, water diversion, irrigation, lake level fluctuation, and various sources of water pollution (CBD *et al.* 2008, p. 44). Information cited by the petition or in our files indicates that the tall pebblesnail may be threatened by grazing in the Fourmile Creek watershed, which feeds into the water near Harriman Spring (Furnish and Monthey 1999, Sect. 4, p. 14; Banish 2010, p. 2). Overgrazing near flowing water can cause increased sedimentation and eutrophication downstream (Banish 2010, p. 2), which can in turn lower oxygen levels and smother eggs and preferred substrates (Furnish and Monthey 1999, Sect. 4, pp. 3, 4, 14).

The petition also states that the species is threatened by urban pollution (CBD *et al.* 2008, p. 44). Information in our files indicates that the development of vacation homes at nearby Rocky Point may threaten the snail due to the

potential for water pollution from urban runoff or septic tank failure (Banish 2010, p. 2). Since the species is only known from one site, it may also be threatened by water diversions for irrigation and livestock (which can lower water flows and diminish available habitat), dredging (which can produce sedimentation and disturb or remove substrate), and lake level fluctuation (which can leave snails cut off from flows) (Furnish and Monthey 1999, Sect. 4, p. 14; Duncan 2005b, p. 11).

The petition also states that the species is threatened generally by road building and log storage and transport, but we did not find information in our files to support these claims.

Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the tall pebblesnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factors B and C: The petition did not present any information, nor do we have any information in our files, to indicate that these factors may pose a threat to the species.

Factor D: The petition asserts that tall pebblesnail is threatened by inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy. The tall pebblesnail is currently considered a special status species (USDA and USDI 2007, p. 92). As a special status species, this mollusk would receive special management consideration on Federal lands if it were to be found on such lands; however, maintenance of special species status is left to the discretion of the Federal land managers. As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented. The Survey requirements of the Survey and Manage Program will help assure that any currently unknown populations of tall pebblesnails that may be located on Federal lands are identified prior to the commencement of habitat modifying activities. The ACS is unlikely to provide significant protection for this species, because the tall pebblesnail is not known to occur on Federal lands.

Factor E: The petition asserts that climate change is a threat to the tall pebblesnail (CBD *et al.* 2008, p. 26). Climate change is causing significant reductions in both the volume and persistence of winter snowpack throughout the western United States, including northern California (Knowles *et al.* 2006, pp. 4545, 4546; Kapnick and Hall 2010, pp. 3446, 3454). The reduction and earlier melting of the snowpack is likely to continue, and this may result in a reduction in the amount of water that is available during summer months (Kapnick and Hall 2010, p. 3446, 3454). Such a reduction in available surface water may result in increased water diversions from groundwater and springs, but the extent to which springs supporting the tall pebblesnail may be affected by potential increased water diversions is unclear. Reduced snow runoff and lower flow levels may also result in water temperature increases, which could negatively impact the tall pebblesnail (Field *et al.* 2007, pp. 620, 629).

The petition also indicates that the tall pebblesnail may be threatened by limited gene flow (inbreeding depression) and stochastic events (CBD *et al.* 2008, pp. 28, 29). Although we do not have information regarding the number of tall pebblesnails at the species' single occupied site (which would affect the threat of inbreeding depression), the restriction of the species to one occupied site does leave it vulnerable to catastrophic events, such as the 1991 herbicide spill at Cantara Bend that removed mollusk populations throughout the upper Sacramento River (Frest and Johannes 1995b, pp. 72, 73).

Tall Pebblesnail Summary: Based on our evaluation of the information presented in the petition and in our files, we have determined the petition presents substantial information to indicate that listing the tall pebblesnail may be warranted due to the present or threatened destruction, modification or curtailment of its habitat or range (Factor A) resulting from water pollution produced by grazing and urban runoff. We are initiating a status review to determine whether listing under the Act is warranted.

Tehama Chaparral (*Trilobopsis tehamana*)

The Tehama chaparral is a terrestrial snail known from 12 sites in Tehama, Butte and Siskiyou Counties, California, 9 of which are on Federal land (ORNHIC 2004p, pp. 1–2; USDA and USDI 2007, p. 93). The Tehama chaparral has been found within 100 m (328 ft) of limestone outcrops with a cover of shrubs or oak (Kelley *et al.* 1999, p. 65). It is usually associated with rocky talus, but may also be found under leaf litter and woody debris, all of which are considered necessary to provide food and temporary cover, according to Burke *et al.* (1999, Sect. 14, pp. 5, 6).

Factor A: The petition asserts that the Tehama chaparral is threatened by habitat loss due to urbanization and road construction (CBD *et al.* 2008, p. 67). Information cited by the petition or in our files identifies road building, recreation, and urban expansion as potential threats (Frest and Johannes 2000, p. 320; ORNHIC 2004p, p. 2). However, the petition does not provide any information regarding the extent of these activities in areas occupied by the species.

Factor B: The petition states that the Tehama chaparral is threatened by overcollecting (CBD *et al.* 2008, p. 66). Although Burke *et al.* (1999, Sect. 14, p. 1) does mention this as a potential threat, they do not provide information to indicate that collecting is taking place at a level that could threaten the species. We have no additional information in our files to indicate that overcollection poses a threat to the overall status of the species.

Factor C: The petition did not present any information, nor do we have any information in our files, to indicate that this factor may pose a threat to the species.

Factor D: The petition asserts that Tehama chaparral is threatened by inadequate regulatory mechanisms associated with the Survey and Manage program, the Special Status Species Program, and the Aquatic Conservation Strategy. The Tehama chaparral is currently considered a special status species (USDA and USDI 2007, p. 93). As a special status species, this mollusk should receive special management consideration on Federal lands; however, maintenance of special species status is left to the discretion of the Federal land managers. As discussed above under ''The Survey and Manage Program and Special Status Species Programs,'' the claims raised under the petition relative to the discontinuation of the Survey and Management Program no longer apply, because that program is once again being implemented.

The ACS is a set of standards established under the Northwest Forest Plan for protecting aquatic and riparian habitat on Federal land (USDA and USDI 1994, p. 9; CBD *et al.* 2008, p. 32). The ACS is unlikely to provide significant protections for this species, because the Tehama chaparral is not an aquatic or riparian species (Burke *et al.* 1999, Sect. 14, p. 6).

The petition also states this mollusk is threatened by the WOPR, a set of revisions to the Northwest Forest Plan proposed for BLM lands in western

Oregon (CBD *et al.* 2008, p. 34). However, the BLM withdrew this proposal in 2009 (USDA 2009, p. 1). We are unaware of any BLM plans to reinstate the WOPR; therefore, we do not have the information to assess if, or how, WOPR may impact the species.

Factor E: The petition asserts that the Tehama chaparral is threatened by fire that will become more frequent with climate change (CBD *et al.* 2008, pp. 27, 28, 67). The petition and our files contain information indicating that global climate change is producing warmer summer temperatures, combined with longer periods of summer drought in the western U.S., which is increasing the vulnerability of western U.S. forests to wildfire (Westerling *et al.* 2006, p. 940). Wildfire frequency and total area burned increased after the mid-1980s to levels several times those during the period 1970–1986 (Westerling *et al.* 2006, p. 941). These changes cannot be explained solely by land-use history considerations such as fire suppression (Westerling *et al.* 2006, p. 940). While the petition provided general information about fire frequencies and climate change in the Pacific Northwest, it did not include any information about the effects of fire on the Tehama chaparral or about predicted climate change induced changes in fire frequency within the species range.

The petition states that the Tehama chaparral is threatened by pesticide application (CBD *et al.* 2008, p. 67). Although Burke *et al.* (1999, Sect. 14, p. 7) does mention herbicide use as a potential threat, they do not provide information to indicate which herbicides, if any, are used in or near sites occupied by this species, or in what amounts, or to what extent the Tehama chaparral may be susceptible to the herbicides used. We have no information in our files to indicate that pesticide application may be a threat to the species.

The petition also indicates that the Tehama chaparral may be threatened by limited gene flow (inbreeding depression) and stochastic events (CBD *et al.* 2008, pp. 28, 29). We do not have any information in our files regarding the size of most local populations of this species, which would affect its susceptibility to inbreeding depression. We also lack information regarding the likelihood of damaging stochastic events capable of threatening the species, other than for wildfire, which is covered above.

Tehama Chaparral Summary: Although the petition claims the Tehama chaparral may be threatened by urbanization and road construction (Factor A), and by fire, climate change, pesticides, limited gene flow, and deleterious stochastic events (Factor E), it does not provide sufficient information regarding the specific applicability of these threats to areas occupied by the species. The petition also states that the species is threatened due to the discontinuation of the Survey and Manage Program, and the enactment of the WOPR program, but the Survey and Manage Program has been reinstated, and the WOPR program has been withdrawn. Based on our evaluation of the information presented in the petition and in our files, we have determined the petition does not present substantial information to indicate that listing the Tehama chaparral may be warranted.

Wintu Sideband (*Monadenia troglodytes wintu*)

See discussion for ''Shasta Sideband (*Monadenia troglodytes troglodytes*) and Wintu Sideband (*M. t. wintu*)'' above.

Finding

On the basis of our evaluation of the petition under section 4(b)(3)(A) of the Act, we find that the petition presents substantial scientific or commercial information to indicate that listing 26 of the 29 petitioned mollusks as threatened or endangered under the Act may be warranted. We are therefore initiating status reviews for the following 26 species and subspecies: Basalt juga, Big Bar hesperian, canary duskysnail, Chelan mountainsnail, cinnamon juga, Columbia duskysnail, Columbia Oregonian, Dalles sideband, diminutive pebblesnail, evening fieldslug, Goose Valley pebblesnail, Hat Creek pebblesnail, Hoko vertigo, keeled jumping-slug, knobby rams-horn, masked duskysnail, nerite pebblesnail, nugget pebblesnail, Potem Creek pebblesnail, Puget Oregonian, Shasta chaparral, Shasta hesperian, Shasta pebblesnail, Shasta sideband, tall pebblesnail, and Wintu sideband. We did not find substantial information to support listing (and will not proceed to a status review) for the following petitioned mollusks: Crater Lake tightcoil, Siskiyou sideband, and Tehama chaparral (see table above). Our findings for each petitioned mollusk are also provided in the table under ''Listable entity evaluation,'' above.

After completing our status reviews for the 26 mollusks listed above, we will publish ''12-month findings,'' in which we will determine whether listing any of these 26 petitioned mollusks under the Act is warranted. The ''substantial information'' standard for a 90-day finding differs from the Act's ''best scientific and commercial data'' standard that applies to a status review to determine whether a petitioned action is warranted. Because the Act's standards for 90-day and 12-month findings are different, a substantial 90-day finding does not mean that the 12-month findings will result in a warranted finding.

The petition also requests that critical habitat be designated for the species concurrent with final listing under the Act. If we determine in our 12-month finding, following the status review of the species, that listing is warranted, we will address the designation of critical habitat in a subsequent proposed rule.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this document are staff members of the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 26, 2011.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–25538 Filed 10–4–11; 8:45 am]

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Cactus Ferruginous Pygmy-Owl as Threatened or Endangered With Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R2–ES–2011–0086; MO 92210–0–0008]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Cactus Ferruginous Pygmy-Owl as Threatened or Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) as threatened or endangered and to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). Additionally, the petition requested that we recognize and list a western subspecies of the cactus ferruginous pygmy-owl (*Glaucidium ridgwayi cactorum*), or, alternatively, two potential distinct population segment (DPS) configurations. After review of all available scientific and commercial information, we find that *Glaucidium ridgwayi cactorum* is not a valid taxon, and, therefore, not a listable entity under the Act. Additionally, using the currently accepted taxonomic classification of the pygmy-owl (*Glaucidium brasilianum cactorum*), we find that listing the pygmy-owl is not warranted at this time throughout all or a significant portion of its range, including the petitioned and other potential DPS configurations. However, we ask the public to submit to us at any time any new information concerning the taxonomy or status of the pygmy-owl, as well as any new information on the threats to the pygmy-owl or its habitat.

DATES: The finding announced in this document was made on October 5, 2011.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R2–ES–2011–0086. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021–4951. Please submit any new information, materials, comments, or questions regarding this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, Arizona Ecological Services Office (see **ADDRESSES**); telephone 602–242–0210; or by facsimile 602–242–2513. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information that listing a species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we determine whether the petitioned action is: (1) Not warranted, (2) warranted, or (3) warranted, but immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted annually on the date of such finding. Therefore, a new finding is to be made within 12 months and subsequently thereafter until we take action on a proposal to list or withdraw our original finding. We must publish these 12-month findings in the **Federal Register.**

Previous Federal Actions

On March 20, 2007, we received a petition dated March 15, 2007, from the Center for Biological Diversity and Defenders of Wildlife (petitioners) requesting that we list the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) (pygmy-owl) as a threatened or endangered species under the Endangered Species Act (Act) (CBD and DOW 2007). Additionally, the petition requested the designation of critical habitat concurrent with listing. The petition clearly identified itself as a petition and included the identification information, as required in 50 CFR 424.14(a). We acknowledged the receipt of the petition in a letter to the petitioners dated June 25, 2007, stating that we were proceeding with a review of the petition.

The petitioners described three potentially listable entities of the pygmy-owl: (1) An Arizona distinct population segment (DPS) of the pygmy-owl; (2) a Sonoran Desert DPS of the pygmy-owl; and (3) the western subspecies of the pygmy-owl, which they identified as *Glaucidium ridgwayi cactorum.* As an immediate action, the petitioners requested that we promulgate an emergency listing rule for the pygmy-owl. In our June 25, 2007, response letter to the petitioners, we described our evaluation of the need for emergency listing and stated our determination that emergency listing was not warranted for the pygmy-owl. We also stated that the designation of critical habitat would be considered if listing of the pygmy-owl was found to be warranted.

In the **Federal Register** of June 2, 2008 (73 FR 31418), we published a 90-day finding in which we determined that the petition presented substantial scientific and commercial information to indicate that listing the pygmy-owl may be warranted. A more thorough summary of previous Federal actions related to the pygmy-owl can be found in the June 2, 2008 90-day finding (73 FR 31418).

Following the publication of our 90-day finding on this petition, we initiated a status review to determine if listing of the pygmy-owl was warranted. During our status review, we solicited and received information from the general public and other interested parties on the status of the pygmy-owl. We consulted with experts, agencies, countries, and tribes to gather pertinent information, and ensure that experts and affected parties were aware of the status review and of the opportunity to provide input. We identified, contacted, and consulted with a diverse group of experts and interested persons in an effort to ensure that we gathered and evaluated the best available scientific and commercial information on this subspecies to inform our 12-month finding.

On December 12, 2009, we received a 60-day Notice of Intent to Sue from the petitioners for failure to produce a timely 12-month finding on their petition. They subsequently filed suit on February 17, 2010, in the U.S. District Court for the District of Arizona. That complaint was subsequently consolidated in the U.S. District Court for the District of Columbia along with another case filed by the Center for Biological Diversity and thirteen cases filed by Wild Earth Guardians, all related to petition finding deadlines. The court in the consolidated case

approved two settlement agreements between the parties on September 9, 2011. *In re Endangered Species Act Deadline Litigation,* Misc. Action No. 10–377 (EGS), MDL Docket No. 2165 (D.D.C. Sept. 9, 2011) (Docs. 55 & 56). The settlement agreements stipulate that the Service will submit to the Federal Register a proposed listing rule or a not warranted finding for the cactus ferruginous pygmy-owl no later than the end of Fiscal Year 2011, which is September 30, 2011.

This notice constitutes a 12-month finding for the petition to list the pygmy-owl as threatened or endangered. We base our finding on a review of the best scientific and commercial information available, including all substantive information received during our status review.

In this finding, we first provide background information on the biology of the pygmy-owl. Included in this background is our analysis of the petitioner's request that we recognize a western subspecies of the pygmy-owl (*Glaucidum ridgwayi cactorum*), which represents a proposed change in the taxonomic classification of the pygmy-owl. Then, we consider each of the five factors listed in section 4(a)(1) of the Act. For each factor, we first determine whether any negative impacts appear to be affecting the pygmy-owl anywhere in the subspecies' range, and whether any of these impacts rise to the level of threats such that the pygmy-owl is endangered or threatened throughout its range, according to the statutory standard.

After the rangewide assessment, we evaluate the validity of the petitioned distinct population segments (DPSs), as well as other potential DPS configurations suggested by information submitted during the status review or by the ecology, occurrence, and distribution of the pygmy-owl. This analysis determines whether any of the DPS configurations meet the criteria for discreteness and significance under our DPS policy (see Distinct Vertebrate Population Segment section below). We then evaluate whether there is a significant portion of the pygmy-owl's range that warrants further evaluation, consistent with the Act's definitions for ''endangered species'' and ''threatened species,'' which requires analysis of whether a ''species'' is endangered or threatened within ''a significant portion of its range'' (see Significant Portion of the Range section below). Finally, we make our finding with regard to the petitioned action and our evaluation as described above.

Species Information

Description

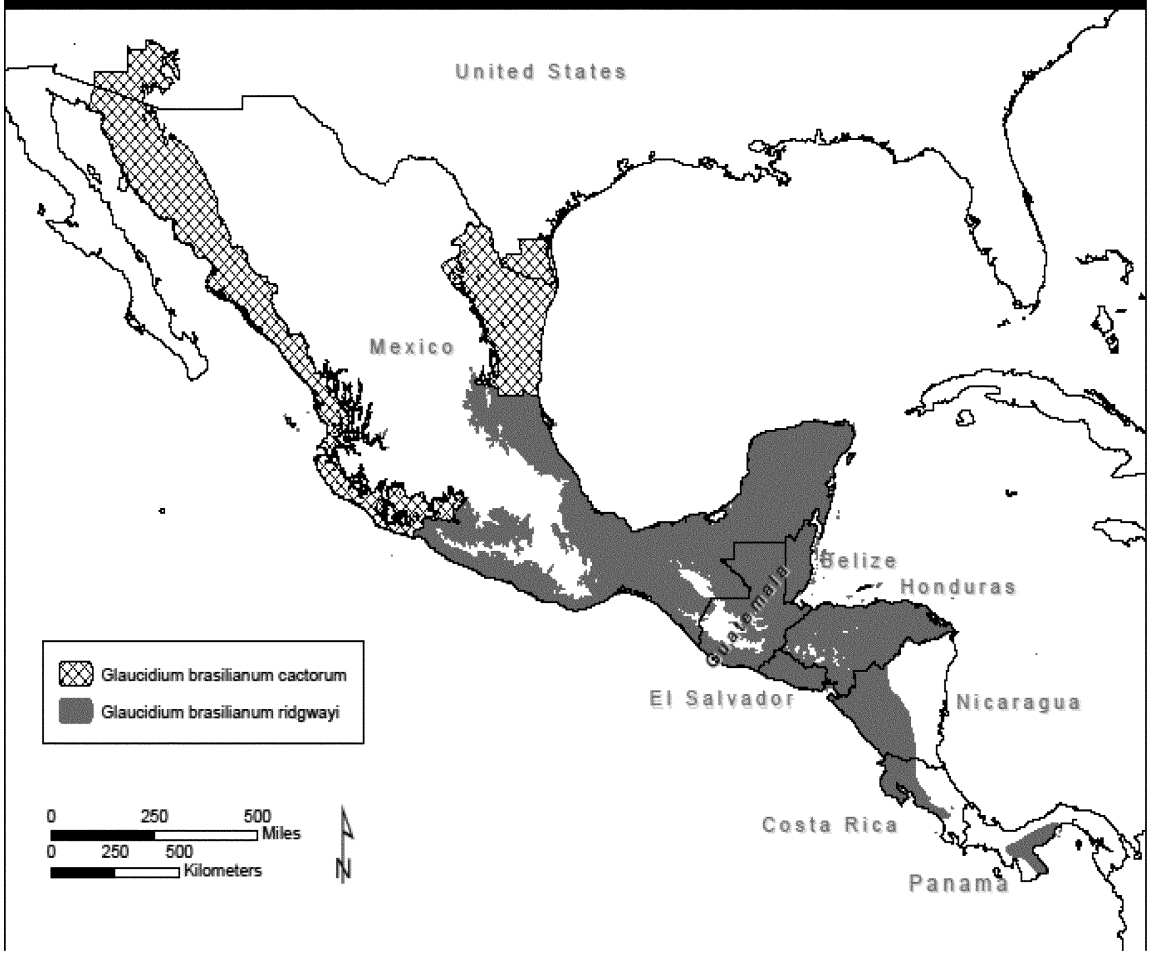
The pygmy-owl is in the order Strigiformes and the family Strigidae. It is a small bird, approximately 17 centimeters (cm) (6.75 inches (in)) long. Generally, male pygmy-owls average 58 grams (g) to 66 g (2.0 to 2.3 ounces (oz)) and females average 70 g to 75 g (2.4 to 2.6 oz) (AGFD 2008b, p. 3; Proudfoot and Johnson 2000, p. 16; Johnsgard 1988, p. 159). The pygmy-owl is reddish brown overall, with a cream-colored belly streaked with reddish brown. Color may vary, with some individuals being more grayish brown (Proudfoot and Johnson 2000, pp. 15–16). The crown is lightly streaked, and a pair of dark brown or black spots outlined in white occurs on the nape, suggesting ''eyes,'' leading to the name ''Cuatro Ojos'' (four eyes), as it is sometimes called in Mexico (Oberholser 1974, p. 451). The species lacks ear tufts, and the eyes are yellow. The tail is relatively long for an owl and is reddish brown in color, with darker brown bars. Pygmy-owls have large feet and talons relative to their body size.

Taxonomy

The petitioners requested that we recognize a change in the taxonomic classification of the pygmy-owl (CBD and DOW 2007, pp. 1–2). In considering taxonomic data, the Service relies ''on standard taxonomic distinctions and the biological expertise of the Department and the scientific community concerning the relevant taxonomic group'' (50 CFR 424.11(a)) and on ''the best available scientific and commercial information'' (50 CFR 424.11(b)). The use of specific taxonomic data is at the discretion of the Service, as long as the information is reliable and meets the above standards. With regard to the pygmy-owl, existing avian checklists attempt to present the most current taxonomic classifications, but discrepancies among checklists demonstrate that there is scientific debate and disagreement over some accepted taxonomic designations. Taxonomic changes within these checklists generally occur as a result of a proposal to change the existing taxonomy. Lack of reference to a proposed taxonomic change within these checklists cannot be interpreted as rejection (or acceptance) of a proposed change. It may simply mean a proposal has not been submitted or evaluated. Absolute reliance on one or more of these avian checklists, absent consideration of recent studies, would be arbitrary on the part of the Service. The Service has the responsibility for deciding what taxonomic entities are to be protected under the Act, based on the best available scientific information. We address any conflicting information or conflicting expert opinion by carefully evaluating the underlying scientific information and weighing its reliability and adequacy according to the considerations of the Act and our associated policies and procedures.

When we previously listed the pygmy-owl as endangered in 1997 (62 FR 10730; March 10, 1997), and in all subsequent regulatory and legal actions, we followed the currently accepted taxonomic classification, *Glaucidium brasilianum cactorum.* We considered *G. b. cactorum* to occur from lowland central Arizona south through western Mexico to the Mexican states of Colima and Michoacán, and from southern Texas south through the Mexican states of Tamaulipas and Nuevo Leon, consistent with most of the contemporary literature (Johnsgard 1988, p. 159; Millsap and Johnson 1988, p. 137; Oberholser 1974, p. 452; Friedmann *et al.* 1950, p. 145), and the last American Ornithologist Union (AOU) list that addressed avian classification to the subspecies level (AOU 1957) (Figure 1). The AOU checklist is generally accepted as the primary authority for avian taxonomic classification, and the 1957 AOU checklist description is the currently accepted taxonomic classification of the pygmy-owl at the subspecies level.

Figure 1. Range of currently accepted cactus ferruginous pygmy-owl taxonomy including *Glaucidium brasilianum cactorum* and *G. b. ridgwayi*. Ranges are approximate and for illustrative purposes only.



The petitioners requested a revised taxonomic consideration for the pygmy-owl based on Proudfoot *et al.* (2006a, p. 9; 2006b, p. 946) and König *et al.* (1999, pp. 160, 370–373), classifying the northern portion of *Glaucidium brasilianum's* range as an entirely separate species, *G. ridgwayi,* and recognizing two subspecies of *G. ridgwayi—G. r. cactorum* in western Mexico and Arizona and *G. r. ridgwayi* in eastern Mexico and Texas (Figure 1). Other recent studies proposing or supporting the change to *G. ridgwayi* for the northern portion of *G. brasilianum's* range have been published in the past 15 years (Heidrich *et al.* 1995, p. 2, 25; Navarro-Siguenza and Peterson 2004, p. 5).

Groups classified within species, such as subspecies, are important in the discussion of biodiversity because they represent the evolutionary potential within a species. Recognizing this, a number of existing lists of threatened, endangered, or special status species include subspecific groups (Haig *et al.* 2006, p. 1585). We considered the information in these existing lists and other literature as we evaluated the petitioned taxonomic classification. The 1957 AOU checklist is the last AOU checklist that described subspecies. Subsequent AOU checklists have limited their descriptions to the species level only and are, therefore, not helpful in our evaluation.

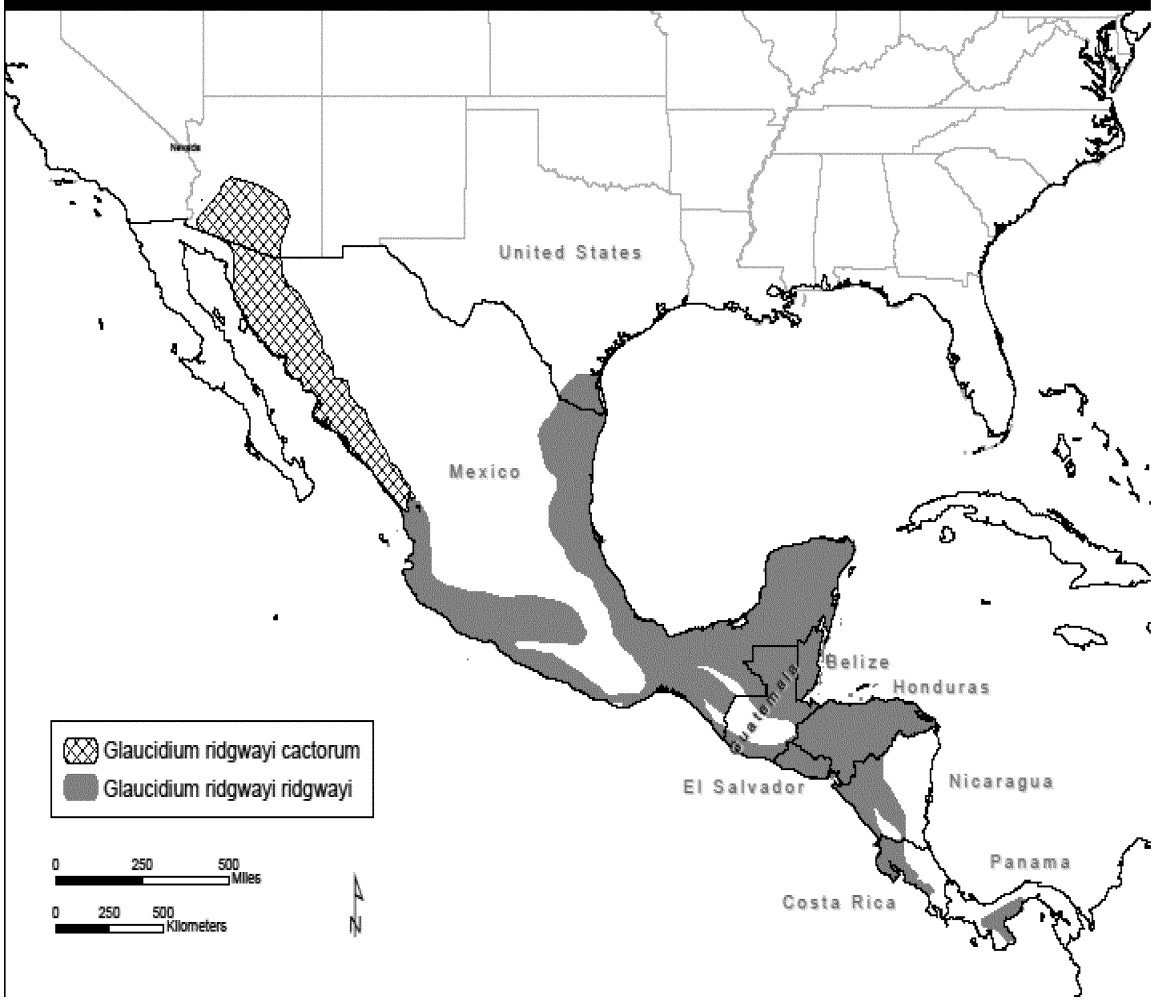
In our 90-day finding for this petition (73 FR 31418), we indicated that the petition presented reliable and substantive information that a taxonomic revision may be warranted. The suggested taxonomic change is based on recently published recommendations (Proudfoot *et al.* 2006a, p. 9; 2006b, p. 946; König *et al.* 1999, pp. 160, 370–373) to revise pygmy-owl taxonomy. Various other publications also provide evidence that the taxonomic status of the pygmy-owl has not been resolved (Proudfoot and Johnson 2000, pp. 4–5; König *et al.* 1999, p. 373; Phillips 1966, p. 93; Buchanan 1964, p. 107). Information received during our status review also indicates that pygmy-owl taxonomy needs additional work to resolve current questions (Johnson and Carothers 2008b, pp. 5–6; Robbins 2008, p. 1; Voelker 2008, p. 1).

Taxonomic nomenclature for the pygmy-owl has changed over time. Originally called *Glaucidium ferrugineum* in 1872 by Coues (Coues 1872, p. 370), the pygmy-owl has also been known as *G. ferrugineus* (Aiken 1937, p. 29) and *G. phalo(a)enoides* (Fisher 1893, p. 199; Gilman 1909, p. 115, Swarth 1914, p. 31; Kimball 1921, p. 57). Since the 1920's, the pygmy-owl has been classified as *G. brasilianum* (van Rossem 1937, p. 27; Bent 1938, p. 435; Peters 1940, p. 130; Brandt 1951, p. 653; Sutton 1951, p. 168). We will focus our discussion at the subspecies level since the petitioned entity is at the subspecies level of classification. As such, we will not evaluate or discuss whether the appropriate species classification is *G. brasilianum* or *G. ridgwayi.*

The petitioners asked the Service to recognize a subspecies, *Glaucidium ridgwayi cactorum,* described by

Proudfoot *et al.* (2006a, pp. 9–10; 2006b, p. 2, 9) as the listable entity in the petition. The primary difference between the petitioned subspecies and the currently accepted description of *G. brasilianum cactorum* is the latter's more extensive distribution to the south and east (Figure 1). The range of the *G. b. cactorum* subspecies we originally listed in 1997 is Arizona, northwestern Mexico, the Lower Rio Grande Valley of Texas, and northeastern Mexico, for a general distribution that runs from central Mexico northward on both sides of the Sierra Madre mountains into Arizona and Texas. The range of the proposed *G. r. cactorum* does not extend as far south as *G. b. cactorum.* The two *G. ridgwayi* subspecies proposed by the petition encompass the northwestern (*G. r. cactorum*) and northeastern (*G. r. ridgwayi*) extensions of the range of *G. b. cactorum.* Specifically, the petition describes the range of the suggested subspecies, *G. r. cactorum,* as extending from Arizona on the north through the States of Sonora and Sinaloa in Mexico (Figure 2).

Figure 2. Petitioned range of *Glaucidium ridgwayi cactorum* and *G. r. ridgwayi.* Ranges are approximate and for illustrative purposes only.



Our analysis of whether to accept the petitioners' proposed *Glaucidium ridgwayi cactorum* subspecies as a listable entity includes an evaluation of whether there are historical or current descriptions or studies of the proposed subspecies that would support the description of the petitioned subspecies based on Proudfoot *et al.* (2006a, 2006b). A number of subspecies of *G. brasilianum* have been described or suggested (Proudfoot and Johnson 2000, p. 4; Friedmann *et al.* 1950, pp. 145–147), including various descriptions of a *cactorum* subspecies, the distribution of some of which generally match the petitioned subspecies. Therefore, the delineation of a *cactorum* subspecies as petitioned is not a new classification, but one that has been described previously in the literature under *G. brasilianum.*

With regard to existing literature, van Rossem (1937, pp. 27–28) described the earliest *cactorum* subspecies that approximates the distribution of the petitioned subspecies. This was a newly described subspecies of ferruginous pygmy-owl and was described from a ''giant cactus grove between Empalme and Guaymas * * * Sonora, Mexico'' (van Rossem 1937, p. 27). Van Rossem restricted this new subspecies to northwestern Mexico and Arizona (Figure 3). Van Rossem also included a more southern and eastern subspecies, *ridgwayi,* that was described as occurring in southern Mexico and central America, but also Texas (van Rossem, 1937, pp. 27–28). He specifically excluded the Texas population from *cactorum,* about which

he wrote ''they approximate very closely the measurements and tail characters of *cactorum* * * * in color they are best referred to *ridgwayi''* (van Rossem 1937, pp. 27–28; italics added). The 1944 AOU checklist accepted this classification and described its distribution as southern Arizona to Nayarit, in western Mexico (AOU 1944, p. 50) (Fig. 3). However, in a later publication van Rossem (1945, p. 111) indicated that *cactorum* extended only to the Sonora and Sinaloa border in Mexico (Figure 3), perhaps excluding Nayarit, because his 1937 publication indicates that the specimen from Nayarit was not typical (van Rossem 1937, p. 28). Karalus and Eckert (1971, p. 223) give a southern distribution for *cactorum* of western and northwestern Sonora (Figure 3). Proudfoot *et al.* (2006a, p. 9; 2006b, p. 7) indicate the state of Sinaloa is the southern extent of the range, while König *et al.* (1999, p. 373) extend the distribution of *cactorum* into Nayarit and Jalisco in western Mexico (Figure 3). Freethy (1992, p. 121) simply states that western Mexico is the southern limit of *cactorum.* Clements (2007, p. 171) recognizes the *cactorum* subspecies, but gives no distribution.

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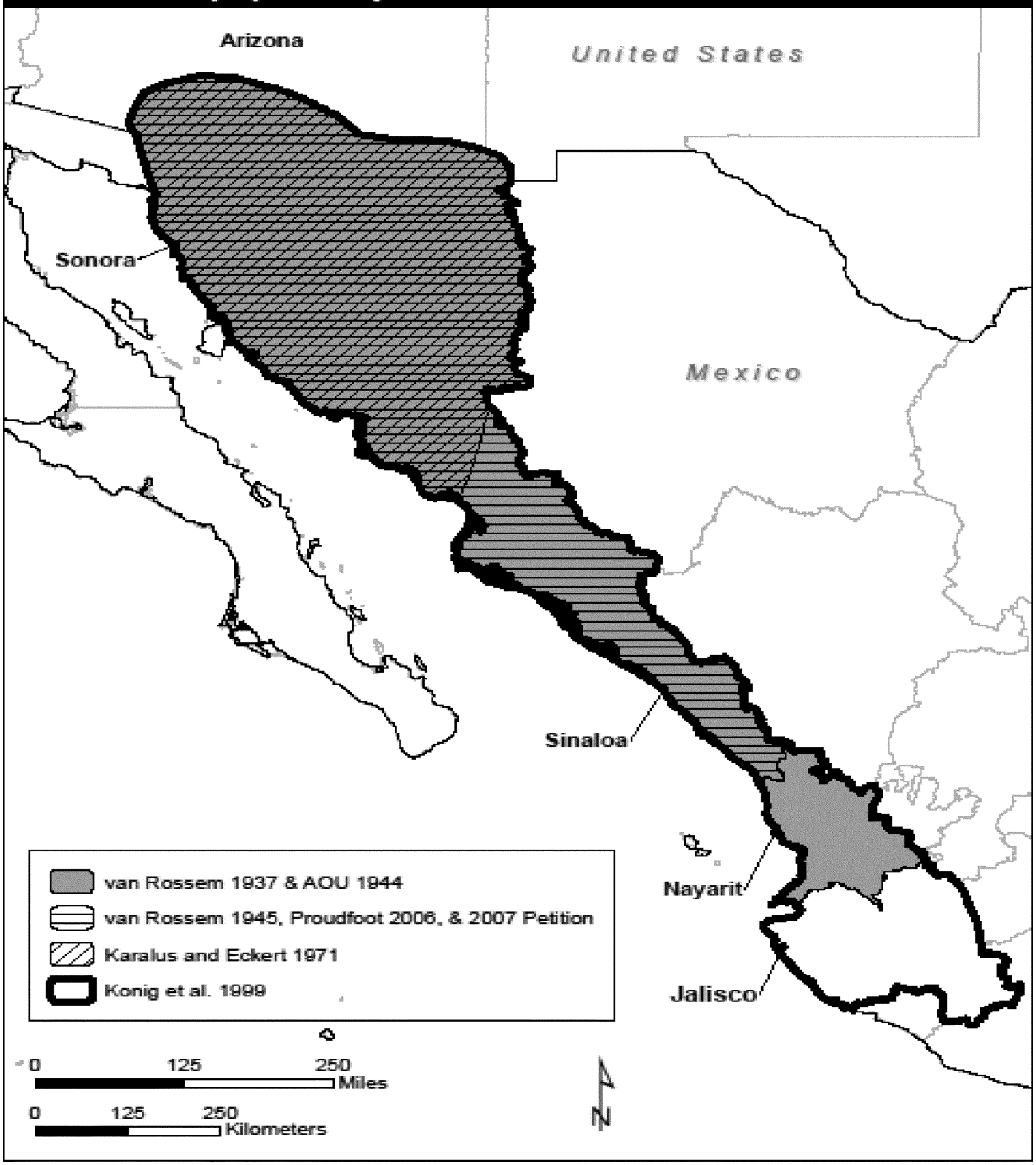
Figure 3. Cactus Ferruginous Pygmy-owl : Various configurations of the range of *cactorum* subspecies found in the literature. Ranges are approximate and for illustrative purposes only.



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The chronology described in the previous paragraph, which excludes the currently accepted distribution of *Glaucidium brasilianum cactorum,* focuses on descriptions in the literature which generally approximate the petitioned description of *G. ridgwayi cactorum,* and there is consensus that *cactorum* extended northward into Arizona. However, it is evident there is inconsistency regarding the southern extent of the subspecies. With the exception of van Rossem (1937, pp. 27–28), who uses morphological characteristics to describe the subspecies, most of the above descriptions of the *cactorum* subspecies do not indicate why they have ascribed the subspecies to the ranges indicated in these publications. König *et al.* (1999, p. 373) simply uses the morphological characters of van Rossem (1937, pp. 27–28). König *et al.* (1999, entire) and Proudfoot *et al.* (2006a; 2006b, entire) do classify *cactorum* using genetic data, but draw different conclusions with regard to the southern boundary. The incremental southward extension of the various *cactorum* ranges may provide some support for the idea of a clinal pattern of differentiation in which genetic and morphological differences occur in an incremental manner, as opposed to more abrupt changes that are more likely to represent a boundary between two distinct subspecies groupings. The data presented in the petition (Proudfoot *et al.* 2006a; 2006b, entire) are not sufficient to clarify the groupings in the literature, nor does it allow us to determine if the subspecies ranges are distinct because there is a lack of adequate sampling in southern and eastern Mexico. The uncertainty of the southern boundary would suggest that additional sampling is needed to refine this portion of the range of *cactorum.* In the presence of unresolved inconsistencies, the Service relies upon the ''standard taxonomic distinctions (50 CFR 424.11(a)); in this case, the currently accepted taxonomic classification (AOU 1957).

In addition to reviewing historical and current descriptions of the subspecies, we requested review and input on the issue of taxonomic classification of the petitioned entity from 10 individuals with biological expertise and background in this issue. Of the 10 we consulted, 5 provided comments on specific questions we asked regarding the issues of taxonomic classification, genetic differentiation, and genetic diversity based on recent and historical studies and publications related to pygmy-owl taxonomic classification. Information submitted by all five experts indicated that, while there are certain aspects of the information presented in the petition that support acceptance of the petitioned entity, there is insufficient information regarding how to define a distinct subspecies. Additional work is needed to clarify the distribution of the subspecies, especially in regards to the southern boundary (Voelker 2008, p. 1; Cicero 2008, p. 2; Robbins 2008, p. 1; Oyler-McCance 2008, pp. 1–2; Dumbacher 2008, pp. 2–8). A summary of their comments is presented below.

Dumbacher (2008, p. 7) provided a summary of considerations in response to our request for input on this issue: ''In summary, Proudfoot *et al.* 2006a and 2006b do not provide a critical test for the subspecies *Glaucidium ridgwayi ridgwayi* or *G.r. cactorum* or their geographical ranges. The data are consistent with current subspecies names in that they show: (1) Isolation by distance across the range, albeit with larger genetic breaks in the region that corresponds with the subspecies names [as described by van Rossem 1937]; (2) and significant variation among major geographical areas that broadly correspond to present subspecies names [van Rossem 1937]. However, it is not clear: (1) Where exactly the subspecies boundaries occur; (2) whether the boundary will be geographically distinct or correspond to characters used in the original subspecies designation, such that the two groups would qualify for subspecies under the 75 percent rule [75 percent of individuals in a new subspecies (or region) are diagnosably different from the other possible subspecies]; or (3) whether a broad hybrid zone or cline would be discovered that might call the two subspecies into question. Further data are needed to critically test the validity of the subspecies and to identify the most appropriate geographic boundary between them. Proudfoot *et al.* (2006b) make a plea for more data in critical areas, such as between Sonora and Sinaloa, and I would argue further south as well.''

Cicero (2008, p. 2) adds, ''On the basis of these data, I would argue that Arizona and Texas populations should be managed as separate units. However, further study of the variation in morphology and plumage (the characters originally used to describe *cactorum*) is needed before we can reliably apply names to these populations. Thus, in my opinion, the molecular data provided by Proudfoot *et al.* (2006a and 2006b) do not clarify subspecific limits and ranges in North American populations of *G. brasilianum''.* Similarly, Oyler-McCance (2008, p. 2) indicates that, ''within the United States, it is clear that the Arizona group is much different from the Texas group and should not be considered as one group. What is less clear, however, is where exactly to draw the boundary between the two subspecies * * *. It would be informative to look at other characteristics (morphology, behavior, geographic distribution) and see how well they fit with the patterns provided by the genetic data. Only then, using all those characteristics, would it be prudent to make a decision.''

Robbins (2008, p. 1) indicated that work on a molecular-based phylogeny of New World pygmy-owls is about to be completed that will inform this issue. He suggested that acceptance of the petitioned entity be delayed until this work has been published. However, the study to which Robbins refers will focus on species-level analyses, and it may not provide additional information regarding the distribution of subspecies and, as of the date of this finding, has not yet been published.

Recently, the Committee on Classification and Nomenclature on North and Middle American birds (the Checklist Committee) of the AOU considered a proposal to separate *Glaucidium brasilianum ridgwayi* as a distinct species, but rejected that proposal, citing the need to wait for additional work (AOU 2009).

In fairness to Proudfoot and his collaborators, their two 2006 studies are more general in nature and did not have the objective of defining pygmy-owl classification to the subspecies level. In addition, Proudfoot and his fellow authors, similar to the authors of many other publications related to pygmy-owl taxonomy, pointed out the need for additional work to clarify the taxonomic classification of pygmy-owls. Therefore, when we consider the recent information provided by Proudfoot *et al.* (2006a; 2006b, entire) and König *et al.* (1999, entire), in combination with the historical descriptions of distributions for the subspecies *cactorum,* there is evidence of a general nature that the petitioned subspecies may have merit. However, after reviewing the best available information, we find that uncertainty and inconsistency exists with regard to the delineation of the range of these subspecies.

The peer reviewers who provided information to the Service regarding this issue represent respected experts with considerable knowledge of the current science regarding avian taxonomy and classification. They point out that a combination of factors, including morphological, vocal, and genetic, need to be considered in greater depth, with

additional sampling, to determine if the petitioned taxonomic classification should be accepted, and we are in agreement with these comments. Given the uncertainty and lack of clarification found in the best available scientific and commercial information, we rely on the ''biological expertise of the Department and the scientific community concerning the relevant taxonomic group'' (50 CFR 424.11(a)).

In summary, we find that there is considerable uncertainty as to whether the genetic differentiation found at the far ends of the pygmy-owl's distribution represented by Arizona and Texas are adequate to define the eastern and western distributions as separate subspecies. These differences may simply represent isolation by distance with a clinal gradation of genetic differentiation between the two extremes of the range, which would be inconsistent with the existence of two different subspecies. Therefore, the best available scientific and commercial information does not suggest that genetic differentiation reported by Proudfoot *et al.* (2006a; 2006b, entire) and König *et al.* (1999, entire) supports their proposed *Glaucidium ridgwayi cactorum* subspecies classification at this time. Future work and studies may clarify and resolve these issues, but, in the meantime, we will continue to use the currently accepted distribution of *G. brasilianum cactorum* as described in the 1957 AOU checklist and various other publications (Johnsgard 1988, p. 159; Millsap and Johnson 1988, p. 137; Oberholser 1974, p. 452; Friedmann *et al.* 1950, p. 145). The Service accepted this information under the previous listing of the pygmy-owl (62 FR 10730). We, therefore, reject the petitioned listing of a western subspecies of pygmy-owl, *G. r. cactorum,* as an insufficiently supported taxonomic subspecies at this time.

The following discussion will examine the potentially listable entities of *Glaucidium brasilianum cactorum,* the currently recognized subspecies of pygmy-owl.

Distribution and Status

The currently accepted distribution of the pygmy-owl is described as south central Arizona and southern Texas in the United States, south through the Mexican States of Sonora, Sinaloa, Nayarit, Jalisco, Colima, and Michoacán on the west and Nuevo Leon and Tamaulipas on the east (Figure 1). Available information on the specific distribution of the pygmy-owl within this general area is not comprehensive, especially in the southern portions of Mexico. As described below, we have relatively detailed information on pygmy-owl distribution in the United States and Sonora, Mexico. The following is a description of the available information we have related to the distribution of the pygmy-owl.

The cactus ferruginous pygmy-owl is the northernmost subspecies of the ferruginous pygmy-owl. This subspecies was originally described as being common in the lower Rio Grande River in southern Texas (Oberholser 1974, p. 452) and along the Salt and Gila Rivers in central Arizona (Fisher 1893, p. 199; Breninger 1898, p. 128; Gilman 1909, p. 148). In Arizona and Texas, apparent range and population declines have occurred, reducing the current distribution of the pygmy-owl in these areas (Oberholser 1974, p. 452; Monson and Phillips 1981, p. 72; Proudfoot and Johnson 2000, p. 3). Historical records for the pygmy-owl in Arizona span at least five counties in southern and south-central Arizona, including Maricopa, Pima, Pinal, Santa Cruz and Yuma Counties (Johnson *et al.* 2003, p. 394). Most of the historical (pre-1900) and recent (post-1990) records are from Pima County. Between 1872 and 1971, a total of 56 published records or specimens were recorded for Arizona. Of those, almost half (27) were from Pima County (Johnson *et al.* 2003, pp. 392–395). Although the pygmy-owl was historically recorded primarily from lowland riparian habitats, all recent records are from upland and xeroriparian (vegetation community in drainages associated with seasonal or intermittent water) Sonoran desertscrub (Abbate *et al.* 2000, pp. 15–16, Service 2009b, p. 1: 2011, p. 1).

Some information provided by the public suggested that the pygmy-owl is an obligate wet riparian species in south-central Arizona and a preferential wet riparian species in southern Arizona, tying its distribution to these types of areas. In addition, the information states that recent records in upland habitats have occurred primarily in areas associated with ''cultivated riparian'' habitats resulting from the human influences of irrigation and ornamental plantings, such as in suburban areas of Tucson (Johnson and Carothers 2008b, pp. 13–14). We agree that riparian ecosystems provide important pygmy-owl habitat within its range. However, we disagree with the suggestion that pygmy-owls are riparian obligates, and thus limited in occurrence to these areas. For example, there are numerous recent locations in which pygmy-owls were detected in Sonoran desert uplands and semi-desert grasslands of southern Pinal County, Avra Valley, Altar Valley, Cabeza Prieta National Wildlife Refuge, Organ Pipe Cactus National Monument, and northern Sonora that are not in proximity to ''cultivated riparian'' or naturally occurring hydro- or mesoriparian (wet riparian) habitats.

Two members of the public provided extensive information in support of the idea that pygmy-owls have never been common in Arizona; therefore, the current low numbers and reduced distribution are not sufficient reason to determine that the pygmy-owl is endangered in Arizona (James 2008, pp. 8–10; Parker 2008, pp. 2–10). This conclusion is based on the historical records from early naturalists and ornithologists regarding their observations or collections of pygmy-owls or their nests or eggs, or the lack thereof. Specifically, this information points out that a number of early naturalists or ornithologists that made trips of various lengths and in various locations in Arizona where pygmy-owls would have been expected to occur did not make mention of observing pygmy-owls in their trip reports (James 2008, pp. 46–48; Parker 2008, pp. 6–8). We appreciate the effort and research represented by this information. It provides an excellent summary of historical ornithological efforts in Arizona. In assessing the information provided, we must determine if it is comparable to the information currently available on pygmy-owl numbers and distribution in Arizona. Current information comes from extensive surveys focused on locating only pygmy-owls using tape-playback or call imitation to locate the owls. We can find no evidence from the information provided that this same effort or methodology was used to locate pygmy-owls in the historical record; thus comparison with current surveys is not appropriate.

We do not discount the ability of early naturalists and ornithologists to find and identify pygmy-owls. However, finding pygmy-owls was not the objective of the trips reported in the literature, and unfortunately, most of these early reports do not contain enough information for us to determine that the effort was adequate to find pygmy-owls if they were present or that the absence of documentation of pygmy-owls truly means that no pygmy-owls were encountered. Additional information received from the public points out the problems in interpreting these early reports, ''While certainly instructive as to the critical value of surface water diversions, irrigation, and agriculture to Cactus ferruginous pygmy owls, lack of necessary specific information prevents Breninger's 1898

account from serving as a source of support for the petitioner's claim that this owl was historically common across the lowlands of central and southern Arizona. This is because Breninger neither shows how much time he spent in the field nor the locations he actually visited along either the Salt and Gila Rivers that caused him to conclude that Cactus ferruginous pygmy owls were then ''of common occurrence'' ''among the growth of cottonwood'' that fringed both on a highly localized basis'' (Parker 2008, pp. 3–4).

While early records provide information that shows the range of the pygmy-owl has contracted in Arizona, this conclusion relies on information at a large scale and is not dependent on specific population numbers, only presence or absence. The logical assumption may follow that pygmy-owl numbers are likely reduced as well. However, these early records do not have enough specific information for us to quantify historical pygmy-owl population numbers in a way that allows comparison to our current information. Glinski (1998, p. 3) provides a summary of this issue in *The Raptors of Arizona,* ''From the perspective of the variety and numbers of raptors, what did Arizona's landscape harbor two centuries ago? Is the answer to this question in the early literature? Unfortunately, no. Detailed records that accurately depict the status of Arizona raptors before 1970 are entirely lacking. The records of early explorers are full of errors, and later interpretations of them have added to the problem (G.P. Davis 1982).''

We received information from various agencies and municipalities that contained survey results from Arizona indicating that the pygmy-owl is likely absent from some areas in Maricopa and Pima Counties. Survey data submitted by the USDA Forest Service covering over 4,050 hectares (ha) (10,000 acres (ac)) in a 6-year period on the Tonto National Forest in Maricopa County detected no pygmy-owls (USFS 2008, p. 1). Burger (2008, p.1) indicated that the Arizona Game and Fish Department (AGFD) had conducted 3 years of surveys in Maricopa County without any pygmy-owl detections. Annual pygmy-owl surveys have been conducted by the Air Force on the Barry M. Goldwater Range of southwestern Arizona from 1993 to the present with no verified pygmy-owl detections (Uken 2008, p. 1). The Pima County Department of Transportation conducts pygmy-owl surveys for their capital improvement projects. These pygmy-owl surveys are associated with specific projects, and do not represent systematic surveys throughout Pima County. To date, they have conducted 383 surveys at 152 locations in Pima County with no detections (Pima County 2008, p.1). Some of the above surveys, and other negative surveys conducted throughout Arizona since 1997, occurred in areas where the pygmy-owl was historically located. This provides strong evidence that the current range of the pygmy-owl in Arizona has contracted.

Currently in Arizona, the pygmy-owl is found only in portions of Pima and Pinal Counties. The Arizona Breeding Bird Atlas reports confirmed occurrences of the pygmy-owl in only three blocks distributed in Pima and Pinal Counties (Arizona Breeding Bird Atlas (ABBA) 2005, p. 219). Twelve other blocks recorded probable (3) or possible (9) occurrences, but none occurred outside of Pima and Pinal Counties (ABBA 2005, p. 219). Recent surveys indicate that probably fewer than 50 adult pygmy-owls exist in the state, with 10 or fewer nest sites on an annual basis (Abbate *et al.* 2000, pp. 15–16, AGFD unpublished data). However, since the pygmy-owl was delisted in 2006 (71 FR 194521; April 14, 2006), surveys, monitoring, and other research on pygmy-owls has declined. Limited survey and monitoring in Arizona from 2009 to 2011 documented that pygmy-owls still occupy historical locations in the Altar Valley, Avra Valley, and Organ Pipe Cactus National Monument, all within Pima County (Service 2009b, p. 1; Tibbitts 2011, p. 1; Service 2011, p. 1). Comprehensive surveys have not been conducted on the Tohono O'odham Nation (Nation), which is located in the central portion of both the historical and current distribution of pygmy-owls in Arizona. However, a number of surveys have been completed for various utility projects on the Nation, and the pygmy-owl is known to occur there. Distribution of the data from these surveys has been restricted by the Nation and is not available for analysis. There are large areas of suitable habitat on the Nation, but the information we have indicates that pygmy-owls are patchily distributed, just as in other areas of the State, and occur at similar densities.

In summary, because the early records found in the literature provide no basis for consistent interpretation, the statements that the pygmy-owl was ''not uncommon,'' ''of common occurrence,'' and ''fairly numerous'' in lowland central and southern Arizona may be as appropriate as the commenter's interpretation that the pygmy-owl was never common in Arizona. The bottom line is that these early records provided no quantifiable information on which to base trends in pygmy-owl populations. Consequently, we must base our evaluation of the current pygmy-owl status on the best available scientific and commercial data, which is the information that does, at least, provide some ability to quantify pygmy-owl population numbers. Regardless of the lack of quantified historical data, the early records found in the literature give us some idea of the historical distribution of the pygmy-owl in Arizona that, when compared to the current distribution, has unquestionably been reduced.

In Texas, the pygmy-owl was formerly common in the Rio Grande delta. Griscom and Crosby (1926, p. 18) reported that the pygmy-owl was considered a ''common breeding species'' in the Brownville region of southern Texas. Even as late as 1950, Friedman *et al.* (1950, p. 145) considered the pygmy-owl to be ''a very common breeding bird.'' However, Oberholser (1974, pp. 451–452) indicates that agricultural expansion and subsequent loss of native woodland and thornscrub habitat, beginning in the 1920s, preceded the rapid demise of the pygmy-owl populations in the Rio Grande delta. By the 1970s, the pygmy-owl was encountered only rarely in Texas.

Nonetheless, Wauer *et al.* (1993, pp. 1074–1076) indicate that private ranches in Kenedy and Brooks Counties in Texas support a ''large and apparently thriving population of ferruginous pygmy-owls.'' Currently, the pygmy-owl is most consistently found only in the southernmost counties in Texas, mainly in Starr and Kenedy Counties (Tewes 1992, p. 21; Oberholser 1974, p. 451). More recent work documents occupancy in Brooks and Kenedy Counties on the King Ranch and adjacent ranches in Texas (Proudfoot 1996, p. 6; Mays 1996, p. 29). Population estimates in Texas include estimates of greater than 100 owls in Kleberg County (Tewes 1992, p. 24), 654 pairs in Kenedy, Brooks, and Willacy Counties (Wauer *et al.* 1993, p. 1074), and 745 to 1,823 pygmy-owls on ranches in Kenedy and Brooks Counties (Mays 1996, p. 32).

Recent concern about the populations in Texas has been raised because of an apparent decline in the number of pygmy-owl nestlings banded as part of an ongoing nest box study in Texas (Proudfoot 2010, p. 1). The numbers of nestlings banded at more than 200 nest boxes in 2003 and 2004 were 84 and 96 respectively. The numbers suggest a steady decline from 2004 to 2010, with 25 and 24 nestlings banded in 2009 and

2010, respectively (Proudfoot 2010, p. 1). This represents an approximate 70 percent decline in the number of nestlings banded over an 8-year period. Proudfoot (2011b, p. 1) indicates this decline is likely the result of the loss of suitable habitat around nest boxes due to recent hurricanes and fires. Without a more comprehensive survey effort in southern Texas, we cannot definitively state that the overall population of pygmy-owls in south Texas matches the decline of nestlings documented during this nest box study. However, it does raise our level of concern for this population. More work is needed in Texas to determine the overall population status and the extent of habitat loss and fragmentation. It may simply be that the pygmy-owls in these areas have moved to adjacent suitable habitat as former habitat and the associated nest boxes have been destroyed.

The pygmy-owl occurs in portions of eight States in Mexico. The pygmy-owl was thought to be uncommon throughout much of Sonora (Russell and Monson 1998, p. 141; Hunter 1988, pp. 1–6). However, recent surveys and capture efforts have shown that the pygmy-owl commonly occurs in both northern and southern Sonora, but is uncommon or absent in central Sonora (Flesch 2003, p. 39; AGFD 2008a, p.6; Service 2009a, p. 1). The highest densities of pygmy-owls occurred in the Sinaloan deciduous forest of southern Sonora (Flesch 2003, p. 42). Flesch (2003, p. 39) documented 438 males, 74 females, and 12 pygmy-owls of unknown sex along 1,113 kilometers (km) (1,780 miles (mi)) of transects in Sonora, and an additional 112 pygmy-owls incidentally detected.

During capture efforts in 2008, AGFD (2008a, p. 6) documented multiple pygmy-owls commonly responding at capture sites in the thornscrub and tropical deciduous forests of southern Sonora. In areas of central Sonora sampled by AGFD, some sites had no pygmy-owl responses, but responses increased as sampling moved into northern Sonora. These results are similar to patterns of occupancy documented by Flesch (2003, p. 40). However, it is clear that the number and density of pygmy-owls is higher in the thornscrub and deciduous forest community types than in the Sonoran desert community type. This occurrence and distribution agrees with conclusions found in the literature (Hunter 1988, p. 7; Russell and Monson 1988, p. 141; Shaldach 1963, p. 40). A total of 119 pygmy-owls were captured by AGFD over 15 days of trapping in northern Sinaloa and Sonora (AGFD 2008a, p. 6). The most recent monitoring of pygmy-owls in northern Sonora showed that, in 2010, sites sampled had the highest occupancy rates in the past 10 years at nearly 64 percent (Flesch 2011, p. 1). However, early results from the 2011 monitoring show occupancy of these same sites at around 50 percent, not far from the 10-year low of 45.7 percent (Flesch 2011, p. 1).

In summary, recent surveys and research in northwestern Mexico indicate that numbers and density of pygmy-owls are higher in thornscrub and tropical deciduous forest communities of southern Sonora and Sinaloa than in the Sonoran desertscrub and semi-desert grassland vegetation communities of the Sonoran Desert Ecoregion (Flesch 2003, pp. 39–42; AGFD 2008a, p. 6).

The best available information we have from the literature for the southern portion (areas south of Sonora and northern Sinaloa) of the pygmy-owl range indicates that pygmy-owls are one of the most common birds collected in these areas (Cartron *et al.* 2000, p. 5; Enriquez-Rocha *et al.* 1993, p. 154; Binford 1989, p. 132; Hunter 1988, p. 7; Johnsgard 1988, p. 161; Oberholser 1974, p. 451; Schaldach 1963, p. 40). It is important to note, however, that most of these references apply to the ferruginous pygmy-owl as a species and not to the *cactorum* subspecies specifically. However, the more recent survey, monitoring, and capture work discussed above all occurred within the range of the *cactorum* subspecies.

Tewes (1993, pp. 15–16) provides the most current information on pygmy-owls in northeastern Mexico. During surveys in 1991, he estimated 96 pygmy-owls in association with 142 plots at 12 locations (Tewes 1993, pp. 15–16). He concludes that no published empirical evidence suggests any change in the distribution of this species in Texas or northeastern Mexico, although the likelihood of finding pygmy-owls is low in some historically occupied areas (Tewes 1993, p. 22).

In addition, pygmy-owls are not evenly distributed across their current range; rather they tend to be patchily distributed across the landscape. Pygmy-owl populations, particularly in the northern portion of its range, likely function as metapopulations (a group of spatially separated populations that act at some levels as a single large population). Genetic and population support for individual groups of pygmy-owls likely occurs as a result of dispersal. Therefore, habitat connectivity among these population groups is important to maintain genetic diversity, as well as demographic support. Interaction among these population groups likely varies with distance, but pygmy-owls have been documented to disperse up to 260 km (161 mi.) (AGFD 2008a, p. 5). Individual pygmy-owl groups throughout the range are important to the survival of the subspecies as a whole in providing metapopulation support.

In conclusion, pygmy-owl distribution in the United States has contracted, with pygmy-owls no longer found in Maricopa, Cochise, Yuma, and Santa Cruz Counties in Arizona, nor in the Lower Rio Grande Valley in Texas. Despite this range contraction in the United States, pygmy-owls remain in Arizona and Texas. Survey results for Arizona indicate that approximately 50 adult pygmy-owls remain. In addition, there are a few large expanses of Arizona with suitable pygmy-owl habitat that have not been completely surveyed or for which pygmy-owl information is not available for evaluation. Pygmy-owl populations in Texas are estimated to range up to 1,800 birds, although there have been some declines in pygmy-owl nestlings associated with a nest box study in Texas. Pygmy-owls are still found in Sonora and northern Sinaloa, with higher densities reported in thornscrub and dry tropical forested areas compared to the arid desert areas. Based on Tewes study (1993, entire), pygmy-owls still occupy suitable habitat in northeastern Mexico and the pygmy-owl's distribution remains unchanged in Texas and northeastern Mexico. In addition, it appears that pygmy-owls still occur in the same areas of Mexico reported in the literature, suggesting that the current distribution is similar to the historical distribution. The available information, although dated, suggests that pygmy-owls remain common in the southern portion of their range.

Habitat

Pygmy-owls are found in a variety of vegetation communities, including Sonoran desertscrub and semidesert grasslands in Arizona and northern Sonora, thornscrub and dry deciduous forests in southern Sonora south to Michoacán, and Tamaulipan brushland in Texas and northeastern Mexico. However, available information regarding specific pygmy-owl habitat elements within these vegetation communities is limited to Arizona, Texas, and northern Sonora.

In Arizona, pygmy-owls rarely occur below 300 meters (m) (1,000 feet (ft)) or above 1,200 m (4,000 ft) (Proudfoot and Johnson 2000, p. 5), except perhaps during dispersal (AGFD 2008b, p. 3). Historically, in Arizona, the pygmy-owl

nested in Fremont cottonwood-mesquite forests and mesquite bosques (woodlands) associated with major drainages and their tributaries and the subspecies is considered by some to be a preferential riparian nesting species. The pygmy-owl in Arizona also occupies upland Sonoran desertscrub, often associated with xeroriparian areas. Species associated with these areas are *Prosopis* spp. (mesquite), *Parkinsonia* spp. (palo verde), *Acacia* spp. (acacia), *Olneya tesota* (ironwood), and *Carnegiea gigantea* (saguaro cactus) (Proudfoot and Johnson 2000, p. 5).

In Texas, the pygmy-owl was historically found in *Prosopis* spp., *Ebenopsis ebano* (ebony), and *Arundinaria gigantea* (cane) along the Rio Grande River, and a more general distribution in riparian trees, brush, palm, and mesquite thickets (Oberholser 1974, p. 451). It is now found primarily in undisturbed live oak-mesquite forests and mesquite brush, ebony, and riparian areas of the historical Wild Horse Desert north of Brownsville, Texas (Proudfoot and Johnson 2000, p. 5).

In Mexico, the pygmy-owl occurs from sea level to 1,200 m (4,000 ft) (Friedmann *et al.* 1950, p. 145). In Sonora, it was originally common in the lower Sonoran and Tropical Zones, primarily in giant cactus associations (van Rossem 1945, p. 111). The subspecies is resident throughout most of the desertscrub, tropical thornscrub, and dry subtropical forests of Sonora, being most common in the latter association (Russell and Monson 1998, p. 141). The pygmy-owl is absent from tropical deciduous forests and higher vegetation zones in west Mexico, where it is replaced by the least pygmy-owl (*Glaucidium minutissimum*) and the northern pygmy-owl (*G. gnoma*) (Schaldach 1963, p. 40; Buchanan 1964, pp. 104–105), as well as the Colima pygmy-owl (*G. palmarum*) (Howell and Robbins 1995, pp. 19–20). Dry, subtropical forests provide important pygmy-owl habitat elements, as evidenced by pygmy-owls being more common in this vegetation community type than in other community types in Mexico. The dry, subtropical forests comprise the majority of the pygmy-owl's southern range in Mexico. The presence of large trees and columnar cacti for nesting, and diversity of cover and prey types, contribute to the value of dry subtropical forests as pygmy-owl habitat.

The pygmy-owl is a creature of edges found in semi-open areas of thorny scrub and woodlands in association with giant cacti, scattered patches of woodlands in open landscapes, mostly dry woods, and evergreen secondary growth (König *et al.* 1999, p. 373). It is often found at the edges of riparian and xeroriparian drainages and even habitat edges created by villages, towns, and cities (Proudfoot and Johnson 2000, p. 5; Abbate *et al.* 1999, pp. 14–23). The pygmy-owl is a secondary cavity nester, and nests occur within woodpecker holes and natural cavities in giant cacti, but also in trees and even in a sand bank (Flesch 2003, pp. 130–132; Proudfoot and Johnson 2000, p. 11; Russell and Monson 1998, p. 141; Johnsgard 1988, p. 162). Tewes (1992, p. 22) contends that status and occurrence of the pygmy-owl is related to the availability of nest cavities.

While native and nonnative plant species composition differs among the various locations within the range of the pygmy-owl, there are certain unifying characteristics such as the presence of vegetation in fairly dense thickets or woodlands; the presence of trees, saguaros, *Stenocereus thurberi* (organ pipe cactus), or other columnar cacti large enough to support cavities for nesting; and elevations typically below 1,200 m (4,000 ft) (Swarth 1914, p. 31; Karalus and Eckert 1974, p. 218; Monson and Phillips 1981, pp. 71–72; Johnsgard 1988, Enriquez-Rocha *et al.* 1993, p. 158; Proudfoot 1996, p. 75; Proudfoot and Johnson 2000, p. 5). Large trees provide canopy cover and cavities used for nesting, and the density of mid- and lower-story vegetation provides foraging habitat and protection from predators and contributes to the occurrence of prey items (Wilcox *et al.* 2000, pp. 6–9).

Life History

Usually, pygmy-owls first nest as yearlings (Proudfoot and Johnson 2000, p. 13; Abbate *et al.* 1999, pp. 17–19), and both sexes breed annually thereafter. Territories normally contain several potential nest and roost cavities from which responding females select a nest. Hence, cavities per unit area may be a fundamental criterion for habitat selection. Historically, pygmy-owls in Arizona used cavities in cottonwood, mesquite, and ash trees, and saguaro cacti for nest sites (Millsap and Johnson 1988, pp. 137–138). Recent information from Arizona indicates nests were located in cavities in saguaro cacti for all but two of the known nests documented from 1996 to 2002 (Abbate *et al.* 1996, p. 15; 1999, p. 41; 2000, p. 13; AGFD 2003, p. 1). Pygmy-owl nests in Texas were primarily in mesquite and live oak trees (Proudfoot 1996, pp. 36–38), and nests in Sonora, Mexico, were nearly always in columnar cacti (Flesch and Steidl 2002, p. 6). Pygmy-owls will also use nest boxes for nesting (Proudfoot 1996, p. 67).

Pygmy-owls begin courtship and advertisement calls early in the year from January into February. Nest selection then occurs, with eggs typically being laid from late March into June. Average clutch size as reported by Johnsgard (1988, p. 162) for the United States and Mexico was 3.3 (range 2 to 5, n = 43). In Texas, Proudfoot and Johnson (2000, p. 11) report an average clutch size of 4.9 (range 3 to 7, n = 58). First eggs hatch generally around mid-May, and fledging occurs from late-May through June. The first dispersal of fledglings in Arizona and Texas was documented as July 24th and August 14th, respectively (Proudfoot and Johnson 2000, p. 10). Pygmy-owl juveniles typically disperse at 8 weeks post-fledging. Males typically disperse shorter distances than females. Dispersal distance ranges from 2.5 to 20.91 km (1.55 to 13.00 mi) in Arizona (Abbate *et al.* 2000, p. 21) and 16 to 31 km (9.6 to 18.6 mi) in Texas (Proudfoot and Johnson 2000, p. 13). One juvenile female pygmy-owl in Arizona recently dispersed a total of 260 km (161 mi) between August 2003 and April 2004 (AGFD 2008a, p. 5). In Sonora, Mexico, Flesch and Steidl (2007, p. 37) documented dispersal distances ranging from 1.1 to 19.2 km (0.7 to 11.5 mi).

Pygmy-owls are considered nonmigratory throughout their range. There are winter (November to January) pygmy-owl locations from throughout their historical range in Arizona (University of Arizona 1995, pp. 1–2; Snyder 2005, pp. 4–5; Abbate *et al.* 1999, pp. 14–17; 2000, pp. 12–13) and also in Texas (Proudfoot 1996, p. 19; Mays 1996, p. 14). These winter records suggest that pygmy-owls are found within their home ranges throughout the year and that they do not migrate seasonally. The pygmy-owl is primarily diurnal (active during daylight) with crepuscular (active at dawn and dusk) tendencies.

The pygmy-owl is a perch-and-wait hunter. It is largely a generalist with regard to prey and diet. Oberholser (1974, p. 451) indicated that the pygmy-owl's diet included lizards, large insects, rodents, and birds (some as large as the owl). In Texas, insects, reptiles, birds, small mammals, and amphibians, to a lesser extent, are eaten by pygmy-owls (Proudfoot and Johnson 2000, p. 6). In Arizona, reptiles, birds, small mammals, and insects have all been recorded in the diet of the pygmy-owl (Abbate *et al.* 1999, pp. 35–40). Seasonal and annual variations in diet occur throughout its range (Proudfoot

and Johnson 2000, p. 6; Abbate *et al.* 1999, pp. 35–40).

The pygmy-owl is commonly mobbed (harassed) by many species of passerines, presumably in response to being a regular predator on those species (Proudfoot and Johnson 2000, p. 10; Abbate *et al.* 1999, pp. 25–26; Hunter 1988, p. 1). The mobbing behavior of birds can often aid in locating a well hidden pygmy-owl, as multiple individuals and species will often participate in the mobbing and identify the perch of the pygmy-owl. The dark eye-spots on the back of the pygmy-owl's head may act to fend off mobbing or increase predatory efficiency by confusing prey (Heinrich 1987 in Proudfoot and Johnson 2000, p. 10).

Due to their small size and occurrence in similar habitats as many of their predators, pygmy-owls are preyed upon by a variety of species. Documented and likely predators in Texas and Arizona include raccoons (*Procyon lotor*), great horned owls (*Bubo virginianus*), Cooper's hawks (*Accipiter cooperii*), Harris' hawks (*Parabuteo unicinctus*), western screech owls (*Megascops kennicottii*), bull snakes (*Pituophis melanoleucus*), and domestic cats (*Felis domesticus*) (Abbate *et al.* 1999, p. 27; Proudfoot and Johnson 2000, p. 10). Pygmy-owls may be particularly vulnerable to predation and other threats during and shortly after fledging (Abbate *et al.* 1999, p. 50). Lifespan has been documented to be 7 to 9 years in the wild (Proudfoot 2009b, p. 1) and 10 years in captivity (AGFD 2009, p. 1).

Summary of Information Pertaining to the Five Factors Affecting the Pygmy-Owl Throughout Its Range

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making our 12-month finding on the petition we considered and evaluated the best available scientific and commercial information.

In considering whether the five statutory factors in section 4(a) might constitute threats, we must look beyond the mere exposure of the species to the factor and determine whether the species responds to the factor in a way that causes actual negative impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a significant threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of threatened or endangered under the Act. A species may be threatened or endangered based on the intensity or magnitude of one operative threat alone or based on the synergistic effect of several operative threats acting in concert.

Through our five-factor analysis, we identified a number of factors negatively impacting the pygmy-owl or its habitat. To determine whether these impacts individually or collectively rise to the level of threats such that the pygmy-owl is in danger of extinction throughout its range, or likely to become so in the foreseeable future, we first considered whether these impacts to the subspecies were causing long-term, range-wide, population-scale declines in pygmy-owl numbers, or were likely to do so in the foreseeable future. Although some of these impacts seem significant individually, we found these impacts to be localized in their effects, but not placing the pygmy-owl in danger of extinction throughout its range now or in the foreseeable future. In other words, the severe impacts were restricted to an area that constitutes a relatively small portion of the pygmy-owl's range.

The detailed information we have on impacts covers only about 27 percent of the pygmy-owl's range. For this area, which includes Arizona and Texas in the United States, and Sonora and northern Sinaloa in Mexico, information describing the impacts to pygmy-owls was relatively complete. For the remaining 73 percent of the pygmy-owl range in Mexico, information regarding impacts to pygmy-owls was relatively sparse. The best available scientific and commercial information indicates that the impacts to pygmy-owls in the northern portion of their range are severe. However, the best available information indicates that pygmy-owls in the southern portion of their range remain common and that some of the threats that are severe in the northern portion of the species' range appear to be less severe or non-existent in the southern portion. Thus we conclude that pygmy owls are not threatened throughout their range, or likely to become so. The details supporting our conclusion are found in the following analysis.

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

For this factor, we evaluate available information related to impacts to pygmy-owl habitat throughout its range. Our evaluation identified general activities affecting or potentially affecting pygmy-owl habitat that included urbanization, nonnative species invasions, fire, agricultural development, wood cutting, improper grazing, border issues, and off-highway vehicle use. However, with the exception of the United States and Sonora, Mexico, detailed information related to these activities is limited, and we were unable to specifically evaluate the effects of many of these activities for much of the pygmy-owl's range in Mexico. The following discussion presents the best available information regarding these activities and their effects to pygmy-owl habitat.

Urbanization

Increasing human populations result in expanding urban areas. Urbanization causes permanent impacts on the landscape that potentially result in the loss and alteration of pygmy-owl habitat. Residential, commercial, and infrastructure development replace and fragment areas of native vegetation resulting in the loss of available pygmy-owl habitat and habitat connectivity needed to support pygmy-owl dispersal and metapopulation function. Increasing human populations require additional water, and increasing water consumption can reduce available surface and ground water needed to support pygmy-owl and pygmy-owl prey habitats. Added human presence on the landscape can potentially lead to increased pygmy-owl mortality through

introduced predators, collisions, etc. The following discussion presents the available information related to pygmy-owl habitat impacts associated with urbanization.

Human population growth results in the expansion of urbanization (Travis *et al.* 2005, p. 2). Arizona's population increased by 394 percent from 1960 to 2000, and was second only to Nevada as the fastest growing State during this timeframe (Social Science Data Analysis Network (SSDAN) 2000, p. 1). Since 1990, Arizona's population has grown by 44 percent. From 1960 to 2000, population growth rates in Arizona counties where the pygmy-owl occurs, or recently occurred, have varied by county, but all are increasing: Maricopa (463 percent); Pima (318 percent); Pinal (54 percent); and Santa Cruz (355 percent) (SSDAN 2000).

Urban expansion and human population growth trends in Arizona are expected to continue into the future. The Maricopa-Pima-Pinal County areas of Arizona are expected to grow by as much as 71 percent in the next 15 years, creating rural-urban edge effects across thousands of acres of pygmy-owl habitat (AIDTT 2000, p. 10; BLM files-Lands Livability Initiative). In another projection, the Arizona population is expected to more than double within the next 20 years, compared to the 2000 population estimate (U.S. Census Bureau 2005, p. 1). Many cities and towns within the historical distribution of the pygmy-owl in Arizona already experienced substantial growth during the 8-year time span from 2000 to 2008: Town of Carefree (30.5 percent); Casa Grande (56 percent); Town of Cave Creek (44.2 percent); City of Eloy (22.3 percent); City of Florence (20.3 percent); City of Mammoth (45 percent); Town of Marana (139.9 percent); Town of Oro Valley (32.5 percent); and the Town of Sahuarita (507.3 percent) (U.S. Census Bureau 2008, pp. 1–4).

This population growth has spurred a significant increase in urbanization and development in these areas. Regional development is predicted to be high in certain areas within the distribution of the pygmy-owl in Arizona. In particular, a wide area from the international border in Nogales, through Tucson, Phoenix, and north into Yavapai County (called the Sun Corridor ''Megapolitan'' Area) is predicted to have 8 million people by 2030, an 82.5 percent increase from 2000 (Gammage *et al.* 2008, pp. 15, 22–23). If build-out occurs as expected, it will encompass a substantial portion of the current and historical distribution of the pygmy-owl in Arizona.

Development pressure across Arizona has slowed due to the recent economic downturn and decline in the housing market. However, development will likely continue in the future, although perhaps at a slower pace than in the earlier part of this century. We also recognize that economic trends are difficult to predict into the future. The most recent draft Pinal County Comprehensive Plan (February 2009) acknowledges that the county is in the middle of the Sun Corridor Megapolitan and proposes four shorter-term growth areas in defining where development will likely occur over the next decade, but does not discourage growth outside of these areas (Pinal County Comprehensive Plan 2009, p. 109). Areas within two of the four growth areas (West Pinal and Red Rock) support historically occupied and recently occupied areas.

Because most of the pygmy-owl habitat in Texas occurs on private ranch lands, the impact of habitat loss and fragmentation of the remaining pygmy-owl habitat due to urbanization is greatly reduced. Some housing, ranch facilities, roadways, and utilities will undoubtedly be constructed with changing ranch plans, and this may affect individual pygmy-owl territories. However, the overall impact to pygmy-owl habitat from current rates of urbanization in Texas is much less than that in Arizona and parts of Mexico.

In Mexico, the greatest increases in population have occurred mostly in coastal resort areas, State capitals, and along the United States-Mexico border. In the Sonoran Desert Ecoregion of Mexico (a relatively homogeneous ecological area defined by similarity of climate, landform, soil, potential natural vegetation, hydrology, or other ecologically relevant variables), the human population nearly doubled between 1970 and 1990, to a total population of 6.9 million (Gorenflo 2002, p. 13). The Sonoran capital, Hermosillo, grew by 116 percent. When considering urban growth within individual biotic communities, the human population more than doubled in three of the seven major biogeographic communities of Mexico (Arizona Upland and Lower Colorado River Valley, Plains of Sonora, and Magdalena Plain) (Gorenflo 2002, p. 28), all of which provide important pygmy-owl habitat.

The United States-Mexico border region has a distinct demographic pattern of permanent and temporary development related to warehouses, exports, and other border-related activities, and patterns of population growth in this area of northern Mexico have been accelerated relative to other Mexican States (Pineiro 2001, pp. 1–2). This focuses development, and potential barriers or impediments to pygmy-owl movements, in a region that is important for pygmy-owl metapopulation support and other movements such as dispersal. The Arizona-Sonora border region's population growth is expected to reach 2.1 million (Walker and Pavlakovich-Kochi 2003, p. 1) in an area that will affect cross-border movement by pygmy-owls and other important population linkages needed to support the pygmy-owl metapopulation structure. Based on 1990 human population numbers, the land cover types currently most valuable to the pygmy-owl—Mesquite Bosque and Palo Verde-Mixed Cactus—were the most heavily human-populated in the Sonoran Desert Ecoregion. The Mesquite Bosque type makes up 8.2 percent of the area, but supports 10.4 percent of the human population. Similarly, the Palo Verde-Mixed Cactus type covers 29 percent of the area, but supports 49.4 percent of the population (Gorenflo 2002, p. 28).

Human activity, most notably in the past century, has dramatically altered the landscape of the Arizona-Sonora border, affecting both the quantity and quality of its ecological resources. Urbanization not only reduces the amount of open space, but impacts the biological value of areas (Walker and Pavlakovich-Kochi 2003, p. 3). The Sonoran border population has been increasing faster than that State's average and faster than Arizona's border population; between 1990 and 2000, the population in the Sonoran border municipios increased by 33.4 percent, compared to Sonora's average (21.6 percent) and the average increase of Arizona's border counties (27.8 percent). Urbanization has increased habitat conversion and fragmentation, which, along with immigration, population growth, and resource consumption, were ranked as the highest threats to the Sonoran Desert Ecoregion (Nabhan and Holdsworth 1998, p. 1).

Urbanization has also affected pygmy-owl habitat in other parts of Mexico. Trejo and Dirzo (2000, p. 133) indicate that areas of dry subtropical forests, important habitat for pygmy-owls in southwestern Mexico, have been used by humans through time for settlement and various other activities. The long-term impact of this settlement has converted these dry subtropical forests into shrublands and savannas lacking large trees, columnar cacti, and cover and prey diversity that are important pygmy-owl habitat elements Trejo and Dirzo (2000, p. 134) state that in Mexico dry tropical forest is the major type of tropical vegetation in the country,

covering over 60 percent of the total area of tropical vegetation. According to official governmental maps, about 8 percent (approximately 160,000 square km (61,776 square mi)) of this forest remained intact by the late 1970s, and an assessment made at the beginning of the present decade suggested that 30 percent of these tropical forests have been altered and converted to agricultural lands and cattle grasslands. The remaining forests are restricted to steep slopes where it is not likely that land will be cleared for additional agricultural or development purposes (Allnutt 2001, p.3). However, the information about the current actual extension and condition of dry tropical forests in Mexico is unclear due to confusion in their classification and difficulty using remote sensing to delineate intact dry forest (Allnutt 2001, p. 3). The best available information indicates that there are still expanses of dry tropical forest along the Pacific coast in Mexico, including some areas below 1,200 m (4,000 ft) where pygmy-owls are found, but there has been loss of this forest type throughout Mexico.

The actual effects of urbanization on biodiversity are many and mutually reinforcing, including the aggravation of the ''urban heat island effect''; the channelization or disruption of riverine corridors; the proliferation of exotic species; the killing of wildlife by automobiles, toxins, and pets; and the fragmentation of remaining patches of natural vegetation into smaller and smaller pieces that are unable to support viable populations of native plants or animals (Ewing and Kostyack 2005, pp. 1–2; Nabhan and Holdsworth 1998, p. 2). Human-related mortality (e.g., shooting, collisions, and predation by pets) increases as urbanization increases (Banks 1979, pp. 1–2; Churcher and Lawton 1987, p. 439). The above statements, while general in their nature, point out the vulnerability of habitats that support pygmy-owls and the impacts that urbanization can have on the extent and quality of available habitat. We would expect these types of impacts in areas that have experienced or are experiencing urban growth in or near pygmy-owl habitats. Not all areas in the United States and Mexico are experiencing this type of growth, especially in the southern portion of the pygmy-owl's range.

Development of roadways and their contribution to habitat loss and fragmentation is a particularly widespread impact of urbanization (Nickens 1991, p. 1). Data from Arizona and Mexico indicate that roadways and other open areas lacking cover affect pygmy-owl dispersal (Flesch and Steidl 2007, pp. 6–7; Abbate *et al.* 1999, p. 54). Nest success and juvenile survival were lower at pygmy-owl nest sites closer to large roadways, suggesting that habitat quality may be reduced in those areas (Flesch and Steidl 2007, pp. 6–7).

Currently, most roadways in Sonora are relatively narrow. However, the Sonoran government is starting to implement plans to build new highways and other infrastructure improvements. Governor Bours of Sonora formed the Sonoran Strategic Projects Operator, in conjunction with other investors, to carry out the construction of highway improvements (Wild Sonora 2009, p. 2). Of specific concern related to pygmy-owl impacts is the recent improvement of the road between Saric, in the upper Rio Altar valley, and Sasabe, in the heart of the distribution of the pygmy-owl in northern Sonora. Instead of just paving the existing Altar/Sasabe road, a new highway was constructed resulting in an increase of habitat impacts and fragmentation (Wild Sonora 2009, p. 2). Another development project proposed for northern Sonora is the Quitovac toxic waste dump south of Organ Pipe Cactus National Monument that could accept up to 45,000 tons of toxic waste per year (Wild Sonora 2009, p. 7). The proposed site for this project is located in the vicinity of a rare spring in this very arid region that supports pygmy-owl habitat. There are documented pygmy-owls nesting at Quitovac (Flesch 2003, pp. 40–41). While this project is currently on hold, it represents the potential for impacts to pygmy-owls related to development and urbanization in Sonora.

Significant human population expansion and urbanization in the Sierra Madre foothill corridor may represent a long-term risk to pygmy-owls in northeastern Mexico. In Texas, the pygmy-owl occurred in good numbers until approximately 90 percent of the mesquite-ebony woodlands of the Rio Grande delta were cleared in 1910–1950 (Oberholser 1974, p. 452). Habitat removal in northeastern Mexico is widespread and nearly complete in northern Tamaulipas (Hunter 1988, p. 8). The pygmy-owl metapopulation structure is threatened by ongoing loss and fragmentation of habitat in this area. Urbanization has the potential to permanently alter the last major landscape linkage between the pygmy-owl population in Texas and those in northeastern Mexico (Tewes 1992, pp. 28–29).

With regard to Mexico, for those areas outside of Sonora and northeastern Mexico discussed above, human population growth in Sinaloa, Nayarit, Colima, and Jalisco are relatively slow compared to Sonora. The Sinaloan population grew at a rate of 0.9 percent over the last decade. The population in Nayarit grew at a rate of 1.8 percent over the last decade. The Jalisco population grew by 1.6 percent per year during 2000–2010. Colima, one of the smallest States in Mexico, has a total population of approximately 650,500 and grew annually at a rate of 1.9 percent over the last decade. These areas of Mexico are not experiencing the high growth rates of Sonora, and likely will not have the concurrent spread of urbanization in the foreseeable future. In addition, most of the growth is taking place in the large cities, and not the rural areas of these countries (*http:www.citypopulation.de/Mexico-Cities.html*). Also, some of the large cities of the southern Mexican States, such as Guadalajara in Jalisco and Morelia in Michoacán, are not within the range of the pygmy-owl, so their growth would not be affecting pygmy-owl habitat. The rural areas likely contain the remaining habitat for the pygmy-owl. It is reasonable to assume that slow or stagnant population growth will result in fewer developments and infrastructure projects, such as new highways, or destruction and fragmentation of habitat on a landscape scale. The impacts associated with urbanization are, therefore, much reduced and less severe in this portion of the pygmy-owl's range. While the magnitude of the impacts associated with urbanization are significant in Arizona and northern Mexico, we would expect these impacts to be much reduced in the remaining 73 percent of the pygmy-owl's range in Mexico and we expect these impacts to remain less significant in this part of its range into the foreseeable future because of the difference in population growth.

Nonnative Invasive Species

The invasion of nonnative vegetation, particularly nonnative grasses, has altered the natural fire regime over the Sonoran portion of the pygmy-owl range. As a result, fire has become a significant threat to the native vegetation of the Sonoran Desert. Esque and Schwalbe (2002, pp. 180–190) discuss the effect of wildfires in the Arizona Upland and Lower Colorado River subdivisions of Sonoran desertscrub, which comprise the primary portions of the pygmy-owl's range within Sonoran desertscrub. The widespread invasion of nonnative annual grasses appears to be largely responsible for altered fire regimes that have been observed in these communities, which are not adapted to fire (Esque and Schwalbe 2002, p. 165). In areas comprised entirely of native

species, ground vegetation density is mediated by barren spaces that do not allow fire to carry across the landscape. However, in areas where nonnative species have become established, the fine fuel load is continuous, and fire is capable of spreading quickly and efficiently (Esque and Schwalbe 2002, p. 175). Nonnative annual plants prevalent within the Sonoran range of the pygmy-owl include *Bromus rubens* and *B. tectorum* (brome grasses) and *Schismus* spp. (Mediterranean grasses) (Esque and Schwalbe 2002, p. 165). *Brassica tournefortii* (Sahara mustard) is an Old World forb that can cover 100 percent of the ground under certain conditions (ASDM 2009, p. 1). In 2006, fires that burned thousands of acres of Sonoran desertscrub in southwestern Arizona had Sahara mustard as the primary fuel. However, the nonnative species that is currently the greatest threat to vegetation communities in Arizona and northern Sonora, Mexico is the perennial *Pennisetum ciliare* (buffelgrass), which is prevalent and increasing throughout much of the Sonoran range of the pygmy-owl (Burquez and Quintana 1994, p. 23; Van Devender and Dimmit 2006, p. 5).

Buffelgrass is an Indo-African grass introduced to Mexico between 1940 and 1960 (Burquez *et al.* 1998, p. 25). The distribution of this grass has been supported and promoted by governments on both sides of the United States-Mexico border as a resource to increase range productivity and forage production. Buffelgrass is first established by stripping away the native desertscrub and thornscrub (Franklin *et al.* 2006, p. 69). Following establishment, it fuels fires that destroy Sonoran desertscrub, thornscrub, and, to a lesser extent, tropical deciduous forest; the disturbed areas are quickly converted to open savannas composed entirely of buffelgrass. Buffelgrass is now fully naturalized in most of Sonora, southern Arizona, and some areas in central and southern Baja California (Burquez-Montijo *et al.* 2002, p. 131), and now commonly spreads without human cultivation (Arriaga *et al.* 2004, pp. 1509–1511; Perramond 2000, p. 131; Burquez *et al.* 1998, p. 26).

However, buffelgrass is adapted to dry, arid conditions and does not grow in areas with high rates of precipitation or high humidity, above elevations of 1,265 m (4,150 ft), and in areas with freezing temperatures. Areas that support pygmy-owls south of Sonora and northern Sinaloa typically are wetter and more humid, and the best available information does not indicate that buffelgrass is invading the southern portion of the pygmy-owl's range. Buffelgrass is most often located on steep, rocky, south-facing slopes, with poor soil development (Van Devender and Dimmitt 2006, pp. 25–26). Surveys completed in Sonora and Sinaloa in 2006 noted buffelgrass was present in Sonora and northern Sinaloa, but the more southerly locations were noted as sparse or moderate (Van Devender and Dimmitt 2006, p. 7). This was in comparison to northerly sites in Sonora that were rated as dense with buffelgrass. As such, this nonnative species only significantly affects a portion of the pygmy-owl's range. The best available information indicates that buffelgrass is not significantly affecting areas in Mexico beyond Sonora, and northern Sinaloa.

Buffelgrass is not only fire-tolerant (unlike native Sonoran Desert plant species), but is actually fire-promoting (Halverson and Guertin 2003, p. 13). Invasion sets in motion a grass-fire cycle where nonnative grass provides the fuel necessary to initiate and promote fire. Nonnative grasses recover more quickly than native grass, tree, and cacti species and cause a further susceptibility to fire (D'Antonio and Vitousek 1992, p. 73; Schmid and Rogers 1988, p. 442). While a single fire in an area may or may not produce long-term reductions in plant cover or biomass, repeated wildfires in a given area, due to the establishment of nonnative grasses, are capable of ecosystem type-conversion from native desertscrub to nonnative annual grassland, and render the area unsuitable for pygmy-owls and other native wildlife due to the loss of trees and columnar cacti and reduced diversity of cover and prey species (Brooks and Esque 2002, p. 336). Buffelgrass competes with neighboring native species for space, water, and nutrients (Halverson and Guertin 2003, p. 13; Williams and Baruch 2000, pp. 128–135; D'Antonio and Vitousek 1992, pp. 68–72). Buffelgrass conversion is associated with increased soil erosion and changes in nutrient dynamics and primary productivity (Abbot and McPherson 1999, p. 3). These changes make it more difficult for native vegetation to reestablish, even if the conversion process or fires are discontinued (Franklin *et al.* 2006, p. 69; Rogers and Steele 1980, pp. 17–18).

Within the past 15 years, the establishment of nonnative grasslands has been identified as the most serious threat to the biological diversity of the Sonoran Desert (Burquez and Quintana 1994, p. 23). Economic subsidies from the State of Sonora and low-interest loans from banks made funds available for more widespread plantings of buffelgrass in the 1980s (Camou-Healy 1994). By 1997, more than 1 million ha (2.5 million ac) of desertscrub and thornscrub (both communities occupied by the pygmy-owl) had been cleared in central Sonora to plant buffelgrass, and more than 2 million ha (5 million ac) were scheduled for future vegetation conversion (Burquez and Quintana 1994, p. 23; Johnson and Navarro 1992, p. 118), often as part of government programs to support the ranching industry (Van Devender *et al.* 1997, p. 3). Researchers during this time period predicted that, if not halted, this practice of buffelgrass planting will permanently change the landscape of the Sonoran desert and deplete its associated biological diversity (Burquez and Quintana 1994, p. 23). Also, given the government subsidies to establish exotic grasslands in order to maintain large cattle herds, and to support marginal cattle ranching, it is less likely that control measures will be implemented, and the desertscrub and thornscrub in Sonora will probably be replaced in the near term by ecosystems with significantly lower species diversity and reduced structural complexity (Burquez and Martinez-Yrizar 1997, p. 387).

More recent figures indicate that this is indeed occurring, with buffelgrass present in more than two-thirds of Sonora, and 1.6 million ha (4 million ac) having been deliberately cleared and seeded with the species (Burquez-Montijo *et al.* 2002, p. 132). A 2006 publication estimates that 1.8 million ha (4.5 million ac) have been converted to buffelgrass in Sonora, and that between 1990 and 2000, there was an 82 percent increase in buffelgrass coverage (Franklin *et al.* 2006, pp. 62, 66). Buffelgrass pastures have doubled in area in Sonora approximately every 10 years since 1973 (Franklin *et al.* 2006, p. 67) and the conversion to buffelgrass is expected to continue into the foreseeable future.

It is not only Sonoran desertscrub communities in Sonora and northern Sinaloa that are impacted by the spread of buffelgrass. Another unique vegetation community in this region, dry subtropical forests, are being lost and fragmented due to the planting of buffelgrass in association with cattle ranching, which results in vast tracts of forest being removed and replaced by buffelgrass (Allnut *et al.* 2001, pp. 3–4).

Buffelgrass invasion in the United States is such an urgent and significant issue that the Governor of Arizona, and nearly all southern Arizona municipalities and agencies have joined together to address the issue. The Governor formed the Arizona Invasive Species Advisory Council in 2005, and

the Southern Arizona Buffelgrass Working Group developed the Southern Arizona Buffelgrass Strategic Plan in 2008 (Buffelgrass Working Group 2008) in order to coordinate the control of buffelgrass. Because of its negative impacts to native ecosystems, buffelgrass was declared a noxious weed by the State of Arizona in March 2005. It is not currently known whether these programs will be successful in controlling buffelgrass invasion.

The impacts of buffelgrass establishment and invasion are substantial for the pygmy-owl in the United States and Sonora because conversion results in the loss of all important habitat elements, particularly columnar cacti and trees that provide nest sites. Buffelgrass invasion and the subsequent fires eliminate most columnar cacti, trees, and shrubs of the desert (Burquez-Montijo *et al.* 2002, p. 138). This elimination of trees, shrubs, and columnar cacti from these areas is a significant negative impact and potentially a threat to the survival of the pygmy-owl in the northern portion of its range, as these vegetation components are necessary for roosting, nesting, protection from predators, and thermal regulation. Because tree canopy cover is an important pygmy-owl habitat feature, the fact that buffelgrass fires reduce the number of tree-dominated patches and the recruitment opportunities for those native species dependent on them [such as saguaros] (Burquez and Quintana 1994, p. 11), is significant. Franklin *et al.* (2010, p. 7) report significant changes in vegetation structure as a result of creating buffelgrass pastures for grazing. There were 90 percent fewer trees and shrubs of the size used by pygmy-owls (2 to 5 m (6 to 15 ft) tall) in buffelgrass pastures as compared to native vegetation communities. Loss of diversity and availability of prey species due to conversion are also detrimental (Franklin *et al.* 2006, p. 69; Avila Jimenez 2004, p. 18; Burquez-Montijo *et al.* 2002, pp. 130, 135).

Some information we received from the public downplays the significance of the conversion of Sonoran desertscrub to buffelgrass savannas on pygmy-owl habitat by stating that there is no indication that the conversion is occurring in areas occupied by the pygmy-owl (Johnson and Carothers 2003, pp. 6–7). However, when compared to the maps of current and predicted buffelgrass invasion in Sonora found in Arriaga *et al.* (2003, Figure 1), the distribution of pygmy-owl locations from Flesch (2003, Figure 2), AGFD (2008a, p. 1), and Westland Resources (2008, Figure 4), as well as the known pygmy-owl locations and the documented occurrence of buffelgrass in Tucson, Avra Valley, Altar Valley, Organ Pipe Cactus National Monument, Pinal County, the Tohono O'odham Nation, and Sonora and northern Sinaloa show that there is almost 100 percent overlap in the areas occupied by pygmy-owls and the areas under greatest threat from buffelgrass invasion. One of the principle reasons that nonnative plants pose such a significant negative impact on the pygmy-owl in its northern range, and the native plant communities on which they depend, is because few, if any, reasonable methods currently exist to control the ongoing invasion of these plants or to remediate areas where they are already established. Mechanical removal, herbicides, and fire have all been tested for their effectiveness in control of this nonnative grass. However, none have proven effective at the scale of the current invasion.

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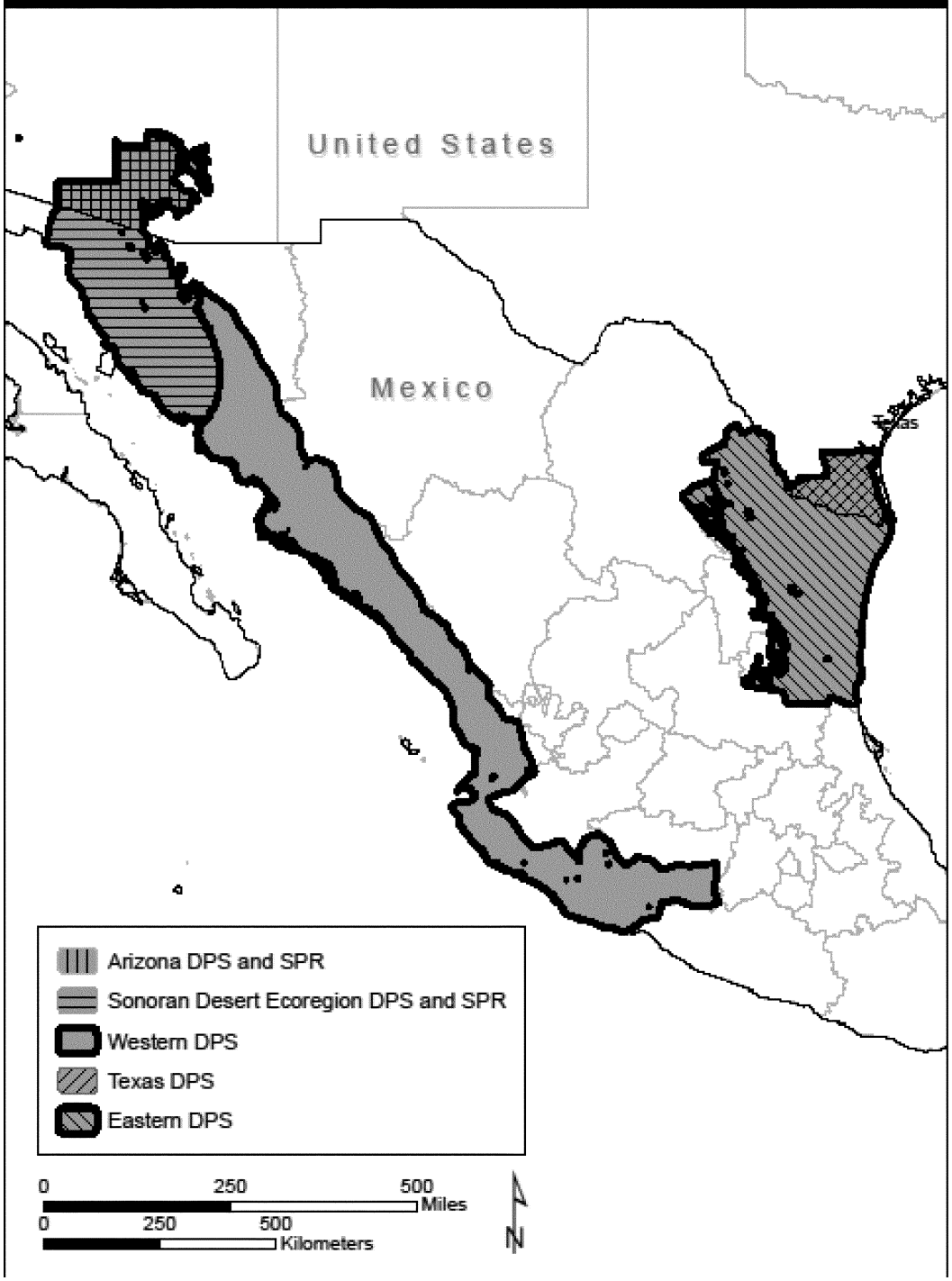
Figure 4. Cactus Ferruginous Pygmy-owl Distinct Population Segments (DPSs) and Significant Portions of the Range (SPR)s. DPSs and SPRs are approximate and for illustrative purposes only.



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In Texas and other portions of the pygmy-owl's range in the United States, such as semi-desert grasslands, invasive species and fire are not as significant in their impact because the vegetation communities in these areas are adapted to periodic fire. However, while fire may not be a primary issue, nonnative species can cause other effects to pygmy-owl habitat elements. For example, in Texas, studies indicate that the spread and prevalence of the nonnative grass, *Bothriochloa ischaemum* (King Ranch bluestem), results in this grass dominating native grasses, forbs, and endemic species, thus decreasing plant and animal species diversity and altering the vegetative structure of the community (Davis 2011, p. 4). It is not known if these changes in plant community structure affect pygmy-owls.

The best available scientific and commercial information, as presented in the discussion above, leads us to conclude that conversion of Sonoran

desertscrub to nonnative plant pastures composed of buffelgrass, and the subsequent change in the fire regime, has resulted in the loss of large areas of pygmy-owl habitat in the northern range of the pygmy-owl, is negatively impacting the remaining areas of pygmy-owl habitat in the Sonoran desert and tropical thornscrub/dry deciduous forest communities of Arizona, Sonora, and northern Sinaloa, and is expected to continue to do so in the foreseeable future. Other areas in Texas and the United States, such as semidesert grassland, are not as affected by buffelgrass and subsequent changes in fire behavior, but may be invaded by other nonnative species. However, the effect, if any, on pygmy-owls, has not been studied.

In contrast to the severity of buffelgrass invasion as a significant negative impact to the pygmy-owl in the northern portions of its range, it appears to have less impact or no impact at all further south. The area in Mexico that is susceptible to buffelgrass invasion and planting represents only just over 22 percent of the pygmy-owl's range. The magnitude of the impact diminishes in the southern portion of the range where buffelgrass has not been reported in the dry tropical forests, which comprise the majority of pygmy-owl habitat in the southern portion of its range. In addition, buffelgrass is not likely to invade and persist in these areas in the foreseeable future because it is adapted to dry, arid savannahs and grasslands in its native Africa (Burquez et al. 1998, p. 25). The elevational conditions, canopy coverage, and precipitation patterns of the dry tropical forest communities are not as suitable for the establishment of buffelgrass as the arid desert and semi-desert vegetation communities (Arriaga *et al.* 2004, pp. 1508–1510.). The best available scientific and commercial information suggests that buffelgrass invasion should not be an issue in the southern portions of the pygmy-owls range, nor should it become an issue in the future.

Agricultural Production and Wood Harvesting

Agricultural development and wood harvesting can result in substantial impacts to the availability and connectivity of pygmy-owl habitat. Conversion of native vegetation communities to agricultural fields or pastures for grazing has occurred within historical pygmy-owl habitat in both the United States and Mexico, and not only removes existing pygmy-owl habitat elements, but also can affect the long-term ability of these areas to return to native vegetation communities once agricultural activities cease. Wood harvesting has a direct effect on the amount of available cover and nest sites for pygmy-owls and is often associated with agricultural development. Wood harvesting also occurs to supply firewood and charcoal, and to provide material for cultural and decorative wood carvings. While we do not have detailed information regarding the impacts of agricultural development and wood harvesting for all areas within the range of the pygmy-owl, the following provides a discussion of the extent of the impacts from these activities for areas for which we do have sufficient information.

The extent of agricultural development and woodcutting as a current or ongoing impact to pygmy-owl habitat differs between the United States and Mexico. For example, in the United States, habitat loss and conversion due to agricultural development is more of a historical issue because less area is being used currently for agriculture, and wood cutting is primarily for personal, rather than commercial use. However, impacts to pygmy-owl habitat from historical agricultural use and wood harvesting are still evident. The vegetation and soils of many valleys in the Sonoran Desert were shaped by the periodic flooding of dynamic wash systems, which partially recharged a shallow, fluctuating groundwater table. Because of agricultural development, these valleys no longer experience these defining processes and there has been a permanent loss of meso- and xero-riparian habitat (Jackson and Comus 1999, pp. 233, 249). These riparian habitats are important pygmy-owl habitat, especially within drier upland vegetation communities like Sonoran desertscrub and semi-desert grasslands.

In Arizona, although new agricultural development is limited and is expected to remain limited in the foreseeable future, the effects to historical habitat are still evident. Jackson and Comus (1999, pp. 249–250) describe the long-term effects of agricultural development on native vegetation communities, ''The groundwater has been mined, river flows have been relocated, tributaries have been channelized, and smaller waterways are blocked by roads or the canals of the Central Arizona Project. Soil-surface characteristics have been greatly altered by field leveling and irrigation ditches. Compounding these large-scale changes, soil in some areas has increased salinity, pesticide residues, or loss of physical structure due to repeated tillage, soil compaction, and irrigation.'' There have been important biological losses and introductions as well. Seed sources of native plants in these old agricultural fields are now rare. Natural regeneration of many of the old agricultural fields is unlikely because they are no longer near to a native seed source (Jackson and Comus 1999, pp. 243–247, 250).

It is not known to what extent the loss of certain pollinators, predators, detritivores (organisms that obtain nutrients by consuming decomposing organic matter), cryptogamic crusts (soil with crusts formed by an association of algae, mosses, and fungi; such crusts stabilize desert soil, retain moisture, and protect germinating seeds), mycorrhizae (a fungus that grows in a symbiotic association with plant roots), etc., as well as the addition of exotic species, will have on recovery of habitat. Because of these profound changes, we believe that habitat recovery, either by natural succession or through various attempts at ecological restoration, will be very limited (Jackson and Comus 1999, p. 250). The significance of this lies in the fact that many acres of pygmy-owl habitat have been lost to agricultural development, especially along valley bottoms and drainages that were important for pygmy-owls as they supported higher quality meso- and xero-riparian habitats. A well-known example of this is the huge mesquite bosque (woodland) south of Tucson on the San Xavier District of the Tohono O'odham Nation that comprised old-growth mesquites supporting cavities for pygmy-owl nests, adequate cover, and prey diversity, and which was lost due to groundwater pumping and diversion for agriculture and urban growth (Stromberg 1993, pp. 117–119). Mesquite bosques provide important pygmy-owl habitat. The viability of these bosques is dependent upon the ability of native trees, like mesquite, to reach the water table with their taproots. Only then can they grow to sizes that provide habitat for pygmy-owls. Even when abandoned and left to return to their natural state, there has been such extensive alteration of soils, drainage patterns, and contamination that these impacted bosques are unlikely to ever regain the historical habitat values. Restoration of old agricultural areas often meets with either limited success or failure.

Historically, agriculture in Sonora, Mexico, was restricted to small areas with shallow water tables, but it had, nonetheless, seriously affected riparian habitats by the end of the nineteenth century. Large-scale agriculture was introduced in the 1940s, with the construction of dams in the Rio Yaqui and Rio Mayo watersheds. By the late 1970s, the delta regions and alluvial

plains of these rivers were almost entirely converted to field crops. Huge expanses of natural vegetation had been cleared. The vast mesquite forests of the Llanos de San Juan Bautista in the plains of the Rio Sonora disappeared with the development of the Costa De Hermosillo irrigation district. In the Rio Mayo and Rio Yaqui coastal plains, nearly one million ha (2.5 million ac) of mesquite, cottonwood, and willow riparian forests and coastal thornscrub disappeared after dams upriver started to operate (Burquez and Martinez-Yrizar 2007, p. 543). In 1980, a national food system was initiated and the total area under cultivation in northern Mexico increased significantly (Stoleson *et al.* 2005, p. 59).

Based upon the amount of area currently in irrigated agriculture, Sonora, with 530,000 ha (1.3 million ac), ranks second among the States in Mexico to Sinaloa (747,800 ha (1.85 million ac)), a State which is also occupied by pygmy-owls. The area equipped for agricultural irrigation in Sonora is 668,900 ha (1.65 million ac), resulting in the potential future loss of approximately 139,000 ha (343,000 ac) of natural vegetation communities (AQUASTAT 2007, p. 2) if these areas are developed for agriculture. Other Mexican States within the range of the pygmy-owl show similar potential for habitat loss. For example, in Tamaulipas, area under irrigation increased from 174,400 to 494,472 ha (431,000 to 1.22 million ac) between 1998 and 2004, with an area of 668,872 ha (1.65 million ac) equipped for irrigation. Michoacán supports 24,900 ha (61,500 ac) of irrigated lands with a potential infrastructure for 222,800 additional ha (550,600 ac). Although the amount of land converted to agriculture seems to be on the increase, we do not know where these areas are in relation to pygmy-owl habitat. Dry tropical forests on steeper slopes are not likely to be used for agricultural production. In addition, agricultural development in the States of Colima, Jalisco, Nayarit, and Nuevo Leon had substantial decreases in the amount of irrigated lands over the same period. Colima dropped from 64,100 ha (158,394 ac) to 37,800 ha (93,406 ac), Jalisco went from 161,600 ha (399,322 ac) to 95,600 ha (236,233 ac), Nayarit decreased from 55,400 ha (136,896 ac) to 43,200 ha (106,749 ac), and Nuevo Leon dropped from 143,000 ha (353,361 ac) to 32,484 ha (80,270 ac). These numbers indicate that continuing destruction of habitat for agricultural production is not occurring with the same intensity throughout the range of the pygmy-owl, and may be declining in large parts of its southern range (AQUASTAT 2007, p. 2).

Agricultural development is declining in some parts of the pygmy-owl's range, but seems concentrated in the northern portion of the range. In certain localities in northwestern Mexico, especially Sonora, it has remained the same and even increased over the past few decades. In the Sonoyta Valley of Sonora flanking Organ Pipe Cactus National Monument across the United States-Mexico border, cropland quadrupled in extent between 1977 and 1987, due in part to government-supported agricultural development. Proximity to U.S. fruit and vegetable markets, inexpensive labor, good quality water, and government agency interest in increased fruit and vegetable crops in the area mean that agricultural production and the associated descent of groundwater levels will likely continue in the future (Nabhan and Holdsworth 1998, p. 36). Some scientists surveyed noted that clearing for agriculture was becoming more severe in portions of the Lower Colorado River Valley, Central Gulf Coast, and Viscaino. Current Sonoran Desert cropland is most extensive in the border municipality of Mexicali and the extreme southern end of the Sonoran Desert where most municipalities have from one-quarter to three quarters of their land surface as cropland. The central section around Hermosillo, Sonora, is 15 to 25 percent cropland, and the rest of the area is less than 15 percent (Nabhan and Holdsworth 1998, p. 36). However, these figures do not include the millions of hectares (acres) of abandoned agricultural land. While not all the area converted for agriculture was or could be suitable pygmy-owl habitat, agricultural development has typically occurred along river bottoms and other drainages that support important riparian habitat for pygmy-owls (Flores-Villela and Fernandez 1989, p. 2). Additionally, associated habitat fragmentation exacerbates the actual impacts to available pygmy-owl habitat through loss of habitat connectivity (Stoleson et al. 2005, p. 60; Saunders et al. 1991, pp. 23–24).

Prescribed burning to reduce mesquite invasion into rangelands represents another potential threat to pygmy-owl habitat associated with agriculture. In general, improved grassland health adjacent to pygmy-owl habitat should benefit pygmy-owls through improved hydrology and enhance prey habitat. However, if woodlands providing important pygmy-owl habitat are not protected during prescribed burns, impacts to pygmy-owl habitat can be significant due to the loss of nest structures, predator and thermal cover, and prey habitat. For example, in Texas, two prescribed burns over the past 3 years have consumed 1,200 to 1,600 ha (3,000 to 4,000 ac) respectively, including areas that supported natural pygmy-owl nests, as well as pygmy-owl nest boxes (Proudfoot 2011b, p. 1). Other documented fires on the King Ranch consumed from several hundred up to 3,200 ha (8,000 ac) over this same time period (Caller 2009, NOAA 2011, Texas-Fire.com 2011, Firerescue 2008). While the loss of woodlands to fire is often a temporary impact, it can take many years for trees to reach adequate size to once again support cavities used for nesting by pygmy-owls.

Mesquite harvesting also has negative impacts on pygmy-owl habitat. Mesquite wood is a valuable commodity. Historically in Arizona, mesquite trees have been harvested for decades. In the late 1800s through the early 1900s, Arizona saw large-scale harvesting for fuel and for mining. Fuelwood cutting once had a major impact on the riparian forests, mesquite thickets, and evergreen woodlands near most of southeastern Arizona's major cities and mining centers (Bahre 1991, p. 143). This whole-scale harvest may explain the scarcity of riparian trees in early (1890) photographs of southern rivers such as the San Pedro (Stromberg 1993, p. 119). In the Sonoran Desert of Mexico, the mesquite tree is being harvested in order to fulfill the demand for mesquite charcoal, and former mesquite forests have disappeared at an alarming rate (Burquez and Martinez Yrizar 2007, p. 545). Ironwood trees are also being harvested in Mexico where the wood is cherished for its hardness and carving potential for native artwork by groups such as the Seri Indians.

Mesquite and ironwood woodlands provide pygmy-owl habitat elements related to tree canopy cover and a diverse prey base. Unfortunately, woodcutters and charcoal makers do not use scrubby-type mesquite, but rather take advantage of large, mature mesquite and ironwood trees growing in riparian areas (Taylor 2006, p. 12), the exact tree class that is of most value as pygmy-owl habitat. From the time ''mesquite charcoal'' became popular in U.S. restaurants in the early 1980s, both mesquite and ironwood have been harvested from the same lands, with as much as 15 to 40 percent of each mesquite charcoal bag consisting of ironwood prior to 1991. As a result, both trees were locally overexploited in Sonora and Baja California Sur (Taylor 2006, p. 12).

Sonora supports 1,888,000 ha (4,665,000 ac), or 46 percent of total mesquite woodlands in Mexico; more than double that of any other State in Mexico. This also means that much of the mesquite harvested in Mexico comes from Sonora (Taylor 2006, p. 12). Current estimates suggest that ironwood is being rapidly depleted across an area roughly equivalent to twice the size of Massachusetts. In northern Mexico, over 202,000 ha (500,000 ac) of mesquite have been cleared to meet the growing demand for mesquite charcoal (Haller 1994, p. 1). Haller (1994, p. 3) predicted that, if this trend continued, the entire ecosystem of the Sonoran Desert could crumble, and used the examples of the degraded ecosystem along the coast of Sonora near Kino Bay where most of the mesquite and ironwood had already been removed and virtually all plant and animal life has disappeared. Declining tree populations in the Sonoran Desert as a result of commercial uses and land conversion threatens other plant species, and may alter the structure and composition of the vertebrate and invertebrate communities as well (Bestelmeyer and Schooley 1999, p. 644). This has implications for pygmy-owl prey availability because pygmy-owls rely on a seasonal diversity of vertebrate and invertebrate prey species; loss of tree structure and diversity reduces prey diversity and availability.

In the Sonoyta region of Sonora, an area occupied by pygmy-owls, more than 193,000 ha (478,000 ac) have been affected by deforestation related to charcoal production, brick foundries, tourist crafts, and pasture conversion (Nabhan and Suzan 1994, p. 64). The accelerated rate of legume tree (trees belonging to the family *Leguminosae* whose characteristic fruit is a seed pod, including the mesquite and ironwood) depletion for charcoal and carvings in the Mexican States of Sonora and Baja California has clearly affected the health of ironwood populations and associated plant communities (Suzan *et al.* 1997, p. 955). This is evidenced by an increased number of damaged and dying trees, as well as generally small size classes for sampled areas (Suzan *et al.* 1997, pp. 950–955).

Pressure for fuelwood and crafts materials has been so intense in Mexico south of Organ Pipe Cactus National Monument that wood harvest, especially ironwood, has been detected more than 500 m (1600 ft) into the Monument as supplies have been depleted south of the border (Suzan *et al.* 1999, p. 1499). The structure of both wash and upland habitats in the Monument have been affected by this harvest (Suzan *et al.* 1999, p. 1499). Organ Pipe Cactus National Monument is one of four areas in Arizona that has been consistently occupied by pygmy-owls. In the arid environment of the Monument, tree canopy and structure are particularly important pygmy-owl habitat features.

Mesquite used as fuelwood is a thriving cross-border trade, although not on the same scale as charcoal. However, local impacts can be significant in the areas where the fuelwood is harvested. For example, Mexican trucks loaded with mesquite cross the border to Arizona at Sasabe. Interviews with these truck drivers indicated that most of the wood they haul comes from ejidos (communally owned lands) within a 20-km (12.4-mi) radius of the Town of Sasabe, an area occupied by nesting pygmy-owls (Taylor 2006, p. 5; Flesch 2008, p. 2).

In 2008, during field work in Sonora to gather pygmy-owl genetic samples, large areas of charcoal production were observed near Hermosillo. Impacts to vegetation were not limited to just the removal of the trees, but a significant area around the production sites was covered with fine, black charcoal dust covering all native vegetation (Service 2009, p. 1). The effects of these production areas are verified by reports of the complete removal of a dense mesquite bosque to the axe and charcoal pits just east of Hermosillo (Taylor 2006, p. 5). The immediate area around charcoal pits is often treeless. Walking transects away from charcoal pits revealed that all trees within a 1-km (0.6-mi) radius bear the scars of the chainsaw (Taylor 2006, p. 7).

Native woodlands in Sonora are additionally threatened as ranchers and charcoal producers team up to first clear the land of native trees for planting buffelgrass, and then use the dead trees to produce charcoal (Taylor 2006, pp. 6–7). The end result is the incentive to clear more native woodlands. Professional woodcutters are only permitted to harvest dead wood. However, dead wood to meet export demands is hard to come by. A simple solution practiced by many wood cutters is to ring trees and let them die; then the dead wood can be legally harvested (Taylor 2006, p. 7).

Impacts to pygmy-owl habitat in northwestern Mexico from these activities are resulting in the loss and fragmentation of habitat in this part of Mexico, and the inability to recover or restore habitats and habitat connectivity in Arizona. Impacts related to surface- and groundwater loss and channel diversions are long-term and are particularly significant as riparian habitat, both meso- and xero-riparian, are crucial for maintaining viable pygmy-owl populations in the arid portions of their range in Arizona and Sonora, Mexico. Loss of leguminous trees results in long-term effects to the soil as they add organic matter, fix nitrogen, and add sulfur and soluble salts, affecting overall habitat quality and quantity (Rodriguez Franco and Aguirre 1996, p. 6–47). Ironwood and mesquite trees are important nurse species for saguaros, the primary nesting substrate for pygmy-owls in the northern portion of their range (Burquez and Quintana 1994, p. 11). Demand for mesquite charcoal and firewood contributes to the loss of extensive, mature mesquite forests in riparian areas of northern Mexico.

The harvest of mature mesquites in the Sonoran Desert for charcoal and firewood permanently alters desert ecosystems because leguminous trees like mesquite and ironwoods are such important anchors for these systems and their associated flora and fauna (Taylor 2006, p. 8). Thus, ongoing wood harvesting can reduce or eliminate pygmy-owl habitat in the Sonoran Desert region of Arizona and Mexico by perpetuating scrubby trees that are unsuitable for nest substrates, supporting increased fire frequency associated with nonnative grass invasion, eliminating important nurse trees for saguaro protection, reducing tall canopy coverage important for pygmy-owl cover, and altering prey availability through the reduction of structural diversity.

Once common in areas of the Rio Grande delta, significant habitat loss and fragmentation due to woodcutting have now caused the pygmy-owl to be a rare occurrence in this area of Texas. Oberholser (1974, p. 452) concluded that agricultural expansion and subsequent loss of native woodland and thornscrub habitat, begun in the 1920's, preceded the rapid demise of pygmy-owl populations in the Lower Rio Grande Valley of southern Texas. Because much of the suitable pygmy-owl habitat in Texas occurs on private ranches, habitat areas are subject to potential impacts that are associated with ongoing ranch activities such as grazing, herd management, fencing, pasture improvements, construction of cattle pens and waters, road construction, and development of hunting facilities. Brush clearing, in particular, has been identified as a potential factor in present and future declines in the pygmy-owl population in Texas (Oberholser 1974, p. 452). However, relatively speaking, the current loss of habitat is much reduced

in comparison to the historic loss of habitat in Texas. Conversely, ranch practices that enhance or increase pygmy-owl habitat to support ecotourism can contribute to conservation of the pygmy-owl in Texas (Wauer *et al.* 1993, p. 1076). The best available information does not indicate that current ranching practices are significantly affecting pygmy-owl habitat in Texas.

Tamaulipan brushland is a unique ecosystem that is found only in the Lower Rio Grande Valley of south Texas and northeastern Mexico. This vegetation community has historically supported occupancy by pygmy-owls. Brush clearing, pesticide use, and irrigation practices associated with agriculture have had detrimental effects on the Lower Rio Grande Valley (Jahrsdoerfer and Leslie 1988, p. 1). Since the 1920's, more than 95 percent of the original native brushland in the Lower Rio Grande Valley has been converted to agriculture or urban use. Along the Rio Grande River below Falcon Dam, 99 percent of the land has been cleared for agriculture and development. Cook *et al.* (2001, p. 3) indicated that both banks of the Rio Grande are now completely developed with homes or farms, and that the only remaining natural habitat areas south of the river are salt marshes and mudflats, both communities that are not used by pygmy-owls. A large percentage of similar habitat has been cleared in Mexico (Jahrsdoerfer and Leslie 1988, p. 17). This is supported by Tewes' (1992, p. 29) conclusion that most of the Rio Grande delta of Texas and Mexico has been developed over the past 60 years. Hunter (1988, p. 8) states, ''Habitat removal in Mexico is widespread and nearly complete in northern Tamaulipas.''

Habitat fragmentation in northeastern Mexico is extensive, with only about two percent of the ecoregion remaining intact, and no habitat blocks larger than 250 square km (96.5 square mi), and no protected areas (Cook *et al.* 2001, p. 4). This has the potential to limit pygmy-owl movements and dispersal, exacerbating the effects of small, isolated populations. Fire is often used to clear woodlands for agriculture in this area of Mexico, and many of these fires are not adequately controlled. There may be fire-related effects to native plant communities (Cook *et al.* 2001, p. 4); however, there is no available information of how much area may be affected by this activity.

The best available scientific and commercial information indicates that historical land clearing, as a result of wood harvesting and agricultural development has caused the loss and alteration of a considerable area of pygmy-owl habitat in Arizona, Sonora, Texas, and northeastern Mexico. Past impacts continue to affect the extent of available pygmy-owl habitat in these areas, because of the extended time it takes for these lands to recover, even if negative actions cease, and impacts are expected to continue in many of these same areas into the foreseeable future. However, based on our review of the best available scientific and commercial information, we conclude that these impacts are limited in magnitude, because they are significant only in the northern portion of the range (Arizona, Texas, northwestern and northeastern Mexico). Moreover, the best available scientific and commercial data indicate that habitat loss due to woodcutting or agriculture is primarily historical in Texas, and these activities are not currently impacting habitats occupied by pygmy-owls on the private ranches in Texas. Further, the impacts in the southern portion of the range are less extensive, both because woodcutting and agricultural development appear to have less impact in the southern portion of the pygmy-owl's range, and because the pygmy-owl seems to be common throughout this area. Therefore, after reviewing and evaluating the best available scientific and commercial data, we conclude that woodcutting and agricultural development are not threats to the continued existence of the pygmy-owl rangewide, and are not likely to become so in the future.

Improper Livestock Grazing

Probably no single land use has had a greater effect on the vegetation of southeastern Arizona or has led to more changes in the landscape than improper livestock grazing and range-management programs (Carothers 1977, p. 4). Undoubtedly, grazing since the 1870s has led to soil erosion, destruction of those native plants most palatable to livestock, changes in the regional fire ecology, the spread of both native and alien plants, and changes in the age structure of evergreen woodlands and riparian forests (Bahre 1991, p. 123). Many areas of pygmy-owl habitat have recovered from these historical effects of grazing; however, other areas are slow to recover and may never recover due to the arid nature of the Sonoran Desert.

Livestock grazing in northwestern Mexico is probably the most widespread human use of Sonoran ecoregional landscapes. Grazing by cattle, goats, and other livestock has reduced vegetation cover and helped change grasslands to shrublands. Livestock grazing in the Sonoran Desert has fluctuated greatly in the last few centuries from being relatively confined and intensive to being extensive and intensive. In the 19th century, repeated Apache raids on ranchers and the paucity of water limited cattle production to relatively small areas (Bahre 1991, pp. 114–115). However, the late 19th century saw the largest stocking rates in history; extensive cattle production played a major role in the transformation of grasslands to scrublands, down-cutting of arroyos, the spread of nonnative plants, and degradation of riparian areas. Stocking rates are now much lower than in the 1890s because regulations such as those of the Taylor Grazing Act of 1934 helped improve rangeland quality in the United States. However, overstocking still continues in parts of northwestern Mexico, and Mexico's COTECOCA (Comisión Técnico Consultiva de Coeficientes de Agostadero) statistics confirm that 2 to 5 times the recommended stocking rates occur with regularity on the Sonoran side of the border (Walker and Pavlakovich Kochi 2003, p. 14; Nabhan and Holdsworth 1998, p. 2).

Available information on livestock grazing in Mexico that we evaluated was focused primarily on the border areas adjacent to the United States and in the arid areas of northwestern Mexico, such as Sonora. In Sonora, rangelands are often heavily grazed, with effects particularly apparent during drought (Rorabaugh 2008, p. 25). Sonora's higher stocking rate is likely due to its greater amounts of private and ejidal (communal) land, less regulation, and the greater dependence on ranching and farming in Mexico. Demand in North America drives the number of cattle in Sonora. The number of cattle in Sonora nearly doubled between 1950 and 1960. The Sonoran cattle population was 1,652,771 in 1990 according to official government statistics (Hawks 2003, p. 5). Other authors estimate the overstocking at 177 percent (Lopez 1992), with 60 to 400 percent overstocking in some areas (Burquez-Montijo *et al.* 2002, p. 134). Excessive grazing of vegetation by livestock, especially when combined with conversion of plant cover to exotic pasture grasses, ranked as number four on a list of threats to the Sonoran Desert Ecoregion (Nabhan and Holdsworth 1998, p. 1).

One research study showed that overgrazing in Sonora leaves the Mexican landscape more exposed and, as a result, it dries out more rapidly following summer convective precipitation. After about 3 days, depletion of soil moisture evokes a period of higher surface and air

temperatures in northwestern Mexico (Bryant *et al.* 1990, pp. 254–258). These drier soils and higher temperatures can result in impacts to vegetation survival and persistence. Effects of poorly managed livestock grazing in Sonora include changes in plant species composition and vegetation cover and structure, soil compaction, erosion, altered fire regimes, and nonnative plant species introductions and invasions (Stoleson *et al.* 2005, pp. 61–62). With regard to pygmy-owl habitat, improper stocking rates can result in reduced saguaro reproduction through trampling and alteration of microclimates (Abouhaider 1989, pp. 40–48), reduced tree cover and reproduction through grazing of seedlings and seed pods, and impacts to prey availability from reduced vegetation structural diversity and species composition.

One of the most significant adverse impacts within western riparian systems has been the perpetuation of improper grazing practices. Belsky *et al.* (1999, p. 419) found that grazing by livestock has damaged 80 percent of the streams and riparian ecosystems in the arid regions of the western United States. The initial deterioration of western riparian systems began with the severe overgrazing in the late nineteenth century. Livestock grazing can affect four general components of riparian systems: (1) Streamside vegetation; (2) stream channel morphology; (3) shape and quality of the water column; and (4) structure of streambank soil. Vegetation impacts include: (1) Compaction of soil, which increases runoff and decreases water availability to plants; (2) herbage removal, which allows soil temperatures to rise, thereby increasing evaporation; (3) physical damage to vegetation by rubbing, trampling, and browsing; and (4) alteration of growth form of plants by removing terminal buds and stimulating lateral branching (Fleischner 1994, p. 635).

In a summary of studies investigating the impacts of livestock grazing on riparian areas, Belsky *et al.* (1999, p. 425) found that none of the studies showed positive impacts or ecological benefits that could be attributed to livestock activities when grazed areas were compared to protected areas. It was mostly negative effects that were reported, and there was little debate about those effects. Most of these studies tended to agree that improper livestock grazing can damage stream and riparian ecosystems. All types of riparian habitats provide important pygmy-owl habitat elements due to the increased size, diversity, and structure associated with riparian communities and enhanced moisture availability. Larger trees provide substrates for nest cavities. Structure diversity provides important predator and thermoregulatory cover, as well as an increased number and diversity of prey species. A reduction of the extent or quality of riparian habitats within the range of the pygmy-owl represents direct impacts on the availability and quality of pygmy-owl habitat.

Although proper management has greatly improved riparian communities in some areas, field data compiled in the last decade showed that riparian areas throughout much of the West were in the worst condition in history due mainly to the complications initiated by improper grazing techniques (Krueper 1993, p. 322). However, information submitted during the public comment period supports the idea that, in certain areas, riparian habitat has returned and, perhaps, even increased in certain areas in Arizona, including areas that are being grazed by livestock. Parker (2008, p. 13) points out that Webb *et al.* (2007, pp. 388–389, 404–408) conclude that, in the drainages they studied, increases in riparian vegetation from 24 percent to 49 percent had occurred since the late 1800s and early 1900s, and that increases in the density of riparian plants appear to have accelerated in the 1970s. We are encouraged by this positive information indicating that riparian habitats in some areas may become suitable for pygmy-owls in the future if grazing continues to be properly managed. It is not our contention that grazing per se has a negative effect on riparian areas, but that improper or overgrazing can have detrimental effects. Parker (2008, p. 14) reiterates this by stating, ''While there is little question that overgrazing can degrade riparian ecosystems, the question here is whether grazing has had long-term negative effects on woody riparian vegetation in Arizona.'' We acknowledge that, with proper management, riparian areas can recover and provide habitat for the pygmy-owl.

In Mexico, increasing human population numbers and the extent of subsistence agriculture threatens the future of Mexico's extensive riparian systems. Grazing impacts include contamination and an increasing demand for agricultural and forage production (Deloya 1985, pp. 9–11). Riparian destruction is evident throughout Mexico, but especially in areas of denser human population. Of particular relevance to the pygmy-owl has been the loss and destruction of virtually all of the dense woodlands within the Rio Grande River valley. Despite the evident destruction of riparian systems, little information exists on the problem and there is apparently no strategy at a national level to solve the problem. The present trends pose serious concerns for the future of Mexico's riparian ecosystems (Deloya 1985, pp. 11–12).

In Texas, areas occupied by pygmy-owls are primarily on large, private ranches where livestock production is a primary objective. However, alternative sources of revenue for these ranches also include hunting and ecotourism. As a result, habitat management for the benefit of wildlife is also a high priority for these ranchers. Livestock management is often conducted with consideration of impacts to wildlife.

Pygmy-owls are known to exist in areas that are grazed. Grazing, itself, does not appear to negatively affect pygmy-owls. Properly managed grazing can enhance certain pygmy-owl habitat elements (Loeser *et al.* 2007, p. 96; Holechek *et al.* 1982, p. 208). Climatic variation is important in determining the ecological effects of grazing practices in arid rangelands (Loeser *et al.* 2007, pp. 93–96). However, improper grazing at inappropriate stocking rates or during seasons or years when drought and other conditions reduce forage availability can affect pygmy-owls directly through the loss of important habitat elements (e.g., saguaros, tree cover, riparian vegetation, vegetation reproduction) and prey availability. No studies specifically related to the effects of livestock grazing on pygmy-owls have been conducted; however, impacts to pygmy-owls can be determined indirectly from studies on related species or issues. For example, studies in Arizona and Sonora show that the number of lizard species and abundance of lizards declined significantly in heavily grazed areas (Jones 1981, p. 111); there is also a likely loss of lizard species in areas invaded by buffelgrass. Lizards are an important food resource for pygmy-owls; therefore, impacts to lizard abundance can affect pygmy-owls.

An additional concern related to grazing lands is that, faced with rising land prices, unstable markets, and unpredictable climate, many ranchers in the United States are choosing or are forced to sell their private lands to real estate developers or subdivide it themselves. This results in these lands being subject to the threats described above related to urbanization. There was no available information to determine if these same pressures apply to grazing lands in Mexico.

Improper livestock grazing has a negative impact on pygmy-owl habitat under some circumstances in Arizona and Sonora. While we expect that

continued implementation of improved grazing-management techniques will reduce grazing impacts on pygmy-owls in Arizona and Texas, we expected that overgrazing will continue to negatively impact pygmy-owls in Sonora and other parts of northern Mexico. Within the Sonoran desert, over grazing can result in loss of structural habitat components important to pygmy-owls, as well as reducing prey availability and diversity. Additionally, improper grazing during droughts can affect the long-term viability of riparian habitats, which are an important habitat type for pygmy-owls in Arizona and Sonora. However, there is no indication that livestock grazing precludes occupancy by pygmy-owls in any part of its range. While improper livestock grazing can have negative impacts to local pygmy-owl populations, we do not believe livestock grazing is significantly affecting pygmy-owl populations throughout its range. The best available scientific and commercial information does not appear to indicate that improper grazing is affecting pygmy-owl populations in Texas. We have no readily-available information to determine whether the effects of livestock grazing on pygmy-owl habitat in Mexico outside of Sonora are greater or more harmful than in Arizona and Sonora, but we suspect impacts are similar. Based on the best available scientific and commercial data, we conclude that improper livestock grazing is not a threat to the continued existence of the pygmy-owl rangewide, nor is it likely to become so.

Border Issues

One of the most pressing issues for the Arizona-Sonora border is the impact of illegal human and vehicular traffic through these unique and environmentally sensitive areas. Many of these locations now bear the scars of wildcat trails, abandoned refuse, and trampled vegetation (Marris 2006, p. 339; Walker and Pavlakovich-Kochi 2003, p. 15). Monitoring activities by the U.S. National Park Service (NPS) estimate that, annually, 300,000 individuals illegally cross through Organ Pipe Cactus National Monument in southwestern Arizona. Video surveillance equipment erected at Coronado National Memorial, in southeastern Arizona, indicates traffic volumes ranging from 100 to 150 immigrants per night (Walker and Pavlakovich-Kochi 2003, p. 15). In the Cabeza Prieta National Wildlife Refuge, located in southwestern Arizona, which supports resident pygmy-owls, there are over 640 km (400 mi) of illegal roads plus another 1,280 km (800 mi) of unauthorized foot trails as a result of illegal border activities (Cohn 2007, p. 96). These activities result in direct impacts to pygmy-owl habitat.

Additional information from the NPS indicates a significant issue ''* * * is the increasing drug smuggling, illegal immigrants, and law enforcement activity which results in much greater human disturbance of the birds.'' Further elaboration shows that the NPS believes ''* * * that cactus ferruginous pygmy-owls within the Monument have been subject to repeated disturbance events and some habitat degraded as a result of long-term drought and impacts associated with illegal migration, drug smuggling, and law enforcement interdiction efforts'' (Snyder 2005, pp. 1–3). Trails and roadways remove pygmy-owl habitat features, noise and disturbance from people and vehicles disrupt important behaviors, and there is an increased risk of fire in important habitats resulting from cooking and warming fires, as well as signal fires used by cross-border immigrants and smugglers. Areas occupied by pygmy-owls in Organ Pipe Cactus National Monument have been abandoned by the owls, likely due, at least in part, to heavy illegal immigrant traffic and associated enforcement actions.

There is fear that efforts to curb illegal border activities through the construction of infrastructure such as fences and barrier will fragment the Sonoran Desert ecosystem, damage the desert's plant and animal communities, and prevent free movement of wildlife between the United States and Mexico (Cohn 2007, p. 96). During the time the pygmy-owl was listed under the Act, we consulted on the effects of Federal border infrastructure projects and identified a number of potential impacts (Service 2003, pp. 66–85). The construction of new border infrastructure in the form of pedestrian fences, vehicle barriers, and patrol roads create impediments to pygmy-owl movement across the border due to pygmy-owl flight patterns and behavior (Marris 2006, p. 239; Vacariu 2005, p. 354). The fences and vehicle barriers, when considered in conjunction with patrol roads, drag roads, and vegetation removal, result in a combination of nonvegetated area with a raised structure in the middle causing an impediment to pygmy-owl movement, particularly given their normal flight patterns, where normal flights are generally less than 30 m (100 ft) and typically only 1.5 to 3.0 m (5 to 11 ft) above the ground (Flesch and Steidl 2007, p. 35; AGFD 2008b, p. 5). Flesch *et al.* (2009, pp. 7–9) show that the vegetation gaps, in association with the tall fences, may limit transboundary movements by pygmy-owls. Raptors are often attracted to artificial hunting perches, especially in areas that lack tall trees (Oles 2007, p. 1; Heintzelman 2004, p. 35; Askham 1990, p. 147). Border fences can provide open hunting areas and improved hunting perches for a variety of raptors that are potential predators of pygmy-owls. This combination of perches, open area, and an impediment to movement may result in increased predation of pygmy-owls, particularly dispersing juvenile pygmy-owls. Because the overall population of pygmy-owls likely functions as a metapopulation, the pygmy-owl depends on dispersal, emigration, and immigration to maintain the genetic and demographic fitness of regional populations. To the extent that border infrastructure and activities reduce or prevent such movements, and increase the likelihood of pygmy-owl predation, it follows that population-level impacts may result.

Impacts to pygmy-owls from border infrastructure and illegal activities are likely limited to the immediate border areas of Arizona and northern Sonora. Information was not readily available so that we could determine the extent of these impacts in Texas and northeastern Mexico, although they are likely to be similar (habitat gaps, perches for raptors, *etc.*). Nevertheless, these impacts are restricted to the border regions of Arizona and Texas, and only affect a relatively-small portion of the pygmy-owl range. This localized effect reduces the magnitude of this impact to the overall pygmy-owl population. Therefore, based on the best available scientific and commercial data, we conclude that effects associated with border activities are not a threat to the continued existence of the pygmy-owl rangewide, and are not likely to become so in the future.

Off-Highway Vehicle (OHV) Use

The information we have on impacts to the pygmy-owl from OHV use relates primarily to Arizona. Information was not readily available on any potential OHV impacts to pygmy-owls or pygmy-owl habitat in Texas and Mexico.

OHV use is widespread in Arizona and occurs on lands under a variety of management entities including the Forest Service, Bureau of Land Management, State Land Department, Tribes, and private individuals. The use of OHVs has grown considerably. For example, as of 2007, 385,000 OHVs were registered in Arizona (a 350 percent increase since 1998) and 1.7 million people (29 percent of Arizona's population) engaged in off-road activity from 2005 to 2007 (Sacco 2007). Over

half of OHV users reported that merely driving off the paved road was their primary activity, versus using the OHV for the purpose of seeking a destination to hunt, fish, or hike (Sacco 2007). Specific impacts to the pygmy-owl or its habitat from OHV use when driving off road include disturbance from noise and human activity, vegetation damage, changes in plant abundance and species composition, reduced habitat connectivity, soil compaction, soil erosion, reduced water infiltration, higher soil temperatures, destruction of cryptogamic soils (soil with crusts formed by an association of algae, mosses, and fungi; such crusts stabilize desert soil, retain moisture, and protect germinating seeds), and increased fire-starts (Boarman 2002, pp. 46–47; Ouren *et al.* 2007, pp. 6–7, 11, 16).

Of specific concern is the regular use by OHV operators to utilize xero-riparian washes as travel ways. These washes provide important habitat elements for pygmy-owls due to the increased structure and productivity of vegetation resulting from the presence of increased moisture. Pygmy-owls use these wash areas for foraging, dispersal, thermal and predator cover, and for movements within their home range. Wash areas are often narrow and constrained, resulting in OHV impacts to vegetation and concentrated noise and disturbance, affecting the use and suitability of these areas as pygmy-owl habitat.

Pygmy-owls may be affected by OHV use in riparian areas. However, this effect is temporary and not continuous. Pygmy-owls may leave the area if disturbed by noise and return once the activity has ceased. Pygmy-owl habitat destruction in Arizona may result from OHV activity, but the magnitude and severity of this impact is relatively minor. Based on our evaluation of the best available scientific and commercial data, we conclude that OHV use does not threaten the continued existence of pygmy-owl, and is not likely to do so in the future.

Summary of Factor A

In summary, pygmy-owls require habitat elements such as mature woodlands that include appropriate cavities for nest sites, adequate structural diversity and cover, and a diverse prey base. A number of negative impacts described in Factor A are affecting pygmy-owl habitat within portions of its range. However, the best available scientific and commercial information indicates that most of these impacts are either restricted to or are greater in a smaller subset of the pygmy-owl's range (approximately 27 percent). For instance, we have detailed information that in the Arizona and Sonoran Desert Ecoregion, pygmy-owl habitat loss and fragmentation resulting from urbanization, changing fire regimes due to the invasion of buffelgrass, agricultural development and woodcutting, overgrazing, and border issues have had significant negative impacts on pygmy-owl habitat in these areas and will likely continue to do so to varying degrees in the foreseeable future. In Texas, which comprises approximately five percent of the pygmy-owl's range, historical loss of habitat has reduced the pygmy-owl range, but current impacts, such as livestock grazing and the invasion of nonnative plants, are reduced in their magnitude and severity.

For the larger part of the pygmy-owl's ranger in Mexico (the remaining 73 percent south of Sonora), the best available data indicates that many impacts to pygmy-owl habitat are reduced in their magnitude and severity or absent altogether. The rate of growth in these southern Mexican States is relatively slow compared with growth in Sonora and the Arizona border region and is expected to remain that way. Agricultural development has decreased in these areas, and buffelgrass is not a known threat to pygmy-owl habitat in this area and is not expected to become a threat in the future because of unfavorable growth conditions for buffelgrass. Historical loss of pygmy-owl habitat in northeastern Mexico has occurred, but there is no available evidence that significant habitat destruction is currently taking place. In addition, pygmy-owls are still considered common in the southern portion of their range. This information indicates that the negative impacts to pygmy-owl habitat discussed herein have different levels of effects on the populations of pygmy-owls throughout their range, and are much reduced or absent in the southern portion of the pygmy-owl's range. Based on the best available scientific and commercial information, we conclude that the present or threatened destruction, modification, or curtailment of its habitat or range is not a threat to the pygmy-owl rangewide now or in the foreseeable future.

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

We are unaware of any overutilization of pygmy-owls for commercial, scientific, or educational purposes. However, the pygmy-owl is highly sought after by birders, who concentrate at several of the remaining known locations of pygmy-owls in the United States. For example, in 1996, a resident in Tucson reported a pygmy-owl sighting (documented pair) that subsequently was added to a local birding hotline, and the location was added to their website on the internet. Several carloads of birders were later observed in the area of the reported location (AGFD 1999, p. 12). As recently as 2003, property owners in Tucson have expressed concerns that birders and others have been documented trying to get photos or see pygmy-owls at occupied sites (AGFD 2003, p. 1).

In Texas, Tewes (1992, p. 28) states, ''Frequent disruption by well-intentioned bird enthusiasts with call imitations may produce a local risk to the pygmy-owls, especially during breeding season.'' We believe this disturbance problem is most significant in southern Texas. Oberholser (1974, p. 452) made a similar observation: ''They [pygmy-owls] are considerably disturbed by hordes of bird watchers, some of whom keep their portable tape recorders hot for hours at a time in hopes that one of these rare birds will answer.'' Recreational disturbance of pygmy-owls in Texas is particularly an issue in the side patches of mesquite, ebony, and cane in Starr and Hidalgo Counties (Oberholser 1974, p. 452). Oberholser (1974, p. 452) and Hunter (1988, p. 6) suggest that recreational birding may disturb pygmy-owls in highly visited areas, affecting their occurrence, behavior, and reproduction. Tewes (1992, p. 12) indicates that many amateur and professional ornithologists have strictly controlled or eliminated their use of taped calls to locate pygmy-owls because of the potential to affect the pygmy-owl's behavior.

Currently, a number of ranches in Texas offer the opportunity to view and photograph pygmy-owls. An internet search revealed invitations to birders to view pygmy-owls on the Canelo, King, and San Miguelito ranches. Additionally, both the AGFD and the Service continue to get requests to view and photograph pygmy-owls in Arizona.

Summary of Factor B

In summary, impacts to pygmy-owls from over-zealous birdwatchers have been documented in some areas within the range of the pygmy-owl. While pygmy-owls continue to be a highly sought after species by birders, there is some indication that compliance with etiquette related to use of tape-playback or call imitation has improved. We were unable to find any information on the effects of birding on pygmy-owls in Mexico, but we do not believe that it is a significant issue in Mexico, except

perhaps on local ranches or ejidos where ecotourism and bird watching are promoted. While the above impacts may negatively affect individual pygmy-owls on a local basis, landowners in areas that promote ecotourism are also likely to implement actions that have positive effects for the pygmy-owl. We conclude, based upon our review of the best commercial and scientific data available, that overutilization for commercial, recreational, scientific, or educational purposes is not a threat to the pygmy-owl now or likely to become so.

Factor C: Disease or Predation

Documentation of disease or predation as a significant mortality factor within a wildlife population requires extensive monitoring and the ability to observe individuals in hand. With regard to pygmy-owls, monitoring and capture has only occurred with any regularity in Arizona and Texas within the United States. This has included the capture of hundreds of individual pygmy-owls and subsequent monitoring using radio telemetry. Consequently, all of the available information on disease and predation is from Arizona and Texas. We are aware of only limited, anecdotal information related to predation for northwestern Mexico (Flesch 2010, pers. comm.). The following discussion outlines our evaluation of the information related to disease and predation that we have available from Arizona and Texas.

Little is known about the rate or causes of mortality in pygmy-owls; however, they are susceptible to predation from a wide variety of species. Recent research indicates that natural predation likely plays a key role in pygmy-owl population dynamics, particularly after fledging and during the postbreeding season (AGFD 2003, p. 2). AGFD telemetry monitoring in 2002 indicated at least three of the nine young produced that year were killed by predators prior to dispersal during a year when tree species failed to leaf out due to drought conditions (AGFD 2003, p. 2). Increased predation during a particularly harsh drought year (2004) in Arizona prompted a rescue effort by the AGFD and the Service during which two hatch-year pygmy-owls were temporarily brought into captivity to increase their chances of survival. They were subsequently released when habitat conditions improved (Service 2004, p. 1). Pygmy-owl predation by screech owls has been identified as a potential factor contributing to the decline of regional pygmy-owl population groups (AGFD 2008b, p. 9). However, there is not enough information to conclusively support this hypothesis. Predation is a significant pygmy-owl nest mortality factor associated with nest boxes and tree cavities in Texas. Proudfoot (2011a, p. 1) indicates that predation rates on natural cavities and unprotected nest boxes have been as high as 40 to 60 percent, with an average of 25 to 30 percent.

Domestic cat predation of pygmy-owls has been documented in both Texas and Arizona (AGFD 2003, p. 1; Proudfoot 1996, p. 79). Human population growth can increase the numbers of subsidized predators, such as household cats, that can affect pygmy-owl populations. As the number of potential predators increases, the chance of predation on pygmy-owls increases. In addition, domestic house cats consume considerable quantities of birds, reptiles, insects, and small mammals, reducing available pygmy-owl prey availability (Barratt 1995, p. 185; Coleman *et al.* 1997, p. 2; Evans 1995, p. 4). This introduction of additional potential predators and a reduction in prey availability negatively affects pygmy-owls.

Ectoparasites have recently been identified as a potential threat to pygmy-owl populations (Proudfoot *et al.* 2005, pp. 186–187; Proudfoot *et al.* 2006c, pp. 874–875). These recent investigations in Texas and Arizona have indicated the regular occurrence of avian parasites in the materials inside of pygmy-owl nest cavities. The numbers of parasites may be high enough to affect nestling pygmy-owl health and survival. Blood parasites have been implicated in reduced body condition and impacts to survival and dispersal in small raptors (Dawson and Bortolotti 2000, pp. 3–5). Proudfoot *et al.* (2005, pp. 186–187) could not rule out that blood loss from external parasites, in combination with other factors, may have contributed to the loss of an entire clutch of pygmy-owls in Arizona.

The West Nile virus has been identified as the cause of a number of raptor mortalities throughout the United States, including Arizona. A number of North American owl species have documented mortality from West Nile virus, including the northern pygmy-owl (Gancz *et al.* 2004, p. 2139). However, the West Nile virus has not been documented in cactus ferruginous pygmy-owls in either the United States or Mexico, and no pygmy-owl mortalities have been suspected to be the result of an infection with the West Nile virus.

Summary of Factor C

In summary, our review of the best available information suggests that disease and predation clearly have the potential to affect pygmy-owl individuals and populations, and have done so in local populations. However, information related to these factors is limited to pygmy-owl populations in the United States. We have only limited, anecdotal information related to predation on pygmy-owls in Mexico. Even in the United States, where predation has been documented, we conclude that it is not resulting in significant effects to the status of the pygmy-owl, because no disease or predation effects have been identified as having population-level effects on pygmy-owls. Based upon our review of the best commercial and scientific data available, we conclude that disease and predation are not threats to the pygmy-owl now or in the future.

Factor D: Inadequacy of Existing Regulatory Mechanisms

Regulations that could potentially address conservation of the pygmy-owl or pygmy-owl habitat in both the United States and Mexico may occur at a number of different levels of government, from Federal to local. The following discussion addresses the existing regulatory mechanisms related to the conservation of pygmy-owls and pygmy-owl habitat based on the best available information.

Although the pygmy-owl in Arizona is considered nonmigratory, it is protected under the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703–712). The MBTA prohibits ''take'' of any migratory bird; however, unlike take under the Endangered Species Act, some Federal courts have concluded that the MBTA does not apply to indirect forms of take such as habitat destruction, unless direct mortality or destruction of an active nest occurs during the activity that causes the habitat destruction. Other Federal and State regulations and policies, such as the Clean Water Act, the Department of Defense's Integrated Natural Resources Management Plans (Barry M. Goldwater Range) (Uken 2008, p.1), National Park Service policy, the inclusion of the pygmy-owl on the State of Arizona's list of Species of Special Concern (AGFD 1996, p. 15), and various municipal planning documents (Oro Valley 2008, p. 1) provide varying levels of protection, but have not been effective in protecting the pygmy-owl in Arizona from further decline. As a result of the implementation of the 2005 Real ID Act, the U.S. Department of Homeland

Security has waived application of the Endangered Species Act and other environmental laws in the construction of border infrastructure, including areas occupied by the pygmy-owl (73 FR 5271). Some local conservation mechanisms, such as habitat conservation plans, are in development in southern Arizona. These plans include conservation measures for pygmy-owls, but are at least a year from completion, and as drafts, do not afford the pygmy-owl any level of protection or conservation (although some pygmy-owl habitat has been conserved through acquisitions related to these plans). There are currently no statutory or regulatory provisions under Arizona law addressing the destruction or alteration of pygmy-owl habitat.

One member of the public provided information indicating that, because the current distribution of pygmy-owls occurs primarily on lands under Federal, State, or Tribal control, these lands are not at risk for the primary threats that have been identified (James 2008, p. 8). However, activities occur on all these lands that can result in all of the negative impacts to pygmy-owls identified in our 90-day finding and this document. None of these types of lands are immune to or restricted from impacts of facilities development, nonnative invasive species, changing fire regimes, drought, climate change, wood harvesting, bird watching, avian disease and predation, border issues, or any of the other impacts discussed above. In fact, it is on these very lands that many of these impacts, such as border issues, nonnative species invasions, fire, and recreation are concentrated. As discussed above, existing regulations governing these lands do not specifically protect pygmy-owls or their habitats, particularly absent protection under the Act.

A potential regulatory effect not specifically related to protection of the pygmy-owl, but which will affect our ability to conserve the pygmy-owl, has recently come to light with regard to Arizona State Trust lands. The Arizona State Land Department is considering restricting access to State Trust Lands for the purposes of conducting wildlife studies. Such access restrictions might prohibit further surveys, research, and monitoring of pygmy-owls on State Trust lands, due to new permit requirements and substantial cost. This has not been formally adopted and may be changed prior to finalization (Latimer 2010, p. 1). However, if implemented as described by Latimer (2010, p. 1), these proposed procedures and fees would likely limit pygmy-owl research on State Trust lands because of our and other biologists' inability to meet the requirements or pay the fees. This would have a substantial negative effect on our ability to conserve pygmy-owls within Arizona.

The State of Texas lists the pygmy-owl as threatened (TPWD 2009, p. 1). This designation requires permits for take of individuals for propagation, zoological gardens, aquariums, rehabilitation purposes, and scientific purposes (Texas Parks and Wildlife Code Chapters 67 and 68; Texas Administrative Code Sections 65.171–65.176, Title 31). There are no provisions for habitat protection. The pygmy-owl is also on the Texas Organization for Endangered Species (TOES) ''watch list,'' but this list provides no regulatory protection for the species or its habitat (TOES 1995, p. 1).

The establishment of protected areas of habitat and management to enhance or restore habitat are important to the conservation of pygmy-owl populations in both the United States and Mexico. In the United States, this could potentially be accomplished on lands managed by Federal agencies such as the Park Service, Bureau of Land Management, Department of Defense, and the Service. However, many of these lands have a multiple-use mandate and do not focus solely on pygmy-owl conservation, or even wildlife conservation in general. Similar issues exist in Mexico as well. Goals and objectives of wildlife management in Mexico have primarily focused on huntable or harvestable species.

A Mexican program to protect sensitive habitats and species is the National Natural Protected Areas (NPAs) system. NPA designation is supposed to protect areas that have not been significantly altered by human activities and that provide diverse ecosystem services. However, prior to 1994, most NPAs lacked sound and comprehensive management plans. By 2000, approximately 30 percent of new and existing NPAs had developed management plans. However, under the NPA model, these plans lacked detailed information, and in many cases could be considered obsolete. NPA goals to promote sustainable natural resources were often unattainable because of conflicting land ownership interests (Valdez *et al.* 2006, p. 272). The allocation of funds for management of natural reserve areas in Sonora is precarious, and some reserves have not received protection other than that given by government edicts or their natural isolation (Burquez and Martinez-Yrizar 1997, p. 378). Urban development has taken its toll on Sonora's natural reserves. Three of the reserves have already disappeared, which reflects the tenuous state of many nature reserves in Mexico during the 1990s (Burquez and Martinez-Yrizar 2007, p. 546).

Another program set up to promote wildlife management on private property in Mexico is the development of wildlife management units, or UMAs. The UMA program in Mexico has not been effective in promoting wildlife management or biodiversity conservation. It has increased the introduction of exotic wildlife species to meet hunting demands. There is a lack of technical capability on private lands to conduct proper wildlife monitoring and management (Weber *et al.* 2006, p. 1482). In Mexico, the exploitation of minerals and industrial development has not been matched by strong measures to protect the environment (Burquez and Martinez-Yrizar 2007, p. 547). Riparian management in particular seems to lack sufficient efforts (Kusler 1985, p. 6).

Summary of Factor D

In summary, Federal laws such as the Migratory Bird Treaty Act and Arizona and Texas State laws do address direct take of pygmy-owls within the United States. Existing regulations in Mexico do not protect or conserve pygmy-owls. Laws and regulations within the range of the pygmy-owl in both the United States and Mexico do not address the loss of or impacts to pygmy-owl habitat. However, within the majority of the range of the pygmy-owl, the inadequacy of existing regulations does not appear to affect the frequency or magnitude of impacts to pygmy-owls and their habitat. Therefore, based on the best scientific and commercial information available, we find that, despite the lack of specific laws or regulations addressing impacts to and conservation and protection of pygmy-owls and their habitat, the inadequacy of regulatory mechanisms does not threaten the pygmy-owl rangewide, and is not likely to do so in the future.

Factor E: Other Natural or Man-Made Factors Affecting Its Continued Existence

We briefly discussed the effects of introduced predation on pygmy-owls by domestic house cats in our Factor C analysis above. While this is a manmade factor affecting pygmy-owls, for Factor E we will discuss human-caused mortality that is not associated with any of the other factors, for example, collisions with fences, cars, and windows, and shooting. Natural factors affecting pygmy-owl habitat availability and suitability not related to Factor A will

also be discussed under Factor E. These include drought, climate change, hurricanes, and the effects of small populations.

Human-Caused Mortality

Direct and indirect human-caused mortalities (*e.g.,* collisions with cars, glass windows, fences, power lines, introduced competitors and predators, etc.), while likely uncommon, are often underestimated, and probably increase as human interactions with pygmy-owls increase (Banks 1979, pp. 13–14; Klem 1979, pp. 1–2; Churcher and Lawton 1987, p. 439). This may be particularly important in areas of the pygmy-owl's range where pygmy-owls are located in proximity to urban development. Documentation exists of pygmy-owls flying into windows and fences, resulting in serious injuries or death to the birds. In one incident, a pygmy-owl collided with a closed window of a parked vehicle; it eventually flew off, but had a dilated pupil in one eye, indicating neurological injury as a result of this encounter (Abbate *et al.* 1999, p. 58). In another incident, an adult pygmy-owl was found dead at a wire fence; apparently it flew into the fence and died (Abbate *et al.* 2000, p. 18). AGFD also has documented an incident of individuals shooting BB guns at birds perched on a saguaro that contained an active pygmy-owl nest. The information we have related to human-caused mortality is limited to the United States and does not generally appear to be a significant effect on pygmy-owl populations. Information from Mexico does not indicate that these activities are affecting pygmy-owls in a manner different than the United States.

Drought and Climate Change

''Climate'' refers to an area's long-term average weather statistics (typically for at least 20- or 30- year periods), including the mean and variation of surface variables such as temperature, precipitation, and wind, whereas ''climate change'' refers to a change in the mean and/or variability of climate properties that persists for an extended period (typically decades or longer), whether due to natural processes or human activity (Intergovernmental Panel on Climate Change (IPCC) 2007a, p. 78). Although changes in climate occur continuously over geological time, changes are now occurring at an accelerated rate. For example, at continental, regional and ocean basin scales, recent observed changes in long-term trends include: a substantial increase in precipitation in eastern parts of North American and South America, northern Europe, and northern and central Asia, and an increase in intense tropical cyclone activity in the North Atlantic since about 1970 (IPCC 2007a, p. 30); and an increase in annual average temperature of more than 2° F (1.1°C) across US since 1960 (Global Climate Change Impacts in the United States (GCCIUS) 2009, p. 27). Examples of observed changes in the physical environment include: An increase in global average sea level, and declines in mountain glaciers and average snow cover in both the northern and southern hemispheres (IPCC 2007a, p. 30); substantial and accelerating reductions in Arctic sea-ice (*e.g.,* Comiso *et al.* 2008, p. 1), and a variety of changes in ecosystem processes, the distribution of species, and the timing of seasonal events (*e.g.,* GCCIUS 2009, pp. 79–88).

The IPCC used Atmosphere-Ocean General Circulation Models and various greenhouse gas emissions scenarios to make projections of climate change globally and for broad regions through the 21st century (Meehl *et al.* 2007, p. 753; Randall *et al.* 2007, pp. 596–599), and reported these projections using a framework for characterizing certainty (Solomon *et al.* 2007, pp. 22–23). Examples include: (1) It is virtually certain there will be warmer and more frequent hot days and nights over most of the earth's land areas; (2) it is very likely there will be increased frequency of warm spells and heat waves over most land areas, and the frequency of heavy precipitation events will increase over most areas; and (3) it is likely that increases will occur in the incidence of extreme high sea level (excludes tsunamis), intense tropical cyclone activity, and the area affected by droughts (IPCC 2007b, p. 8, Table SPM.2). More recent analyses using a different global model and comparing other emissions scenarios resulted in similar projections of global temperature change across the different approaches (Prinn *et al.* 2011, pp. 527, 529).

All models (not just those involving climate change) have some uncertainty associated with projections due to assumptions used, data available, and features of the models; with regard to climate change this includes factors such as assumptions related to emissions scenarios, internal climate variability and differences among models. Despite this, however, under all global models and emissions scenarios, the overall projected trajectory of surface air temperature is one of increased warming compared to current conditions (Meehl *et al.* 2007, p. 762; Prinn *et al.* 2011, p. 527). Climate models, emissions scenarios, and associated assumptions, data, and analytical techniques will continue to be refined, as will interpretations of projections, as more information becomes available. For instance, some changes in conditions are occurring more rapidly than initially projected, such as melting of Arctic sea ice (Comiso *et al.* 2008, p. 1; Polyak *et al.* 2010, p. 1797), and since 2000 the observed emissions of greenhouse gases, which are a key influence on climate change, have been occurring at the mid- to higher levels of the various emissions scenarios developed in the late 1990's and used by the IPPC for making projections (*e.g.,* Raupach *et al.* 2007, Figure 1, p. 10289; Manning *et al.* 2010, Figure 1, p. 377; Pielke *et al.* 2008, entire). Also, the best scientific and commercial data available indicates that average global surface air temperature is increasing and several climate-related changes are occurring and will continue for many decades even if emissions are stabilized soon (*e.g.,* Meehl *et al.* 2007, pp. 822–829; Church *et al.* 2010, pp. 411–412; Gillett *et al.* 2011, entire).

Changes in climate can have a variety of direct and indirect impacts on species, and can exacerbate the effects of other threats. Rather than assessing ''climate change'' as a single threat in and of itself, we examine the potential consequences to species and their habitats that arise from changes in environmental conditions associated with various aspects of climate change. For example, climate-related changes to habitats, predator-prey relationships, disease and disease vectors, or conditions that exceed the physiological tolerances of a species, occurring individually or in combination, may affect the status of a species. Vulnerability to climate change impacts is a function of sensitivity to those changes, exposure to those changes, and adaptive capacity (IPCC 2007, p. 89; Glick *et al.* 2011, pp. 19–22). As described above, in evaluating the status of a species, the Service uses the best scientific and commercial data available, and this includes consideration of direct and indirect effects of climate change. As is the case with all potential threats, if a species is currently affected or is expected to be affected by one or more climate-related impacts, this does not necessarily mean the species is a threatened or endangered species as defined under the Act. If a species is listed as threatened or endangered, this knowledge regarding its vulnerability to, and impacts from, climate-associated changes in environmental conditions can be used to help devise appropriate strategies for its recovery.

While projections from global climate model simulations are informative and

in some cases are the only or the best scientific information available, various downscaling methods are being used to provide higher-resolution projections that are more relevant to the spatial scales used to assess impacts to a given species (see Glick *et al,* 2011, pp. 58–61). With regard to the area of analysis for the pygmy-owl, downscaled models predict that the Sonoran Desert Ecoregion will be drier through the 21st century and that the transition to a more arid climate is likely already under way (Seager *et al.* 2007, p. 1181). Future drought is projected to occur under warmer temperature conditions as climate change progresses. Seager *et al.* (2007, p. 1181) predict that the recent multiyear droughts, the Dust Bowl, and 1950s drought conditions will become the new climatology of the American Southwest with a timeframe of years to decades. Already, the current, multiyear drought in the western United States, including most of the Southwest, is the most severe drought recorded since 1900 (Overpeck and Udall 2010, p. 1642).

Although specifically looking at pinyon-juniper communities, Breshears *et al.* (2005, pp. 15147–15148) showed that a particular concern under these drought conditions is regional-scale mortality of overstory trees, which rapidly alters ecosystem type, associated ecosystem properties, and land-surface conditions for decades. Woodlands providing important pygmy-owl habitat, including meso- and xeroriparian trees, thornscrub, and tropical deciduous forests may respond in a similar manner. Gitlin *et al.* (2006, p. 1482) documented increased mortality of *Populus fremontii* (Fremont cottonwood) (an important riparian tree in Sonoran Desert mesoriparian communities) during the recent drought.

Northern areas of Mexico are most vulnerable to droughts and desertification because erosion and drought severity will increase with higher temperatures and rainfall variations in these arid and semi-arid regions (Conde and Gay 1999, p. 2). The three Mexican regions most vulnerable to climate change are, in order of importance, Central, Northern (in areas occupied by pygmy-owls), and the Tabasco Coast (Conde and Gay 1999, p. 2). Magana and Conde (2000, p. 183) showed the vulnerability of northern Mexico, specifically Sonora, to interannual climate variability and climate change. They found that future major challenges that will result from climate change are increasing demand for water, competition among water users, and decline in water quality, along with the resultant loss or reduction of riparian woodlands and other pygmy-owl habitat elements. Smith *et al.* (2000, p. 79) noted the following with regard to nonnative grass invasions and climate change, ''This shift in species composition in favor of exotic annual grasses, driven by global [climate] change, has the potential to accelerate the fire cycle, reduce biodiversity, and alter ecosystem function in the deserts of western North America.''

Changes in the timing of precipitation due to climate change may have effects related to pygmy-owl prey availability and abundance. Flesch (2008, p. 8) found that timing and quantity of precipitation affected both lizard and rodent abundance in ways that suggested rainfall is an important driver of population and community dynamics. In general, cool-season rainfall had a positive correlation with rodent populations and warm-season rainfall was positively correlated with lizard populations. Because various climate change models predict that climate conditions will become more variable, lizard species that are most affected by variations in precipitation will tend to decline in abundance across time. This is an important finding given that lizards are the primary prey item for pygmy-owls during the summer.

The majority of the current range of the pygmy-owl occurs in tropical or subtropical vegetation communities that may be reduced in coverage if climate change results in hotter, more arid conditions. The Sonoran Desert Ecoregion is already characterized by hot, arid conditions, and pygmy-owls in this portion of the range are already adapted to the hotter, more arid conditions that may prevail in the future. This adaptation may be important to the continued existence of the subspecies as desertification spreads in response to climate change, but may be offset as some future model scenarios predict a reduction in columnar cacti densities, the primary pygmy-owl nesting substrate within the Sonoran Desert Ecoregion (Weiss and Overpeck 2005, p. 2074). Already studies have documented a noticeable shift north of bird species in association with changing climates. Christmas Bird Count data show a shift northward in 56 percent of the 305 most widespread, regularly occurring wintering bird species (NABCI 2010). This same report indicates that bird species that are rare or nonexistent in the United States at present will expand their ranges into our country from the south (NABCI 2009, p. 15).

Climate change may have a negative impact on some pygmy-owl populations because it will exacerbate the current and ongoing effects discussed above. For example, drought has been documented in Arizona and northern Sonora to reduce juvenile pygmy-owl survival. Under the predicted climate change scenarios, drought will occur more frequently and increase in severity. The invasion of nonnative species has been documented in the loss of pygmy-owl habitat and native vegetation communities. A common prediction under climate change is for conditions that will favor the increased occurrence and distribution of nonnative species. Riparian areas, both permanent and ephemeral, support important pygmy-owl habitat elements such as thermal and predator cover, and increased prey availability. Precipitation events under most climate change scenarios will decrease in frequency and increase in severity. This may reduce available cover and prey for pygmy-owls by affecting riparian areas through scouring flood events and reduced moisture retention. However, the extent to which changing climatic patterns will affect the pygmy-owl is not known with certainty at this time.

Hurricanes

Although not generally considered a historical impact to pygmy-owl habitat, the loss of habitat and nest structures as a result of hurricanes has recently been identified as a potential contributor to an apparent decline in pygmy-owl nestlings documented as part of an ongoing pygmy-owl nest box study in south Texas (Proudfoot 2011b, p. 1; Proudfoot 2010, p. 1). Hurricanes within the past five years have impacted thousands of acres of occupied pygmy-owl habitat by removing trees and reducing cover and structural diversity. Within the current range of the pygmy-owl, hurricanes are most likely to affect pygmy-owl habitat in southern Texas and northeastern Mexico, although hurricanes in the Pacific Ocean also have the potential to affect pygmy-owl habitat in western Mexico. Historically, major hurricanes have made landfall in southern Texas on average about once every decade. However, more recently, hurricanes (Erika in 2003, Dolly in 2008, and Alex in 2010) have occurred more often than in the past, suggesting that major hurricanes may be occurring more frequently now. If hurricanes continue to occur every few years, this frequency of hurricanes resulting in loss of woodlands may not allow some areas of previously suitable pygmy-owl habitat to regenerate trees of adequate size to support the cavities needed for nesting by pygmy-owls. However, the effects are expected to be localized.

Scattered, Small Population Groups

An important principle of conservation genetics is that small, isolated populations will experience reductions in the health of the population due to the expression of negative population characteristics as a result of inbreeding. Loss of individual adaptation can also occur and may adversely affect population demography and increase the risk of population extinction (Caughley 1994, p. 217). Inbreeding in small, isolated populations often occurs because of a lack of mates to choose from, not from preferential mating among related individuals. This can lead to increased chances that both parents will contribute genes containing harmful traits, some of which may affect important adaptive and physiological characteristics, such as survival, fertility, and physiological vigor (Soule and Mills 1998, p. 1658).

Inbreeding has been documented within the small pygmy-owl population in Arizona (Abbate *et al.* 2000, p. 21). Lack of genetic diversity has also been documented during recent genetics studies (Proudfoot and Slack 2001, pp. 5–7). Loss of isolated population groups has occurred in Arizona due to lack of productivity and inadequate dispersal (AGFD 2008, p. 1). In 2008, a possible genetic heart condition was diagnosed in the mortality of three related pygmy-owls in the captive breeding research project, a possible expression of the detrimental effects of the inbreeding of pygmy-owls in Arizona (Fox 2008, p. 1).

In addition to genetic factors, habitat degradation or human-caused mortality can cause shifts in population characteristics that drive population decline. Genetic factors may simply hasten the extinction process once a population is small (Miller and Waits 2003, p. 4334). In the face of ongoing loss and fragmentation of habitat, the potential for inbreeding increases as populations or groups of pygmy-owls are increasingly isolated. This increases the need for management that maintains, restores, or substitutes for historical patterns of between-population gene flow (Hogg *et al.* 2006, p. 1491). In addition to inbreeding, genetic drift (a change in the gene pool of a population that takes place strictly by chance) in small populations can depress population fitness and increase extinction risk (Tallmon *et al.* 2004, p. 489), as well as diminish future adaptations to a changing environment (Lande 1988, p. 1455). A significant loss in genetic variation within small populations may decrease population health or limit the long-term capacity of a population to respond to environmental challenges (Keller *et al.* 1994).

Similarly, chance environmental and demographic events may pose a more substantial threat to small populations than to large populations (Westemeier *et al.* 1998, p. 1695). Caughley and Gunn (1996, p. 166) noted that small populations can become extinct entirely by chance even when their members are healthy and the environment favorable. Demographic characteristics of small populations can be significant contributors in determining minimum viable population sizes. Viability of small populations is likely dependent on both demography and population genetics and should not be considered independently (Keller *et al.* 2002, p. 356; Lande 1988, p. 1459). Consequently, for those areas of the pygmy-owl's range where local small population size is an issue, if the result of any of the above factors negatively affects pygmy-owl demography or genetics, effects, at least at the local population scale, may be significant.

Genetic rescue within a metapopulation structure can occur through periodic immigration into small, inbred, at-risk populations and can alleviate inbreeding depression and boost fitness, but habitat connectivity and adequate dispersal opportunities must be present. However, immigration of genetically divergent individuals can lead to the opposite effect—a reduction in population fitness due to outbreeding depression (when crosses between individuals from different populations have lower fitness than progeny from crosses between individuals within the same population) (Tallmon *et al.* 2004, p. 489).

In conclusion, small population size and inadequate dispersal, as well as a reduced ability to adapt due to low genetic diversity, can result in increased vulnerability of extinction for pygmy-owls in small, isolated populations. The best information we have indicates that small, isolated populations probably occur in Arizona, Texas, and northeastern Mexico. We know of no small, isolated populations in southern Mexico, and thus conclude that small population size is not likely to be a threat in that area.

Summary of Factor E

In summary, direct, human-caused mortality of pygmy-owls can occur and may, locally, have some impact on isolated population segments. However, it is unlikely that direct human-caused mortality will have significant population-level impacts on the pygmy-owl throughout its range. Impacts to pygmy-owl populations from factors related to drought and small population size have been documented in portions of the pygmy-owl's range, specifically Arizona. All but one model evaluating changing climatic patterns for the southwestern United States and northern Mexico predict a drying trend for the region (Seager *et al.* 2007, pp. 1181–1184), which will negatively affect riparian and other plant communities that provide habitat for pygmy-owls. The extent to which changing climatic patterns will affect the pygmy-owl is not known with certainty at this time. However, predicted impacts of climate change may exacerbate and intensify the effects of long-term drought and other negative impacts within the range of the pygmy-owl identified under Factor A. One concern in the northwestern portion of the species' range is the potential decline in large columnar cacti, an essential pygmy-owl habitat element that provides nest sites. However, given the persistence of pygmy-owl populations in the more arid areas of its range (northwestern Mexico and Arizona), pygmy-owls in these areas may provide the genetic adaptations necessary to adapt to changing conditions.

Given the current pygmy-owl population status, the effects of small population size are likely to continue, especially in the northern portion of the range. Reduced population connectivity as a result of habitat impacts identified under Factor A will likely continue to increase the potential for inbreeding and the associated loss of genetic diversity. At least in Arizona, lack of dispersing juveniles and floating nonbreeding individuals in the population due to low numbers of breeding pygmy-owls will also affect long-term occupancy of breeding territories and further erode the metapopulation structure in Arizona and northern Sonora. However, these effects appear to be localized, and we do not find that impacts under Factor E are significantly affecting pygmy-owls rangewide. Based upon our review of the best commercial and scientific data available, we conclude that other natural and manmade factors are not immediate threats to the pygmy-owl rangewide, and are not likely to become so in the future.

Pygmy-Owl Finding Throughout Its Range

As required by the Act, we conducted a review of the status of the species and considered the five factors from section 4(a) in assessing whether the pygmy-owl is threatened or endangered throughout all of its range. We examined the best scientific and commercial information

available regarding the past, present, and future threats faced by the species. We reviewed the petition, information available in our files, other available published and unpublished information, and we consulted with species and subject experts, including peer review, and other Federal, State, Tribal, and local agencies.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor and determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of threatened or endangered under the Act.

Through our five-factor analysis, we identified a number of factors that are negatively affecting the pygmy-owl, including the following: (1) Habitat loss and fragmentation due to urbanization, improper grazing, nonnative-species invasions and associated changes in fire regimes, OHV use, agricultural development, and wood cutting; (2) border issues; (3) inadequate regulatory mechanisms; (4) drought and climate change; and (5) small size of some local populations. To determine whether these factors individually or collectively rise to a ''threat'' level such that the pygmy-owl is in danger of extinction throughout its range, or likely to become so in the foreseeable future, we first considered whether these negative factors to the subspecies were causing long-term, range-wide, population-scale declines in pygmy-owl numbers, or were likely to do so in the foreseeable future.

While range-wide surveys have not been conducted for the pygmy-owl, information from surveys that have been conducted in Texas and Arizona in the United States, and in Sinaloa and Sonora in Mexico can be used to help us determine the general population status of the pygmy-owl throughout its range. The best available information we have indicates that local populations of pygmy-owls in Arizona, northern Sonora, and Texas have likely experienced population declines; however, the pygmy-owl is still found in these areas. Pygmy-owls are still found in southern Mexico, and the best available information indicates that they may remain relatively common throughout this area. Based on the level of information we do have, it appears pygmy-owls persist in most areas where they have been historically documented in the literature and during recent survey efforts. The most recent IUCN (International Union for Conservation of Nature) Red List (an international standard for species extinction risk) contains the following statement with regard to the status of the ferruginous pygmy-owl, ''Despite the fact that the population trend appears to be decreasing, the decline is not believed to be sufficiently rapid to approach thresholds for Vulnerable under the population trend criterion (greater than a 30 percent decline over ten years or three generations).'' (IUCN 2008, p. 2). So, while this statement may be an indication of a range-wide population decline, it does not appear that such a decline is significant enough to place the pygmy-owl in a category of concern for IUCN. In addition, this statement applies to ferruginous pygmy-owls as a species, and does not separate status for the individual subspecies. Therefore, based on the best available scientific and commercial information, we do not find evidence of a sufficient declining trend in the subspecies' population to indicate it is in danger of range-wide extinction now, or in the foreseeable future. In other words, based on a review of the best available data, the data do not suggest that the combined effects of the negative impacts discussed in our five-factor analysis are resulting in an overall, long-term reduction in the distribution of the pygmy-owl, or an associated significant range-wide decline in pygmy-owl numbers, such that the subspecies is currently in danger of extinction or likely to become so.

There are severe impacts to certain portions of the pygmy-owl's range. However, those impacts are restricted to a relatively small (27 percent) portion of the entire range. We found no evidence that these impacts are of sufficient magnitude and severity to affect the rangewide population of pygmy-owls. Although it appears there are localized declines in pygmy-owl populations in Arizona and, possibly Texas and northern Sonora, there does not appear to be an ongoing, significant, long-term decline in range-wide pygmy-owl numbers that would lead us to believe the subspecies is currently in danger of extinction or likely to become so throughout its range due to factors identified in our five-factor analysis.

We also considered whether any of the negative impacts began recently enough that their effects are not yet manifested in current subspecies' population numbers, but are likely to have an effect in the foreseeable future. Impacts from climate change are a particular impact that has recently been accelerating. These effects are so recent that we have no information on the long-term effects to pygmy-owl populations. However, drought is predicted to become more prevalent within the Sonoran range of the pygmy-owl, and drought has had a historically-negative impact on pygmy-owl populations in this area. The predictions of drought throughout the remainder of the range are uncertain; however, as discussed under Factor E, pygmy-owls in the northern portion of their range may be more resilient and better adapted to drought conditions. Other impacts are largely limited to specific portions of the subspecies' range, and we do not believe they would manifest their future effects as range-wide population declines. Therefore, the pygmy-owl is not currently in danger of extinction, or likely to become so, due to potential threats that began recently enough that their long-term effects are not yet manifest.

Next, we considered whether any of the current negative factors are likely to increase within the foreseeable future, such that the species is likely to become in danger of extinction in the foreseeable future. We do believe that some of the negative factors identified will increase in the foreseeable future including urbanization, nonnative invasions and fires, agricultural development, woodcutting, grazing, and climate extremes. However, as discussed above in our five-factor analysis, these impacts occur in a limited portion of the range, primarily Arizona, Texas, and Sonora. For the remaining portions of Mexico, the best available information indicates that the negative factors are less severe or that there is no evidence of the negative impact. The best available information also indicates that pygmy-owls are relatively common in this portion, which is 73 percent of their range. Therefore, we conclude that there is no

evidence that negative factors, such as urbanization, agricultural development, or woodcutting, will increase in the foreseeable future in the majority of the pygmy-owl's range.

Finally, we considered whether stochastic events might decrease the long-term viability of the species (species viability requires a naturally-reproducing population large enough to maintain sufficient genetic variation to provide for its continued evolution and response to natural environmental changes). We considered whether, given a currently stable population range-wide, is the pygmy-owl likely to become in danger of extinction in the foreseeable future because stochastic events might reduce its current numbers to a point where its long-term viability would be in question. Current information suggests that stochastic events such as hurricanes, extreme drought, and catastrophic fires could reduce the viability of local pygmy-owl populations in Arizona, Texas, and northern Sonora. However, because of the pygmy-owl's wide distribution and historical indications of relatively higher numbers throughout most of its range, even if a stochastic event were to occur within the foreseeable future that negatively affected this subspecies, the range-wide population would still be unlikely to fall to such a low level that it would be in danger of extinction.

Despite some regional declines in pygmy-owl population numbers, the subspecies has been able to maintain what appears to be range-wide population viability. Negative factors affecting pygmy-owls seem to be restricted, for the most part, to a relatively small portion of its range. The areas where we have detailed information to evaluate potential threats and pygmy-owl population status (Arizona, Texas, and Sonora) represent approximately 27 percent of the overall pygmy-owl range. The best available information suggests that the range-wide pygmy-owl population is not significantly declining, despite regional changes in population numbers, and that most of the immediate impacts to the pygmy-owl and its habitats are geographically concentrated. In summary, based on our review of the best available scientific and commercial information pertaining to the five factors, we find that threats throughout the majority of the pygmy-owl's range are not of sufficient imminence, severity, or magnitude to indicate that the pygmy-owl is in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened), throughout all of its range.

After determining the subspecies is not currently in danger of extinction or likely to become so in the foreseeable future throughout its range, we next consider whether a distinct vertebrate population segment (DPS) or whether any significant portion of the pygmy owl's range is in danger of extinction or is likely to become so in the foreseeable future.

Distinct Vertebrate Population Segment

Under the Service's Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (61 FR 4722, February 7, 1996), three elements are considered in the decision concerning the establishment and classification of a possible DPS. These are applied similarly for additions to or removal from the Federal List of Endangered and Threatened Wildlife. These elements include:

(1) The discreteness of a population in relation to the remainder of the species to which it belongs;

(2) The significance of the population segment to the species to which it belongs; and

(3) The population segment's conservation status in relation to the Act's standards for listing. delisting, or reclassification (i.e., is the population segment endangered or threatened).

Discreteness

Under the DPS policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of these 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.

(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 Act.

Significance

If a population segment is considered discrete under one or more of the conditions described in the Service's DPS policy, its biological and ecological significance will be considered in light of Congressional guidance that the authority to list DPSs be used ''sparingly'' while encouraging the conservation of genetic diversity. In making this determination, we consider available scientific evidence of the discrete population segment's importance to the taxon to which it belongs. Since precise circumstances are likely to vary considerably from case to case, the DPS policy does not describe all the classes of information that might be used in determining the biological and ecological importance of a discrete population. However, the DPS policy describes four possible classes of information that provide evidence of a population segment's biological and ecological importance to the taxon to which it belongs. As specified in the DPS policy (61 FR 4722), this consideration of the population segment's significance may include, but is not limited to, the following:

(1) Persistence of the discrete population segment in an ecological setting unusual or unique to the taxon;

(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of a 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.

A population segment needs to satisfy only one of these conditions to be considered significant. Furthermore, other information may be used as appropriate to provide evidence for significance.

Analysis of Potential Distinct Population Segments

The petitioners requested that we consider two potential DPS's of the pygmy-owl for protection under the Act, a Sonoran Desert DPS and an Arizona DPS. The petitioners did not suggest any additional DPS configurations to be evaluated. However, in order to be complete in our analysis of potentially listable pygmy-owl entities, we also considered other potential DPS configurations including an eastern/western DPS and a Texas DPS. Our analysis of these two other potential DPS configurations follows our evaluation of the petitioned DPS configurations.

Potential Sonoran Desert DPS

As described, none of the boundaries of the petitioner's Sonoran Desert DPS include an international border or boundary (CBD and DOW 2007, pp. 4–6) (Figure 4). Therefore, the petitioned DPS must meet the first condition for discreteness in order to be considered a valid DPS, because it does not meet the second condition. The eastern and

western portions of the range of the pygmy-owl are separated by the Sierra Madre and other mountain ranges in north-central Mexico (Proudfoot *et al.* 2006a, p. 9). However, there are no obvious physical or geographic barriers that separate the petitioned Sonoran Desert DPS from the rest of the pygmy-owl's range to the south. There is a documented area in central Sonora, near Hermosillo, Mexico, that may act as an impediment to pygmy-owl movements and dispersal, because of the lack of contiguous suitable habitat resulting from natural and artificial conditions (Flesch 2003, pp. 40, 100). However, the extent of this band of unsuitable habitat does not prevent regular or occasional movements by pygmy-owls between northern and southern Sonora. This is supported by genetic sampling and analysis that has recently been completed, that indicates that there is likely gene flow between the two groups (Proudfoot 2009a, p. 1).

Proudfoot's earlier assessment of mitochondrial DNA (mtDNA) and microsatellite DNA of pygmy-owls from Arizona, Sonora, and Sinaloa implied restricted gene flow between the Sonoran and Sinaloan populations (Proudfoot *et al.* 2006a, p. 10; Proudfoot *et al.* 2006b, p. 9). However, the authors implied that limited sampling and geographic distance between sample sites in Sonora and Sinaloa may have influenced the results of these studies. To verify the inference of restricted gene flow, a joint effort among Proudfoot, AGFD, and the Service resulted in the collection and analysis of an additional 119 samples collected in areas not previously sampled (Proudfoot 2009, p. 1; AGFD 2008a, pp. 1–10). Analysis of the genotypic variation revealed isolation by distance with significant gene flow between pygmy-owl populations. Estimates of migrants per generation time for pygmy-owl populations were 8.62 (Arizona-Sonora), 6.65 (Arizona-Sinaloa) and 23.46 (Sonora-Sinaloa) (Proudfoot 2009, p. 1).

So, while no haplotypes from Arizona, Sonora, or Sinaloa are shared with the remainder of Mexico and Texas, there are shared haplotypes among Arizona, Sonora, and Sinaloa, indicating there is exchange of genetic material within this grouping (Proudfoot *et al.* 2006a, p. 7). This would argue against the Sonoran Desert Ecoregion being markedly separate from the remainder of Sonora and Sinaloa. Based on observations of pygmy-owls during survey and capture activities in Arizona, and in both northern and southern Sonora as described above, the best available scientific and commercial data does not indicate that there is any evidence that there are marked behavioral, morphological, or physiological differences within the petitioned DPS (AGFD 2008a, pp. 1–4). As a result, this study indicates that there is no marked genetic or morphological separation between the petitioned Sonoran Desert DPS and southern Sonora populations (Proudfoot 2009a, p. 1; AGFD 2008a, p. 10).

The Sonoran Desert Ecoregion does differ ecologically from the remainder of the areas within its range. Despite the fact that occurrence of some plant species overlaps with other ecoregions to the south and east, the Sonoran Desert is a unique dry desert area that does function ecologically in a different way when compared to adjacent ecoregions. However, as described above, the best available scientific and commercial data do not indicate that this ecological difference has resulted in any morphological, physiological, or genetic differentiation within pygmy-owl populations in the Sonoran Desert. Environmental characteristics within the Sonoran Desert have likely resulted in the reduced numbers and densities of pygmy-owls found in this area. However, this does not appear to have resulted in any physical differentiation, at least anecdotally, from adjacent pygmy-owl populations.

We find that there is no evidence that the Sonoran Desert population of pygmy-owl is markedly separated in any way from the remainder of the taxon. Therefore, we determine, based on a review of the best available information, that the petitioned Sonoran Desert DPS of the pygmy-owl does not meet the discreteness conditions of the 1996 DPS policy. As such, this population segment does not qualify as a DPS under our policy and is not a listable entity under the Act.

The DPS policy indicates that significance should be analyzed only if a population segment has been identified as discrete. Because we found that the Sonoran Desert population segment did not meet the discreteness element and, therefore, does not qualify as a DPS under the Service's DPS policy, we will not conduct an evaluation of significance.

Potential Arizona DPS

Because we are evaluating this petitioned entity based on the currently accepted taxonomic classification of the pygmy-owl (see Description and Taxonomy section above), the taxon considered in this finding is the same as for our 1997 listing of the pygmy-owl (62 FR 10730). Consequently, the petitioned Arizona DPS is exactly the same DPS configuration that was the subject of litigation and, ultimately, the same DPS configuration that the Service removed from the Federal List of Endangered and Threatened Wildlife in 2006 (71 FR 19452; April 24, 2006) (Figure 4). That final rule presents our analysis showing that, while the discreteness criteria for the DPS were met, we could not show that this DPS was significant to the taxon as a whole. The petition states that ''the Arizona DPS occurs in a unique ecological setting and differs markedly in its genetic characteristics from pygmy-owls in Sinaloa and elsewhere in the species range. Loss of the Arizona DPS would also create a significant gap in the species' range, resulting in loss of roughly a third of the subspecies' range, and half of the species' range in the Sonoran Desert. The Arizona DPS is also significant because it represents the entire range of *G. ridgwayi cactorum* in the United States'' (CBD and DOW 2007, p. 12).

Our analysis in the final rule to delist the pygmy-owl showed that the then-listed Arizona DPS of the pygmy-owl was not markedly different in its genetic characteristics from pygmy-owls in northern Sonora, Mexico; did not occur in a unique ecological setting; nor would loss of the DPS represent a significant gap in the range of the taxon (71 FR 19452). We are unaware of any scientific information compiled since the delisting that would alter the conclusions made in that final rule. Therefore, we determine, based on a review of the best available information, that the petitioned Arizona DPS of the pygmy-owl does not meet the significance conditions of the 1996 DPS policy. Therefore, this population segment does not qualify as a DPS under our policy and is not a listable entity under the Act.

Potential Texas DPS

We have reviewed new information regarding the status of the pygmy-owl in Texas (Proudfoot 2010, p. 1; 2011b, p. 1). In addition, the peer reviewers of the current genetic information provided insight and recommendations regarding the genetic diversity and management of pygmy-owls in Arizona and Texas. Upon consideration of this new information, we concluded that it was appropriate to evaluate a potential Texas DPS that includes the current range of the pygmy-owl in Texas to the international border with Mexico.

Discreteness

The use of the international border to define discreteness of the Arizona pygmy-owl DPS was upheld by the courts (No. 02–15212, CV00–0903 SRB

at 11586, 2003) because of the differences in status and management of the pygmy-owl between Arizona and Mexico. Defining the discreteness of the Texas DPS is appropriate using the same rationale. For example, Mexico has no regulations or laws specifically protecting the pygmy-owl. In Texas, the pygmy-owl is listed as threatened, and State law prohibits take without the appropriate permit. Therefore, we determine that the Texas DPS is discrete due to differences in status and management of the pygmy-owl between the United States, in Texas, and Mexico.

Significance

The best available scientific and commercial information does not indicate that the Texas population of pygmy-owls occurs in an ecological setting that is unusual or unique to the taxon. For example, the vegetation community that supports pygmy-owls in Texas is classified as Tamaulipan brushland (Jahrsdoerfer and Leslie 1988, p. 1). This vegetation community and the associated pygmy-owl habitat elements are found in southern Texas and northeastern Mexico (Jahrsdoerfer and Leslie 1988, pp. 1–9; Hunter 1988, p. 8; Cook *et al.* 2001, pp. 1–2) and comprise most of the eastern portion of the pygmy-owl's current range. Texas represents approximately 15 percent of the eastern portion of the range of the pygmy-owl. In other words, approximately 85 percent of the pygmy-owl habitat that is characterized as Tamaulipan brushland occurs outside of Texas. Therefore, the Texas population of pygmy-owls does not occur in an unusual or unique setting for the taxon.

Texas represents approximately 5 percent of the overall range of the pygmy-owl. From a geographic perspective, loss of this portion of the range does not represent a significant gap in the range of the pygmy-owl. However, we must also consider where the loss of the contribution of this population segment to overall population numbers would represent a significant gap in the range. Pygmy-owl population estimates for Texas range from 100 owls in Kleberg County (Tewes 1992, p. 24), to 654 pairs in Kenedy, Brooks, and Willacy Counties (Wauer *et al.* 1993, p. 1074), and 745 to 1,823 pygmy-owls on ranches in Kenedy and Brooks Counties (Mays 1996, p. 32). This is considerably higher than population estimates in Arizona (approximately 50 owls (Abbate *et al.* 2000, pp. 15–16)), but likely similar to the densities occurring in thornscrub and dry tropical forest habitats further south in Mexico. Field data indicate that pygmy-owls in the southern portions of Sonora (within thornscrub and tropical deciduous forests) are common and likely number on the order of thousands, while further north within the Sonoran Desert Ecoregion, they are fewer in number, more patchily distributed, and likely number on the order of hundreds (Flesch 2003, pp. 39–42; AGFD 2008a, p. 6). Given that the majority of the pygmy-owl's range appears to support similar numbers and densities of pygmy-owls as Texas, we do not believe that the loss of the population in Texas would represent a significant gap from the perspective of contribution to overall pygmy-owl population numbers.

While there is some evidence that the Texas population of pygmy-owls contributes key genetic diversity to the overall population of pygmy-owls and is, to some extent, genetically unique (Proudfoot 2006a, p. 7; Cicero 2008, p. 2; Oyler-McCance 2008, pp. 1–2; Dumbacher 2008, p. 9), the best available scientific and commercial information suggests that pygmy-owls in Texas are genetically similar to pygmy-owls across the international border in Mexico (Proudfoot 2006a, pp. 9–10). This lack of genetic differentiation from adjacent pygmy-owl populations suggests that the Texas population segment does not differ markedly from adjacent populations of pygmy-owls. Proudfoot *et al.* (2006a, p. 7) indicated that Texas is characterized by a single haplotype; and that one haplotype is shared with pygmy-owls from Tamaulipas, Mexico, indicating there has been some exchange of genetic material. Based on the best available scientific and commercial information, we do not find that the Texas DPS is significant to the taxon as a whole, and is, therefore, not a listable entity under the Act. No further analysis of the Texas DPS is warranted at this point.

Potential Western and Eastern DPSs

Discreteness

The current range of the pygmy owl, as discussed above, is defined as occurring from lowland central Arizona south through western Mexico to the States of Colima and Michoacán, and from southern Texas south through the Mexican States of Tamaulipas and Nuevo Leon (Johnsgard 1988, p. 159; Millsap and Johnson 1988, p. 137; Oberholser 1974, p. 452; Friedmann *et al.* 1950, p. 145), consistent with the last American Ornithologist Union (AOU) list that addressed avian classification to the subspecies level (AOU 1957). In the United States, the eastern and western portions of the pygmy-owl's range are separated by over 1,600 km (1,000 mi) of unsuitable habitat (Chihuahuan desert and grasslands, oak and pine forests) and elevations greater than 1,200 m (4,000 ft) associated with various mountain ranges. There has never been any record of occurrence for pygmy-owls in the area between south Texas and Tucson, Arizona. In Mexico, this distribution is separated throughout its entirety by the Sierra Madre Occidental and the Sierra Madre Oriental. These mountain ranges extend south beyond the southern boundary of the described range of this subspecies and represent a significant geographical barrier between the eastern and western segments of the distribution (Cartron *et al.* 2000, p. 6). The elevational range of peaks in these mountain ranges is from 1,880 m to over 3,600 m (6,000 ft to over 12,000 feet). Given the elevational limits of the pygmy-owl's distribution within its range (Freidman *et al.* 1950, pp. 145–147), and the fact that pygmy-owls are replaced by the least pygmy-owl (*G. minutissimum),* Colima pygmy-owl (*G. palmarum*), and the northern pygmy-owl (*G. gnoma)* at higher elevations (Schaldach 1963, p. 40; Howell and Robbins 1995, pp. 19–20), mountains with elevations as significant as those separating the eastern and western portions of the pygmy-owl's distribution in Mexico represent a significant physical barrier, as discussed in the Service's DPS policy (61 FR 4725). The eastern and western portions of the current distribution of *cactorum* never meet (Figure 1).

Recent evaluation of genetic characteristics appears to indicate that the eastern and western portions of the pygmy-owl's current distribution differ from each other genetically (Proudfoot *et al.* 2006b, pp. 7–9). As we have discussed previously in this document, this genetic differentiation may not be adequate to define a subspecies, but it does provide further evidence that the eastern and western portions of the pygmy-owl's range are markedly separate. There is genetic evidence that the western group containing this portion of the range does group closer together than it does to owls in the eastern portion of the overall range. Proudfoot (2006a, p. 7) indicates that pygmy-owls in this portion of the range share no haplotypes with populations in Texas or in the remainder of Mexico. Additionally, in considering the work of Proudfoot *et al.* (2006a and 2006b), expert review concluded that, based on evidence of restricted gene flow between the Arizona/western Mexico and Texas/eastern Mexico populations, Arizona and Texas should be managed as separate units and should be

considered genetically distinct (Cicero 2008, p. 2; Oyler-McCance 2008, pp. 1–2; Dumbacher 2008, p. 9), indicating that Arizona and Texas, as portions of the western and eastern distributions of the pygmy-owl, contribute to the respective genetic diversity of each of these regions. Therefore, we find that the eastern and western portions of the range of *Glaucidium brasilianum cactorum* are markedly separated from each other as a consequence of physical and ecological factors. As such, we determine that the eastern and western portions of the current distribution of the pygmy-owl are discrete (Figure 4).

Significance

The Service's DPS policy indicates that one of the ways a DPS may be significant to the taxon as a whole is if the loss of the DPS would result in a significant gap in the range of the taxon (61 FR 4725). A gap in the range can be interpreted as a physical gap, but may also be considered to be a gap in the continuous cline of genetic variation found within the distribution of the species. With regard to the pygmy-owl, the western portion of the range comprises approximately 68 percent of the entire range of the taxon and, consequently, the eastern portion of the range represents approximately 32 percent of the range. Physically, the loss of either of these geographic areas represents a significant gap in the distribution of the taxon. In addition, Proudfoot *et al.* (2006a and 2006b) indicate that the genetic characteristics of the pygmy-owl may vary from Texas to Arizona as a cline of variation based on distance of separation. Loss of either the western or eastern portion of this cline represents a significant gap in the distribution of genetic variation within the overall pygmy-owl population. Therefore, the loss of the current range of the pygmy-owl as represented by the western and eastern portions of the current range, and the loss of a substantial portion of the genetic variation represented within the taxon as a whole, would result in a significant gap in the range of the pygmy-owl. As such, we find that the eastern and western population segments are significant, based on evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon.

Determination for the Potential Western DPS

Of the negative impacts we identified in our 5-factor analysis above, the following occur within western portions of the pygmy-owl's range: (1) Habitat loss and fragmentation due to urbanization, improper grazing, nonnative species invasions, fire, agricultural development, and wood cutting; (2) border issues; (3) inadequacy of existing regulatory mechanisms; (4) drought and climate change; (5) predation; and (6) small population size. Therefore, within the potential western DPS configuration, impacts to pygmy-owls and their habitat discussed under factors A, C, and E may be affecting this pygmy-owl population segment.

Despite the potential effects of these impacts within the western portion of the pygmy-owl's range, low population numbers, and apparent population declines in local pygmy-owl populations in the northern portion of this population segment, the best available scientific and commercial data indicate that pygmy-owls remain common in the majority of the western portion of the pygmy-owl's range. Recent survey and monitoring in Sonora indicated that the highest densities of pygmy-owls occurred in the Sinaloan deciduous forest of southern Sonora (Flesch 2003, p. 42). During capture efforts in 2008, AGFD (2008, p. 6) documented multiple pygmy-owls commonly responding at capture sites in the thornscrub and tropical deciduous forests of southern Sonora and northern Sinaloa, an occurrence which only rarely happened further north in Sonoran desertscrub habitats. While anecdotal, it appears that the number and density of pygmy-owls is higher in the thornscrub and deciduous forest community types than in the Sonoran Desert community type. This occurrence and distribution agrees with past conclusions found in the literature (Hunter 1988, p. 7; Russell and Monson 1988, p. 141; Shaldach 1963, p. 40). Because pygmy-owl habitat in the southern portion of the western population segment is primarily thornscrub and dry tropical forests, it logically follows that pygmy-owls are more common in this portion of the population segment. Based upon our review of the best available commercial and scientific data, we conclude that pygmy-owl population numbers are not being significantly affected by the identified negative impacts in most of the western portion of the pygmy-owl's range such that the population is in danger of extinction or likely to become so in the foreseeable future. Therefore, we find that listing a western DPS of the overall pygmy-owl population is not warranted under the Act.

Determination for the Potential Eastern DPS

Of the negative impacts we identified in our 5-factor analysis above, the following occur within the eastern portion of the pygmy-owl's range: (1) Habitat loss and fragmentation due to urbanization, improper grazing, nonnative species invasions, fire, agricultural development, and wood cutting; (2) loss or alteration of habitat as a result of hurricanes; (3) lack of adequate regulatory mechanisms; (4) drought and climate change; (5) predation; and (6) small population size. Therefore, within the potential eastern DPS configuration, impacts to pygmy-owls and their habitat discussed under factors A, C, E may be affecting this pygmy-owl population segment.

The historical loss of pygmy-owl habitat in the eastern portion of its range has had significant effects on the pygmy-owl. As discussed above, the pygmy-owl was once a common breeding species in Texas and northeastern Mexico (Griscom and Crosby 1926, p. 18; Friedmann *et al.* 1950, p. 145), but is now extirpated or extremely rare in the area of the Rio Grande Delta (Oberholser 1974, pp. 451–452). However, a disjunct population generally occurring in the area of Kenedy County, Texas, has been estimated at 100 pygmy-owls (Tewes 1992, p. 24), 654 pairs (Wauer *et al.* 1993, p. 1074), and up to 1,823 pygmy-owls (Mays 1996, p. 32). It should be noted that these studies used different methodologies and study areas, and are not directly comparable, but do provide estimates for the general area. A recent concern about the populations in Texas has been raised because of an apparent decline in the number of pygmy-owl nestlings banded in this population as part of an ongoing nest box study in Texas (Proudfoot 2010, p. 1). However, comprehensive pygmy-owl surveys throughout southern Texas have not occurred for over a decade, and, without a more comprehensive survey effort in southern Texas, we cannot definitively state that the overall population of pygmy-owls in southern Texas matches the decline of nestlings documented during this nest box study. Pygmy-owls may simply have moved to other areas supporting suitable nesting habitat (Proudfoot 2011b, p. 1).

While the literature indicates that significant areas of pygmy-owl habitat have been lost and fragmented throughout the eastern portion of the pygmy-owl's range, there is no indication that, where areas of suitable habitat remain, numbers and densities of pygmy-owls would not be similar to those found in the same type of habitat in Texas. Numbers of pygmy-owls in Texas remain substantially higher than those in the northwestern portion of the pygmy-owl's range, and similar to the

apparently higher numbers found in the southwestern portion of the range in thornscrub and dry tropical forests.

Additionally, while urbanization and agricultural development and woodcutting may be ongoing negative impacts in northeastern Mexico (AQUASTAT 2007, p. 2; Cook *et al.* 2001, p. 4; Jahrsdoerfer and Leslie 1985, p. 17; Tewes1993, pp. 28–29), the occurrence of the majority of suitable pygmy-owl habitat in Texas on private ranches may reduce the potential for these impacts to significantly affect pygmy-owl populations in this area. Wauer *et al.* (1993, p. 1076) state, ''Changes in the ranch land habitats of Kenedy and Brooks Counties have been relatively limited, suggesting that rancher landowners, at least in south Texas, are being good land stewards.'' At least currently, the Texas population of pygmy-owls appears to be viable (Wauer *et al.* 1993, p. 1071) and the primary recruitment base for pygmy-owl populations in this area (Wauer *et al.* 1993, p. 1076).

The best available scientific and commercial information demonstrates that, despite the ongoing negative impacts to pygmy-owl habitat in the eastern portion of its range, numbers and densities have remained relatively high. Therefore, we find that listing an eastern DPS of the overall pygmy-owl population is not warranted under the Act.

Significant Portion of the Range

The Act defines ''endangered species'' as any species which is ''in danger of extinction throughout all or a significant portion of its range,'' and ''threatened species'' as any species which is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The definition of ''species'' is also relevant to this discussion. The Act defines the term ''species'' as follows: ''The term 'species' includes any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature.'' The phrase ''significant portion of its range'' (SPR) is not defined by the statute, and we have never explicitly addressed it in our implementing regulations either: (1) The consequences of a determination that a species is endangered or likely to become so throughout a significant portion of its range, but not throughout all of its range; or (2) what qualifies a portion of a range as ''significant.''

Two recent district court decisions have addressed whether the SPR language allows the Service to list or protect less than all members of a defined ''species'': *Defenders of Wildlife* v. *Salazar,* 729 F. Supp. 2d 1207 (D. Mont. 2010), concerning the Service's delisting of the Northern Rocky Mountain gray wolf (74 FR 15123; Apr. 12, 2009); and *WildEarth Guardians* v. *Salazar,* 2010 U.S. Dist. LEXIS 105253 (D. Ariz. Sept. 30, 2010), concerning the Service's 2008 finding on a petition to list the Gunnison's prairie dog (73 FR 6660; Feb. 5, 2008). The Service had asserted in both of these determinations that it had authority under the Act to protect only some members of a ''species,'' as that term is defined by the Act (i.e., species, subspecies, or DPS). Both courts ruled that the determinations were arbitrary and capricious on the grounds that this approach violated the plain and unambiguous language of the Act. The courts concluded that reading the SPR language to allow protecting only a portion of a species' range is inconsistent with the Act's definition of ''species.'' The courts concluded that, once a determination is made that a species (i.e., species, subspecies, or DPS) meets the definition of ''endangered species'' or ''threatened species,'' it must be placed on the list in its entirety and the Act's protections applied consistently to all members of that species (subject to modification of protections through special rules under sections 4(d) and 10(j) of the Act).

Consistent with that interpretation, and for the purposes of this finding, we interpret the phrase ''significant portion of its range'' in the Act's definitions of ''endangered species'' and ''threatened species'' to provide an independent basis for listing; thus there are two situations (or factual bases) under which a species would qualify for listing: A species may be endangered or threatened throughout all of its range (which we have determined is not the case with the pygmy-owl); or a species may be endangered or threatened in only a significant portion of its range. If a species is in danger of extinction throughout an SPR, the species is an ''endangered species.'' The same analysis applies to ''threatened species.'' Based primarily on existing case law, the consequence of finding that a species is endangered or threatened in only a significant portion of its range is that the entire species shall be listed as endangered or threatened, respectively, and the Act's protections shall be applied across the species' entire range.

We conclude, for the purposes of this finding, that interpreting the SPR phrase as providing an independent basis for listing is the best interpretation of the Act because it is consistent with the purposes and the plain meaning of the key definitions of the Act. This interpretation does not conflict with established past agency practice (prior to the 2007 Solicitor's Opinion, which interpreted language in section 4(c) as limiting the application of ESA protections to the significant portion of a species' range where it is endangered or threatened, rather than throughout its range) because no consistent, long-term agency practice has been established, and it is consistent with the most recent judicial opinions that have most closely examined this issue. Having concluded that the phrase ''significant portion of its range'' provides an independent basis for listing and protecting the entire species, we next turn to the meaning of ''significant'' to determine the threshold for when such an independent basis for listing exists.

Although there are potentially many ways to determine whether a portion of a species' range is ''significant,'' we conclude, for the purposes of this finding, that the significance of the portion of the range should be determined based on its biological contribution to the conservation of the species. For this reason, we describe the threshold for ''significant'' in terms of an increase in the risk of extinction for the species. We conclude that a biologically-based definition of ''significant'' best conforms to the purposes of the Act, is consistent with judicial interpretations, and best ensures species conservation. Thus, for the purposes of this finding, a portion of the range of the pygmy-owl is ''significant'' if its contribution to the viability of the species is so important that, without that portion, the pygmy-owl would be in danger of extinction. Therefore, if we determine that the pygmy-owl is endangered or threatened in a significant portion of its range, and it would be in danger of extinction in the rest of its range without that portion, that portion is significant and we will list the entire species according to its status there.

We evaluate biological significance based on the principles of conservation biology using the concepts of redundancy, resiliency, and representation. *Resiliency* describes the characteristics of a species that allow it to recover from periodic disturbance. *Redundancy* (having multiple populations distributed across the landscape) may be needed to provide a margin of safety for the species to withstand catastrophic events. *Representation* (the range of variation found in a species) ensures that the species' adaptive capabilities are conserved. Redundancy, resiliency, and representation are not independent of

each other, and some characteristic of a species or area may contribute to all three. For example, distribution across a wide variety of habitats is an indicator of representation, but it may also indicate a broad geographic distribution contributing to redundancy (decreasing the chance that any one event affects the entire species), and the likelihood that some habitat types are less susceptible to certain threats, contributing to resiliency (the ability of the species to recover from disturbance). None of these concepts is intended to be mutually exclusive, and a portion of a species' range may be determined to be ''significant'' due to its contributions under any one of these concepts.

For the purposes of this finding, we determine if a portion's biological contribution is so important that the portion qualifies as ''significant'' by asking whether, without that portion, the representation, redundancy, or resiliency of the species would be so impaired that the species would have an increased vulnerability to threats to the point that the overall species would be in danger of extinction (i.e., would be ''endangered''). Conversely, we would not consider the portion of the range at issue to be ''significant'' if there is sufficient resiliency, redundancy, and representation elsewhere in the species' range that the species would not be in danger of extinction throughout its range if the population in that portion of the range in question became extirpated (extinct locally).

We recognize that this definition of ''significant'' establishes a threshold that is relatively high. On the one hand, given that the consequences of finding a species to be endangered or threatened in an SPR would be listing the species throughout its entire range, it is important to use a threshold for ''significant'' that is robust. It would not be meaningful or appropriate to establish a very low threshold whereby a portion of the range can be considered ''significant'' even if only a negligible increase in extinction risk would result from its loss. Because nearly any portion of a species' range can be said to contribute some increment to a species' viability, use of such a low threshold would require us to impose restrictions and expend conservation resources disproportionately to conservation benefit; listing would be rangewide, even if only a portion of the range of minor conservation importance to the species is imperiled. On the other hand, it would be inappropriate to establish a threshold for ''significant'' that is too high. This would be the case if the standard were, for example, that a portion of the range can be considered ''significant'' only if threats in that portion result in the entire species being currently endangered or threatened. Such a high bar would not give the SPR phrase independent meaning, as the Ninth Circuit held in *Defenders of Wildlife* v. *Norton,* 258 F.3d 1136 (9th Cir. 2001).

The definition of ''significant'' used in this finding carefully balances these concerns. By setting a relatively high threshold, we minimize the degree to which restrictions will be imposed or resources expended that do not contribute substantially to species conservation. But we have not set the threshold so high that the phrase ''in a significant portion of its range'' loses independent meaning. Specifically, we have not set the threshold as high as it was under the interpretation presented by the Service in the *Defenders* litigation. Under that interpretation, the portion of the range would have to be so important that current imperilment there would mean that the species would be *currently* imperiled everywhere. Under the definition of ''significant'' used in this finding, the portion of the range need not rise to such an exceptionally high level of biological significance. (We recognize that if the species is imperiled in a portion that rises to that level of biological significance, then we should conclude that the species is in fact imperiled throughout all of its range, and that we would not need to rely on the SPR language for such a listing.) Rather, under this interpretation we ask whether the species would be endangered everywhere without that portion, *i.e.,* if that portion were completely extirpated. In other words, the portion of the range need not be so important that even being in danger of extinction in that portion would be sufficient to cause the remainder of the range to be endangered; rather, the *complete extirpation* (in a hypothetical future) of the species in that portion would be required to cause the remainder of the range to be endangered.

The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that have no reasonable potential to be significant *and* threatened or endangered. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be ''significant,'' and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is ''significant.'' In practice, a key part of the portion status analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further individual consideration. Moreover, if any concentration of threats applies only to portions of the species' range that clearly would not meet the biologically-based definition of ''significant,'' such portions will not warrant further consideration.

Therefore, having determined that the pygmy-owl does not meet the definition of a threatened or endangered species throughout its range or within any considered DPS configuration, we next considered whether there are any significant portions of the range where the pygmy-owl is in danger of extinction or is likely to become endangered in the foreseeable future. We engaged in a systematic process that began with identifying any portions of the range of the pygmy-owl that may warrant further consideration.

To determine whether any portions of the pygmy-owl's range warranted further consideration as possible threatened or endangered significant portions of the range, we reviewed the entire supporting record for the status review of this species with respect to the geographic concentration of threats, and the significance of portions of the range to the conservation of the species. We chose to first identify any portions of the pygmy-owl's range where the species may be in danger of extinction or likely to become so within the foreseeable future. We found that documented and potential population declines are occurring in some parts of the pygmy-owl's range, but not throughout the range of the pygmy-owl, indicating the possibility that threats affect the species to varying degrees across the range of the pygmy-owl. Additionally, the best available data indicates that the impacts identified above do not occur uniformly throughout the range of the pygmy-owl.

Analysis of Potential Significant Portions of the Range

We identified one area of the pygmy-owl's range that warrants further consideration as a possible threatened or endangered significant portion of the range. Based on our five-factor analysis of threats throughout the range of the pygmy-owl, we found that the Sonoran Desert Ecoregion was an area where documented and potential declines in pygmy-owl populations have occurred, indicating the species may be threatened or endangered there.

Sonoran Desert Ecoregion SPR Analysis

We identified the Sonoran Desert Ecoregion as a portion of the pygmy-owl's range that was potentially significant, and that could potentially meet the criteria for threatened or endangered (Figure 3). The decision to use this area to define the boundaries of that portion of the overall pygmy-owl range that may be significant was based on factors related to pygmy-owl ecology and information available related to the status of the pygmy-owl. This portion of the pygmy-owl's range is characterized by a generally unique vegetation community. The Sonoran Desert has the greatest diversity and vegetative growth of any desert worldwide. It is the most tropical of the three North American warm deserts (Sonoran, Mojave, and Chihuahuan) (Williams *et al.* 2001, pp. 1–2; MacMahon and Wagner 1985, pp. 105–202). The boundaries of this vegetation community have been consistently described in a number of papers (Marshall et al. 2000, pp. 4–7; McLaughlin and Bowers 1999, pp. 3–7; Dimmitt 2000, pp. 13–15; Brown 1994, p. 181; Leopold 1950, p. 513; Shreve 1951, pp. 1–3; and Nabhan and Holdsworth 1998, pp. 1–5). Finally, number and density estimates from formal studies and incidental observations from the field show that this area has markedly lower numbers and densities of pygmy-owls than the other areas of its range, and that population declines have occurred within the area (AGFD 2008a, p. 2; Flesch and Steidl 2006, p. 869).

For the purposes of this analysis, the current range of the pygmy-owl within the Sonoran Desert Ecoregion includes those areas of the ecoregion within the Arizona Counties of Pima and Pinal, and the Mexican State of Sonora, from the area immediately south of the western border of Pima County, east to Nogales, and south from Nogales to Guaymas and then back northwest to the western coast of Sonora.

Pygmy-Owl Population Status Within the Sonoran Desert Ecoregion

Within the Arizona portion of the Sonoran Desert Ecoregion, the pygmy-owl occurs in very low numbers in widely scattered population groups within the State. Historically (i.e., late 1800s and early 1900s), pygmy-owls occupied areas of south-central Arizona, from New River, about 56 km (35 mi.) north of Phoenix, south to the United States and Mexico border, west to Agua Caliente near Gila Bend and Cabeza Prieta Tanks, and east to Tucson, and, rarely, the San Pedro River (Bent 1938, pp. 435–438; Monson and Phillips 1981, pp. 71–72; Johnson *et al.* 2003, pp. 390–391). The geographic area historically occupied by pygmy-owls in Arizona includes portions of Gila, Pima, Pinal, Maricopa, Graham, Santa Cruz, Cochise, Greenlee, and Yuma Counties. Currently, the known locations of pygmy-owls in Arizona are restricted to two counties, Pima and Pinal (Service 2011, p. 1; Service 2009b, p. 1; Abbate *et al.* 2000, pp. 15–16). The current distribution of pygmy-owls within Arizona is significantly reduced from its historical distribution.

Historically, the pygmy-owl was found as far north as New River in Maricopa County, and, prior to the mid-1900s, early naturalists considered the pygmy-owl ''not uncommon,'' ''of common occurrence,'' and a ''fairly numerous'' resident of the areas in which they traveled in Arizona (Breninger 1898, p. 28; Gilman 1909, p. 148; Swarth 1914, p. 31). Recent data indicate that there are fewer than 50 adult pygmy-owls and fewer than 10 nest sites in Arizona in any given year (Abbate *et al.* 2000, pp. 15–16). Limited surveys and monitoring conducted in 2009 indicate that pygmy-owls in Arizona still occupy the areas of Avra Valley, Altar Valley, and Organ Pipe Cactus National Monument (Service 2009b, p. 1; 2011, p. 1). However, populations of pygmy-owls in Arizona are in an ongoing decline (AGFD 2008a, p. 2). Comprehensive surveys have not been conducted on the Tohono O'odham Nation in Arizona. A number of surveys have been completed on the Nation with respect to various utility and roadway projects, and some of these surveys did document the presence of pygmy-owl. But distribution of the data from these surveys has been restricted by the Nation and is not readily available for analysis. There are large areas of suitable habitat on the Nation, but the information we have indicates that pygmy-owls are patchily distributed in those areas as in other areas of the State and occur in similar densities.

Within the Mexico portion of the Sonoran Desert Ecoregion, pygmy-owl numbers are higher, but, similar to their distribution in Arizona, pygmy-owls also occur here as scattered population groups throughout the occupied area (Flesch 2003, pp. 123–124). Recent surveys and research in northwestern Mexico indicate that numbers and density of pygmy-owls are higher in thornscrub and tropical deciduous forest communities of southern Sonora and Sinaloa than in the Sonoran desertscrub and semi-desert grassland vegetation communities of the Sonoran Desert Ecoregion (Flesch 2003, pp. 39–42; AGFD 2008a, p. 6). Long-term monitoring of pygmy-owl sites in northern Sonora indicates that the extended drought has resulted in reduced occupancy at monitored sites (Flesch 2008, pp. 4–5). Pygmy-owl survivorship is tied to precipitation (Flesch 2008, pp. 5–6; Service 2004, p. 1). As in Arizona, drought has negatively affected the numbers and distribution of pygmy-owls on the landscape within the analysis area (Flesch 2008, pp. 5–6). While data adequate to define population trends in Sonora, Mexico, are lacking, field data indicate that pygmy-owls in the southern portions of the State (within thornscrub and tropical deciduous forests) are common and likely number on the order of thousands, while further north within the Sonoran Desert Ecoregion, they are fewer in number, more patchily distributed, and likely number on the order of hundreds (Flesch 2003, pp. 39–42; AGFD 2008a, p. 6).

Significance of the Sonoran Desert Ecoregion

This part of the pygmy-owl's range contains habitat that meet the needs of the pygmy-owl for reproduction and survival, and can support self-sustaining population groups. It also provides a mosaic of connected habitat maintaining dispersal and genetic exchange among subpopulations. The habitat found in this portion of the range may become increasingly important if the predictions about climate change prove correct. As hotter, drier conditions prevail, this area, which already provides habitat under these conditions, may provide the largest, most contiguous blocks of higher quality habitat if the wetter, more tropical habitats (thornscrub and tropical deciduous forests) are reduced due to climate change. Conditions in the Sonoran desert are also likely to become hotter and drier. However, the population groups of pygmy-owls found

in the Sonoran Desert Ecoregion are already adapted to the drier climate that is likely to become more widespread under current climate change scenarios and, therefore, this shift in temperature and precipitation may have a reduced effect on pygmy-owls in this area. Saguaros and other columnar cacti may experience range-shifts associated with climate change, however, there is much uncertainty associated with the current models of individual species responses to climate change. Therefore, predictions about the decline of columnar cacti are too speculative to consider in this finding. This population group of pygmy-owls is likely to become a more significant contributor to the long-term viability of this species.

Given the presumed adaptation of this segment of the population to drier, more extreme conditions, we considered whether the demographic characteristics of this population might be important for the species to recover from predicted changes in the ecosystem due to climate change. Although birds in every terrestrial habitat will be affected by climate change, birds in arid lands show lower overall vulnerability to the effects of climate change (NABCI 2010). Pygmy-owls in the Sonoran Desert Ecoregion may be more likely to be able to provide population support for the remainder of its range. Therefore, demographic characteristics and population size within this portion of the range might allow for at least partial recovery of pygmy-owl populations within this portion of the range following disturbance events.

Pygmy-owls are secondary cavity nesters, using cavities excavated in trees and cacti. Within the Sonoran Desert Ecoregion, pygmy-owls typically nest in large, columnar cacti found throughout the area. The Sonoran Desert Ecoregion contains the greatest concentration of large columnar cacti (saguaro, organ pipe, hecho) anywhere in the range of the pygmy-owl. While other areas to the south of this portion of the range also contain large, columnar cacti, they do not occur in as high of densities, nor are they as extensively distributed. In other portions of its range, the pygmy-owl nests in tree cavities; therefore, this aspect of the pygmy-owl's life history requirements is not exclusive to columnar cacti, but it is an important and necessary element in this part of its range because nesting in saguaros reduces the impacts to eggs and nestlings from the temperature extremes and predation found in this portion of the range.

There is some information indicating that this subdivision of the western part of the range is different genetically than the remainder of the range. Proudfoot (2006a, p. 7) indicates that pygmy-owls in this portion of the range share no haplotypes with populations in Texas or in the remainder of Mexico. Using information in Proudfoot *et al.* (2006a, pp. 6–9 and 2006b, pp. 5–7), we have determined that the Arizona/Sonora pygmy-owls contribute approximately 10 percent of the species total mitochondrial DNA (mtDNA) variation and 5 percent of the total alleles (gene types) detected in their study (Service 2009c, p. 1). This data analysis indicates that this part of the range does have unique alleles and contributes to the genetic variation within the range of the pygmy-owl. There is evidence of restricted gene flow between the Arizona/western Mexico and Texas/eastern Mexico populations (Cicero 2008, p. 2; Oyler-McCance 2008, pp. 1–2; Dumbacher 2008, p. 9).

We have found that the Sonoran Desert Ecoregion has unique habitat characteristics and the pygmy-owls in this area possess some unique behavioral and genetic adaptations to this area. Next, we evaluated whether, should this portion of the range theoretically be extirpated, the remaining portion of the pygmy-owl's current range would be in danger of extinction. This evaluation focused on the pygmy-owl's rangewide population status and the importance of this part of the range to the entire range.

There is general consensus in the literature and other reports that pygmy-owls remain common throughout most of the areas of Mexico south of Sonora and Texas. As noted above, the population of pygmy-owls in this ecoregion is small and scattered, and thus represents only a small portion of the overall pygmy-owl population. The best available information does not indicate that, under the theoretical removal of the Sonoran Desert Ecoregion from the current range of the pygmy-owl, the remaining portion of the range is likely to become extinct. Therefore, we do not find the Sonoran Desert Ecoregion of the pygmy-owl to be significant, and thus it is not an SPR.

Sonoran Desert Ecoregion SPR Analyses in Relation to the Eastern and Western DPS's

We determined that the eastern and western portions of the pygmy-owl's current range represent DPSs; that is, we found that they are discrete and significant to the taxon as a whole (see DPS discussion above). We found that the best scientific and commercial information did not indicate that the negative impacts in these DPSs affect the pygmy-owl's status such that these DPSs warrant listing under the Act. However, because we found that these DPS configurations were appropriate under our DPS policy, we next evaluated whether the Sonoran Desert Ecoregion represents significant portions of the western and eastern DPSs respectively.

Potential Sonoran Desert Ecoregion SPR of the Western DPS

The portion of the Sonoran Desert Ecoregion currently occupied by pygmy-owls represents approximately 33 percent of the Western DPS (Figure 3). Even though this is only approximately one-third of the Western DPS, this portion of the DPS may provide important contributions to population numbers, genetic diversity, and status of the pygmy-owls within this DPS.

In considering the portion of the western DPS outside of the Sonoran Desert Ecoregion and whether it may be in danger of extinction, we find it is likely that the population of pygmy-owls in this area is large enough to withstand environmental catastrophes and random perturbations. This is because the area outside of the Sonoran Desert Ecoregion represents approximately 67 percent of the DPS, and it likely supports a higher proportion of the overall population than the Sonoran Desert Ecoregion, because this portion of the DPS is characterized by thornscrub and tropical deciduous forest communities, which have been documented to support higher numbers and densities of pygmy-owls than Sonoran desertscrub communities (Swarth 1914, p. 31; Karalus and Eckert 1974, p. 218; Monson and Phillips 1981, pp. 71–72; Johnsgard 1988, Enriquez-Rocha *et al.* 1993, p. 158; Proudfoot 1996, p. 75; Proudfoot and Johnson 2000, p. 5). The production and population growth of the pygmy-owls outside the Sonoran Desert Ecoregion are likely high enough to maintain viability of the population under current conditions. Because the Sonoran Desert Ecoregion occurs at the northern end of the Western DPS, the theoretical loss of that portion would not result in fragmentation of the DPS in a way that would affect movements and connectivity of the pygmy-owl population.

However, the theoretical loss of a third of the range might represent a significant loss of important habitat and genetic diversity, affecting the redundancy and representation of the overall pygmy-owl population, and possibly affect the remaining portion of the population by reducing metapopulation support including

genetic adaptation and demographic rescue. The current genetic structure of the western DPS indicates that there is population movement within the DPS and, as a consequence, exchange of genetic material among population groups, even though the distribution of pygmy-owls on the landscape is patchy. Removal of approximately 33 percent of the DPS might reduce the viability and potential for long-term survival of the remaining portion of the DPS. For example, the Sonoran Desert Ecoregion supports the portion of the DPS population that is adapted to the unique environment of the Sonoran Desert. Loss of this segment of the population might substantially decrease the genetic diversity of the overall DPS to the point that the pygmy-owl may not be able to adapt to what may be the predominant vegetation community under the predicted effects of climate change. However, the thornscrub and tropical deciduous forest communities have already been substantially reduced, and this reduction and fragmentation is likely to continue. Sonoran desertscrub will likely expand to the north and south as climates to the north become warmer and climates to the south become drier (Weiss and Overpeck 2005, p. 2074).

Pygmy-owl adaptations documented in the Sonoran Desert Ecoregion include the use of saguaro cavities as nest sites, paler plumage coloration, ability to obtain moisture from prey rather than free-standing water, and the ability to select nest locations that maintain productivity during drought conditions (AGFD 2008a, pp. 1–2 and b, pp. 3–7; Flesch 2008, p. 3; Flesch and Steidl 2010, p. 1021). The ability of the western DPS to adapt to impacts from climate change may be substantially reduced with the theoretical loss of the Sonoran Desert Ecoregion.

The Sonoran Desert Ecoregion population is characterized by lower numbers and density of pygmy-owls. This is likely the result of reduced habitat quality and location of this population group at the northern extent of the Western DPS. While this population may be considered marginal, it is important to recognize that marginal populations may have a high adaptive significance to the species as a whole, and marginal habitat conservation, preservation and management is one of the best ways to conserve genetic diversity and resources (Scudder 1989, p. 1). The portion of the western DPS outside of the Sonoran Desert Ecoregion may lack sufficient resiliency to meet future environmental changes that are already manifesting themselves within this DPS. However, the pygmy-owl is somewhat of a habitat generalist and, if impacts to habitat occur over an extended period of time, these populations may still be able to adapt to environmental changes in this DPS.

The primary vegetation communities found outside of the Sonoran Desert Ecoregion in the Western DPS, thornscrub and subtropical dry forests, are under significant stress. As discussed above, thornscrub and subtropical dry forests are among the most threatened vegetation communities in Mexico. Loss of dry tropical forest occurs on as great, or greater, scale than the loss of tropical rain forests (Trejo and Dirzo 2000, p. 133). Only approximately two percent of the original distribution of subtropical dry forests remains in Mesoamerica, including Mexico. Some areas of intact dry tropical forest remain on steep slopes within the western DPS (Allnutt 2001, p. 3; Lugo 1999, p. 4). However, the topography of such slopes, above 1,200 m (4,000), renders these areas unsuitable for occupancy by pygmy-owls. In areas occupied by pygmy-owls, dry tropical forests are threatened by woodcutting, clearing for agriculture, urbanization, and impacts from invasive species. Urbanization is increasing, particularly in the southern portion of the Western DPS (Lugo 1999, p. 2; Trejo and Dirzo 2000, p. 133). In Mexico specifically, only approximately 27 percent of the original cover of seasonally dry forest remains intact (Trejo and Dirzo 2000, p. 139).

In addition, increasing temperatures due to climate change pose a serious threat to subtropical dry forests due to the transitional nature of the community, and the narrow temperature and precipitation requirements of many of its native species (Allnutt 2001, p. 4). Trejo and Dirzo (2000, p. 140) predicted that, under current rates of deforestation, by the year 2030, intact seasonally dry forests would be reduced to 10 percent of their original area. Additionally, the remaining 10 percent would likely be characterized by small, vegetation islands separated from each other, causing significant ecological repercussions at the genetic, ecological, and ecosystem function levels of the ecoregion. Protected areas in Mexico that include seasonally dry forests are few and total less than 10 percent of the remaining, intact forest areas in Mexico (Trejo and Dirzo 2000, p. 140). This loss and fragmentation of habitat, and the influence of climate change on the remaining areas of native habitat, may substantially reduce the availability of pygmy-owl habitat and, consequently, pygmy-owl populations in the foreseeable future.

We acknowledge that the Sonoran Desert Ecoregion represents an important portion of the Western DPS, and of the taxon as a whole. However, in order to find that the portion of the western DPS in the Sonoran Desert Ecoregion is significant under our SPR policy, our position is that its contribution to the viability of the species must be so important that, without that portion, the pygmy-owl would be in danger of extinction. As noted above in the discussion under Sonoran Desert Ecoregion SPR Analysis, even though pygmy-owls in this area possess some unique behavioral and genetic adaptations, the population of pygmy-owls in this ecoregion is small and scattered, and thus represents only a small portion of the overall pygmy-owl population. The best available information does not indicate that, if the Sonoran Desert Ecoregion portion of the pygmy-owl's range is extirpated, the remaining portion of the Western DPS is likely to become extinct. Therefore, we do not find the Sonoran Desert Ecoregion of the pygmy-owl to be significant, and thus it is not an SPR.

SPR Conclusion

In summary, we have thoroughly analyzed all potentially-listable entities of the pygmy-owl. For the reasons described above, we find that the pygmy-owl is not in danger of extinction now, nor is it likely to become endangered within the foreseeable future, throughout all or any significant portion of its range. Therefore, listing the pygmy-owl as endangered or threatened under the Act is not warranted at this time.

We request that you submit any new information concerning the status of, or threats to, the pygmy-owl to our Arizona Ecological Services Office (see **ADDRESSES**) whenever it becomes available. New information will help us monitor the pygmy-owl and encourage management of this subspecies and its habitat. If an emergency situation develops for the pygmy-owl or any other species, we will act to provide immediate protection.

References Cited

A complete list of all references cited in this document is available on the Internet at *http://www.regulations.gov* and upon request from the Arizona Ecological Services Office (see **ADDRESSES**).

Authors

The primary authors of this notice are the staff members of the Arizona

Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 27, 2011.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–25565 Filed 10–4–11; 8:45 am]

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Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Northern Leopard Frog in the Western United States as Threatened; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2009–0030; 92210–1111–FY08–B2]

Endangered and Threatened Wildlife and Plants; 12–Month Finding on a Petition To List the Northern Leopard Frog in the Western United States as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 12-month finding on a petition to list the northern leopard frog (*Lithobates* (=*Rana*) *pipiens*) under the Endangered Species Act of 1973, as amended (Act). After review of the best scientific and commercial information, we find that listing the northern leopard frog is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning threats to the northern leopard frog or its habitat at any time.

DATES: The finding announced in this document was made on October 5, 2011.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R2–ES–2009–0030. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Steven L. Spangle, Field Supervisor, Arizona Ecological Services Office (see **ADDRESSES**); by telephone at (602) 242–0210; or by facsimile at (602) 242–2513. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In our finding, we are required to determine if the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

Previous Federal Actions

On June 5, 2006, we received a petition from the Center for Native Ecosystems, Biodiversity Conservation Alliance, Defenders of Black Hills, Forest Guardians, Center for Biological Diversity, The Ark Initiative, Native Ecosystems Council, Rocky Mountain Clean Air Action, and Mr. Jeremy Nichols requesting that the northern leopard frog (*Lithobates* (=*Rana*) *pipiens*) occurring in the western United States (Arizona, California, Colorado, Idaho, Iowa, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming) be listed as a threatened distinct population segment (DPS) under the Act. The petition contained detailed information on the natural history, biology, current status, and distribution of the western population of the northern leopard frog. It also contained information on what the petitioners reported as potential threats to the western population of the northern leopard frog such as habitat loss and degradation, predation and competition by nonnative species, disease, water pollution, climate change, and other factors. We acknowledged the receipt of the petition in a letter to the petitioners dated August 7, 2006. That letter explained that we would not be able to address their petition at that time. The reason for this delay was that responding to court orders and settlement agreements for other listing actions required nearly all of our listing funding.

In reviewing the petition, there were two issues for which the Service requested clarification from the petitioners. We were petitioned to list the population west of the Mississippi River and the Great Lakes region in the United States and south of the international boundary between the United States and Canada. However, although Wisconsin is located west of the Great Lakes region, the petition map did not show Wisconsin as a part of the petition, and the status of the species is not mentioned in that State. Therefore, we requested that the petitioners clarify whether they intended to include or exclude Wisconsin from the petitioned DPS. We also sought clarification as to whether the petitioners were requesting that we review only the western U.S. population of the northern leopard frog as a DPS or if they were also requesting us to consider listing the entire species or a significant portion of the range of the species. The petitioners responded to our clarification request in a letter dated February 8, 2008, requesting we review whether Wisconsin should be included in the western U.S. population of the northern leopard frog. In addition, the petitioners clarified that, if we find that listing the western U.S. population of northern leopard frogs as a DPS is not warranted, we review whether listing the entire species is warranted because of threats in a significant portion of its range.

On July 1, 2009, we published our 90-day finding (74 FR 31389) that the petition presented substantial scientific information indicating that listing the western population of the northern leopard frog may be warranted, and we initiated a status review to determine if listing the species as a DPS or throughout all or a significant portion of its range is warranted. Our July 1, 2009, 90-day finding opened a 60-day period to send us information for our status review. On October 28, 2009, we reopened this information solicitation period for our status review for an additional 30 days, ending November 27, 2009 (74 FR 55525). This notice constitutes our 12-month finding on the February 8, 2008, petition to list the northern leopard frog.

Species Information

Below we provide information relevant to understanding the analysis of information pertaining to the five factors. See Rorabaugh (2005) for a more complete description of the distribution and life history of the northern leopard frog.

Taxonomy

The northern leopard frog is in the family Ranidae (Lannoo 2005, p. 371), the true frogs, and is one of about 28 species within the genus *Lithobates* (formerly *Rana* (Frost *et al.* 2006, p. 10;

Frost *et al.* 2008, pp. 7–8)) that occur in North America (Lannoo 2005, p. 371). For more than a century, nomenclatural and taxonomic confusion has surrounded members of the *Lithobates* (=*Rana*) complex (Moore 1944, p. 349; Pace 1974, pp. 11–16; Merrell 1977, pp. 1–2; Hillis *et al.* 1983, p. 132 among others), and there is a wealth of literature from the late 1800s to present day that has attempted to accurately describe the different species and geographic variation within the complex. Until recently, all North American ranid frogs (frogs in the family Ranidae) were included within the single genus *Rana.* However, Frost *et al.* (2006, p. 10) placed most of these species into the genus *Lithobates.* This change is recognized by the Committee on Standard English and Scientific Names, which is the official names list of the American Society of Ichthyologists and Herpetologists, the Herpetologists' League, and the Society for the Study of Amphibians and Reptiles (Frost *et al.* 2008, pp. 7–8). Accordingly, the Service also recognizes and accepts Frost *et al.'*s (2008) *Lithobates* classification.

Physical Description

The northern leopard frog is a slim, smooth-skinned green, brown, or sometimes yellow-green frog with webbed hind feet. The frog is covered with large, oval dark spots, each of which is surrounded by a lighter halo or border (Stebbins 2003, pp. 234–235). The snout (nose) is pointed and the tympanum (eardrum) is round and approximately equal in diameter to the eye (Baxter and Stone 1980, p. 41). Northern leopard frogs have a white stripe on the upper jaw and the dorsolateral folds (paired, glandular ridges that run along each side of the back from behind the eyes to the rear) are light cream to yellow and are continuous (not broken posteriorly). The belly is white to cream-colored, and the posterior thigh has a light background color with dark spots. There are two different color morphs (variants) of the northern leopard frog that most often occur in western Minnesota, eastern North Dakota, and South Dakota (Rorabaugh 2005, p. 570; McKinnel1 *et al.* 2005, p. 7). These color morphs do occur in other locations (for example, see Ammon 2002, p. 11), but they are most prevalent in Minnesota, North Dakota, and South Dakota, as described above. The burnsi morph lacks dorsal spots and the kandiyohi morph has mottled pigment patches (speckles) between the dorsal spots. Adult body lengths (snout-vent) range from 2 to 4.5 inches (in) (5 to 11 centimeters (cm)) (Stebbins 2003, p. 234). Females average slightly larger than males (Leonard *et al.* 1993, p. 138; Werner *et al.* 2004, p. 97). Subadult, or recently metamorphosed frogs (see Biology section below), range in length from 1 to 2 in (2 to 5 cm) (Merrell 1977, pp. 10–11). During the breeding season, males have enlarged or swollen thumbs (innermost digit) on forefeet, and vocal sacs are not apparent except when the frog is calling (Baxter and Stone 1980, p. 41; Hammerson 1999, p. 145). The typical breeding call is a prolonged ''snore'' followed by a series of stuttering croaks or chuckles that tend to accelerate towards the end (Hammerson 1999, p. 145). These vocalizations may be interspersed with chuckling sounds (Stebbins 2003, p. 235).

Northern leopard frogs deposit their egg masses underwater in clusters, which they attach to vegetation. Eggs are laid in a single orange- to grapefruit-sized globular clump, and may be laid individually or communally in groups (Nussbaum *et al.* 1983, p. 182). Each egg mass may contain 645 to 7,648 individual eggs (Rorabaugh 2005, p. 572). The eggs hatch into tadpoles. Tadpoles (the larval stage in the lifecycle of the frog) are dark green to brown above with metallic flecking, and a cream to white translucent underside (Werner *et al.* 2004, p. 97). Tadpoles metamorphose into young frogs. For a detailed description of northern leopard frog tadpoles, see Scott and Jennings (1985, pp. 4–16).

Distribution

The northern leopard frog historically ranged from Newfoundland and southern Quebec, south through the northeast portions of the United States to West Virginia, west across the Canadian provinces and northern and central portions of the United States to British Columbia, Oregon, Washington, and northern California, and south to Arizona, New Mexico, and extreme western Texas (Rorabaugh 2005, p. 570).

Current range maps tend to show an extensive and connected distribution for the northern leopard frog; however, its actual distribution is sparse and fragmented in Washington, Oregon, Idaho, California, Nevada, Arizona, New Mexico, Utah, Colorado, western Montana, and western Wyoming in the western United States (Rorabaugh 2005, pp. 570–571), throughout New England (New Hampshire Fish and Game Department 2005, pp. A208–A209), and in British Columbia, Northern Territories, Alberta, Saskatchewan, and parts of Manitoba in Canada (Committee on the Status of Endangered Wildlife in Canada 2009, p. iii).

Habitat

The northern leopard frog is an amphibian (a cold-blooded vertebrate that spends some time on land, but must breed and develop into an adult in water) and as such is ectothermic (incapable of generating their own body heat) (Wells 2007, p. 2). They have highly permeable skin, which allows for rapid passage of water and gases so that they can use their external environment to regulate body temperature and moisture loss (Wells 2007, pp. 2–3). As part of its complex life history, the northern leopard frog requires a mosaic of habitats, which includes aquatic overwintering and breeding habitats, and upland post-breeding habitats, as well as habitat linkages, to meet the requirements of all of its life stages (Pope *et al.* 2000, p. 2505; Smith 2003, pp. 6–15; Rorabaugh 2005, pp. 571–575). Although aquatic breeding habitat is required for long-term population survival, upland foraging, dispersal, and overwintering habitats are critical if individual leopard frogs are to survive to reproductive maturity. For example, researchers noted an area near Chicago that had low northern leopard frog abundance, but extensive potential aquatic breeding habitat. It was not until habitat surrounding the ponds was restored from scrub forest to grasslands that leopard frog numbers increased dramatically (K.S. Mierzwa, pers. comm. in Pope *et al.* 2000, p. 2506). These complex habitat requirements make northern leopard frogs particularly vulnerable to the impacts of habitat loss and fragmentation. Reduction or removal of these habitats or loss of connectivity between habitat components could reduce the capacity of the landscape to support the species (Pope *et al.* 2000, p. 2505; Green 2005, p. 31).

Northern leopard frogs breed in a variety of aquatic habitats that include slow-moving or still water along streams and rivers, wetlands, permanent or temporary pools, beaver ponds, and human-constructed habitats such as earthen stock tanks and borrow pits (Rorabaugh 2005, p. 572). Successful breeding areas typically do not contain predaceous fish or other predators (Merrell 1968, p. 275; Hine *et al.* 1981, p. 12; Orr *et al.* 1998, p. 92; Smith 2003, pp. 19–21). Emergent vegetation, such as sedges and rushes, are important features of breeding and tadpole habitats (Gilbert *et al.* 1994, p. 468; Smith 2003, pp. 8–9), and tadpoles are most often found in backwaters and still pools (Rorabaugh 2005, p. 572).

Sub-adult northern leopard frogs typically move from breeding areas to

feeding sites along the borders of larger, more permanent bodies of water, as smaller frogs are closely tied to water (Merrell 1970, p. 49). Recently metamorphosed frogs will move up and down drainages and across land in an effort to disperse from breeding areas (Seburn *et al.* 1997, p. 69) and may disperse more than 0.5 mile (mi) (800 meters (m)) from their place of metamorphosis (Dole 1971, p. 223). Dole (1971, p. 226) found that dispersal in Michigan occurred on warm, rainy nights and that frogs dispersed overland; however, warm rains are not common in all parts of the species' range and other dispersal routes may be important as well. Streams are an important corridor for dispersing juvenile frogs (Seburn *et al.* 1997, pp. 68–69), and vegetated drainage ditches may also facilitate connectivity between seasonal habitats (Pope *et al.* 2000, p. 2505). In some areas of the western United States, subadults may remain in the breeding habitat within which they metamorphosed (Smith 2003, p. 10).

In addition to the breeding habitats, adult northern leopard frogs require stream, pond, lake, or river habitats for overwintering and upland habitats adjacent to these areas for summer feeding. In summer, adults and juveniles commonly feed in open or semi-open wet meadows and fields with shorter vegetation, usually near the margins of water bodies, and seek escape cover underwater. Post-breeding summer habitats do not include barren ground, open sandy areas, heavily wooded areas, cultivated fields, heavily grazed pastures, or mowed lawns (Rorabaugh 2005, p. 573). Buffer zones around wetland breeding sites should be maintained for movement to surrounding upland foraging habitat. Rittenhouse and Semlitsch (2007, p. 154) collected data from 13 published radio telemetry and tagging studies looking at frog and salamander use of terrestrial habitat surrounding wetlands. They found that, on average, a buffer width of 1,877 ft (572 m) around the breeding site is needed to encompass the non-breeding habitat used by 90 percent of the frogs in a given population (Rittenhouse and Semlitsch 2007, pp. 155–157).

During winter, northern leopard frogs are thought to hibernate underwater in ponds, in lakes, or on the bottom of deeper streams or waters that do not freeze to the bottom and that are well-oxygenated (Nussbaum 1983, p. 181; Stewart *et al.* 2004, p. 72). Northern leopard frogs are intolerant of freezing and of waters that have severely reduced or complete loss of dissolved oxygen. If these conditions occur during hibernation, death of northern leopard frogs is likely (Rorabaugh 2005, p. 574).

Based upon their research in Wisconsin, Hine *et al.* (1981) described the ideal ''breeding pond'' as having the following features:

(1) The pond or wetland site should be located within approximately 1.0 mile (mi) (1.6 kilometers (km)) of suitable overwintering habitat (larger bodies of water) so that adults can find the breeding habitat when they emerge in the spring and juvenile frogs are able to find overwintering sites in the fall.

(2) In the spring, the water depth should be approximately 5 ft (1.5 m) or more so that there is balance of open water and vegetation cover.

(3) Emergent vegetation (such as sedge, bulrush, and cattail) should occur along at least two-thirds of the pond or wetland to provide escape cover and places to attach egg masses.

(4) The slope should be gradual to promote habitat for emergent vegetation.

(5) Natural terrestrial habitats should be maintained peripheral to wetlands summer habitat for adults post-breeding, for juvenile growth, and for dispersal or movement corridors.

(6) Water should be relatively permanent throughout the year, but should dry every decade or so in order to eliminate any predaceous fish that become established.

Water quality and temperature are important determinants of northern leopard frog habitat. Because northern leopard frogs have permeable skin, which may transfer external contaminants to its internal organs, good (*i.e.,* non-polluted) water quality is important at breeding locations. Chemical contamination of habitats can result in malformations, population declines, decreased growth rates, reduced activity, and other impacts to northern leopard frogs (Diana and Beasley 1998, pp. 267–276). Temperature plays an important role in both the springtime migratory and breeding behaviors of northern leopard frogs (Merrell 1970, pp. 50–51; Merrell 1977, pp. 5–6, 9). When ambient air temperature is greater than or equal to 50 degrees Fahrenheit (°F) (10 degrees Celsius (°C)), northern leopard frogs move from their overwintering sites to their breeding sites (Merrell 1970, p. 50). The calling sites and areas where egg masses are deposited are not random and appear to be chosen based upon temperature as these activities tend to be located in the warmest portions of breeding ponds (Merrell 1977, p. 6).

Biology

As soon as males leave overwintering sites, they travel to breeding ponds and call in shallow water (Smith 2003, p. 13). Breeding typically occurs during a short period in the spring beginning in early April (Pace 1974, p. 92; Corn and Livo 1989, p. 4); at higher elevations and more northern latitudes, the onset of breeding is late April to early May (Corn and Livo 1989, p. 5; Gilbert *et al.* 1994, p. 467). Most northern leopard frogs are sexually mature at age 2, although the age of sexual maturity may vary from age 1 to age 3 in any given population depending upon environmental conditions (Leclair and Castanet 1987, p. 368; Gilbert *et al.* 1994, pp. 468–469). Male frogs attract females by calling from specific locations within a breeding pond when temperatures are close to 68 °F (20 °C) or more, with several males typically calling together to form a chorus (Merrell 1977, p. 7). Eggs are typically laid within breeding habitats, 2 to 3 days following the onset of chorusing (Corn and Livo 1989, p. 5). Eggs are laid in non-acidic, shallow (4 to 26 in (10 to 65 cm)), still water that is exposed to sunlight, and are usually attached to emergent vegetation just below the water surface (Merrell 1977, p. 6; Gilbert *et al.* 1994, pp. 467–468; Pope *et al.* 2000, p. 2505). Egg masses may include several hundred to several thousand eggs (Corn and Livo 1989, pp. 6–7) and are deposited in a tight, oval mass (Rorabaugh 2005, p. 572). Time to hatching is correlated with temperature and ranges from 2 days at 81 °F (27 °C) to 17 days at approximately 53 °F (12 °C) (Nussbaum *et al.* 1983, p. 182).

Tadpoles are the ephemeral, feeding, non-reproductive, completely aquatic larvae in the life cycle of the frog (McDiarmid and Altig 1999, p. 2). The length of time required for metamorphosis (the development of the aquatic tadpole to a frog) is variable, and depending upon temperature, may take 3 to 6 months from time of egg-laying (Merrell 1977, p. 10; Hinshaw 1999, p. 105). Northern leopard frog tadpoles are predominantly generalist herbivores (plant eaters), typically eating attached and free-floating algae (Hoff *et al.*1999, p. 215); however they may feed on dead animals (Hendricks 1973, p. 100). Adult and subadult frogs are generalist insectivores (insect eaters) that feed on a variety of terrestrial invertebrates such as insect adults, larvae, spiders, and leeches (Merrell 1977, p. 15; Collier *et al.* 1998, p. 41; Smith 2003, p. 12; Rorabaugh 2005, p. 575). In addition, adult northern leopard frogs have also been known to prey upon small

northern leopard frogs, birds, and snakes (Merrell 1977, p. 15).

Status

Northern leopard frogs, like many amphibian populations, are dynamic, and their individual numbers may naturally fluctuate in size within populations. However, across the range of the northern leopard frog, information suggests that there is an ongoing loss of populations throughout the species' range. The loss of populations across the landscape is what results in species' declines (Green 2005, p. 29). Population declines of northern leopard frogs are well-documented in the western United States and western Canada, but are also documented rangewide (through the Midwestern and Eastern United States), as described below.

The most recent complete summary of distributional and abundance patterns of the northern leopard frog is from Rorabaugh (2005, pp. 570–571), which documents a substantial contraction of the species' range, especially in the western two-thirds of the United States, where widespread extirpations have occurred. Other authors have also compiled summary data indicating population declines (*e.g.,* Smith and Keinath 2007, p. 14). Since the 1960s, the northern leopard frog has experienced significant declines and losses throughout its range (Gibbs *et al.* 1971, p. 1028), particularly in the western United States and western Canada, and tends to become less abundant the farther west one proceeds (Corn and Fogelman 1984, p. 150; Hayes and Jennings 1986, p. 491; Clarkson and Rorabaugh 1989, p. 534; Corn *et al.* 1989, pp. 26–29; Koch and Peterson 1995, pp. 84–87; Corn *et al.* 1997, pp. 37–38; Weller and Green 1997, p. 323; Casper 1998, p. 199; Hammerson 1999, pp. 146–147; Leonard *et al.* 1999, p. 51; Dixon 2000, p. 77; Smith 2003, pp. 4–6; Jennings and Fuller 2004, pp. 125–127; Werner *et al.* 2004, pp. 97–98; Committee on the Status of Endangered Wildlife in Canada 2009, p. v; Germaine and Hays 2009, p. 537; Johnson *et al.* 2011, p. 557).

Based upon this and other information, the northern leopard frog appears to be declining, is considered rare, or is locally extirpated from many historical locations in Arizona, California, Colorado, Idaho, Iowa, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, Oregon, Texas, Utah, Washington, Wisconsin, and Wyoming (Hayes and Jennings 1986, p. 491; Stebbins and Cohen 1995, p. 220; Johnson and Batie 1996; Bowers *et al.* 1998, p. 372; Casper 1998, p. 199; Lannoo 1998, p. xvi; Mossman *et al.* 1998, p. 198; Smith 2003, pp. 4–6; Smith and Keinath 2004, pp. 57–60; McCleod 2005, pp. 292–294; Rorabaugh 2005, p. 571; Johnson *et al.* 2011, p. 561). The species is nearly extirpated from almost 100 percent of its historical range in Texas, California, Oregon, and Washington (Stebbins and Cohen 1995, p. 220; McAllister *et al.* 1999, p. 15; Stebbins 2003, p. 235; Germaine and Hays 2009, p. 537).

Table 1 lists current NatureServe ranks for States and provinces in which the northern leopard frog is known to occur. NatureServe conservation status assessment procedures have different criteria, evidence requirements, purposes, and taxonomic coverage than the Federal Lists of Endangered and Threatened Wildlife and Plants, and therefore, these rankings may not coincide with legal listing processes (NatureServe 2008, p. 1). However, for a species as widespread as the northern leopard frog, the NatureServe rankings aid in summarizing the relative risks facing the northern leopard frog throughout its range and are provided here for this reason.

NatureServe lists Maryland and New Jersey as States where the northern leopard frog occurs. However, the Maryland Department of Natural Resources lists the northern leopard frog as an introduced species that occurs in one county (Maryland Department of Natural Resources 2011, p. 2), and the frog does not occur in New Jersey (Gessner and Stiles 2001, pp. 1–9; New Jersey Division of Fish and Wildlife 2006, pp. 1–2).

TABLE 1—NATURESERVE AND STATE, PROVINCE, AND TERRITORY RANKS FOR NORTHERN LEOPARD FROGS IN STATES AND PROVINCES IT IS KNOWN TO OCCUR

[NatureServe 2011, p. 1]

State, province, territory or sovereign nation	Natural heritage program rank*	State, province, territory rank
Arizona	S2 (Imperiled)	Species of Greatest Conservation Need.
California	S2 (Imperiled)	Species of Greatest Conservation Need.
Colorado	S3 (Vulnerable)	Species of Greatest Conservation Need, Species of Special Concern.
Connecticut	S2 (Imperiled)	Special Concern Species.
Idaho	S3 (Vulnerable)	Species of Greatest Conservation Need.
Illinois	S5 (Secure)	Non-game Indicator Species.
Indiana	S2 (Imperiled)	Species of Greatest Conservation Need.
Iowa	S5 (Secure)	No ranking or status.
Kentucky	S3 (Vulnerable)	Species of Greatest Conservation Need.
Maine	S3 (Vulnerable)	Species of Greatest Conservation Need (Priority 3).
Maryland	S4 (Apparently Secure), introduced spp	No ranking or status (considered an introduced species).
Massachusetts	S3/S4 (Vulnerable/Apparently Secure)	Species of Special Concern, Species of Greatest Conservation Need.
Michigan	S5 (Secure)	Species of Greatest Conservation Need.
Minnesota	S4 (Apparently Secure)	No ranking or status.
Missouri	S2 (Imperiled)	Species of Conservation Concern.
Montana	S1/S3 (Critically Imperiled/Vulnerable)	Species of Concern, Species of Greatest Conservation Need.
Navajo Nation (NE Arizona, NW New Mexico, SE Utah).	S2 (Imperiled)	Endangered.
Nebraska	S5 (Secure)	At-Risk Species (Tier II).
Nevada	S2/S3 (Imperiled/Vulnerable)	Species of Conservation Priority.
New Hampshire	S3 (Vulnerable)	Species of Concern.
New Jersey	SNR (Unranked), species not present	Species not present.

TABLE 1—NATURESERVE AND STATE, PROVINCE, AND TERRITORY RANKS FOR NORTHERN LEOPARD FROGS IN STATES AND PROVINCES IT IS KNOWN TO OCCUR—Continued

[NatureServe 2011, p. 1]

State, province, territory or sovereign nation	Natural heritage program rank*	State, province, territory rank
New Mexico	S1 (Critically Imperiled)	Species of Greatest Conservation Need.
New York	S5 (Secure)	No ranking or status.
North Dakota	SNR (Unranked)	No ranking or status.
Ohio	SNR (Unranked)	No ranking or status.
Oregon	S1/S2 (Critically Imperiled/Imperiled)	Sensitive Critical, List 2 Species (threatened with extinction or presumed extinct).
Pennsylvania	S2/S3 (Imperiled/Vulnerable)	Priority Conservation Species (Tier 5).
Rhode Island	S2 (Imperiled)	Species of Greatest Conservation Need.
South Dakota	S5 (Secure)	No ranking or status.
Texas	S1 (Critically Imperiled)	No ranking or status (likely extirpated).
Utah	S3/S4 (Vulnerable/Apparently Secure)	Species of Concern (Tier III).
Vermont	S4 (Vulnerable)	No ranking or status.
Washington	S1 (Critically Imperiled)	Endangered.
West Virginia	S2 (Imperiled)	Species in Greatest Need of Conservation.
Wisconsin	S4 (Vulnerable)	No ranking or status.
Wyoming	S3 (Vulnerable)	Species of Greatest Conservation Need.
Alberta	S2/S3 (Imperiled/Vulnerable)	Threatened.
British Columbia	S1 (Critically Imperiled)	Endangered.
Labrador and Newfoundland	S3/S4 (Vulnerable/Apparently Secure)	No ranking or status.
Manitoba	S4 (Vulnerable)	No ranking or status.
New Brunswick	S5 (Secure)	No ranking or status.
Northwest Territories	SNR (Unranked)	No ranking or status.
Nova Scotia	S5 (Secure)	No ranking or status.
Ontario	S5 (Secure)	Not at risk.
Prince Edward Island	S4/S5 (Apparently Secure/Secure)	No ranking or status.
Quebec	S5 (Secure)	No ranking or status.
Saskatchewan	S3 (Vulnerable)	Interim Species at Risk.

*S1 = Critically Imperiled: At very high risk of extinction due to extreme rarity (often 5 or fewer populations), very steep declines, or other factors.

S2 = Imperiled: At high risk of extinction due to restricted range, few populations (often 20 or fewer), steep declines, or other factors.

S3 = Vulnerable: At moderate risk of extinction due to a restricted range, relatively few populations (often 80 or fewer), recent and widespread declines, or other factors. Such species are often rare or found locally in a restricted range.

S4 = Apparently Secure: Uncommon but not rare; some cause for long-term concern due to declines or other factors. Such species are likely to be quite rare in parts of their range, especially at the periphery.

S5 = Secure: Common; widespread and abundant. Such species are potentially rare in parts of their range, especially at the periphery.

SNR = Unranked. State or Province conservation status not yet assessed.

The International Union for the Conservation of Nature's ''Red List Categories and Criteria'' were developed for classifying species at high risk of global extinction (IUCN 2003, p. 1), and as such have different criteria, evidence requirements, purposes, and taxonomic coverage than the Federal Lists of Endangered and Threatened Wildlife and Plants. However, just as with the NatureServe data, because we are reviewing the entire range of the northern leopard frog, the International Union for the Conservation of Nature assessment is useful in summarizing the current status of the northern leopard frog throughout its range.

The International Union for the Conservation of Nature currently lists the northern leopard frog as a species of 'least concern' in view of its wide distribution, tolerance to degree of habitat modification, and presumed large population (Hammerson *et al.* 2004, p. 2). The International Union for the Conservation of Nature states that the population trend is decreasing (Hammerson *et al.* 2004, p. 3), but the authors believe that the northern leopard frog is not declining fast enough to qualify for listing in a more threatened category (Hammerson *et al.* 2004, p. 2). The International Union for the Conservation of Nature reviewed Hammerson *et al.* (2004, pp. 1–6) in 2011, and no updates were made to the 2004 review. Since 2004, Rorabaugh (2005, pp. 570–577) completed a status review for the northern leopard frog in the United States (Rorabaugh 2005, pp. 570–577), and the Committee on the Status of Endangered Wildlife in Canada published the Assessment and Update Status Report for the Northern Leopard Frog in Canada (Committee on the Status of Endangered Wildlife in Canada 2009, pp. 1–76). The Rorabaugh (2005, pp. 570–577) status review found that for a variety of reasons the northern leopard frog is declining throughout its range, but particularly in the western United States. The Committee on the Status of Endangered Wildlife in Canada (2009, pp. iii) assessment notes that there are continued declines for the northern leopard frog throughout the western provinces and evidence of declines in eastern Canada. The current International Union for the Conservation of Nature review does not cite either of these documents or provide any current threats assessment. The International Union for the Conservation of Nature analysis for the northern leopard frog also includes leopard frogs in Panama, which likely belong to the *Lithobates* complex, but do not belong to the same species as the northern leopard frog. Therefore, we do not consider the International Union for the Conservation of Nature review for the northern leopard frog a current assessment of the species' status in North America.

Western States

Until the late 1970s, northern leopard frogs were widespread and abundant in much of northern Arizona (Apache, Coconino, Greenlee, Mohave, Navajo, and Yavapai Counties) in springs, streams, rivers, stock tanks, and lakes throughout northern Arizona (Arizona Game and Fish Department 2009, p. 1).

Currently, there is one northern leopard frog population located near Seligman, Arizona; a metapopulation (several breeding locations in close proximity to one another) located south of Flagstaff, Arizona; and three refugial sites developed by the State and Service (and other partners) to assist in stocking northern leopard frogs to other locations in Arizona, north of the Colorado River. All of these locations are located in Coconino County. Outside of these locations, fairly rigorous visual encounter surveys conducted within the species' historical range, including Grand Canyon National Park and the Kaibab National Forest, have not located northern leopard frogs (Kaibab National Forest 2007, p. 1; Kaibab National Forest 2008, p. 1; Drost *et al.* 2008, p. 7). The species is listed as a Species of Greatest Conservation Need in the Arizona State Wildlife Action Plan (Arizona Game and Fish Department 2006, Appendix M, p. 153) and has a NatureServe rank of S2 (Imperiled) (NatureServe 2011, p. 1). In Arizona, there is no open season for northern leopard frog, and collecting is illegal except as authorized by State permit, effective January 1, 1993 (Commission Order 41). The northern leopard frog has also significantly declined on the Navajo Nation (which is situated in southeastern Utah, northeastern Arizona, and northwestern New Mexico) in the last century. Most remote desert populations of northern leopard frogs were lost between the 1920s and 1970s, and mountain populations were lost in the late 1980s. The Navajo Nation has listed the northern leopard frog as a ''Group 2—Endangered Species'' on the Navajo Endangered Species List, which means its prospects of survival or recruitment on the Navajo Nation are in jeopardy (Navajo Nation Department of Fish and Wildlife 2009, p. 3).

The northern leopard frog is a State of California species of special concern and is listed as a Species of Special Concern (native populations only) (California Department of Fish and Game, Natural Diversity Database, 2009) and as a Species of Greatest Conservation Need in California Department of Fish and Game's State Wildlife Action Plan (California Department of Fish and Game 2007); however, the northern leopard frog is not listed under the California Endangered Species Act. The northern leopard frog may be taken under the authority of a sport fishing license, subject to restrictions (California Code of Regulations, Title 14, Section 5.05). The frog is ranked S2 (Imperiled) by NatureServe (NatureServe 2011, p. 1). Northern leopard frogs are likely native to the region east of the Sierra Nevada-Cascade crest in the following areas of California: upper Pit River basin (Shasta, Lassen, and Modoc counties), Surprise Valley (Modoc County), lower Klamath Lake basin (Siskiyou County), Lake Tahoe region (El Dorado County), Carson River drainage (Alpine County) and Owens River Valley (Mono and Inyo counties) (Jennings and Fuller 2004, p. 122). The northern leopard frog was introduced to at least 15 other sites in California, but most of these introductions have not resulted in naturalized populations that continue to exist today (Jennings and Hayes 1994, p. 80; Jennings and Fuller 2004, p. 119). There is a small, introduced population in Merced County, near the Merced National Wildlife Refuge (NWR) that persisted as recently as 2007 (Jennings and Fuller 2004, pp. 119, 127; Woolington 2009, pers. comm.). Since the 1970s, northern leopard frogs have disappeared from most (approximately 95 percent) of their historic range in California, (Jennings and Fuller 2004, p. 119; Rorabaugh 2005, p. 571) and may be completely extirpated from these areas of the State as we are not aware of any recent confirmed sightings. Jennings and Hayes (1994, p. 82) knew of only two extant, native northern leopard frog populations as of the 1990s: one adult was observed at Tule Lake National NWR (Siskiyou County) in 1990, and 8 to 10 juveniles were found near Pine Creek in Round Valley near Bishop (Inyo County) in 1994. Northern leopard frogs are no longer found on Tule Lake NWR (Adams 2011, pers. comm.), and no northern leopard frogs have been observed during amphibian surveys conducted on the Klamath Falls NWR Complex, including Tule Lake NWR (Austin 2009, pers. comm.). Recent surveys conducted by the California Department of Fish and Game did not locate any northern leopard frogs in the Owens River Area (Becker 2011, pers. comm.). In addition, surveys found that sites previously considered to be northern leopard frog habitat now contain nonnative aquatic species, and the habitat has been extensively modified such that there are likely few areas of suitable habitat left in the Owens Valley (Becker 2011, pers. comm.). Northern leopard frogs have not been found in the Lake Tahoe basin for over 20 years, and the species is presumed to be extirpated from the area (Jennings and Fuller 2004, p. 125). Jennings and Fuller (2004, p. 126) also report that a formerly isolated native northern leopard frog population on Hat Creek, Shasta County, is now apparently extirpated as well. Modoc NWR in northeastern California reported no known occurrences of northern leopard frogs on the refuge in recent times, and no northern leopard frogs were reported during numerous hours of amphibian survey time in 2004, 2005, and 2010 (Bachman 2011, pers. comm.).

The northern leopard frog was historically quite common throughout Colorado, but over the last 30 to 40 years, populations have declined and even been locally extirpated from portions of eastern and north-central Colorado, including Rocky Mountain and Mesa Verde National Parks (Corn and Fogleman 1984, p. 148; Corn *et al.* 1989, p. 15; Stebbins and Cohen 1995, p. 220; Corn *et al.* 1997, pp. 37–38; Hammerson 1999, pp. 146–147; Mesa Verde National Park 2009, p. 1; Johnson *et al.* 2011, p. 561). The Colorado Division of Wildlife has designated the northern leopard frog a Species of Greatest Conservation Need as well as a Species of Special Concern due to low population status and a declining population trend (Colorado Division of Wildlife 2006, pp. 2, 28, 305). These are not statutory categories; however, the northern leopard frog is classified as ''nongame'' wildlife and their harassment, taking, or possession is prohibited without a permit (Colorado Division of Wildlife 2009, p. 3). NatureServe ranks the northern leopard frog as S3 (Vulnerable) in Colorado (NatureServe 2011, p. 1). Intensive surveys conducted from 2007 through 2009 in the Front Range of Colorado indicate that northern leopard frogs there have become rare and documented losses are widespread (Johnson and McKenzie 2009, p. 9; Keeley 2009, pp. 5–6; Johnson *et al.* 2011, p. 562). Historically, northern leopard frogs were found at high densities in this region (Johnson *et al.* 2011, p. 562). Along the Western Slope (the area west of the continental divide in Colorado), data suggest that northern leopard frog populations remain viable, especially in the northern region (Johnson and McKenzie 2009, p. 10). This supports information from Arapaho and Browns Park NWRs, both located in northwestern Colorado, that continue to support northern leopard frogs (Johnson 2009, pers. comm.; Smart 2009, pers. comm.). Northern leopard frogs were the most common amphibian in southwest Colorado until the late 1960s, but now they are rare (San Miguel 2009, pers. comm.). Despite conducting amphibian surveys for 15 years with an emphasis on locating northern leopard frogs, none have been detected within Mesa Verde National Park, Colorado. Historically,

this species was found abundantly along the Mancos River in the park and adjacent lands (San Miguel 2009, pers. comm.). However, the overall status of the northern leopard frog in western Colorado is not currently known (Johnson *et al.* 2011, p. 563).

The Idaho Department of Fish and Game designated the northern leopard frog a Type 2 Species of Greatest Conservation Need (Idaho Department of Fish and Game 2005, Appendix B p. 6). A Type 2 species of greatest conservation need is defined as a rangewide or globally imperiled species that is experiencing significant declines throughout its range with a high likelihood of being listed in the foreseeable future due to its rarity (Idaho Department of Fish and Game 2005, Appendix B, p. 4). Reduced distribution and a declining population trend are noted in the Idaho Comprehensive Wildlife Conservation Strategy as reasons for the designation (Idaho Department of Fish and Game 2005, Species Account, p. 1). The northern leopard frog is also a protected nongame species, which means take or possession of the species is prohibited without a permit (Idaho Administrative Code 13.01.06–300.02). NatureServe ranks the northern leopard frog in Idaho as S3 (Vulnerable) (NatureServe 2011, p. 1). Both the Targhee National Forest and Kootenai NWR have records of northern leopard frogs from the 1970s (Service 1972, p. 11; Stebbins and Cohen 1995, p. 220). However, surveys in 1992 at 98 sites on the Targhee National Forest did not locate northern leopard frogs (Stebbins and Cohen 1995, p. 220), and Kootenai NWR has no records of frogs for the last 30 years (Rose 2009, pers. comm.). Deer Flat NWR amphibian surveys have only detected American bullfrogs (*Lithobates catesbeiana*). Northern leopard frogs are known to be present on Bear Lake, Grays Lake, and Minidoka NWRs, and presumed to be present on Camas NWR and Oxford Slough Wetland Protection Area (WPA) (Fisher and Mitchell 2009, p. 1).

Localized declines of northern leopard frogs are documented in Iowa (Lannoo *et al.* 1994, pp. 317–318; Hemesath 1998, p. 216). Lannoo *et al.* 1994 (p. 311) states, ''From descriptions of the turn-of-the-century commercial ''frogging'' industry in Dickinson County (Iowa), we estimate that the number of leopard frogs has declined by at least two, and probably three orders of magnitude.'' However, the northern leopard frog is ranked as Secure (S5) in Iowa by NatureServe (2011, p. 1) and is not considered a Species of Greatest Conservation Need (Iowa Department of Natural Resources 2006, p. 42). Currently, there is a continuous open season for northern leopard frogs in inland and boundary waters in Iowa, and up to 48 frogs can be collected per day (Iowa Department of Natural Resources 2011, p. 1). In 1991, the Iowa Department of Natural Resources initiated an annual anuran (frog and toad) survey. The survey is conducted by volunteers, and until 2007, volunteers were not required to distinguish between species of leopard frogs on the report forms (Iowa Department of Natural Resources 2009, p. 1). Survey data from 2007 and 2008 (when the species were separated) and older data from counties where it was thought only the northern leopard frog occurred were reviewed by the State. The analyses of this information suggest a possible downward trend in northern leopard frog presence, but the trend was not statistically significant (Iowa Department of Natural Resources 2009, p. 1).

Northern leopard frog populations began declining in Minnesota in the late 1960s or early 1970s (Rittschof 1975, p. 103; Minnesota Department of Natural Resources 2011a, pp. 1–2). The declines of northern leopard frog populations from the past are thought to have been substantial, but information is not detailed enough to know if the population is now stable or if it is still declining in Minnesota (Moriarty 1998, p. 168). However, because the species is still considered to be fairly common, it is not considered a Species of Greatest Conservation Need in Minnesota's Comprehensive Wildlife Strategy (Minnesota Department of Natural Resources 2006, Appendix B p. 9). The Minnesota Department of Natural Resources' northern leopard frog fact page does indicate that the northern leopard frog is still declining (Minnesota Department of Natural Resources 2011a, p. 2). The species is ranked S4 (Apparently Secure) by NatureServe (NatureServe 2011, p. 1). In Minnesota, from May 16 to March 31, licensed anglers and children under age 16 may take, use, buy, and sell an unlimited number of northern leopard frogs up to 6 inches long for bait (Minnesota Department of Natural Resources 2011b, p. 70). A Minnesota Department of Natural Resources commercial license is required to take northern leopard frogs for purposes other than bait.

Missouri is located on the periphery of the range for northern leopard frogs and the frog is currently only known to occur in two counties (Atchison and Mercer) that border Iowa (Missouri Department of Conservation 2009, p. 1). The northern leopard frog is listed as a Species of Conservation Concern by the Missouri Department of Conservation and NatureServe ranks it as Imperiled (S2) (Missouri Department of Conservation 2009, p. 1; NatureServe 2011, p. 1). This ranking is based upon the low number of known occurrences in Missouri and not based upon declining population trends (Missouri Department of Conservation 2009, p. 1). The Missouri Department of Conservation noted that it is likely that more populations are present in northern Missouri, but further surveys need to be completed to affirm this assumption (Missouri Department of Conservation 2009, p. 1). In Missouri, northern leopard frogs have regulatory protection from commercial take and non-resident collection. Missouri residents are allowed to possess up to five northern leopard frogs for education use (Wildlife Code Missouri 3CSR10–9.110); however, these five individuals cannot be sold, traded, shipped over State lines, or taken from public lands (Missouri Department of Conservation 2009, p. 2). Northern leopard frogs also cannot be used as live bait in Missouri (Wildlife Code Missouri 3CSR10–6.605).

Montana Fish, Wildlife, and Parks classified the northern leopard frog as a Species of Concern in Montana and it is considered a Species of Greatest Conservation Need in their Wildlife Conservation Strategy (Montana Fish, Wildlife, and Parks 2009, p. 1). Northern leopard frogs are protected from commercial collection in Montana (Montana Code Annotated 2009 87–5–116). Historically, northern leopard frogs occurred across the eastern plains of Montana and in the mountain valleys on both sides of the Continental Divide (Montana Fish, Wildlife, and Parks 2009, p. 1). However, since the 1990s, most previously known northern leopard frog populations on the west side of the Continental Divide in Montana are considered extirpated, and there has been a clear range contraction of northern leopard frogs (Werner 2003, p. 26; Montana Fish, Wildlife, and Parks 2009, p. 1). Currently, only two populations exist in western Montana. Surveys in the mid-1990s of historically occupied sites in central Montana, east of the Continental Divide, found only 19 percent of the sites to be occupied by northern leopard frogs (Montana Fish, Wildlife, and Parks 2009, p. 1). NatureServe provides a split rank for the State that reflects the difference in status between western (S1 Critically Imperiled) and eastern (S3 Vulnerable) Montana (NatureServe 2011, p. 1). Habitat restoration and survey efforts are being planned Statewide to provide

a current assessment of northern leopard frog distribution (Montana Fish, Wildlife, and Parks, 2009, p. 2).

The northern leopard frog occurs commonly in the State of Nebraska (McLeod 2005, p. 292) and has a NatureServe rank of S5 (Secure) (NatureServe 2011, p. 1). However, surveys conducted in 1997 and 1998 indicated a significant decline in northern leopard frog occurrences at the State level (McLeod 2005, p. 292). It is difficult to ascertain if this information represents a real decline or is representative of normal stochastic events, but data indicated significant differences from location data collected in the 1970s (McLeod 2005, p. 292). The Nebraska Game and Parks Commission identified the northern leopard frog as a Tier II At-Risk Species during development of the Nebraska Natural Legacy Project (2005, p. 319). Tier II species are typically those that are not at-risk from a global or national perspective, but are rare or imperiled within Nebraska. As of 2011, northern leopard frogs can no longer be commercially harvested or sold for bait in Nebraska; however, anglers can still collect them as bait for personal use (Nebraska Game and Parks Commission 2011, p. 5).

In Nevada, northern leopard frogs are currently ranked S2/S3 (Imperiled/Vulnerable) by NatureServe (NatureServe 2011, p. 1) and are on the Nevada Natural Heritage Program's Animal and Plant Watch List, which means they could be declining in Nevada or across much of their range, or may be less common than currently thought and could become at-risk in the future. The northern leopard frog is identified as a Species of Conservation Priority in the Nevada Wildlife Action Plan (Wildlife Action Plan Team 2006, p. 61). In addition, the northern leopard frog is a protected amphibian by Nevada statute (NAC 503.075) and cannot be collected for commercial, recreational, or educational purposes without a permit (Nevada Department of Wildlife 2009, p. 5). The Nevada Department of Wildlife notes that there is little historical or current information available to accurately assess the distribution and status of the northern leopard frog in Nevada (Nevada Department of Wildlife 2009, p. 1). However, recent surveys suggest that northern leopard frogs may no longer be abundant in Nevada and that there have been numerous local extirpations, for example, along the Truckee and Carson rivers in western Nevada and in springs of southern and eastern Nevada (Panik and Barrett 1993, p. 203; Hitchcock 2001, pp. 9, 109–110). While historical records and anecdotal evidence indicated that northern leopard frogs were once widely distributed in the State, the current species distribution is much smaller than the historical distribution (Hitchcock 2001, pp. 9, 38, 48). In addition, suitable northern leopard frog habitat is patchily distributed in the State due to the aridity and isolated nature of many wetland systems, which results in a discontinuous and limited distribution (Nevada Department of Wildlife 2009, p. 1). Recent Nevada Department of Wildlife records document northern leopard frog populations in Ruby Valley (including Ruby Lakes NWR) and Lower Mary's River in Elko and White Pine Counties; Spring Valley and Lake Valley in White Pine County; Lake Valley and Pahranagat Valley (including Pahranagat NWR) in Lincoln County; Carson River near Carson City; the lower Truckee River and Truckee meadows in Washoe County; and a small number of additional sites in western and northeastern Nevada (Hitchcock 2001, pp. 96–102; Service 2009, pp. 1–2; Nevada Department of Wildlife 2009, p. 2). Efforts to restore northern leopard frog habitat and re-establish the species have occurred along the lower Truckee River in western Nevada and on Pahranagat NWR (Horton 2010, pers. comm.; Rogers 2010, p. 7).

Historically, the northern leopard frog was documented from a large area in the northern and western part of New Mexico and along the entire length of the Rio Grande River valley, except southern Elephant Butte and northern Caballo Reservoirs (New Mexico Department of Game and Fish 2009, p. 1). Declines in northern leopard frogs have been reported from the Lower Rio Grande (below Caballo Reservoir), in the Jemez Mountains, and in the Chuska Mountains (Christman 2009, p. 5; New Mexico Department of Game and Fish 2009, p. 2). The species is believed to be extirpated from the Rio Grande Valley, south of Albuquerque (New Mexico Department of Game and Fish 2009, p. 3). Recent survey efforts indicate that northern leopard frogs are persisting in northern New Mexico, but most occupied sites contained small numbers of frogs with very few robust populations (Christman 2009, p. 13). The northern leopard frog is not listed as endangered or threatened in New Mexico under the Wildlife Conservation Act, but was designated a Species of Greatest Conservation Need by the New Mexico Department of Game and Fish, and NatureServe ranks it as S1 (Critically Imperiled) in New Mexico (New Mexico Department of Game and Fish 2006, p. 540; NatureServe 2011, p. 1). The northern leopard frog is protected from commercial take (Section 17–1–14 NMSA); however, take by New Mexico State residents for pets or other uses are uncontrolled (New Mexico Department of Game and Fish 2009, p. 2).

Historically, the northern leopard frog ranged Statewide in North Dakota and is still quite common today (North Dakota Game and Fish Department 2009, p. 1). Northern leopard frogs are widely distributed throughout the State and locally abundant in some locations (Newman 2009, p. 1; Scherr 2009, pers. comm.) but surveys conducted by Bowers *et al.* (1998, p. 372) found that the range of the northern leopard frog was less extensive in the prairie potholes region of North Dakota than previously described. Because of its distribution and local abundance, the northern leopard frog has no special status in the State, and there are no conservation programs that specifically target the northern leopard frog (North Dakota Game and Fish Department 2009, p. 1). Commercial frog licenses are available for unlimited collection of northern leopard frogs (North Dakota Administrative Code 30–03–04). NatureServe does not have a current ranking for North Dakota as it is currently under review (NatureServe 2011, p. 1).

The Oregon Department of Fish and Wildlife ranks the northern leopard frog as a ''Sensitive Critical'' species, meaning that it is imperiled with extirpation from a specific geographic area of the State due to small population sizes, habitat loss or degradation, or immediate threats (Oregon Biodiversity Information Center 2010, p. 7, 13). The sensitive species list is primarily a non-regulatory tool designed to provide a voluntary, proactive approach to conservation (Oregon Department of Fish and Wildlife 2008, p. 1). The Oregon Biodiversity Information Center lists the northern leopard frog as a ''List 2 Species'' meaning that it is threatened with extirpation or presumed to be extirpated from the State of Oregon (Oregon Biodiversity Information Center 2010, pp. 4, 13) and it is ranked S1/S2 (Critically Imperiled/Imperiled) by NatureServe (NatureServe 2011, p. 1). The Oregon Biodiversity Information Center (2010, p. 13), lists the following counties as containing historical locations for the northern leopard frog: Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Jefferson, Crook, Grant, Baker, Malheur, Klamath, and Jackson Counties. Rorabaugh (2005, p. 571) reported that northern leopard frogs are extirpated from most historical

localities in Oregon. The six records we have from the Oregon Natural Heritage Information Center are observations from 1975, 1980, 1990, 1995, 1996, and 2003. We have found no records, current or historical, to indicate the presence of northern leopard frogs on either the Hart Mountain National Antelope Refuge (southern Oregon) or Sheldon NWR (northern Nevada) (Harper Collins 2009, pers. comm.). Frog surveys were conducted at Sheldon NWR in summer 2009, but they detected only nonnative American bullfrogs.

The status of the northern leopard frog in South Dakota is thought to be stable and NatureServe lists the frog as secure (S5) (South Dakota Department of Game, Fish, and Parks 2009, p. 1; NatureServe 2011, p. 1). The northern leopard has no specific protection in South Dakota and can be collected for commercial and non-commercial bait (South Dakota Laws and Regulations for Commercial Bait Dealers 2009, p. 1; South Dakota Department of Game, Fish, and Parks 2011, p. 23). The species' range includes almost the entire State based upon historical and current distribution maps (Fischer *et al.* 1999, p. 12; Naugle *et al.* 2005, p. 285). Smith *et al.* (2005, p. 9) found northern leopard frogs to be common in the Black Hills, and a Statewide herpetology (amphibian and reptile) survey report indicates that the distribution of the northern leopard frog in the State is stable (Backlund 2004, p. 8). However, there is no historical or recent abundance data to compare current survey data that would indicate population trend (Backlund 2004, p. 9). Information received from Lacreek and Waubay NWRs and the Huron Wetland Management District indicate northern leopard frogs are prevalent (Flannders-Wanner 2009, pers. comm.; Hubers 2009, pers. comm.; Koerner 2009, pers. comm.). Anuran auditory surveys (1997–1998) found northern leopard frogs to be one of the most widespread and wetland-abundant species in eastern South Dakota (Naugle *et al.* 2005, p. 290).

The northern leopard frog's historic range in Texas was in the Rio Grande Valley, El Paso County (a relatively small portion of the State). However, extensive efforts to locate the frog have been unsuccessful (Dixon 2000, pp. 42, 77). The northern leopard frog is ranked S1 (Critically Imperiled) by NatureServe (NatureServe 2011, p. 1), but is not listed as a species of conservation concern in the Texas Comprehensive Wildlife Conservation Strategy (Texas Parks and Wildlife Department 2005, pp. 748–751). The Texas Parks and Wildlife Department webpage (Texas Parks and Wildlife Department 2011a, p. 11) lists the species as occurring in Texas, but the most current field guide for amphibians and reptiles of Texas indicates the species is likely extirpated (Dixon 2000, p. 77). The Texas Parks and Wildlife Department requires that anyone who captures a wild animal, including frogs, be licensed or permitted (Texas Parks and Wildlife Department 2011b, p. 1).

The Utah Division of Wildlife Resources considers northern leopard frog populations in Utah to be secure (Utah Division of Wildlife Resources 2009, p. 1). NatureServe ranks the northern leopard frog as S3/S4 (Vulnerable/Apparently Secure) (NatureServe 2011, p. 1). In Utah, the northern leopard frog is classified as ''controlled'' for collection, importation, and possession, and may only be collected with a certificate of registration (Administrative Rule R657–53: Amphibian and Reptile Collection, Importation, Transportation, and Possession). Historically the northern leopard frog is considered to be a wide-ranging species in Utah and is verified to have occurred in all but Davis and Wayne Counties (Utah Division of Wildlife Resources 2009, p. 2). Utah's Wildlife Action Plan lists the northern leopard frog as a Tier III Species of Concern (Sutter *et al.* 2005, p. 5–6). Tier III species are of conservation concern because they are linked to at-risk habitats, they have suffered significant population declines, or there is little information regarding the species. The northern leopard frog was listed as a species of concern due to lack of information, water development, and disease. In 2006, the Utah Division of Wildlife Resources began compiling survey information and conducting surveys to determine the current distribution of northern leopard frogs in Utah. Recent surveys have documented northern leopard frogs at 97 new sites (not historical sites), for a total of 683 known sites in Utah (Utah Division of Wildlife Resources 2009, p. 2). Of these sites, 75 percent (512) are extant, and 25 percent (171) are considered historical, as the observations occurred prior to 1989 (Utah Division of Wildlife Resources 2009, p. 2). We do not have information regarding how many of these sites are breeding sites versus other observations (such as dispersing frogs).

The northern leopard frog was listed in 2000 as an endangered species under the Endangered, Threatened, and Sensitive Species Classification (Washington Administrative Code, Title 232, Chapter 12, Section 014) in Washington State after surveys of 17 known historic locations confirmed occupancy at only two sites (Leonard *et al.* 1999, p. 52; Germaine and Hays 2009, p. 537). ''Endangered'' in this context means any wildlife species native to the State of Washington that is threatened with extinction throughout all or a significant portion of its range within the State. The northern leopard frog is ranked S1 (Critically Imperiled) in Washington State by NatureServe (NatureServe 2011, p. 1). Historically, the northern leopard frog occurred in six major watersheds in eastern Washington (Germaine and Hays 2009, p. 537). However, extensive surveys conducted at Gloyd Seeps and Potholes Reservoir in 2002–2005 indicate that the Gloyd Seeps population is likely no longer a functional breeding population and the Potholes Reservoir population is in sharp decline (Germaine and Hays 2009, p. 542). Although inclement weather prevented Washington Department of Fish and Wildlife from completing surveys in 2009, no observations of northern leopard frogs were made during what limited field time was available (Washington Department of Fish and Wildlife 2009, p. 32).

The northern leopard frog is not currently listed in Wisconsin, but over the past several decades, declines have been documented (Hine *et al.* 1981, pp. 2–3; Mossman *et al.* 1998, pp. 191–192, 198; Wisconsin Department of Natural Resources 2009, p. 1). In 1981, the Wisconsin Frog and Toad Survey began to monitor several species, including the northern leopard frog. The occurrence of a species is determined by whether or not the species is heard calling, and the abundance is ranked by the relative number of individuals heard calling at a site (Kitchell and Hay 2007, p. 1). Survey results from 1984 to 2007 indicate an overall decrease in the estimated population trend for northern leopard frogs (Kitchell and Hay 2007, p. 7). NatureServe ranks the northern leopard frog as S4 (Secure) (NatureServe 2011, p. 1). In Wisconsin, northern leopard frogs may be collected and possessed in unlimited numbers if the collector or possessor has a valid Class A Captive Wild Animal Farm License or a Commercial Bait License (Wisconsin Department of Natural Resources 2011, p. 13).

The northern leopard frog is considered to be widely distributed in Wyoming (Wyoming Game and Fish Department 2009, p. 1). The Wyoming Game and Fish Department identified the species as a Species of Greatest Conservation Need due to potential habitat degradation and loss, disease, absence of data, and contaminants (Wyoming Game and Fish Department

2005, p. 13). NatureServe ranks it as S3 (Vulnerable) (NatureServe 2011, p. 1). Population declines have been documented from the Laramie Plains, Targhee National Forest, and Grand Teton National Park (Baxter and Stone 1980, p. 44; Lewis *et al.* 1985, p. 167; Koch and Peterson 1995, p. 85). No population trend data are available for northern leopard frogs in Wyoming. Anecdotal reports and local survey information indicate that the frog may be common throughout eastern and southwestern Wyoming (Wyoming Game and Fish Department 2009, p. 1); however, others reports indicate that the present abundance of northern leopard frogs in Wyoming is unknown and the population trend is declining (Smith and Keinath 2007, p. 14). The Wyoming Game and Fish Department manages commercial, scientific, and education activities through their collection permitting system (Wyoming Game and Fish Department 2009, p. 3).

Eastern States

The northern leopard frog still occurs throughout the eastern States it is historically known from (Connecticut, Illinois, Indiana, Kentucky, Maine, Massachusetts, Michigan, New Hampshire, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and West Virginia) (Rorabaugh 2005, pp. 571–572). However, the frog currently has a very disjunct distribution throughout the northeast (New Hampshire Fish and Game Department 2005, pp. A208–A209); some populations are thought to be both locally and regionally declining (Smith and Keinath 2007, p. 14; Spriggs 2009, p. 29), and, in some cases, local extirpations have occurred (Rorabaugh 2005, p. 571; Spriggs 2009, p. 26). For example, habitat loss from urban development has resulted in local extirpations in Connecticut, Massachusetts, and Rhode Island (Klemens 2000, p. 41; Rorabaugh 2005, p. 571). Northern leopard frog declines also occurred in the Midwest in Michigan, Minnesota, and northeastern Illinois in the late 1960s or early 1970s (Rittschof, 1975, p. 103; Moriarty 1998, p. 168; Mierzwa 1998, p. 117), and although some populations have recovered, others have not (Mierzwa 1998, p. 117; Moriarty 1998, p. 168).

In 1999, the Northeast Endangered Species and Wildlife Diversity Technical Committee published a list of regional species of conservation concern, which included the northern leopard frog. The northern leopard frog was added to the list based upon declining populations or high risk of disappearing from the Northeast, lack of data with suspicion of risk of disappearing from the region, and special circumstances (such as vulnerability to collecting pressures) (Therres 1999, p. 97).

Northeast Partners in Amphibian and Reptile Conservation, using information from State wildlife action plans and other sources, developed the Northeast Amphibian and Reptile Species of Regional Responsibility and Conservation Concern (Northeast Partners in Amphibian and Reptile Conservation 2010, pp. 2–3). Based upon their analysis, the Northeast Partners in Amphibian and Reptile Conservation ranked the northern leopard frog as a species of High Concern and Regional Responsibility that should be considered a target for habitat and landscape-based conservation initiatives (such as land protection), may be an appropriate indicator for long-term monitoring to detect changes in distribution due to climate change, and should be among the highest priority species for Northeast Partners in Amphibian and Reptile Conservation to target conservation efforts (*e.g.,* create a regional species working group) (Northeast Partners in Amphibian and Reptile Conservation 2010, pp. 3–5). The ranking is based upon the number of northeastern States that comprise a species' U.S. distribution and the number of States that listed the species in their Wildlife Action Plans. Based upon their analysis, the northeastern States make up less than 50 percent of the northern leopard frog's U.S. distribution (occurs in 9 of 14 northeastern States), and it is listed as a Species of Greatest Conservation Concern in 6 of the 9 States it inhabits (Northeast Partners in Amphibian and Reptile Conservation 2010, p. 5).

In Connecticut, the northern leopard frog is locally common along sections of the Connecticut River and its tributaries (the Farmington, Scantic, and Coginchaug Rivers) (Klemens 2000, p. 40). Historical records of northern leopard frog distribution indicate that the frog was once widespread; current information indicates that the northern leopard frog no longer is found in some of these areas (Klemens 2000, p. 41). The northern leopard frog is considered a ''Special Concern'' species under Connecticut's State Endangered Species Act (Connecticut Department of Environmental Protection 2005, Appendix 1–b p. 18), and the NatureServe rank is S2 (Imperiled) (NatureServe 2011, p. 1). There is no open season for taking northern leopard frogs in Connecticut (Title 26 Fisheries and Game, Department of Environmental Protection Sec. 26–66–13).

Northern leopard frogs experienced a die-off in the 1960s or early 1970s in northeastern Illinois, but have since recovered in localized areas where extensive wetland habitat still occurs (Mierzwa 1998, p. 117). The northern leopard frog is less common in areas where significant wetland loss has occurred (Mierzwa 1998, p. 117). Statewide, the northern leopard frog is considered to be abundant with a stable and secure population trend in Illinois (S5 (Secure) ranking from NatureServe) (Smith and Keinath 2007, p. 14; NatureServe 2011, p. 1). However, most amphibian sampling efforts in Illinois have been largely opportunistic, and data are likely insufficient to accurately determine changes in distribution and abundance of species such as the northern leopard frog (Illinois Department of Natural Resources 2005, p. 102). The Illinois Comprehensive Wildlife Conservation Plan and Strategy identified the northern leopard frog as a non-game indicator species for improving wetland habitat (Illinois Department of Natural Resources 2005, p. 172). It is unlawful to take, possess, buy, sell, offer to buy or sell or barter any reptile, amphibian, or their eggs or parts taken from the wild in Illinois for commercial purposes unless otherwise authorized by statute (17 Illinois Adm. Code Section 880–10). If a person possesses a valid fishing license, they may take up to eight northern leopard frogs per day (17 Illinois Adm. Code Section 880–20, 880–30).

The northern leopard frog's range in Indiana includes northern and eastern Indiana. Minton (1998, pp. 217–220) noted significant declines in the northern leopard frogs populations based on observations he made from 1948 to 1993 throughout Indiana. The species is listed as a Species of Greatest Conservation Need in the Indiana Comprehensive Wildlife Strategy, listed as a Species of Special Concern by the Indiana Department of Natural Resources, and is ranked as Imperiled (S2) by NatureServe (Indiana Department of Natural Resources 2006, p. 30; NatureServe 2011, p. 1). In Indiana, an individual with a valid hunting or fishing license may collect up to four northern leopard frogs for non-commercial purposes (Indiana Department of Natural Resources 2011, p. 11).

The northern leopard frog is known historically from 22 counties in northern Kentucky (Kentucky Department of Fish and Wildlife Resources 2010, Amphibian Species Accounts, Northern leopard frog).

However, the species is considered to be decreasing in Kentucky, and populations have declined throughout the frog's historical State range. Kentucky Department of Fish and Wildlife Resources' recent survey records (1984–2004) show northern leopard frogs persisting in 10 counties, and no longer present in 12 counties (Kentucky Department of Fish and Wildlife Resources 2010, Amphibian Species Accounts, Northern leopard frog). The species is considered to be a Species of Greatest Conservation Need and ranked by NatureServe as Vulnerable (S3) (Kentucky Department of Fish and Wildlife Resources 2010, Appendix 1–1 p. 6; NatureServe 2011, p. 1). The northern leopard frog may be collected for personal bait use in Kentucky (301 Kentucky Administrative Regulations 1:130).

The northern leopard frog is a Species of Special Concern in Maine (Maine Department of Inland Fisheries and Wildlife 2005, p. 28) and is listed as a Priority 3 Species of Greatest Conservation Need in the Comprehensive Wildlife Conservation Strategy (Maine Department of Inland Fisheries and Wildlife 2005, p. 90). The Maine Department of Inland Fisheries and Wildlife chose this ranking due to the low to moderate potential for the northern leopard frog to become extirpated in the State, but concerns remain regarding restricted distribution, status, or extreme habitat specialization. Currently, the present abundance and population trend for the northern leopard frog in Maine are unknown (Smith and Keinath 2007, p. 14), and NatureServe ranks the species as S3 (Vulnerable) (NatureServe 2011, p. 1). A wildlife or fish possession permit is required from the Commissioner to take, possess, or hold in captivity northern leopard frogs (Maine Department of Inland Fisheries and Wildlife 2009, p. 1).

The northern leopard frog occurs Statewide in Massachusetts, except in Barnstable, Dukes, and Nantucket Counties (Massachusetts Division of Fisheries and Wildlife 2006, p. 406). Due to the widespread release of captive northern leopard frogs, their historical distribution and native status in Massachusetts is uncertain (Cardoza and Mirick (2002) in Massachusetts Division of Fisheries and Wildlife 2006, p. 406). As part of the Massachusetts Audubon Herp Atlas Project (1992 through 1998), the northern leopard frog was reported to be well-distributed and confirmed from approximately 13 percent of the quadrants (Massachusetts Division of Fisheries and Wildlife 2006, p. 406). Though the northern leopard frog is not listed in Massachusetts (Massachusetts Division of Fisheries and Wildlife 2006, p. 107), because its status in the State is unclear, it is a species of regional conservation concern, a Species of Special Concern, and a Species of Greatest Conservation Need in the Massachusetts Comprehensive Wildlife Conservation Strategy (Massachusetts Division of Fisheries and Wildlife 2006, pp. 137, 274, 292, 343, 348). There is a closed season on the hunting, fishing, taking and possession of northern leopard frogs in Massachusetts (Massachusetts Division of Fisheries and Wildlife 2002, p. 1). NatureServe ranks the northern leopard frog in Massachusetts as S3/S4 (Vulnerable/Apparently Secure) (NatureServe 2011, p. 1).

The Michigan Department of Natural Resources describes the northern leopard frog's distribution in Michigan as unknown, but considered patchy, and notes that it appears to be declining based upon the lack of reports compared to historical records from the current Frog and Toad Surveys (Eagle *et al.* 2005, Species of Greatest Conservation Need, p. 152; Smith and Keinath 2007, p. 14). The northern leopard frog is a Species of Greatest Conservation Need in Michigan's Wildlife Action Plan (Eagle *et al.* 2005, p. 20 in Aquatic Threats by Species of Greatest Conservation Need), but is ranked by NatureServe as S5 (Secure) (NatureServe 2011, p. 1). In Michigan, an all-species fishing license is required to take northern leopard frogs for personal bait use (Michigan Department of Natural Resources 2011, p. 9).

The northern leopard frog is a Species of Concern in New Hampshire and ranked as S3 (Vulnerable) by NatureServe (2011, p. 1). Possession of northern leopard frogs in New Hampshire is prohibited without a permit (New Hampshire Fish and Game Department 2011, p. 1). Distribution records from 1992 to 2004 were verified for Coos, Merrimack, Rockingham, and Sullivan Counties; reports from a number of other towns have not been verified with a voucher photograph or specimen (New Hampshire Fish and Game Department 2005, p. A–209). Throughout the area that the ranges of northern leopard frogs and pickerel frogs (*Lithobates palustrus*) overlap, it is important to verify distribution records via a photograph or a specimen as northern leopard frogs are commonly confused with pickerel frogs. New Hampshire is the only State we found that appears to require this information for distribution records. Based upon this information, it is likely that the current distribution of northern leopard frogs in New Hampshire is unknown.

The northern leopard frog is not identified as species of greatest conservation need or a species of concern in the Comprehensive Wildlife Conservation Strategy for New York (New York Department of Environmental Conservation 2005, p. 73), and NatureServe (2011, p. 1) ranks the northern leopard frog as S5 (Secure). Persons holding a freshwater fishing license or combined hunting and fishing license (including those entitled to fish without a license) may take northern leopard frogs for personal bait use (except in New York City, Suffolk County, and Nassau County), and frogs may be imported, bought, and sold at any time (New York Department of Environmental Conservation 2010, pp. 10–11, 16). The northern leopard frog distribution map for New York shows it having a very wide distribution throughout the State (New York Department of Environmental Conservation 2011, p. 1), but local herpetologists have reported declines throughout New York (O'Donnell 2011, pers. comm.). It is likely that the current abundance and population trends for northern leopard frogs in New York are unknown (Smith and Keinath 2007, p. 14).

The northern leopard frog is broadly distributed throughout Ohio and is considered to be secure by the Ohio Department of Natural Resources, Division of Wildlife (2005, pp. 125, 138, 143) and other sources (Smith and Keinath 2007, p. 14). Currently, NatureServe does not have a ranking for Ohio (NatureServe 2011, p. 1). In Ohio, a permit is required to possess northern leopard frogs (Ohio Revised Code 1531.02). Walker (1946, p. 88) described the northern leopard frog as being one of the most abundant frogs in Ohio. It is still considered to be locally abundant, but it does appear to be declining where wetlands have been drained. The range appears to be contracting in the southeastern counties where extensive field efforts have yielded few recent records (Ohio Frog and Toad Calling Survey 2011, p. 1).

The current distribution, abundance, and population trend for northern leopard frogs in Pennsylvania is unknown (Smith and Keinath 2007, p. 14; Gipe 2011, pers. comm.). The Comprehensive Wildlife Conservation Strategy states that there has been a reduction in the northern leopard frog's range, and although it was previously common in Pennsylvania and the northeast, it is suspected that it has significantly declined in recent years (Pennsylvania Game Commission and

Pennsylvania Fish and Boat Commission 2005, p. 10–41). The northern leopard frog is considered a Priority Conservation Tier 5 Species, and the need for a long-term monitoring program is identified (Pennsylvania Game Commission and Pennsylvania Fish and Boat Commission 2005, p. 10–41). This conservation priority tier represents species that are fairly secure in Pennsylvania, but for which the Pennsylvania Biological Survey recommends some level of management attention. NatureServe (2011, p. 1) ranks the northern leopard frog in Pennsylvania as S2/S3 (Imperiled/Vulnerable). The collection of one northern leopard frog per day from Pennsylvania waters requires a fishing license, but a license is not required to take a frog from land (Pennsylvania Fish and Boat Commission 2011, pp. 1–2).

The northern leopard frog is a Species of Greatest Conservation Need and ranked by NatureServe as S2 (Imperiled) in Rhode Island (Rhode Island Department of Environmental Management, Division of Fish and Wildlife 2005, p. 24; NatureServe 2011, p. 1). Rhode Island currently has one small population of northern leopard frogs on an island; several other populations have been extirpated in recent years (O'Donnell 2011, pers. comm.). The removal from the wild, for any purposes, of northern leopard frogs is prohibited in Rhode Island, except by special permit (Rhode Island Department of Environmental Management, Division of Fish and Wildlife 2011, p. 38).

The Vermont Fish and Wildlife Department considers the northern leopard frog to be secure in Vermont (Kart *et al.* 2005, p. 1 Secure Species Summary; NatureServe 2011, p. 1). The species is distributed along the western edge of Vermont and then scattered populations are documented throughout the rest of the State (Kart *et al.* 2005, Distribution Map). Collection of northern leopard frogs for scientific research, education purposes, or for the purpose of using them as the subjects of art or photography is authorized through issuance of a scientific collection permit; other collections or take are authorized by Commissioner Letter with a valid hunting license (Vermont Fish and Wildlife Regulations Title 10, Chapter 1, Section 25).

The West Virginia Natural Heritage Program and NatureServe list a State rank of S2 (Imperiled) for the northern leopard frog (West Virginia Natural Heritage Program 2007, p. 11; NatureServe 2011, p. 1). The species is also listed as a Species in Greatest Need of Conservation (West Virginia Division of Natural Resources 2005, pp. 4F–Habitats-20, 5F–49, 5F–56). Statewide surveys were conducted between March 2008 and April 2009 to determine the status and distribution of northern leopard frogs in West Virginia (Spriggs 2009, p. 17). Surveys of 70 sites found only four occupied sites and only one of the sites constituted a breeding population (only single adult or juvenile frogs were located at the three other locations) (Spriggs 2009, pp. 38–39). In 2010, surveyors searched for northern leopard frogs at the known breeding population at Greenbottom Wildlife Management Area, West Virginia (including one day with four experienced surveyors), and found only one dead northern leopard frog (O'Donnell 2011, pers. comm.). Based upon Statewide survey data collected, Spriggs (2009, p. 29) recommended that the northern leopard frog NatureServe rank be changed to S1 (Critically Imperiled).

Canada

Historically, the northern leopard frog ranged across Canada from British Columbia to Nova Scotia. Canada represents approximately half of the current range of the northern leopard frog based on an estimation of land area in the United States and Canada. Within Canada, the northern leopard frog's range includes small to large portions of the area within the Northwest Territories, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland. The distribution of northern leopard frogs in western Canada is more closely tied to major river drainages than is the species' distribution in eastern Canada (Seburn and Seburn 1998, p. 9).

The northern leopard frog is uncommon in the Northwest Territories and is historically known from nine sites (Fournier 1997, p. 104). These historical locations encompass a small area between the northern borders of Alberta and Saskatchewan and the southern border of Great Slave Lake (Weller and Green 1997, p. 323). Since 1980, a few frogs have been reported from three sites (Seburn and Seburn 1998, p. 6). The northern leopard frog is considered rare within this restricted range, and a lack of data precludes any determination of a population trend (Fournier 1997, p. 104). The northern leopard frog is not ranked in the Northwest Territories by NatureServe (NatureServe 2011, p. 1).

In British Columbia, the northern leopard frog historically occurred in the Kootenay and Columbia River valleys and in the Rocky Mountains east of Fernie (Seburn and Seburn 1998, p. 6). Currently, there is one native northern leopard frog population remaining at the Creston Valley Wildlife Management Area (estimated population less than 60 adults), plus one introduced population that has likely been extirpated (Committee on the Status of Endangered Wildlife in Canada 2009, pp. 42–43). The British Columbia (or Rocky Mountain) population is listed as Endangered under the Species at Risk Act (Statues of Canada 2002, c.29), which provides protection similar to that of the Endangered Species Act in the United States. The northern leopard frog is also on the provincial Red List and is listed as Endangered under British Columbia's Wildlife Act (Revised Statutes of British Columbia 1996, c. 488). The northern leopard frog is ranked as critically imperiled (S1) (NatureServe 2011, p. 1) in British Columbia.

Historically, northern leopard frogs were widely distributed and locally abundant in central and southern Alberta, and in the extreme northeastern region of the province (Alberta Northern Leopard Frog Recovery Team 2005, p. 3). Beginning in 1979, the northern leopard frog disappeared suddenly from much of its range in Alberta (Roberts 1992, p. 14; Seburn and Seburn 1998, p. 10). All previously known populations in central Alberta are no longer present, and to the south, populations have disappeared or are restricted to small, fragmented habitats with limited opportunity for dispersal (Roberts 1992, p. 14). In 1990–1991 and 2000–2001, province-wide surveys were conducted to determine the distribution of northern leopard frogs in Alberta. In the first survey, 24 sites were found to be occupied; the more recent survey found that of 269 historical sites surveyed, only 54 supported northern leopard frogs (Alberta Northern Leopard Frog Recovery Team 2005, p. 4). Currently, the northern leopard frog is thought to occur in about 20 percent of historically occupied areas in Alberta (Wilson *et al.* 2008, p. 864), and the NatureServe ranking is S2/S3 (imperiled/vulnerable) (NatureServe 2011, p. 1). The species is listed as Threatened under Alberta's Wildlife Act (Revised Statutes of Alberta 2000, Chapter W–10), and a recovery plan was prepared in 2005 (Alberta Northern Leopard Frog Recovery Team 2005).

Historically, northern leopard frogs were considered to be widespread and abundant in Saskatchewan (Seburn 1992, p. 18). However, the northern leopard frog experienced significant declines in the 1970s and is now absent

throughout most of its historical range (Didiuk 1997, p. 112; Weller and Green 1997, p. 323). Currently, the number of northern leopard frog populations in Saskatchewan is unknown, and there is no data to evaluate the population trends (Didiuk 1997, p. 112). Anecdotal information indicates that populations may be recovering (Seburn 1992, pp. 17–18), but declines and die-offs have also been reported and the overall population status is unknown (Committee on the Status of Endangered Wildlife in Canada 2009, p. 29). The current range of the northern leopard frog within Saskatchewan is thought to be discontinuous, and the majority of occurrences are in the very southern portion of the province (Saskatchewan Conservation Data Center 2006, p. 1). The northern leopard frog is currently on Saskatchewan's Interim Species at Risk List (Wildlife Act 1998, Chapter W–13.12), and is protected in provincial and national parks (Committee on the Status of Endangered Wildlife in Canada 2009, p. vi). The NatureServe rank for the northern leopard frog in Saskatchewan is S3 (Vulnerable) (NatureServe 2011, p. 1).

In Manitoba, northern leopard frogs suffered a significant die-off from 1975–1976, and within a year were absent from previously known population cores (Koonz 1992, p. 19; Committee on the Status of Endangered Wildlife in Canada 2009, p. 29). Since this time, populations have increased in some areas and remained extremely low in others (Koonz 1992, p. 20). Northern leopard frogs are not monitored in Manitoba and the current number and distribution of extant populations is not known (Committee on the Status of Endangered Wildlife in Canada 2009, p. 29). The current NatureServe rank for the northern leopard frog in Manitoba is S4 (secure) (NatureServe 2011, p. 1).

The northern leopard frog is thought to be common, widespread, and secure throughout southern and central Ontario, with sparse distribution in the north (Weller and Green 1997, p. 323; NatureServe 2011, p. 1). The species is currently listed as ''Not at Risk'' under the Ontario Endangered Species Act of 2007 (Statutes of Ontario 2007, Chapter 6) and under the Canadian Species at Risk Act (Ontario Nature 2011, p. 2). However, as with many parts of Canada, northern leopard frog populations have declined precipitously, particularly in northern and southwestern Ontario (Hecnar 1997, p. 9; Seburn and Seburn 1998, p. 10; Committee on the Status of Endangered Wildlife in Canada 2009, p. 29; Desroches *et al.* 2010, pp. 308–309). Although the widespread declines of the 1970s did not occur in Ontario as they did in the provinces to the west, relatively recent mass mortality events resulting from ranavirus have been documented in Ontario (Greer *et al.* 2005, p. 11; Committee on the Status of Endangered Wildlife in Canada 2009, p. 29). A 4-year study in the eastern and central regions of the province found declines of 23 percent (1992–1993) and 5 percent (1993–1994) in abundance of northern leopard frogs (Hecnar 1997, pp. 9, 11; Committee on the Status of Endangered Wildlife in Canada 2009, p. 29). Regional declines of northern leopard frogs have also been documented in southern Ontario, including the southern Great Lakes Region (Committee on the Status of Endangered Wildlife in Canada 2009, pp. 29–30). Hecnar (1997, p. 11) notes, ''Anecdotal reports suggest that *R. pipiens* is the most abundant frog in the Essex Plain. During this study (1992–1993), *R. pipiens* declined in occurrence across all regions of southwestern Ontario.''

The northern leopard frog is widely distributed throughout the southern region of Quebec, with sparse populations in the central region of the province (Weller and Green 1997, p. 323). Weller and Green (1997, p. 323) note that there is no evidence of historic or recent declines in Quebec, but Gilbert *et al.* (1994, p. 468) found lower densities of northern leopard frog egg masses than reported in Wisconsin and anecdotal declines of northern leopard frogs in the Richelieu River system of Quebec. Bonin (1992, p. 24) states that trends in northern leopard frog populations in Quebec are not known based upon data collected for the Amphibian and Reptile Atlas. In addition, Desroches *et al.* (2010, pp. 308–309) found that the northern leopard frog was uncommon on the Quebec side of James Bay.

In New Brunswick, the northern leopard frog is distributed throughout the province and populations are thought to be secure (S5 NatureServe rank) (McAlpine 1997, p. 123; Weller and Green 1997, p. 323; NatureServe 2011, p. 1). The northern leopard frog occurs throughout mainland Nova Scotia and Cape Breton Island and is considered to be secure (S5 NatureServe rank) with no evidence of declines (Weller and Green 1997, p. 323; NatureServe 2011, p. 1). On Prince Edward Island, the northern leopard frog status is apparently secure (S4) or secure (S5) (NatureServe 2011, p. 1).

In Newfoundland, the northern leopard frog was introduced to the western side of the island on several occasions, but is no longer present (Buckle 1971, p. 74; Maunder 1997, p. 94). The species is at the edge of its range in Labrador, but occurs in a few, discrete locations that are apparently secure (Committee on the Status of Endangered Wildlife in Canada 2009, p. 30; NatureServe 2011, p. 1).

Summary

In summary, the northern leopard frog appears to be absent or declining throughout a large portion of its historical and current range in the western United States and western Canada (Rorabaugh 2005, pp. 570–571). The species generally tends to be more abundant and more secure in the eastern portion of its range, but there are indications that local, and possibly regional, declines may also be occurring in the eastern United States (such as in Connecticut, Indiana, Kentucky, Maine, Massachusetts, Michigan, New Hampshire, Rhode Island, and West Virginia) as well. Historically, regional declines in the western United States and Canada occurred in the 1960s through 1970s, and since this time the northern leopard frog has either not recovered in many of these areas (such as in Alberta, Arizona, British Columbia, Colorado, Idaho, western Montana, Nevada, New Mexico, Oregon, Texas, Washington, and western Wyoming) or the status of that recovery is unknown due to a lack of information regarding changes in the number of sites occupied across the species' range over time (such as in Manitoba, Minnesota, Saskatchewan, and Utah). Occupancy trend data are also lacking throughout much of the western and eastern portions of the northern leopard frog's range where the northern leopard frog's status appears to be stable or where it is unknown (such as in Iowa, Illinois, Nebraska, New York, North Dakota, Ontario, Pennsylvania, South Dakota, and Wisconsin), and as such, the overall range status is likely unknown. However, despite the lack of occupancy trend data, information indicates that in the eastern United States and eastern Canada, the northern leopard frog is still widespread and relatively common.

Distinct Vertebrate Population Segment

We consider a species for listing under the Act if available information indicates such an action might be warranted. ''Species'' is defined by the Act as including any subspecies of fish or wildlife or plants, and any distinct population segment (DPS) of any species of vertebrate fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). We, along with the National Marine Fisheries Service (now the National Oceanic and Atmospheric Administration—Fisheries), developed

the Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722; February 7, 1996), to help us in determining what constitutes a DPS. The policy identifies three elements that are to be considered regarding the status of a possible DPS. These elements include: (1) The discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (*i.e.,* is the population segment, when treated as if it were a species, is endangered or threatened?) (61 FR 4722; February 7, 1996). The first two elements are used to determine if a population segment constitutes a valid DPS. If it does, then the third element is used to consider whether such DPS warrants listing. In this section, we will consider the first two criteria (discreteness and significance) to determine if the western northern leopard frog is a valid DPS (*i.e.,* a valid listable entity). Our policy further recognizes it may be appropriate to assign different classifications (*i.e.,* threatened or endangered) to different DPSes of the same vertebrate taxon (61 FR 4722; February 7, 1996).

Discreteness

Under the DPS policy, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following two 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 (separation based on genetic or morphological characters) may provide evidence of this separation.

(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 Act.

Marked Separation

In our evaluation of discreteness under the DPS policy, we primarily used the results of two recent genetic studies (Hoffman and Blouin 2004a, pp. 145–159; O'Donnell *et al.* 2011, pp. 1–11) to evaluate whether any populations of the northern leopard frog should be considered markedly separate. We based our determination on these two studies because they provided comprehensive data on the genetic variation across the range of the species. The petition to list a ''western DPS'' of the northern leopard frog was mainly based on the genetic information and conclusions from the study by Hoffman and Blouin (2004a). There has since been an additional genetic study conducted on the species by O'Donnell *et al.* (2011) that we also used in this 12-month finding. We found no other relevant information regarding the other factors to consider in evaluating population discreteness, such as physical, physiological, ecological, or behavioral factors, or morphological characters. We therefore focused our analysis on these two genetic studies in determining whether the best available information supports that there are discrete populations of the northern leopard frog that would be considered markedly separate under our DPS policy.

Hoffman and Blouin (2004a) reported two different lineages (lines of descent from a common ancestor) of mitochondrial DNA (mtDNA) haplotypes in northern leopard frogs. Analyzing mtDNA data is one way to measure the genetic variation within a species. When mtDNA lineages are geographically localized and separated by geographic barriers, this information can be used to identify evolutionarily separate units when it is used in combination with patterns displayed by other genetic markers (Avise 2004, p. 301). A haplotype refers to a set of closely linked genetic markers present on one chromosome that tend to be inherited together. The more similar these genetic markers, or haplotypes, are in a given sample of frogs, the more closely related those frogs are likely to be (with the opposite also being the case). This study (Hoffman and Blouin 2004a, p. 152) showed haplotypes of mtDNA genetic markers grouping into a ''western'' lineage, occurring mostly west of the Mississippi River and Great Lakes region in the United States and Canada, and an ''eastern'' lineage, occurring to the east of this area.

The initial study by Hoffman and Blouin (2004a, pp. 146, 150) found that on a broad scale the eastern and western haploypes have diverged for approximately 2 million years, indicating that the western and eastern lineages have likely been separate to some degree for a long time period, with secondary contact following Pleistocene glaciation events that occurred in North America (Hoffman and Blouin 2004a, p. 152). The overall differences were measured at approximately 4 percent sequence divergence, and this amount of mtDNA divergence is considered to be relatively high and is comparable to the differences found between some other recognized ranid frog species (Jaeger *et al.* 2001, p. 344; Hoffman and Blouin 2004a, p. 152). Hoffman and Blouin (2004a, p. 152) note that mtDNA divergence alone is not enough evidence to split eastern and western lineages into separate species and that more taxonomic work (such as research regarding nuclear genetic markers, morphology, and behavior) is needed before such a taxonomic revision would be justified. The results of this study indicated important genetic differences broadly between northern leopard frogs in the eastern and western portions of North America. However, additional data were needed to determine if the ''western'' lineage represented a separate population of the species.

Although a preliminary administrative report, the recent O'Donnell *et al.* (2011) study report by the U.S. Geological Survey was peer-reviewed and presents the findings of a robust analysis of the genetic variation of the northern leopard frog across its range in North America. The study replicated the earlier mtDNA analysis but had larger sample sizes (20–24 individuals per sample compared with 12 individuals per sample at most sample localities) and had more sample locations in the area of contact between the eastern and western lineages. In addition, it also included nuclear gene sequencing as well. Nuclear genetic sequences provided an additional way to measure genetic variation in populations of the northern leopard frog. Because of its maternal (mother to daughter) pattern of inheritance, mtDNA is inherited only as a single genetic unit and has some limits in value for evaluating recent and localized relationships within a species. However, DNA sequences from multiple nuclear genes provided more information from additional genetic makers. This is an important distinction because identification of geographic subdivisions, like judging population distinction in the case of this analysis of the northern leopard frog, depends on the related geographic patterns of different genetic markers (Avise 2004, p. 303).

The study by O'Donnell *et al.* (2011) was specifically designed to look at the genetic relationships of the species and to supplement the results of Hoffman and Blouin (2004) by increasing the number of samples in the area of probable overlap of the two lineages in the upper Midwest of the United States. The analysis for one mtDNA gene produced similar results to that of the earlier study—with strong divergence between east and west lineages and a narrow area of overlap (O'Donnell *et al.*

2011, pp. 2–3). However, the study also analyzed DNA from four nuclear genes. These nuclear genetic data still indicated deeply divergent eastern and western lineages of the northern leopard frog. However, and most importantly for our DPS analysis, the results of the nuclear data showed a broad zone of introgression between the two areas (in other words, a mixing of haplotypes) (O'Donnell *et al.* 2011, p. 10). We considered this large zone of introgression as the primary reason that a potential western population of the northern leopard frog is not considered markedly separate from other populations of the species.

So to determine whether these two lineages should be considered markedly separate populations and be considered discreet under our DPS policy, we looked at the relative amount of overlap in the distribution of northern leopard frogs that contain haplotypes from the eastern and western lineages. Hoffman and Blouin (2004a, pp. 147, 152, 155) found that the distributions of eastern and western haplotypes meet roughly at the Mississippi River and Great Lakes region, initially indicating that these geographic features may serve as physical barriers separating the eastern and western lineages. However, the additional nuclear genetic data from O'Donnell *et al.* (2011, p. 10) discussed above indicate the eastern and western lineages are not separated along these geographic features. Hoffman and Blouin (2004a, pp. 147, 152) also found some areas of co-occurrence of haplotypes of both lineages in Ontario, Canada, and indicated that this is likely the result of more recent (during the current interglacial period in North America) secondary contact between eastern and western lineages that were formerly separated. In addition, O'Donnell *et al.* (2011) reveal that the haplotype mixing evident in the nuclear analyses is more likely associated with introgression and that more research is needed to clearly explain the pattern of haplotype mixing. The full extent of current contact (and presumably gene flow from interbreeding) between northern leopard frogs with eastern and western haplotypes could not be evaluated in detail as a part of earlier study because there were only a few sample sites from the likely areas of contact in Wisconsin, Michigan, and western Ontario and limitations due to small sample sizes. Further, there are multiple factors that may be responsible for the co-occurrence of frogs with eastern and western haplotypes, for example, it is possible that the mixing of haplotypes between the east and west in the overlap zone may be attributable in part to the anthropogenic movement of individuals associated with the trade in northern leopard frogs that has taken place in this area since at least the 1950s (Gibbs *et al.* 1971, p. 1027; Collins and Wilbur 1979, p. 17).

Hoffman and Blouin (2004a, pp. 150–151) also found one individual frog (from a sample of 10) from Arizona with an eastern haplotype. They suggested this haplotype is likely not from a native frog, but from a released pet or laboratory animal. It is reasonable to believe it was a released eastern frog, or a descendant of one, because there is commercial trade in leopard frogs and tadpoles transported to pet stores, laboratories, and schools throughout the United States and Canada for recreational and scientific uses (Fisher and Garner 2007, p. 3). Their supposition is also supported by specific genetic research regarding this Arizona population of northern leopard frogs, which found haplotypes of mtDNA consistent with frogs from extreme eastern North America (from New York, New England, and adjacent areas of Quebec and Ontario) widespread in the Stoneman Lake area of northern Arizona (Theimer *et al.* 2011, p. 32).

The relatively small sample sizes (about 12 individuals were used for most sample localities) were a disadvantage of the Hoffman and Blouin (2004a, Appendix pp. 1–8) study in evaluating genetic variation across a narrow part of the range. While these sample sizes were useful for looking at broad patterns of geographic variation (which was the object of the study), they were less useful in answering our question of separation, because of their limited power for detecting haplotypes that may occur at low frequencies and there were few sample sites in the area of suspected overlap. The small differences in the amount of genetic variation at specific locations are important because even haplotypes at low frequencies can help us understand the relationships between the eastern and western lineages of northern leopard frogs and inform our determination of whether the western lineage is a markedly separate population. The O'Donnell *et al.* (2011, pp. 2–9) study utilized larger sample sizes and provides a level of detail more appropriate and helpful to evaluate similarities and differences in western and eastern lineages.

The results of O'Donnell *et al.* (2011, pp. 2–9) indicated that neither the Mississippi River nor the Great Lakes are acting as a physical barrier between western and eastern lineages of northern leopard frogs. The existence of western haplotypes in northern leopard frog populations located east of the Mississippi River and of eastern haplotypes in northern leopard frog populations located both north and south of the Great Lakes does not support a marked separation between eastern and western northern leopard frogs. Although the nuclear genetic sequences continue to show east-west trends in different haplotypes (supporting the mtDNA data of east-west differences), these nuclear data also indicate that western haplotypes (from frogs in the west) occur in frogs much farther to the east than the mtDNA data indicated. Western haplotypes of some of the nuclear genes were found extending east of the Mississippi River to the eastern end of the Great Lakes in New York (O'Donnell *et al.* 2011, pp. 6–8), and eastern haplotypes of some of the nuclear genes were found as far west as Nebraska (O'Donnell *et al.* 2011, p. 9). This area of overlap of haplotypes spans roughly 1,900 km (1,200 mi) from east to west across North America.

This broad co-occurrence of haplotypes of nuclear genes, as well as the more gradual geographic trends in haplotype distributions (O'Donnell *et al.* 2011, pp. 4–9), indicates there is not a marked separation between eastern and western lineages of the northern leopard frogs. The overlap in genetic markers across the midwestern United States leads us to conclude that there is no physical barrier or other processes keeping northern leopard frogs in the western part of the range discrete from the frogs in the eastern part of the range. Ongoing genetic analyses (such as microsatellite allele frequency analyses) will likely provide additional information regarding geographic patterns of genetic variation in northern leopard frogs (O'Donnell *et al.* 2011, p. 10), but these data are not currently available. Therefore, based upon the genetic information presented above (Hoffman and Blouin 2004a, pp. 145–159; O'Donnell *et al.* 2011, pp. 1–10), there does not appear to be marked separation between possible eastern and western populations of northern leopard frogs. We do recognize that this lack of a marked separation between the eastern and western populations may be a result of a variety of factors, including the anthropogenic movement of individuals for the trade in northern leopard frogs, but at this time, we do not have data supporting this claim. Because the potential eastern and western populations are not markedly separate, they are not considered discrete under

the DPS policy. Based upon the best available information, we conclude that the potential western U.S. population of northern leopard frog is not genetically discrete, in other words not markedly separate, from other northern leopard frogs.

International Border

In order to determine that the populations of northern leopard frog in the western United States are a DPS, we must have found that the western United States populations were discrete from populations in the eastern United States and that the western United States populations were discrete from population in Canada. The DPS policy allows us to use international borders to delineate the boundaries of a DPS if there are differences in control of exploitation, conservation status, or regulatory mechanisms between the countries. However, because we do not have a discrete east-west boundary of the potential DPS, we did not conduct further analysis regarding the northern boundary of the potential DPS between Canada and the United States.

Evaluation of Discreteness

The information discussed in the preceding section provides information on the geographic patterns that we evaluated to determine that the genetic information does not indicate that northern leopard frogs from the western United States are markedly separate from other populations of the northern leopard frog.

We note that our application of the DPS policy does not require absolute reproductive isolation as a prerequisite to recognizing the discreteness of a population segment. The presence of a small degree of sharing of genetic markers would not necessarily preclude us from concluding that there is discontinuity between populations and that they were markedly separated. However, in this case of the northern leopard frog, we do not have the information to make such an evaluation of whether or not the two populations are actually reproductively isolated. Although the genetic patterns indicate discontinuity in eastern and western mtDNA and nuclear haplotypes, the available genetic data do indicate there is more than a small degree of sharing of genetic markers. Rather than a small degree of shared markers, we found a broad extent of introgression that has western haplotypes of some nuclear genes occurring in samples of northern leopard frogs as far as New York. Therefore, because of the large area of overlap in haplotypes indicating no apparent barrier between the two lineages, we conclude at this time based on the best available scientific data that there is not marked separation between the western and eastern U.S. populations. This does not mean that the western and eastern populations of northern leopard frogs, as has been suspected for many years, are not unique and do not have significant conservation value. It simply means that, per our policy, the best available data at this time do not support a marked separation between the two populations, based on genetics and other information available to us.

In conclusion, based on our review of the best available information and pursuant to our DPS policy, we find that the western U.S. populations of northern leopard frog are not discrete from other populations of northern leopard frogs.

Significance

Under our DPS Policy, once we have determined that a population segment is not discrete, we do not need to consider whether that population segment is significant.

Conclusion

On the basis of the best available information, we determined that the western U.S. population of the northern leopard frog is not discrete in relation to the other populations of northern leopard frog. Therefore, we find that the western U.S. populations of northern leopard frog do not represent a valid DPS.

Having determined that the western U.S. populations of northern leopard frog are not a valid DPS, we proceed below with an analysis of threats for the northern leopard frog throughout its range.

Summary of Information Pertaining to Five Factors

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making this finding, information pertaining to the northern leopard frog in relation to the five factors provided in section 4(a)(1) of the Act is discussed below.

In considering what factors might constitute threats to a species we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to that factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and, during the status review, we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined in the Act. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that these factors are operative threats that act on the species to the point that the species may meet the definition of endangered or threatened under the Act.

Due to the wide geographic range of the northern leopard frog, and the diversity of habitat types which it occupies throughout its range, there are a wide variety and relatively large number of factors that have the potential to impact the species. However, these factors may result in impacts at the individual, population, or species scale, and may have a variety of effects from minor habitat degradation to complete habitat loss and mortality. As such, it is important to consider the magnitude and extent of impacts when assessing the factors affecting a species, and we attempt to provide this context throughout our discussions below.

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

A number of hypotheses, including habitat loss, have been proposed for global amphibian declines (Blaustein *et al.* 1994, p. 61; Collins and Storfer 2003, pp. 90–94; Stuart *et al.* 2004, p. 1783; Green 2005, p. 28). In our review of the best scientific and commercial data available, impacts that are potentially affecting northern leopard frogs and their habitats throughout their range include habitat destruction, habitat fragmentation, and habitat degradation resulting from development, modification, and loss of wetland habitat. Because the northern leopard

frog, an amphibian, depends upon breeding ponds, upland foraging areas, overwintering aquatic habitats, and connectivity between these habitats across the landscape, it is very susceptible to the destruction (defined as complete loss of all or part of the frog's necessary habitat), fragmentation (isolation of all or part of the frog's necessary habitat without its alteration or destruction), and degradation (the deleterious alteration of all or part of the frog's necessary habitat) of its habitat (Green 2005, p. 28).

The destruction and degradation of northern leopard frog habitat has been widespread and has affected, and continues to affect, the species to some extent throughout its range (Maxell 2000, p. 15; Hitchcock 2001, pp. 64–66; Rorabaugh 2005, p. 576; Clarkson and Rorabaugh 1989, p. 535; Smith 2003, pp. 26–31). Habitat destruction and degradation is reported to be the primary threat to all ranid and lithobatid frogs in the United States (Bradford 2005, p. 923) and a principal cause of decline of northern leopard frogs in the western United States and Canada (Smith 2003, p. 4; Alberta Northern Leopard Frog Recovery Team 2005, p. 6; Rorabaugh 2005, p. 571; Committee on the Status of Endangered Wildlife in Canada 2009, p. 32). Factors with the potential to impact northern leopard frog habitat include wetland loss, agricultural development, livestock grazing, urban development, oil and gas development, forest management, roads, groundwater withdrawal, and air pollution. Below we present information about these factors and discuss the magnitude and extent of the impacts from these factors on the northern leopard frog.

Wetland Loss

As a species with aquatic and semi-aquatic life-history phases, freshwater wetland habitat is an extremely important component of northern leopard frog habitat. In order to discuss the different actions that result in destruction or modification of northern leopard frog habitat, it is important to understand what is known about the current overall status of wetlands throughout the range of the northern leopard frog.

It has been estimated that 53 percent of the Nation's former wetland area was lost from the 1780s to the 1980s (Dahl 1990, p. 5). In terms of States where the northern leopard frog occurs, Minnesota (42 percent loss), Maine (20 percent loss), Michigan (50 percent loss), and Wisconsin (46 percent loss) have the most remaining wetland area compared to historical times (Dahl 1990, p. 5). New Hampshire (9 percent loss) was the only State in the range of the northern leopard frog that lost less than 20 percent of its original wetland acreage (Dahl 1990, p. 5). California (91 percent loss), Connecticut (74 percent loss), Illinois (85 percent loss), Indiana (87 percent loss), Iowa (89 percent loss), Kentucky (81 percent loss), Missouri (87 percent loss), and Ohio (90 percent loss) lost over 70 percent of their original wetland acreage (Dahl 1990, pp. 5–6). The remaining States within the range of the northern leopard frog had estimated wetland losses ranging from 20 percent to 60 percent (Dahl 1990, p. 6).

Dahl (1990, p. 10) noted that wetland area in the lower 48 States had declined to the point that ''environmental, and even socio-economic benefits (ground water supply, water quality, shoreline erosion, floodwater storage, trapping of sediments, and climatic change) are now seriously threatened.'' The destruction and degradation of wetland and riparian habitat is thought to represent the most widespread impact to northern leopard frog populations in Arizona (Arizona Game and Fish Department 2009, p. 1), Colorado (Colorado Division of Wildlife 2009, p. 2), Idaho (Idaho Department of Fish and Game 2005), Montana (Montana Fish Wildlife and Parks 2009, p. 2), Nevada (Nevada Department of Wildlife 2009, p. 4), New Mexico (New Mexico Department of Game and Fish 2009, p. 3), North Dakota (North Dakota Game and Fish Department 2009, p. 2), Utah (Utah Department of Wildlife Resources 2009, pp. 2–3), Wisconsin (Wisconsin Department of Natural Resources 2009, p. 1), Connecticut (Klemens 2000, p. 1), Indiana (Indiana Department of Natural Resources 2006, p. 113), Kentucky (Kentucky Department of Fish and Wildlife Resources 2010, p. 27), Maine (Maine Department of Natural Resources 2005, p. 90), Massachusetts (Massachusetts Department of Fish and Wildlife 2006, pp. 276, 292, 328), Michigan (Eagle *et al.* 2005, Threats p. 20), New Hampshire (New Hampshire Fish and Game Department, p. A–210), New York (New York Department of Environmental Conservation 2005, pp. 57–58), and Rhode Island (Rhode Island Department of Environmental Management, Division of Fish and Wildlife 2005, p. 22).

While the total wetland losses in the United States are significant, the information regarding status and trend of wetlands only looks at total losses and gains of wetland area; there is no comprehensive data assessing trends in the quality or function of lost wetlands (Dahl 2006, p. 74). Therefore, we do not know how much of the lost wetland habitat would have naturally functioned as northern leopard frog habitat. In short, while the extent of wetland losses is broad and widespread throughout the range of the species, we are unable to assess the magnitude or severity of impact of these losses at the species scale. There have most likely been losses of northern leopard frog habitat concurrent with these wetland losses, but large areas of wetland remain intact in many States, particularly in the eastern portion of its range in the United States. Further, the data above address total change in wetland area without reference to the causes of the losses; thus it is difficult to relate past losses to future losses in this context. Ongoing impacts to northern leopard frog habitats will be discussed more specifically in the following sections.

Since the late 1980s, creation of new wetland area has occurred, although the rate of replacement area is much slower than the historical loss rate (Dahl 1990, p. 5). Data collected from 1998 to 2004 indicate that for the first time since uniform monitoring began, wetland creation actions resulted in a larger net gain of wetlands than net loss of wetlands during this time period (Dahl 2006, p. 15). However, the location and types of wetlands that represent this gain in wetland acres has not necessarily resulted in the creation of northern leopard frog habitat. In terms of location, a majority of the wetland areas gained were created in the southeast, particularly in Florida, which is outside the range of the northern leopard frog (Dahl 2006, p. 62). Further, review of created ponds from 1986 to 1997 indicates that only 2 percent of these ponds were reclassified as vegetated wetlands; most created ponds are designed and maintained to function as open water basins—deep waters with little vegetated shoreline and steep slopes—that are not conducive to northern leopard frog breeding, foraging, or dispersal (Hine *et al.* 1981, p. 12; Leja 1998, p. 351; Semlitsch 2000, p. 624). All of the created ponds that Dahl (2006, pp. 76–78) noted were manmade farm ponds, freshwater fishing ponds, detention ponds, and aquaculture ponds. Deepwater lakes and reservoirs also increased in area over this time period (typically associated with urban development) (Dahl 2006, p. 78). Many of these ponds or open water bodies are not an equivalent replacement for vegetated wetlands (Dahl 2006, p. 76), and although they count towards the total of wetland area in the conterminous United States, they do not necessarily indicate a gain in northern

leopard frog habitat, particularly if water quality, vegetation, and native species are not objectives for the created wetland.

In Canada, wetland loss has also occurred throughout the range of the northern leopard frog. Wetland habitat quality is considered to be a limiting factor for the one remaining northern leopard frog population in British Columbia (Committee on the Status of Endangered Species in Canada 2009, p. 16). It is estimated that approximately 60 percent of basins and 80 percent of wetland margins in the 1980s in southern Alberta were degraded and that local extirpations of northern leopard frogs likely occurred as a result (Alberta Northern Leopard Frog Recovery Team 2005, p. 6). By 1990, approximately 20 percent of prairie wetlands that likely functioned as northern leopard frog habitat in Manitoba were lost (Committee on the Status of Endangered Species in Canada 2009, p. 17). Similar patterns of significant wetland loss have occurred in southern Ontario and southern Quebec. Historically, 69 percent of southwestern Ontario consisted of wetlands; however, it is estimated that as much as 90 percent of southwestern Ontario wetlands no longer exist (Committee on the Status of Endangered Species in Canada 2009, p. 17). Again, similar to the situation in the United States, we do not have information assessing how much of this lost habitat may have functioned as northern leopard frog habitat or if any mitigation (such as created wetlands) has resulted in replacement habitat. While it is likely there have been losses of northern leopard frog habitat concurrent with these wetland losses, large areas of wetland remain intact, particularly in the eastern portion of Canada.

Across the range of the species, it is clear that significant total wetland area has been lost since colonial times. It is logically certain that some of these areas represented historic habitat for northern leopard frogs; however, it is not possible to assess the extent of loss of actual northern leopard frog habitats based on a generalized review of loss of wetlands. Further, while wetland losses have occurred, large areas of wetland remain, particularly in the eastern portion of the United States and Canada.

Agricultural Development

Agricultural development has occurred across the range of the northern leopard frog, but particularly in the Midwestern States of the United States (Leja 1998, p. 349). The U.S. Department of Agriculture, Natural Resource Conservation Service (USDA NRCS) has a broad land cover and use map that shows by State the amount of land in cropland, pastureland, rangeland, forest land, developed land, Federal lands, and other lands. Data from this map shows that greater than 80 percent of the total land area (outside Federal lands) in Iowa, Nebraska, North Dakota, and South Dakota is used for agricultural purposes, such as cropland, pastureland, and rangeland (USDA NRCS 2001). In addition, many other western and Midwestern States also have significant amounts of land identified as agricultural within the range of the northern leopard frog (USDA NRCS 2001). While agricultural development continues to be a large land-use practice in South Dakota (57 percent cropland), North Dakota (35 percent cropland), and Ohio (45 percent cropland) (USDA NRCS 2001), the northern leopard frog appears to be relatively stable in these States (Hossack *et al.* 2005, p. 428; Rorabaugh 2005, p. 571), despite this level of usage.

Agricultural development may fragment, destroy, or degrade northern leopard frog habitat directly due to conversion of native habitats to cropland and de-watering of adjacent habitats, or indirectly through the introduction of contaminants and invasive species into habitats (Wang *et al.* 1997, p. 10; Leonard *et al.* 1999, p. 58; Leja 1998, pp. 345–353; Knutson *et al.* 2004, p. 675; Rorabaugh 2005, p. 576). Most of the historic wetland loss discussed above is thought to be due to conversion to agriculture (Leja 1998, p. 349). Agricultural development can result in modification of river valley habitat, including draining of wetlands, channelization and damming of rivers, and development of irrigation systems (Wang *et al.* 1997, p. 11; Findlay and Houlahan 1997, p. 1001), all of which may modify breeding, overwintering, and dispersal habitat for northern leopard frogs (Scott and Jennings 1985, p. 19; Lannoo *et al.* 1994, pp. 317–318; Leja 1998, pp. 345–353; Knutson *et al.* 2000, p. 139; Ammon 2002, p. 2; Idaho Department of Fish and Game 2005, Northern leopard frog species account; Colorado Division of Wildlife 2009, p. 1; Rogers 2010, p. 8). For example, in Idaho, Camas NWR is losing wetlands to groundwater depletion by nearby agriculture, and Grays Lake NWR and Minidoka NWR cannot control water levels because of senior water rights assigned to other agencies, and their use for agriculture (Fisher and Mitchell 2009, pers. comm.). In Canada, the past conversion of large areas of grassland to agriculture has also likely resulted in the loss of northern leopard frog habitat, particularly foraging and overwintering habitats near breeding sites (Didiuk 1997, p. 113; Hecnar 1997, p. 13). In southern Alberta, drainage of wetlands for agricultural use in the 1980s was extensive and is thought to have contributed to local extirpations of northern leopard frogs (Alberta Northern Leopard Frog Recovery Team 2005, p. 6). The land being used for agriculture in the prairies has lately increased by 62 million acres (25 million hectares), and there is pressure to alter remaining wetland areas (Committee on the Status of Endangered Wildlife in Canada 2009, p. 32).

Geographically isolated (or depressional) wetlands surrounded by upland watersheds (such as the prairie potholes region) make up a large proportion of the wetland resource in arid and semi-arid regions of the northern leopard frog's range (Skagen *et al.* 2008, p. 594). However, although the ''wet'' (surface water) portion of the wetland is vitally important for northern leopard frog breeding, the upland terrestrial habitat adjacent to the wetland is also a critical component of their habitat needs (Semlitsch 2000, p. 620; Pope *et al.* 2000, p. 2506; Gibbons 2003, p. 630; Semlitsch and Bodie 2003, p. 1223). Although agricultural development may result in the maintenance or creation of actual ''wet'' wetland habitat (Leja 1998, p. 350), crops and pastures—areas that provide poor or no habitat for northern leopard frog—typically occur on the immediate edge of the water (Guerry and Hunter 2002, p. 752; Committee on the Status of Endangered Species in Canada 2009, p. 32). Research indicates that land use practices around the wetland may be as important as the size of the wetland itself (Findlay and Houlahan 1997, p. 1007). Amphibian species richness increases with wetland area, and herpetofauna abundance, including the northern leopard frog, show a strong positive correlation with the proportion of forest cover on lands within 1.2 mi (2 km) of wetlands (Findlay and Houlahan 1997, pp. 1006–1007). Northern leopard frogs breeding in active agricultural lands may end up crossing roads and tilled agricultural fields which would increase the likelihood of mortality, and northern leopard frogs that breed in active agricultural lands require larger home ranges than do frogs that breed in intact wetlands and grasslands (Pember *et al.* 2002, p. 4.9)

Habitat fragmentation caused by agriculture has also likely limited northern leopard frog dispersal, as frogs may have difficulty moving through active croplands (Didiuk 1997, p. 113;

Saskatchewan Conservation Data Centre 2006, p. 2). Agricultural development also tends to result in disturbed ground, which can impact the distance and the quality of habitat between habitat patches (Didiuk 1997, p. 113; Pember *et al.* 2002, p. 4.9; Alberta Northern Leopard Frog Recovery Team 2005, p. 6; Mazerolle and Desrochers 2005, p. 455; Committee on the Status of Endangered Wildlife in Canada 2009, p. 32). Barren land, agricultural lands, and recently cut forests increase the resistance of the landscape to northern leopard frog movement (Mazerolle and Desrochers 2005, p. 462). Vegetation on undisturbed sites likely reduces evaporative water loss in dispersing or moving frogs through protection from the wind and sun (reduced dehydration), while surfaces with no vegetative cover likely endanger individual frogs and constitute barriers to frog movement (Mazerolle and Desrochers 2005, p. 462). In addition, agriculturally induced habitat fragmentation can increase the role of genetic drift, which may hamper adaptive responses to local environments (Johansson *et al.* 2007, p. 2699). Research regarding the European common frog (*Rana temporia*) found that populations in fragmented agricultural habitats were smaller and had lower genetic diversity compared to populations in a more continuous landscape. More genetic diversity leads to healthier populations. Breeding pond isolation, resulting from fragmented landscapes, has also been shown to negatively affect population persistence and recolonization of ranid and lithobatid frogs to suitable habitats (Witte *et al.* 2008, p. 381).

Agriculture is also the primary source of water pollution throughout the western range of the northern leopard frog and occurs primarily through sedimentation, nutrient pollution, pesticide pollution, and mineral pollution (Ribaudo 2000, pp. 5–11). On many NWRs, pesticide and herbicide use are regulated by Service Pesticide Use Plans, but these plans may not adequately account for toxicity to northern leopard frogs, and thus pesticide and herbicide use may result in impacts to individuals or populations of the species (Dickerson and Ramirez 1993, pp. 1–2; Fisher and Mitchell 2009, pers. comm.). Overwintering northern leopard frogs in permanent waters are likely to be in close contact with sediments on the pond bottom that may contain agricultural chemicals resulting from run-off (Didiuk 2007, p. 113). This close contact with chemicals may make the northern leopard frog more susceptible to potential adverse chemical effects in these areas.

Leopard frogs that inhabit agricultural wetlands and landscapes are also vulnerable to pesticide exposure (King *et al.* 2008, p. 13) (see Pesticides under *Factor E* for further discussion). In addition, ''hotspots'' of amphibian malformations, including northern leopard frog malformations, tend to occur in altered wetlands (Lannoo 2008, p. 200) (see Malformations under *Factor E* for further discussion).

As described above, agricultural development has been shown to result in adverse effects to northern leopard frogs in some portions of its range. The above review of the best available information indicates that large areas of historical habitat have likely been lost due to agricultural development and that current habitats may continue to be subject to ongoing impacts of agricultural development. The most significant impacts associated with agricultural development are likely the loss of historical habitats due to conversion to agricultural lands. Ongoing impacts to areas currently associated with agriculture likely negatively impact local populations through reduced breeding success and individual survival. However, even States with a significant land base in agriculture (such as South Dakota, North Dakota, and Ohio) appear to be maintaining stable populations of northern leopard frogs. Therefore, though research indicates that agricultural development can have a negative impact on local populations of northern leopard frogs, the best available information does not indicate the ongoing impacts are significant at the species level. Based upon the best available information, agricultural development does not constitute a significant threat to the northern leopard frog at the species level now, nor do we have indication that it will in the future.

Livestock Grazing

Approximately 70 percent of the land surface in the western United States (including Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, California, Idaho, Oregon, and Washington) is or has been grazed by livestock (Fleischner 1994, p. 630; Krausman *et al.* 2009, p. 15). Historical and ongoing livestock grazing are specifically identified as being responsible for the loss and degradation of northern leopard frog habitats, and for negatively affecting northern leopard frog populations at sites in Arizona (Clarkson and Rorabaugh 1989, p. 535; Sredl 1998, pp. 573–574), California (California Department of Fish and Game 2007), Idaho (Idaho Department of Fish and Game 2005, Appendix F), Montana (Maxell 2000, p. 15), Nevada (Hitchcock 2001, p. 66), North Dakota (Euliss, Jr. and Mushet 2004, p. 82), South Dakota (Smith 2003, p. 27), and Wyoming (BLM 2009, p. 3). For example, most of the habitat in the Pit River-Modoc Plateau area and the Owens Valley of California, where the northern leopard frog occurred historically, has been severely altered and fragmented largely because of livestock grazing practices. The essential habitats bordering riparian zones are either no longer present or so fragmented that the habitat can no longer support northern leopard frog populations (Jennings and Hayes 1994, p. 82). Although management may be changing in some areas, many wetland habitats are likely still recovering from historical grazing impacts (Krausman *et al.* 2009, p. 16). This is particularly true because the western United States has a relatively arid climate, which can result in longer habitat recovery intervals, and perennial waters tend to be rarer and more disjunct from other waters than in the eastern United States.

Livestock select riparian habitats for water, shade, and cooler temperatures. They tend to spend a disproportionate amount of their time in riparian zones, and they can adversely affect these systems in a number of important ways (Fleischner 1994, pp. 633–635; Belsky *et al.* 1999, pp. 420–424; Jones 2000, pp. 159–161). Because of this disproportionate use of mesic and riparian habitats by livestock, northern leopard frog populations are vulnerable to the effects of poorly managed livestock grazing (Maxell 2000, pp. 15–16; Smith 2003, p. 30). Specifically, trampling by livestock may result in the death of individual frogs (Bartlet 1998, p. 96; Maxell 2000, p. 15; Smith 2003, p. 30), and the compaction of soils around aquatic habitats, thereby decreasing infiltration of water into the soil, increasing soil erosion, and contributing to stream channel down cutting (Kauffman and Kreuger 1984, pp. 432–434; Belsky *et al.* 1999, pp. 419–431). These impacts could hinder or prevent movements of northern leopard frogs by reducing and eliminating riparian vegetation that provides cover.

Impacts to water quality through increased sedimentation (Belsky *et al.* 1999, pp. 420–424; Alberta Northern Leopard Frog Recovery Team 2005, p. 7) may reduce the depth of breeding ponds or overwintering habitats, increase water temperatures, and create favorable environments for diseases and parasites

known to contribute to mortality in northern leopard frogs (Maxell 2000, pp. 15–16; Johnson and Lunde 2005, pp. 133–136; Ouellet *et al.* 2005, p. 1435). Increased watershed erosion caused by livestock grazing can accelerate sedimentation of deep pools used by frogs (Gunderson 1968, p. 510). The indirect effects of grazing on northern leopard frog habitat may also include increases in sedimentation generated by grazing. Sediment can alter primary productivity and fill interstitial spaces in drainage materials with fine particulates that impede water flow, reduce oxygen levels, and restrict waste removal (Chapman 1988, pp. 5–10).

Disturbance from livestock wading and defecating in northern leopard frog habitat has been found to have negative effects on the reproductive success of northern leopard frogs and to result in negative impacts to habitat (Knutson *et al.* 2004, p. 677). The significant input of urine and manure and the turbidity caused by livestock disturbance was found to lead to poor water quality (such as increased nitrates) and low oxygen concentrations, which can result in reduced development and survival of egg masses and tadpoles (Marco *et al.* 1999, p. 2837; Rouse *et al.* 1999, pp. 800–802; Ortiz *et al.* 2004, pp. 235–236; Alberta Northern Leopard Frog Recovery Team 2005, p. 7; Earl and Whiteman 2009, p. 1336). In addition, Knutson *et al.* (2004 p. 675) found that the grazed ponds had little or no aquatic or emergent vegetation, and that this was a result of livestock wading in the pond.

In contrast, there is information from some portions of the range of the species that indicates leopard frog species can persist, and even benefit from, well-managed livestock grazing (Hitchcock 2001, p. 62; Service 2007, pp. 32–34; Alberta Northern Leopard Frog Recovery Plan 2005, p. 7; Arizona Game and Fish Department 2009, pp. 2–3; New Mexico Department of Fish and Game 2009, p. 3). Limited grazing around riparian areas can create open foraging areas for leopard frogs, and livestock management can result in the creation of stock tanks (ponds or impoundments that function as waterholes) that can provide breeding and dispersal habitat for northern leopard frogs, particularly in arid western landscapes (Sredl *et al.* 1997, pp. 46, 49; Theimer *et al.* 2011, p. 11).

Historically, livestock grazing has likely resulted in degraded habitats and local declines and extirpations of northern leopard frogs in some portions of their range. However, the information reviewed above suggests that livestock grazing has only resulted in substantive impacts in the western portions of the United States and Canada, with very little to no information suggesting how livestock grazing has or is adversely impacting northern leopard frog populations in the eastern United States or eastern Canada. Further, declines and extirpations associated with livestock grazing are likely historical impacts in most areas, with ongoing impacts manifesting primarily through effects associated with degraded habitats. Finally, there is no evidence that livestock grazing use is spreading to areas that are not already subject to those uses. Therefore, the best available scientific information indicates that livestock grazing does not constitute a significant threat to the northern leopard frog at the species level now, nor do we have indication that it will in the future.

Urban Development

Urbanization refers to the development of areas for human uses. Areas subject to urbanization tend to be correlated to areas with increased human population growth. This development is resulting in impacts to northern leopard frog habitat across its range (Hitchcock 2001, pp. 64–66; Smith and Keinath 2007, p. 29; Connecticut Department of Environmental Protection 2005, pp. 2–16–2–18; Maine Department of Inland Fisheries and Wildlife 2005, Chapter 5 p. 109; New Hampshire Fish and Game Department 2005, p. A210–212; Wisconsin Department of Natural Resources 2009, p. 1). The 2010 Census reported that the human population in the United States has increased almost 10 percent since 2000. The only State within the range of the northern leopard frog that did not have an increase in population is Michigan (Mackun and Wilson 2011, pp. 1–2). Nevada, Arizona, Utah, Texas, and Idaho were the fastest growing States, and New Hampshire and South Dakota were the fastest growing States in the northeast and Midwest, respectively. Pennsylvania ranks fifth in the nation in the amount of open space it loses to development every day and it has lost over half of its wetlands to development (Pennsylvania Game Commission and Pennsylvania Fish and Boat Commission 2005, pp. 10–34). In Canada, Ontario and Quebec are the largest provinces in terms of numbers of people; larger numbers of people typically contribute more to increases in urban development and modification of northern leopard frog habitats. Projected human population growth is also expected to result in increased needs for water (surface diversions and groundwater pumping) to support this growth (Deacon *et al.* 2007, p. 688). This could decrease water availability for northern leopard frogs and thereby impact the amount and extent of habitat for northern leopard frogs. Reexamination of historic northern leopard frogs sites in northeastern Ohio (Orr *et al.* 1998, p. 92) found that two sites had been destroyed by development and three had been eliminated by high-intensity agriculture. A study in Iowa and Wisconsin found a negative association with urban land use and relative abundance of northern leopard frogs (Knutson *et al.* 1999, p. 1441; Knutson *et al.* 2000, p. 140). From 1998 to 2004, 140,400 ac (56,800 ha) or 61 percent of wetland losses in the United States occurred due to urban and rural development (Dahl 2006, p. 47). These wetland losses are considered to be irreversible as they are the result of permanent construction (such as houses and roads) that alters wetland hydrology (Dahl 2006, pp. 47, 63). Urban development often results in conversion of natural habitats to homes, roads, and industrial uses, which can result in direct mortality from traffic (Mazerolle 2004, p. 47; Bouchard *et al.* 2009, p. 23), chemical contamination of wetlands (Fahrig *et al.* 1995, p. 177), and modification of existing wetland habitats to benefit sport fish rather than native amphibians (Knutson *et al.* 1999, p. 1444).

Based upon the above information, urban development has likely resulted in the historical and continued loss of northern leopard frogs and their habitat throughout their range. While the magnitude of these impacts is conceivably high in localized areas, urbanization is not ubiquitous throughout the range of the northern leopard frog. General information about human population growth and associated urbanization cannot be extrapolated to support high magnitude threats throughout all portions of the range of the northern leopard frog. Further, despite urbanization trends, the northern leopard frog is apparently still considered to be widespread and common in the eastern United States and eastern Canada. Therefore, the best available scientific information indicates that urbanization does not constitute a significant threat to the northern leopard frog at the species level now, nor do we have indication that it will in the future.

Oil and Gas Development

Natural gas drilling is currently occurring in at least 25 States that have populations of northern leopard frogs. In 2007, there were 449,000 natural gas

wells in 32 States, which was a 30 percent increase from 2000; it is estimated that 32,000 new natural gas wells per year could be drilled by 2012 (Lustgarten 2008, p. 2). Examples of the increase in magnitude of drilling in the United States can be observed by the increase in approved permits in Wyoming and Pennsylvania. The first natural gas well in Sublette County, Wyoming, was drilled in 1939, and by 2008, 700 gas wells were producing natural gas on the Pinedale Anticline (a major gas field in Sublette County). In 2008, the Bureau of Land Management approved 4,400 more natural gas wells in Sublette County (Lustgarten 2008, p. 3). In Susquehanna County, Pennsylvania, there was a 27-fold increase in natural gas well permits from 2007 to 2009. Natural gas mining is also occurring in Canada, the world's third-largest producer and exporter of natural gas (Natural Resources Canada 2011, p. 1). However, we have minimal specific information assessing the overlap of occupied northern leopard frog habitats with planned oil and gas development operations for most of the range of the species.

The Powder River Basin in Wyoming and Montana and the San Juan Basin in Colorado and New Mexico, areas within the range of the northern leopard frog, currently have the highest coalbed methane (a natural gas) productions in the United States (Environmental Protection Agency 2004, p. 1–1). Possible impacts to northern leopard frogs associated with coalbed methane development may include discharge of contaminated water into breeding ponds, loss of spring flows related to groundwater withdrawals, discharge of extremely cold water into breeding habitats, discharge of water containing nonnative predatory fish in these same areas, and road-related mortality associated with increased use of roads or new roads to support the coalbed methane development (Allan 2002, pp. 5–8; Gore 2002, pp. 1–14; Noss and Wuethner 2002, pp. 1–20). Mining and oil and gas development may also lead to contamination of habitats (Spengler 2002, pp. 7–26; Smith 2003, pp. 26, 31). Domestic and stock tank waters have dried or become contaminated with gas in Wyoming's Powder Basin (Powder River Basin Resource Council 2009, p. 1). Although some States that have populations of the northern leopard frog are implementing wetland and riparian protections in connection with oil and gas drilling (Colorado Division of Wildlife 2009, p. 5), it is unclear if all States are implementing such measures and whether or not these measures have resulted in decreased impacts to northern leopard frogs.

Another area where there is information about oil and gas development activities in northern leopard frog habitats is the Marcellus Shale. The Marcellus Shale is a black shale formation extending underground from Ohio and West Virginia northeast into Pennsylvania and southern New York that contains natural gas reserves. Although there are areas where the Marcellus Shale is exposed at the surface, it is as deep as 7,000 ft (2,134 m) or more below the ground surface along the Pennsylvania border. Natural gas drilling operations have proliferated in Pennsylvania over the past years, and at least 1,415 new wells were drilled in 2010 (Goldberg 2011, p. 2). The drilling is expected to expand into Ohio and West Virginia. New York is currently conducting a comprehensive review of the potential environmental impacts associated with natural gas development and Ohio's State government approved drilling in Ohio's State parks on June 15, 2011.

Hydraulic fracturing is a method used to extract natural gas from the earth. Environmental concerns with hydraulic fracturing include water use and management, and the composition of the fluids used (Environmental Protection Agency 2011, p. 1). Hydraulic fracturing consists of pumping chemicals (such as benzene) and high volumes of water and sand down the well under high pressure to create fractures in the gas-bearing rock (New York Department of Environmental Conservation 2011, p. 1). The propping material holds the fractures open allowing more gas to flow into the well. The hydraulic fracturing of the Marcellus Shale will require large volumes of water to fracture the rocks and produce natural gas. In 2008, oil and gas wells disgorged approximately 9 million gallons of wastewater a day in Pennsylvania, and water use is expected to increase to at least 19 million gallons per day (Sapien 2009, p. 2).

The wastewater is a product of the hydraulic fracturing which pumps about 1 million gallons of water mixed with sand and chemicals into each well to withdraw the natural gas. When it comes back out, the water contains toxins and dissolved solids. Wastewater contains enough dissolved solids that the water can be five times as salty as sea water. Recent research found methane contamination of drinking water in Pennsylvania and New York from natural gas extraction on the Marcellus Shale (Osborn *et al.* 2011, p. 2). In addition, water contamination has been documented near drilling areas in Sublette County, Wyoming, and Santa Fe, New Mexico; chemical spills of hydraulic fracturing chemicals have occurred in Colorado (Lustgarten 2008, pp. 2–9).

The rate, timing, and location of water withdrawals could result in negative impacts to streams, downstream riverine and riparian resources, wetlands, and aquifer supplies where hydraulic fracturing to mine natural gas occurs (New York Department of Environmental Conservation 2009, p. 6–4). The draft environmental impact statement for natural gas drilling in New York states, ''Water for hydraulic fracturing may be obtained by withdrawing it from surface water bodies away from the well site or through wells drilled into groundwater aquifers'' (New York Department of Environmental Conservation 2009, p. 6–4). The existence and sustainability of wetland habitats directly depend on the presence of water at or near the surface of the soil. The functioning of a wetland is driven by the inflow and outflow of surface water and groundwater. As a result, withdrawal of surface water or groundwater for high volume hydraulic fracturing could impact wetland resources and northern leopard frog habitat. These potential impacts depend on the amount of water within the wetland, the amount of water withdrawn from the catchment area of the wetland, and the dynamics of water flowing into and out of the wetland. Even small changes in the hydrology of the wetland can have significant impacts on the wetland plant community and on the wildlife, such as the northern leopard frog, that depend on the wetland. As discussed in the Biology section, wintering northern leopard frogs are intolerant of freezing, and withdrawals that reduce water depths in overwintering habitat could lead to high levels of winter kill if water levels are reduced so much that these areas freeze.

In summary, some northern leopard frog populations could be impacted by oil and gas development activities through changes to water quantity or quality (due to chemical pollution or increased salinity) and through insufficient water flow to maintain wetland and stream habitat. Natural gas drilling and hydraulic fracturing may occur across the range of the northern leopard frog; however, the impacts are expected to be localized population and habitat losses rather than regional or species-level effects. Pennsylvania, Ohio, West Virginia, Kentucky, Wyoming, Colorado, Montana, and New Mexico all have oil and gas development occurring within their

boundaries; however, we have little to no information about oil and gas development activities in northern leopard frog habitats throughout the rest of the range of the species, notably the Midwestern United States and Canada. Therefore, the best available scientific information indicates that oil and gas development does not constitute a significant threat to the northern leopard frog at the species level now, nor do we have indication that it will in the future.

Roads

Roads have been shown to pose barriers to northern leopard frog dispersal, to contribute to nonpoint source pollution, and to result in direct mortality of northern leopard frogs (Smith 2003, pp. 27, 38; Maxell 2000, p. 25; Fahrig *et al.* 1995, pp. 177–182). The movements of adult northern leopard frogs to breeding habitats during spring rains and the extensive dispersal of juveniles from breeding ponds in late summer make this species vulnerable to highway traffic (Orr *et al.* 1998, p. 93; Langen *et al.* 2009, p. 111), and there are many reports of large amounts of leopard frog road mortality (see references in Carr and Fahrig 2001, p. 1075; Glista *et al.* 2008, pp. 81–82; Langen *et al.* 2009, p. 111). Road building is often tied to other activities such as urban, agricultural, and oil and gas development, so roads may impact leopard frogs directly and indirectly.

Bouchard *et al.* (2009, pp. 5–6) found that the northern leopard frog's inability to avoid roads and their slow movement make them particularly vulnerable to road mortality and that roads could thus result in negative effects to local population abundance. Other studies did not find any decreasing trends in abundance for amphibian roadside populations (Mazerolle 2004, p. 51). Traffic density within 0.9 mi (1.5 km) of occupied northern leopard frog habitat may have negatively affected local frog abundance, but it was unclear if results were due to the observed road mortality, pollution (*e.g.,* vehicle emissions, road runoff), or increased urbanization (Carr and Fahrig 2001, p. 1074). Other studies have also documented smaller amphibian populations in the vicinity of major roads and within landscapes with high road densities than populations where roads are distant and few (Langen *et al.* 2009, p. 104). ''Hotspots'' for northern leopard frog road mortality tend to occur along causeways (road segments with water on either side) with wetland sites within 328 ft (100 m) of the road (Langen *et al.* 2009, p. 110).

In summary, although research indicates that roadside populations of northern leopard frogs may be adversely impacted by roads and evidence shows that individual frogs are certainly impacted through road mortality, the information assessed indicates these impacts are localized and result in effects to local frog abundance, not population level impacts. While roads occur throughout the range of the northern leopard frog, the best available information does not suggest that roads constitute a significant threat to the northern leopard frog at the species level now, nor do we have indication that they will in the future.

Forest Management

The northern leopard frog is associated with forested as well as grassland or open areas (Blomquist and Hunter 2009, p. 150). Based upon broad land cover and use, forest management occurs in forested areas throughout the range of the northern leopard frog (USDA NRCS 2001). Timber harvest activities may impact northern leopard frog populations in several ways. Clearcuts (areas where all trees are removed) at breeding sites can result in enhanced tadpole development through increased water temperatures and food production (Semlitsch *et al.* 2009, p. 859). However, clearcuts can also result in negative effects to juvenile and adult northern leopard frog movement due to higher surface temperatures (from canopy removal), and loss of soil-litter moisture in upland habitats surrounding breeding ponds, which affects the species' ability to move through these areas into post-breeding habitat (Maxell 2000, pp. 12–14; Smith 2003, p. 29; Semlitsch *et al.* 2009, p. 860). Research on timber management and northern leopard frog seasonal habitat requirements found that northern leopard frogs in the late spring and summer used open, wet areas; frogs used unharvested forest for longer movements (Blomquist and Hunter 2009, p. 153). Forest management may affect local populations of northern leopard frogs by fragmenting habitats and reducing landscape connectivity.

Forest management has the potential to impact northern leopard frog breeding, dispersal, and foraging habitats in forested areas throughout its range. However, the information we reviewed does not indicate that forest management, clearcutting in particular, is occurring at a level or extent that would result in impacts at the species level. Therefore, the best available information indicates forest management is not a significant threat to the northern leopard frog at the species level now, nor do we have indication that it will in the future.

Groundwater Withdrawal

Throughout the range of the northern leopard frog, particularly in the western United States and Canada, naturally geographically isolated (or depressional) wetlands completely surrounded by upland plant communities (such as the prairie pothole wetlands in the upper Midwestern United States and Canada) and human-caused isolated wetlands (such as natural wetlands that are no longer connected to streams due to roads or other development) are important habitats for the northern leopard frog. Many of these ''isolated'' wetlands appear to be disconnected from other water sources, but are hydrologically connected to other wetlands or waters through sub-surface or groundwater connections (Tiner 2003, p. 495). Because of this hydrologic connection, groundwater withdrawal can result in significant impacts to wetland habitats and may result in decreased surface water, decreased recharge, and reduced water levels in wetland and spring habitats (Alley *et al.* 1999, pp. 33–44; Alberta Northern Leopard Frog Recovery Plan 2005, p. 7; Wirt *et al.* 2005, pp. G1–11; Patten *et al.* 2008, p. 279). Specifically, groundwater withdrawal can result in loss of northern leopard frog breeding ponds and spring- and riparian-associated vegetation, and thus the loss or modification of northern leopard frog habitat (Alberta Northern Leopard Frog Recovery Plan 2005, p. 7; Patten *et al.* 2008, p. 286). In addition, decreased surface water levels may reduce the water level in overwintering habitats, which may result in the area freezing and an increased risk of mortality as wintering northern leopard frogs are intolerant of freezing (see Biology section).

Across the range of the northern leopard frog, these habitats occur in the prairie potholes region (see above), the playas and springs of the Southwest, the Sandhills wetlands in northern Nebraska, channeled scablands in eastern Washington, woodland vernal pools of the northeastern United States, and many other natural ponds throughout the United States (Tiner 2003, p. 497). Within these areas, there is regional and local information to indicate that current and proposed groundwater pumping may result in reduced habitat for northern leopard frogs, particularly in the arid West (Tiner 2003, p. 513; Deacon *et al.* 2007). Specifically, the BLM recently released the Draft Environmental Impact Statement for the Clark, Lincoln, and White Pine Counties Groundwater Development Project in Nevada (BLM

2011). Based upon the modeling analysis, the BLM predicts that northern leopard frog habitat (for all life stages) will be reduced in currently occupied areas of central-eastern Nevada as a result of the proposed action (BLM 2011, p. 3.7–45). This information indicates that isolated wetland habitats such as those in Spring Valley, Nevada, may be significantly impacted by these proposed groundwater withdrawals.

Groundwater depletion has been a concern in the Southwest and High Plains for many years due to the arid climate and a lack of water resources; however, increased demands on groundwater resources have overstressed aquifers in many areas of the United States (Bartolino and Cunningham 2003, p. 2). The Southwest United States has experienced rapid human population growth over the last two decades in conjunction with long-term drought. This situation has resulted in increased demand for water resulting in impacts to wetland and spring habitats from groundwater pumping (Levick *et al.* 2008, pp. 70–71). Brussard *et al.* (1998, pp. 505–542) found that pumping of groundwater from gold mines impacted spring communities in the north-central region of Nevada. Groundwater pumping by the City of Albuquerque, New Mexico, contributed to the loss of wetland habitat in the Rio Grande valley as well (Bogan 1998, pp. 562–563). In addition, groundwater modeling studies indicate that aquifers in eastern and southern Nevada that supply water to springs currently occupied by northern leopard frogs may decline in response to pumping in these areas to meet human water demands (Schaefer and Harrill 1995, p. 46). However, streams and wetlands in the Northeast, the High Plains, the Pacific Northwest, and other regions of the United States have also been impacted by groundwater pumping (Bartolino and Cunningham 2003, p. 2). Impacts have included lowered water tables, reduced surface flows, desiccation of springs, and decreased lengths of perennial streams as a result of groundwater pumping (Bartolino and Cunningham 2003, pp. 2–4). Currently, there are many ongoing discussions throughout the Southwest regarding water supplies and how groundwater pumping may be used to meet human water demands. While specific plans regarding how these future plans may impact northern leopard frogs are limited at this time in many areas, as described above, the recently proposed Clark, Lincoln, and White Pine Counties Groundwater Development Project (Bureau of Land Management 2011) is expected to reduce occupied northern leopard frog habitat in Spring Valley, Nevada.

As described above in the Oil and Gas Development section, an increase in natural gas mining (using hydraulic fracturing) may also result in increases in groundwater pumping throughout Pennsylvania, Ohio, West Virginia, Kentucky, Wyoming, Colorado, Montana, and New Mexico (see Oil and Gas Development above for further discussion).

In summary, groundwater pumping has likely contributed to localized and possibly regional declines of northern leopard frog habitat, particularly in isolated wetlands and arid areas. However, in assessing the impacts of groundwater pumping on current northern leopard frog populations, impacts are most usually described as potential effects to habitat availability. These impacts are further described as occurring at local and regional, rather than species-wide, scales. Impacts to isolated wetlands in particular are likely to be localized. Further, impacts to water resources in the arid West cannot be extrapolated to the eastern United States and eastern Canada due to differences in climate and geography. Finally, there is little to no information about groundwater withdrawals in Canada, and the northern leopard frog is apparently still considered to be widespread and relatively common in the eastern United States and eastern Canada. Therefore, the best available information indicates groundwater withdrawal is not a significant threat to the northern leopard frog at the species level now, nor do we have indication that it will in the future.

Air Pollution

Acid precipitation may be affecting northern leopard frog habitat in the western United States, including the Rocky Mountain region of Colorado, New Mexico, and Wyoming. Acidic water is an environmental stressor for northern leopard frogs (Simon *et al.* 2002, p. 697), and leopard frog abundance may be reduced in areas where water acidification has occurred (Pope *et al.* 2000, p. 2505). In the last few decades, high-elevation aquatic habitats have become more acidic (Corn and Vertucci 1992, p. 363; Simon *et al.* 2002, p. 697), which may be a result of air pollution. The emissions of certain gases (principally sulfur dioxide and nitrogen oxides) into the air may lead to acid precipitation and the acidification of aquatic habitats. Acidification of aquatic habitats may result in decreased reproductive capabilities of adult northern leopard frogs, and mortality and developmental abnormalities in northern leopard frog tadpoles (Simon *et al.* 2002, p. 697). In addition, acid precipitation can result in the direct destruction of vegetation needed for habitat (Environmental Protection Agency 2000, pp. 48699–48701; Jezouit 2004, pp. 423–445). Nitrogen dioxide, which also contributes to the formation of acid rain (Baron *et al.* 2000, p. 352; Fenn *et al.* 2003, p. 404; Jezouit 2004, pp. 423–445; Environmental Protection Agency 2005, p. 59594), can increase the acidity of soils and aquatic ecosystems; may contribute to eutrophication (a process whereby increased nutrients lead to decreased dissolved oxygen); and may possibly change plant community composition (*e.g.,* enhanced growth of invasive species and shifts in phytoplankton productivity) (Baron *et al.* 2000, p. 358; Fenn *et al.* 2003, pp. 404–418). However, effects from air pollution (in the form of acid precipitation) are currently only a consideration in high-elevation habitats in the western United States. Additionally, at this time, the potential impacts are theoretical and have not been shown to result in population-level impacts to the species. Therefore, the best available information does not indicate that air pollution constitutes a significant threat to northern leopard frogs at the species level now, nor do we have indication that it will in the future.

Summary of Factor A

The northern leopard frog occupies a wide geographic range across the United States and Canada. Because it occurs across such a large area, the habitats it uses are subject to a number of impacts that represent potential threats at various scales. As discussed above, these factors generally have been historical in impact or are occurring now and into the future at scales below the species level, both individually and in combination. Further, while there have been declines noted in portions of the range of the species, the frog is apparently still considered to be widespread and relatively common in the eastern United States and eastern Canada. Therefore, the best available information indicates that the present or threatened destruction, modification, or curtailment of its habitat or range is not a significant threat to the northern leopard frog at the species level now, nor do we have indication that it will in the future.

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

Overutilization of the northern leopard frog for commercial, recreational, scientific, or educational purposes is not reported to be a current threat to the species in most of its range (Woolington 2011, pers. comm.; Smith 2003, p. 21; Arizona Game and Fish Department 2009, p. 2); however, northern leopard frogs are harvested for bait and for use in biology laboratories in some portions of its range (Smith 2003, p. 21; Quinn 2009, pers. comm.; Minnesota Department of Natural Resources 2011a, p. 2). Northern leopard frogs are collected for commercial purposes in Nebraska, Minnesota, and Wisconsin, and historical collection in other States likely contributed to long-term population declines in some areas (Lannoo *et al.* 1994, p. 317; Moriarty 1998, p. 168; Smith 2003, p. 21). From 1995–1999, approximately 174,772 northern leopard frogs were collected in Nebraska to supply two biological supply houses (Smith 2003, p. 21). Northern leopard frogs in Minnesota have been heavily collected for fish bait and for the biological supply trade, and there is little regulation on the collection of frogs there (Moriarty 1998, p. 168). Other States that have identified overutilization as a potential effect to the northern leopard frog include Connecticut (Connecticut Department of Environmental Protection 2005, p. 4–4–4–5), Maine (Maine Department of Inland Fisheries and Wildlife 2005, p. 109), Massachusetts (Massachusetts Department of Fish and Wildlife 2006, p. 407), and Michigan (Eagle *et al.* 2005, Species of Greatest Conservation Need 152 of 242). However, other than naming collection as a potential concern or including conservation measures to guard against overutilization in their State wildlife action plans, we have no information regarding the magnitude of the potential threat of collection in these States.

As noted earlier in the Status section, northern leopard frog populations crashed in 1973 in Minnesota, which halted the commercial collections for uses other than bait from 1974 to 1987. Harvest records from the 1990s report collections of 1,000 to 2,000 pounds of frog per year, compared to reports in the early 1970s that were in the 100,000-pound-per-year range (Moriarty 1998, p. 168). According to North Dakota Game and Fish Department records, 31,683 leopard frogs were collected by wholesalers from 1996–2008. That is an average of 2,463 frogs per year. The North Dakota Game and Fish Department does not believe that this level of use has impacted the population (North Dakota Game and Fish Department 2009, p. 2). There are no restrictions in South Dakota regarding the collection of northern leopard frogs, and they are a legal bait species (limit of 24 per day) (South Dakota Department of Game, Fish, and Parks 2011, p. 23) and some South Dakota tribal members collect and sell northern leopard frogs to educational suppliers in Minnesota (Quinn 2009, pers. comm.). The northern leopard frog may also be legally used for bait or other personal uses (typically with a permit or license) in Iowa, Missouri, Nebraska, New Mexico, Illinois, Indiana, Kentucky, Michigan, New York, Pennsylvania, and Vermont (as identified in the Status section above).

In 1971, Gibbs *et al.* (p. 1027) described the frog trade and the decline of northern leopard frogs throughout most of their range. Due to the declines noted by Gibbs *et al.* (1971), many States began establishing laws to prevent uncontrolled collecting. Today, many State wildlife agencies, including those in the western United States, use commercial and collection regulations to control human actions that may harm wildlife populations, such as collection of amphibians (Adams *et al.* 1995, p. 394; see also discussion in Status section describing State collection laws and under Factor D describing regulatory mechanisms).

Though many States have established regulations regarding the collection of northern leopard frogs, wild-caught amphibians are still traded on the global market, and there is some concern as to whether the take of wild-caught individuals is biologically sustainable (Schlaepfer *et al.* 2005, p. 257). Recent research found that millions of individuals, millions of body parts and products, and more than 2,204,623 pounds (lbs) (1,000,000 kilograms (kg)) of amphibians and reptiles are shipped across U.S. borders each year for commercial purposes (Schlaepfer *et al.* 2005, p. 257). Greater than 2.5 million whole, wild-caught amphibians and reptiles were imported into the United States between 1998 and 2002, but these animals were not tracked by species (Schlaepfer *et al.* 2005, p. 257). Information tracked by the Service's Law Enforcement Management Information System indicates that 249,233 lbs (113,050 kg) of northern leopard frog were imported into the United States between 1998 and 2002, for food and research (Schlaepfer *et al.* 2005, p. 259). An additional 112,289 body parts and products and 1,177,970 lbs (534,318 kg) of *Lithobates* frogs (not identified to species), which likely consisted in part of wild-caught northern leopard frogs, were imported into the United States during this same timeframe. There were 361,858 *Lithobates* frogs imported or exported from the United States with no species specific identification (Schlaepfer *et al.* 2005, p. 261). We can conclude from this information that the U.S. trade in amphibians and reptiles, which is a fraction of the world trade in terms of wild-caught amphibians and reptiles (Schlaepfer *et al.* 2005, p. 263), is importing large numbers of northern leopard frogs from Canada. There are no data to indicate if this trade in wild-caught northern leopard frogs is sustainable, and it may partially explain why the frog continues to decline in Ontario and other portions of eastern Canada. Schloegel *et al.* (2009, p. 1424) found that an average of 5.1 million Ranid (= Lithobatid) frogs per year, including live animals and their parts, were imported into the United States between 2000 and 2005. However, based upon the reported origin of the frogs (China and Taiwan), it is likely that most of these imports were American bullfrogs. However, there is evidence that the commercial trade in amphibians, particularly in American bullfrogs, does result in the spread of disease (such as ranaviral disease and *Batrachochytrium dendrobatidis,* which can cause the amphibian disease, chytridiomycosis), and aids in the spread of invasive species (Fisher and Garner 2007, pp. 3–4; Picco and Collins 2008, p. 1588; Schloegel *et al.* 2009, pp. 1424–1425). In Arizona, northern leopard frogs do appear in the pet trade, either in local pet stores or through on-line suppliers (Arizona Game and Fish Department 2009, p. 3), and documented releases of eastern northern leopard frogs into existing populations have occurred (Hoffman and Blouin 2004a, pp. 150–151; Theimer *et al.* 2011, pp. 3, 30; O'Donnell *et al.* 2011, p. 3), which may have genetic implications for the ongoing conservation of the species.

Summary of Factor B

Despite historic population and regional declines, we do not have any evidence of impacts to northern leopard frogs at the species level from overutilization for commercial, recreational, scientific, or educational purposes, and we have no information that indicates this factor will become a threat to the species in the future. The significant declines and extirpations within the range of the species have occurred in areas other than those that

have traditionally been subject to the highest collection pressures. Further, the collections appear to be occurring in portions of the range that have apparently stable populations. Therefore, the best scientific and commercial information available indicates that overutilization for commercial, recreational, scientific, or educational purposes does not constitute a significant threat to the northern leopard frog at the species level now, nor do we have indication that it will in the future.

Factor C. Disease or Predation

Disease

Fungal, viral, and bacterial diseases may cause mass mortality and contribute to population declines of northern leopard frogs (Rorabaugh 2005, pp. 575–577). Disease has caused mass mortality in ranid and lithobatid frogs in almost every western State in the United States (Bradley *et al.* 2002; Muths *et al.* 2003; Briggs *et al.* 2005). There are several fungal diseases that affect the northern leopard frog (Faeh *et al.* 1998, p. 263); of those, amphibian chytridiomycosis caused by the fungus *Batrachochytrium dendrobatidis* (Bd) has likely had a large impact on northern leopard frogs in the western United States (Johnson *et al.* 2011, p. 564). Mortality from chytridiomycosis is reported for several leopard frog species, including the northern leopard frog, in Arizona, British Columbia, California, and Colorado (Bradley *et al.* 2002, pp. 206–212; Muths *et al.* 2003, p. 361; Briggs *et al.* 2005, p. 3149; Committee on the Status of Endangered Wildlife in Canada 2009, p. 26; Johnson *et al.* 2011, p. 564). Information in Muths *et al.* (2003, p. 364) notes a northern leopard frog museum specimen from Colorado preserved in 1974 was examined histologically and tested positive for Bd, which means the presence of Bd in Colorado can be traced back to the 1970s and is a possible contributing factor to the extensive mortalities that occurred there (Carey *et al.* 1999, p. 461). This time period is also when extensive declines of northern leopard frogs occurred throughout the western United States and Canada, in places such as Wisconsin, Alberta, Saskatchewan, and Manitoba. Longcore *et al.* (2006, p. 440) found that Bd is widespread in the Northeast and the highest prevalence of Bd in a Maine species was the northern leopard frog. However, there was no observed decline in northern leopard frog populations despite the significantly high infection rate (Longcore *et al.* 2006, p. 441). It is possible that northern leopard frogs in the eastern United States have developed some resistance to Bd, or that thermoregulatory behavior (such as basking on a sunny day) may slow the growth of the fungus (Longcore *et al.* 2006, pp. 441–442). It is currently not known under what circumstances the northern leopard frog is susceptible to the lethal effects of chytridiomycosis, but it remains a concern as the fungus appears to be prevalent in the East and in the West (Ellis 2011, pers. comm.; Van Stralen 2011, pers. comm.), and mortality in wild frogs in British Columbia is thought to be the result of chytridiomycosis.

Recent studies indicate that factors such as habitat degradation, habitat fragmentation, and climate change may exacerbate the lethal effects of chytridiomycosis on amphibian populations (Carey *et al.* 1999, pp. 459–472; Ouellet *et al.* 2005, p. 1437). Habitat fragmentation may prevent populations from recovering after lethal outbreaks of chytridiomycosis (Ouellet *et al.* 2005, p. 1437), and other stressors such as water pollution may make northern leopard frogs more susceptible to chytridiomycosis (Carey *et al.* 1999, pp. 459–472; Kiesecker *et al.* 2004, p. 138).

Saprolegniasis, a water-borne fungal disease, may also affect populations of northern leopard frogs (Faeh *et al.* 1998, p. 263). However, this fungal disease is usually secondary to other stressors such as bacterial infections or trauma (Faeh *et al.* 1998, p. 263). Saprolegnia has been associated with embryonic die-offs of ranid frogs in Oregon, and is found in Columbia spotted frog (*Rana luteiventris*) eggs in Idaho and Montana (Patla and Keinath 2005, p. 43), but there is no other information provided to indicate that this disease is currently impacting northern leopard frogs.

Faeh *et al.* (1998, pp. 260–261) provided information regarding five viral diseases that have and could potentially affect the northern leopard frog. These include the iridoviruses, which include ranavirus, polyhedral cytoplasmic amphibian virus, tadpole edema virus, and frog erythrocytic virus. Ranavirus may be extremely lethal, and all life stages of frogs may acquire the disease, although tadpoles are the most susceptible to the disease (Daszak *et al.* 1999, p. 744). The loss of 80 to 90 percent of tadpoles in a population from ranavirus may result in an 80 percent loss of adult recruitment (survival of individuals to sexual maturity and joining the reproductive population), which may negatively affect population viability (Daszak *et al.* 1999, pp. 742–745). The introduction of bullfrogs and spread of tiger salamanders throughout the U.S. range of the northern leopard frog may increase the potential of ranavirus infection as both American bullfrogs and tiger salamanders are hosts for the ranavirus (Picco and Collins 2008, p. 1588; Schloegel *et al.* 2009, p. 1424). Relatively recent mass mortality events of northern leopard frog metamorphs resulting from ranavirus have been documented in Ontario (Greer *et al.* 2005, p. 11).

Septicemia or ''red leg'' involves one or a combination of hemolytic (destructive to blood cells) bacteria that enter the body via wounds or abrasions (Faeh *et al.* 1998, p. 261). Septicemia often results in death in individuals and often results in mass mortality. Septicemia may also have contributed to northern leopard frog declines in the Midwestern United States in the early 1970s (Koonz 1992, p. 20) and caused declines in Colorado between 1974 and 1982 (Carey 1993, pp. 356–358). However, ''red leg'' may be triggered by a variety of environmental factors, and it is unclear how it may be influencing northern leopard frog declines in the United States and Canada (McAllister *et al.* 1999, p. 19).

Significant mortality events of northern leopard frogs have been attributable to disease (Rorabaugh 2005, p. 575). However, with the exception of chytridiomycosis, impacts to northern leopard frogs associated with these diseases appear to be localized. Chytridiomycosis may be having significant effects to northern leopard frogs in the West, but does not appear to be significantly affecting frogs in other portions of its range as the frog is apparently still considered to be widespread and stable in the eastern United States and eastern Canada. Therefore, the best available information does not indicate that disease is a significant threat to the northern leopard frog at the species level now, nor do we have indication that it will in the future.

Nonnative Species

The introduction of nonnative aquatic animals, particularly American bullfrogs and predatory fishes, has resulted in the loss and decline of northern leopard frogs throughout their range, but particularly in the western United States and Canada (Merrell 1968, p. 275; Hine *et al.* 1981, p. 12; Hammerson 1982, pp. 115–116; Hayes and Jennings 1986, p. 491; Hecnar and M'Closkey 1997, p. 126; Livo *et al.* 1998, p. 4; Orr *et al.* 1998, p. 92; Maxell 2000, p. 144; Hitchcock 2001, p. 63; Smith 2003, pp. 19–21; Alberta Northern Leopard Frog Recovery Team 2005, p. 8; Rorabaugh 2005, p. 574; Smith and Keinath 2007,

p. 24; Committee on the Status of Endangered Wildlife in Canada 2009, p. 35). Northern leopard frogs typically breed in waters without fish or aquatic predators (Merrell 1977, p. 16; Hine *et al.* 1981, p. 12). Nonnative animals (including crayfish, American bullfrogs, and fish) displace northern leopard frogs by degrading habitat (*e.g.,* destroying emergent vegetation, increasing turbidity, reducing algal or invertebrate populations) or through direct predation on eggs, tadpoles, and adult leopard frogs (Green 1997, p. 300).

American bullfrogs, which compete with and prey on northern leopard frogs, are thought to be a primary cause of the widespread decline of northern leopard frogs throughout the western United States (Bury and Luckenbach 1976, p. 10; Hammerson 1982, pp. 115–116; Kupferberg 1997, p. 1749; Livo *et al.* 1998, p. 4). The American bullfrog is native to the eastern and Midwestern United States and historically had a very wide native distribution that excluded much of the western United States. American bullfrogs currently are not present in most of eastern Montana, North Dakota, South Dakota, southern Idaho, central and western Wyoming, most of Utah, and a small portion of northern Arizona and White Pine County, Nevada (Casper and Hendricks 2005, p. 541). These areas where the American bullfrog has yet to invade coincide with some areas where the northern leopard frog still occurs and, in some cases, appears to be stable (such as Nebraska, North Dakota, South Dakota, and eastern Montana). American bullfrogs have also been introduced into British Columbia (Weller and Green 1997, p. 320).

As previously described, northern leopard frogs typically breed in fishless waters (Merrell 1968, p. 275) and likely have little natural defense against predation by introduced fish (Smith and Keinath 2007, p. 25). In Canada, research shows that introduced predaceous fish reduce the abundance and diversity of frog populations, including the northern leopard frog (Hecnar and M'Closkey 1997, pp. 126–127). Common carp (*Cyprinus carpio*) cause increased turbidity and the destruction of emergent vegetation, which can displace northern leopard frogs by modifying habitat, reducing invertebrates, and eliminating algae (McAllister *et al.* 1999, pp. 6–7). Information from Bradford (2005, pp. 922–923) indicates that lithobatid frogs in the western United States may be more adversely affected than lithobatid frogs in the eastern United States due to their greater exposure to exotic, introduced species. Because northern leopard frogs in the western United States evolved in permanent or semi-permanent waters without large aquatic predators (Merrell 1968, p. 275), they may be more vulnerable to predation by introduced sport fish, bullfrogs, and crayfish (Bradford 2005, p. 923). In addition, literature studying the habitat preferences of northern leopard frogs from Ohio and Wisconsin indicates that across the range of the northern leopard frog, successful breeding habitats tend to be free of predaceous fish due to periodic drying (Merrell 1977, p. 16; Hine *et al.* 1981, p. 12). This implies that when nonnative species are present, it is more likely that northern leopard frogs will not successfully reproduce.

Invasive plants may also impact northern leopard frog habitat in the western United States (Maxell 2000, pp. 21–22; Hitchcock 2001, pp. 5–6). Tamarisk and other nonnative aquatic and terrestrial plants alter riparian habitats by forming dense stands that exclude native amphibians (Maxell 2000, p. 21) and enhance the survival of other introduced species, such as American bullfrogs (Adams *et al.* 2003, pp. 343–351; Maxell 2000, p. 21; Hitchcock 2001, pp. 5–6, 62–66).

Effects to northern leopard frogs from nonnative species are likely significant in the western United States and Canada, but information we reviewed does not indicate nonnative species are having significant impacts on northern leopard frog populations in the eastern portion of their range. Further, northern leopard frogs are apparently considered to be widespread and relatively common in the eastern United States and eastern Canada. Therefore, the best available information indicates that impacts associated with nonnative species do not constitute a significant threat to the northern leopard frog at the species level now, nor do we have indication that it will in the future.

Summary of Factor C

Disease and predation have undoubtedly contributed to the loss of northern leopard frog populations historically, particularly in the western United States, and will likely continue to impact northern leopard frogs in some portions of its range at local or regional scales. However, despite these impacts, the frog is apparently still considered to be widespread and relatively common in the eastern United States and eastern Canada. Therefore, the best available information indicates that impacts due to disease and predation do not constitute a significant threat to the northern leopard frog at the species level now, nor do we have indication that it will in the future.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address the threats to the northern leopard frog discussed under Factors A, B, C, and E. The Service considers regulatory mechanisms to mean all regulatory and statutory mechanisms that are related to a comprehensive regime designed to maintain a conserved wildlife population. Section 4(b)(1)(A) of the Act requires the Service to take into account, ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species * * *.'' We consider these efforts when developing our threat analyses under all five factors, and in particular under Factor D. Therefore, under Factor D we consider not only laws and regulations, but other mechanisms that are part of a regulatory process, such as management plans, agreements, and conservation practices.

Regulatory mechanisms, if they exist, may preclude the need for listing if such mechanisms are judged to adequately address the threat to the species such that listing is not warranted. Conversely, threats are not ameliorated when not addressed by existing applicable regulatory mechanisms, or when the existing mechanisms are not adequate (or not adequately implemented or enforced). Within its distribution in the United States, the northern leopard frog occurs on lands managed by a myriad of Federal and State agencies, Native American tribes, and private lands. In Canada, the northern leopard frog occurs on a similar variety of jurisdictions. In this section, we review actions taken by State and Federal entities that effectively reduce or remove threats to the northern leopard frog.

Federal Laws and Regulations

The northern leopard frog is not specifically covered by the provisions of any Federal law or regulation. However, there are Federal agencies that manage lands occupied by northern leopard frogs and laws that are applicable to the management and conservation of the species and its habitat.

All Federal agencies are required to adhere to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*) for projects they fund, authorize, or carry out. The Council on Environmental Quality's regulations for implementing NEPA (40

CFR parts 1500–1518) state that environmental impact statements shall include a discussion on the environmental impacts of the various project alternatives (including the proposed action), any adverse environmental effects that cannot be avoided, and any irreversible or irretrievable commitments of resources involved (40 CFR part 1502). NEPA itself is a disclosure law that provides an opportunity for the public to submit comments on the particular project and propose other conservation measures that may directly benefit listed or sensitive fish and wildlife species; however, it does not require subsequent minimization or mitigation measures by the Federal agency involved. Although Federal agencies may include conservation measures for listed species as a result of the NEPA process, there is no requirement that impacts to the northern leopard frog from action analyzed under NEPA would be precluded. Any such measures are typically voluntary in nature and are not required by the statute. Additionally, activities on non-Federal lands are subject to NEPA if there is a Federal nexus, such as permitting by the U.S. Army Corps of Engineers or the Federal Energy Regulatory Commission.

The Environmental Protection Agency's mission is to protect human health and the environment. The agency implements this mission by setting standards for clean air, and regulating pesticide use, chemical use, and water pollution, among other actions. There are a number of laws that are central to this mission; however, the most important in terms of preventing impacts to northern leopard frogs are likely the Clean Air Act of 1970 (42 U.S.C. 7401 *et seq.*), the Clean Water Act of 1972 (33 U.S.C. 1251 *et seq.*), and the Safe Drinking Water Act of 1974 (42 U.S.C. 300f *et seq.*). However, as previously discussed, we have determined that the adverse effects to habitat for the northern leopard frog is not nor is likely to have a species-level impact.

The Clean Air Act is the Federal law that regulates air emissions from stationary and mobile sources. Among other things, this law authorizes the Environmental Protection Agency to establish National Ambient Air Quality Standards to protect public health and public welfare and to regulate emissions of hazardous air pollutants. The Environmental Protection Agency is required under the Clean Air Act to set National Ambient Air Quality Standards for six air pollutants (ozone, particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxides, and lead). Evidence indicates that the National Ambient Air Quality Standards for sulfur dioxide, which contributes to the formation of acid precipitation, may not be adequate to protect aquatic ecosystems from the impacts of acid precipitation and acidification impacts, and continued acid precipitation may cause vegetation damage under the current sulfur dioxide National Ambient Air Quality Standards. Under the current National Ambient Air Quality Standards, acid precipitation is likely to continue and may result in adverse habitat effects from nitrogen deposition (Baron *et al.* 2000, p. 365; Fenn *et al.* 2003, pp. 417–418).

The Clean Water Act establishes the basic structure for surface water quality protection in the United States. The Environmental Protection Agency employs a variety of regulatory and non-regulatory tools to reduce direct pollutant discharges into waterways, finance municipal wastewater treatment facilities, and manage polluted runoff. The Clean Water Act made it unlawful to discharge any pollutant from a point source into navigable waters, unless a permit was obtained. The overall objective of the Clean Water Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters so that they can support ''the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water.''

The Safe Drinking Water Act is the main Federal law that ensures the quality of Americans' drinking water. Under the Safe Drinking Water Act, the Environmental Protection Agency sets standards for drinking water quality and oversees the States, localities, and water suppliers who implement those standards. Section 1421 of the Safe Drinking Water Act tasks the Environmental Protection Agency with protecting underground sources of drinking water for all current and future drinking water supplies across the country.

The Service, Bureau of Land Management (BLM), National Park Service (NPS), and U.S. Forest Service (Forest Service) are the primary Federal agencies that manage lands that provide habitat for the northern leopard frog.

The northern leopard frog occurs on the Service's National Wildlife Refuges and Wetland Management Areas in States throughout the northern leopard frog's U.S. range. The mission of the National Wildlife Refuge System is to administer a national network of lands and waters for the conservation, management, and, where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans. Management on these National Wildlife Refuges largely results in the enhancement of northern leopard frog habitat (Hultberg 2009, pers. comm.; South Dakota Department of Game, Fish and Parks 2009, pp. 2–3).

The northern leopard frog occurs on BLM lands in Colorado, Idaho, Montana, New Mexico, Nevada, and Wyoming, and may also inhabit BLM lands in North Dakota and South Dakota. The frog has declined or is absent from BLM lands in Arizona (Clarkson and Rorabaugh 1989, p. 534), Idaho (Makela 1998, pp. 8–9), Montana (Maxell 2000, p. 144), Nevada (Hitchcock 2001, p. 9), Washington (McAllister *et al.* 1999, pp. 1–4), and Wyoming (Smith and Keinath 2004, p. 57), based upon current ranges. BLM lists the northern leopard frog as a sensitive species in Colorado, Nevada, Wyoming, and Montana; the species is not listed as sensitive on BLM lands elsewhere.

The Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 *et seq.*) is the primary Federal law governing most land uses on BLM-administered lands. Section 102(a)(8) of FLPMA (43 U.S.C. 1701(a)(8)) specifically recognizes the public lands are to be managed to provide food and habitat for fish and wildlife.

BLM Manual section 6840 guides the management of sensitive species in a manner consistent with species and habitat management objectives in land use and implementation plans to promote their conservation and to minimize the likelihood and need for listing under the Act (BLM 2008, p. 05V). This manual also requires that resource management plans (RMPs) should address sensitive species, and that implementation ''should consider all site-specific methods and procedures needed to bring species and their habitats to the condition under which management under the Bureau sensitive species policies would no longer be necessary'' (BLM 2008, p. 2A1).

Where it has been designated as a sensitive species under BLM Manual 6840, northern leopard frog conservation must be addressed in the development and implementation of RMPs on BLM lands. RMPs are the basis for all actions and authorizations involving BLM-administered lands and resources. Resource management plans that include areas of northern leopard frog habitat were completed beginning in the 1980s. RMPs have been developed or amended to incorporate State or regionally developed rangeland

health standards and guidelines, which BLM developed beginning in 1995 (60 FR 9894, February 22, 1995). Standards describe the specific conditions needed for public land health, such as the presence of streambank vegetation; guidelines are the rangeland management techniques designed to achieve or maintain healthy public lands, as defined by the standards. Standards and guidelines must be consistent with the fundamentals of rangeland health, which include watersheds that are in, or are making significant progress toward, properly functioning physical condition, including their riparian-wetland and aquatic components, and water quality that complies with State water quality standards. Areas and activities are assessed to determine if the standards are being achieved, and if not, actions must be taken towards fulfilling the standards (43 CFR 4180.1).

The Service has no specific documentation of how implementation of the rangeland health standards have maintained or improved riparian or wetland conditions within northern leopard frog habitat on BLM-administered lands. The latest Public Land Statistics report available (2010) lists 23,618 acres (ac) (9,558 hectares (ha)) of wetlands either in properly functioning condition or functioning-at-risk with an upward trend, out of 49,764 total wetland ac (20,139 ha) on BLM lands in Colorado, Idaho, Montana, Nevada, New Mexico, North and South Dakota, and Wyoming. The same report lists 12,215 mi (19,658 km) of riparian areas either in properly functioning condition or functioning-at-risk with an upward trend, out of 19,759 total miles (31,799 km) on BLM lands in the same States.

The BLM has regulatory authority for oil and gas leasing on Federal lands and on private lands with a Federal mineral estate, as provided at subpart 3100 (Onshore Oil and Gas Leasing: General) of Title 43 of the CFR, and they are authorized to require stipulations as a condition of issuing a lease. The BLM has developed best management practices to reduce habitat fragmentation, loss, and degradation from energy development. However, use of these conditions is discretionary, and the Service does not have information as to how this authority has been applied.

The NPS manages portions of habitat throughout the range of the northern leopard frog. The NPS carries out its responsibilities in parks and programs under the authority of the National Park Service Organic Act of 1916 (16 U.S.C. 1 *et seq.*). As defined in the National Park Service Organic Act, the purpose of national parks is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

The Forest Service manages habitat for northern leopard frogs in the western United States on National Forests and National Grasslands in several States, including Arizona, Colorado, Idaho, Minnesota, Montana, New Mexico, North Dakota, South Dakota, Utah, and Wyoming. Management of National Forest System lands is guided principally by the National Forest Management Act (NFMA) (16 U.S.C. 1600 *et seq.*). The NFMA specifies that all National Forests must have a Land and Resource Management Plan (LRMP) (16 U.S.C. 1604) to guide and set standards for all natural resource management activities on each National Forest or National Grassland. The NFMA requires the Forest Service to incorporate standards and guidelines into LRMPs (16 U.S.C. 1604(c)). The Forest Service conducts NEPA analyses on its LRMPs, which include provisions to manage plant and animal communities for diversity, based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives. The Forest Service planning process is similar to that of the BLM.

As described in the Status section, populations of northern leopard frogs have declined across most of the western States on lands with populations under Forest Service jurisdiction. The northern leopard frog is designated a ''sensitive species'' in Forest Service Regions 1 (Northern Region—northern Idaho, Montana, North Dakota, and northwest South Dakota), 2 (Rocky Mountain Region—Colorado, Nebraska, most of South Dakota and Wyoming), 3 (Southwest Region—Arizona and New Mexico), 5 (Pacific Southwest Region—California), and 6 (Pacific Northwest—Oregon and Washington), but not in Regions 4 (Intermountain Region—southern Idaho, Nevada, Utah, and western Wyoming) and 9 (Eastern Region—includes all eastern States and Minnesota). Sensitive species status does not provide special protection but requires, ''an analysis of the significance of adverse effects on the population, its habitat, and on the viability of the species as a whole'' (Forest Service's Manual at 2672.1).

Tribal Laws

Of the hundreds of tribal nations located throughout the range of the northern leopard frog in the United States and Canada, we only received information regarding the northern leopard frog from the Navajo Nation (Arizona, New Mexico, and Utah), the Fort Peck Tribes (Montana), the Confederated Salish and Kootenai Tribes of the Flathead Nation (Montana), and the Sisseton-Wahpeton Oyate (South Dakota). The Navajo Nation provided us with specific information regarding tribal laws. We will continue to welcome any additional information regarding the northern leopard frog from tribal nations.

Navajo Endangered Species List Group 2 species are protected under Navajo Nation law. The Navajo Nation Code (17 Navajo Nation Code section 507) makes it ''unlawful for any person to take, possess, transport, export, process, sell or offer for sale or ship'' a Group 2 species. Under this Code, ''take'' means ''the hunting, capturing, killing in any manner or the attempt to hunt, capture or kill in any manner * * *.'' Habitat protection, per se, is not afforded under the Navajo Nation Code.

The Navajo Nation government, pursuant to 2 Navajo Nation Code section 164, reviews actions involving the use of natural resources for compliance with Navajo Nation law, including the Navajo Endangered Species Code. The Navajo Nation Fish and Wildlife Department, through the section 164 review process, advises the tribal Resources Committee and the Navajo Nation Council whether proposed natural resources projects are in compliance with the Navajo Endangered Species Code. The Resources Committee has the power to give final approval for any land exchanges, non-mineral leases, right-of-ways, permits, and other licenses and interests on Navajo land in accordance with applicable and Federal and Navajo Nation laws. The Resources Committee recommends all actions involving the approval of mineral agreements, land acquisitions, and energy development agreements to the Navajo Nation Council. Some protection for northern leopard frog habitat may be provided through this review.

State Laws and Regulations

Only 1 of the 33 States assessed in the Status section above has listed the northern leopard frog under a State wildlife conservation law. In 2000, the Washington Department of Fish and Wildlife listed the northern leopard frog as an endangered species under the Endangered, Threatened, and Sensitive Species Classification (Washington Administrative Code, Title 232, Chapter 12, Section 014). However, because northern leopard frogs are currently

known from only two sites (Germaine and Hays 2009, p. 537) in Washington State, this regulatory mechanism protects relatively few individuals.

Arizona, California, Colorado, Connecticut, Idaho, Indiana, Kentucky, Maine, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, Oregon, Pennsylvania, Rhode Island, Utah, West Virginia, and Wyoming included the northern leopard frog specifically as a species of greatest conservation need or species of concern in their State wildlife action plans (designations vary by State as described in Status section above); however, this designation provides no regulatory protection to the species or its habitat. The northern leopard frog is not considered a species of concern in Illinois, Iowa, Minnesota, New York, North Dakota, Ohio, South Dakota, Texas, Vermont, and Wisconsin.

Several States have laws that provide some protection of northern leopard frogs in regards to collection, as discussed in the Status section above. These laws and regulations generally preclude or limit collection without a permit, but do not preclude impacts to habitat.

In summary, State wildlife conservation laws generally provide for an inconsistent network of protections for the northern leopard frog. While take is prohibited in some States, and the species is afforded some management consideration in project planning, the laws generally do not preclude impacts to habitat. However, 23 of the 33 States within the range of the northern leopard frog have indicated commitment through their State wildlife action plans to implementing conservation actions and habitat enhancement projects to benefit the northern leopard frog.

International Laws and Regulations

The northern leopard frog, Rocky Mountain population, is listed as endangered under the Federal Species at Risk Act (Statues of Canada 2002, c.29) in Canada. The Species at Risk Act, passed December 12, 2002, is a commitment by the Canadian government to prevent the extinction of wildlife and provide the necessary actions for the recovery of the species deemed endangered. Wildlife species listed under the Species at Risk Act are provided with legal protection to avoid extinction resulting from human activities (Government of Canada Species at Risk Public Registry 2011). The northern leopard frog is also Red Listed as endangered under the British Columbia Wildlife Act (Revised Statutes of British Columbia 1996, c. 488), which prohibits the killing or collecting of amphibians or keeping them in captivity without a permit. In British Columbia, the one remaining northern leopard frog population is located in the Creston Valley Wildlife Management Area (Committee on the Status of Endangered Wildlife in Canada 2009, p. 42). The Creston Valley Wildlife Management area is protected by the British Columbia government and by the Convention on Wetlands of International Importance (''Ramsar Convention,'' Ramsar, Iran 1971), where Creston Valley was designated a Wetland of International Importance on February 21, 1994. The Convention on Wetlands is an intergovernmental treaty that provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. In addition, other provincial legislation, including the Fish Protection Act (Bill 25–1997), the Creston Valley Wildlife Act (Revised Statutes of British Columbia 1996, c. 84), the Integrated Pest Management Act (Statues of British Columbia 2003, c. 58), and the Riparian Areas Regulation (Fish Protection Act, British Columbia Regulation 376/2004) provide habitat protection and enhancement to the remaining northern leopard frog population (Committee on the Status of Endangered Species in Canada 2009, p. vi).

The northern leopard frog was listed as threatened in Schedule 6 of Alberta's Wildlife Act (Revised Statutes of Alberta 2000, Chapter W–10), based on a decline in the number of populations, the fragmentation of occupied habitats, and limited population dispersal capabilities of the species (Alberta Northern Leopard Frog Recovery Team 2005, p. 1). As a result of the listing, the Alberta Northern Leopard Frog Recovery Plan was created and is currently being implemented (Alberta Northern Leopard Frog Recovery Team 2005). In Saskatchewan, the northern leopard frog is currently on the province's Interim Species at Risk List (Wildlife Act 1998, Chapter W–13.12) and is protected in provincial and national parks (Committee on the Status of Endangered Wildlife in Canada 2009, p. vi). The national status of the western boreal and prairie population (which includes Alberta, Saskatchewan, Manitoba, and the Northwest Territories) was evaluated in 1998 and 2002, and the northern leopard frog was designated a Species of Special Concern (Committee on the Status of Endangered Wildlife in Canada 2004, p. 20). As a result of the national designation, a management plan was required to be developed for the western boreal and prairie population. Although the northern leopard frog has no national or provincial status in Eastern Canada, the species is protected on Federal lands managed by Parks Canada (national parks and historic sites), Environment Canada (national wildlife areas), and the Department of Defense (Committee on the Status of Endangered Wildlife in Canada 2009, p. vi).

As noted in the **BACKGROUND** section above, the northern leopard frog population in western Canada is small and fragmented, but as one proceeds east, the number of northern leopard frog populations and their known status, based on the best available information, improves. Where the northern leopard frog has and likely continues to decline in western Canada, there is no information to indicate that the species is threatened by the inadequacy of existing regulatory mechanisms in Canada.

Summary of Factor D

While northern leopard frog conservation has been addressed in some State, Federal, and international plans, laws, regulations, and policies, none of these have applicability throughout the range of the northern leopard frog sufficient to provide effective population-level conservation. However, we have found in the analysis of the other four factors (A, B, C, and E) that there are no threats that currently rise to a level such that they significantly impact the northern leopard frog at the species level. Therefore, we conclude that the best scientific and commercial information available indicates that the inadequacy of existing regulatory mechanisms is not a significant threat to the northern leopard frog at the species level now, nor do we have indication that it will in the future.

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

Pesticides

Even at low levels, pesticides can contribute to local declines or extirpation of northern leopard frog populations, particularly in areas that are in close proximity to heavy or frequent pesticide use because tadpole and larval stages are sensitive to even low-level pesticide contamination (Berrill *et al.* 1997, p. 244). The effects to northern leopard frogs from pesticides, including herbicides, piscicides (chemical substances poisonous to fish), and insecticides, vary, but information indicates that the species is negatively affected both

acutely and via sublethal symptoms by several pesticides and chemicals (rotenone, Roundup, atrazine, malathion, copper sulfate, and fenthion) that are commonly used in the United States (Stebbins and Cohen 1995, pp. 215–216; Fordham 1999, p. 125; Hayes *et al.* 2002, pp. 895–896; Beasley *et al.* 2005, p. 86; Patla 2005, p. 275; Relyea 2005, p. 353; Rorabaugh 2005, p. 576). Pesticide contamination of surface waters in the United States is extensive, and concentrations of pesticides are frequently greater than water-quality benchmarks for aquatic life and fish-eating wildlife (Gilliom *et al.* 2006, p. 8). Of the streams analyzed as part of the National Water Quality Assessment Program, 57 percent contained one or more pesticides that exceeded at least one aquatic life protection benchmark (Gilliom *et al.* 2006, p. 8), which may result in decreased habitat quality, malformations, and decreased fitness of northern leopard frogs (Rorabaugh 2005, p. 576).

While northern leopard frogs may be exposed to pesticides in a number of ways, they are most significantly exposed to pesticides when run-off from agricultural and urban areas reaches occupied habitats. Exposure to pesticide run-off can influence parasitic community structure and seasonal recruitment in northern leopard frogs (King *et al.* 2008, p. 20). Berrill *et al.* (1997, p. 243) found that tadpoles (including northern leopard frog tadpoles) are extremely sensitive (*i.e.,* they experience paralysis and death) to exposure of one pesticide at a time; pesticides in combination likely have more severe effects. Ouellet *et al.* (1997, p. 97) examined northern leopard frogs in agricultural and non-agricultural ponds in Quebec and found that frogs in the agricultural ponds had a variety of hind limb malformations. The authors identified agricultural pesticides as a potential causal agent. Pesticide exposure not only can cause malformations in frogs (Lannoo 2008, pp. 142–144), but contact with pesticides has been found to increase amphibians vulnerability to *Ribeiroia* (trematode) and other parasitic infections, which are also known to cause frog malformations (Kiesecker 2002, p. 9903; Lannoo 2008; Rohr *et al.* 2008, p. 1237). In addition, increased nitrates from fertilizers can also result in adverse effects to amphibian development and survival (Marco *et al.* 1999, p. 2837; Rouse *et al.* 1999, pp. 800–802). Therefore, although northern leopard frogs were not specifically tested for pesticides in the examples from Washington or Quebec, it is plausible that the habitat alteration and subsequent contamination of aquatic habitats with pesticides contributed to the decline of northern leopard frogs in these areas. Agrichemical pollution is also thought to be a factor in declining amphibian populations in Nebraska and Quebec (Beasley *et al.* 2005, p. 86; McCleod 2005, p. 293; King *et al.* 2008, p. 20).

Based upon the above information, exposure to pesticides has likely contributed to northern leopard frog population extirpations throughout their range. While the magnitude of these impacts is conceivably high in localized areas, pesticide use is not ubiquitous throughout the range of the northern leopard frog; thus pesticide use is likely not resulting in impacts at regional and species-level scales. Further, despite ongoing exposure to pesticides, the northern leopard frog is apparently still considered to be widespread and common in the eastern United States and eastern Canada. Therefore, the best available scientific information indicates that pesticide use does not constitute a significant threat to the northern leopard frog at the species level now, nor do we have indication that it will in the future.

Malformations

Within the last 15 to 20 years, malformed northern leopard frogs have been reported with increasing frequency in the United States, particularly in Minnesota, North Dakota, South Dakota, and Vermont (Helgen *et al.* 1998, p. 288; Sessions 2003, p. 168; Johnson and Lunde 2005, p. 124; Rorabaugh 2005, p. 576). Malformations are also reported from Colorado, Indiana, Iowa, Michigan, Missouri, Montana, Ohio, Quebec, and Wisconsin (Converse *et al.* 2000, p. 163; Johnson and Lunde 2005, pp. 124–128; Rorabaugh 2005, p. 575; North American Center for Reporting Amphibian Malformations 2006). Noted malformations have included limb deformities, multiple or missing limbs, jaw deformities, stunted growth, multiple eyes, missing eyes, and various other growths (Helgen *et al.* 1998, pp. 288–297; Hoppe 2005, p. 104). Malformations are believed to be caused by a variety of natural and manmade factors, including trematode parasites, pesticides, ultraviolet-B radiation, predation attempts, and water contamination (Helgen *et al.* 1998, pp. 294–297; Blaustein and Johnson 2003, pp. 87–91; Sessions 2003, p. 168; Johnson and Lunde 2005, pp. 124–138;), but are generally linked to human-induced changes in aquatic habitats (Meteyer *et al.* 2000, pp. 151–171; Johnson and Lunde 2005, pp. 130–136; Lannoo 2008, pp. 105–110, 197). These malformations typically lead to mortality as behavior and physical mobility (such as swimming, hopping, and feeding) are compromised to the point of affecting individual fitness (Helgen *et al.* 1998, p. 289; Hoppe 2005, pp. 105–108). Northern leopard frogs tend to be one of the most common species found with malformations (Lannoo 2008, p. 207).

Malformations are a concern because they affect the ability of individual and local populations of northern leopard frogs to survive, and because they are a likely indicator of decreased water quality and of decreased overall habitat quality. However, as stated above, there are likely many causes of malformations in northern leopard frogs that have to do with local, site-specific conditions and are likely not the result of the same causal agent throughout the range of the northern leopard frog (Lannoo 2008, p. 200). Further, the diversity of habitat used by northern leopard frogs may provide some protection against the variety of agents that seem to result in malformation at the local scale. The rate of malformations in some local populations of northern leopard frogs may result in significant effects to these populations; however, the impact of malformations on the northern leopard frog at the species level is not known to be significant. Therefore, based on the best available information, we conclude that malformations are not a significant threat to northern leopard frogs at the species level now, nor do we have indication that it will in the future.

Climate Change

''Climate'' refers to an area's long-term average weather statistics (typically for at least 20- or 30-year periods), including the mean and variation of surface variables such as temperature, precipitation, and wind, whereas ''climate change'' refers to a change in the mean and/or variability of climate properties that persists for an extended period (typically decades or longer), whether due to natural processes or human activity (Intergovernmental Panel on Climate Change (IPCC) 2007a, p. 78). Although changes in climate occur continuously over geological time, changes are now occurring at an accelerated rate. For example, at continental, regional and ocean basin scales, recent observed changes in long-term trends include: A substantial increase in precipitation in eastern parts of North American and South America, northern Europe, and northern and central Asia, and an increase in intense tropical cyclone activity in the North Atlantic since about 1970 (IPCC 2007a,

p. 30); and an increase in annual average temperature of more than 2 °F (1.1 °C) across US since 1960 (Global Climate Change Impacts in the United States (GCCIUS) 2009, p. 27). Examples of observed changes in the physical environment include: An increase in global average sea level, and declines in mountain glaciers and average snow cover in both the northern and southern hemispheres (IPCC 2007a, p. 30); substantial and accelerating reductions in Arctic sea-ice (*e.g.,* Comiso *et al.* 2008, p. 1), and a variety of changes in ecosystem processes, the distribution of species, and the timing of seasonal events (*e.g.,* GCCIUS 2009, pp. 79–88).

The IPCC used Atmosphere-Ocean General Circulation Models and various greenhouse gas emissions scenarios to make projections of climate change globally and for broad regions through the 21st century (Meehl *et al.* 2007, p. 753; Randall *et al.* 2007, pp. 596–599), and reported these projections using a framework for characterizing certainty (Solomon *et al.* 2007, pp. 22–23). Examples include: (1) It is virtually certain there will be warmer and more frequent hot days and nights over most of the earth's land areas; (2) it is very likely there will be increased frequency of warm spells and heat waves over most land areas, and the frequency of heavy precipitation events will increase over most areas; and (3) it is likely that increases will occur in the incidence of extreme high sea level (excludes tsunamis), intense tropical cyclone activity, and the area affected by droughts (IPCC 2007b, p. 8, Table SPM.2). More recent analyses using a different global model and comparing other emissions scenarios resulted in similar projections of global temperature change across the different approaches (Prinn *et al.* 2011, pp. 527, 529).

All models (not just those involving climate change) have some uncertainty associated with projections due to assumptions used, data available, and features of the models; with regard to climate change this includes factors such as assumptions related to emissions scenarios, internal climate variability and differences among models. Despite this, however, under all global models and emissions scenarios, the overall projected trajectory of surface air temperature is one of increased warming compared to current conditions (Meehl *et al.* 2007, p. 762; Prinn *et al.* 2011, p. 527). Climate models, emissions scenarios, and associated assumptions, data, and analytical techniques will continue to be refined, as will interpretations of projections, as more information becomes available. For instance, some changes in conditions are occurring more rapidly than initially projected, such as melting of Arctic sea ice (Comiso *et al.* 2008, p. 1; Polyak *et al.* 2010, p. 1797), and since 2000 the observed emissions of greenhouse gases, which are a key influence on climate change, have been occurring at the mid- to higher levels of the various emissions scenarios developed in the late 1990's and used by the IPPC for making projections (*e.g.,* Raupach *et al.* 2007, Figure 1, p. 10289; Manning *et al.* 2010, Figure 1, p. 377; Pielke *et al.* 2008, entire). Also, the best scientific and commercial data available indicates that average global surface air temperature is increasing and several climate-related changes are occurring and will continue for many decades even if emissions are stabilized soon (*e.g.* Meehl *et al.* 2007, pp. 822–829; Church *et al.* 2010, pp. 411–412; Gillett *et al.* 2011, entire).

Changes in climate can have a variety of direct and indirect impacts on species, and can exacerbate the effects of other threats. Rather than assessing ''climate change'' as a single threat in and of itself, we examine the potential consequences to species and their habitats that arise from changes in environmental conditions associated with various aspects of climate change. For example, climate-related changes to habitats, predator-prey relationships, disease and disease vectors, or conditions that exceed the physiological tolerances of a species, occurring individually or in combination, may affect the status of a species. Vulnerability to climate change impacts is a function of sensitivity to those changes, exposure to those changes, and adaptive capacity (IPCC 2007, p. 89; Glick *et al* 2011, pp. 19–22). As described above, in evaluating the status of a species, the Service uses the best scientific and commercial data available, and this includes consideration of direct and indirect effects of climate change. As is the case with all potential threats, if a species is currently affected or is expected to be affected by one or more climate-related impacts, this does not necessarily mean the species is a threatened or endangered species as defined under the Act. If a species is listed as threatened or endangered, this knowledge regarding its vulnerability to, and impacts from, climate-associated changes in environmental conditions can be used to help devise appropriate strategies for its recovery.

While projections from global climate model simulations are informative and in some cases are the only or the best scientific information available, various downscaling methods are being used to provide higher-resolution projections that are more relevant to the spatial scales used to assess impacts to a given species (see Glick *et al,* 2011, pp. 58–61). With regard to the area of analysis for the northern leopard frog, specific downscaled projections are not available for all the parts of its range, but we do have more generalized information. In North America, climate change is likely to constrain already over-allocated water resources, resulting in increased competition among agricultural, municipal, industrial, and ecological uses of water (Bates *et al.* 2008, p. 102). Of particular note are the expected changes in surface and groundwater hydrology. As the rate of warming accelerates, the timing, volume, quality, and spatial distribution of fresh water available to most areas in North America will change (Bates *et al.* 2008, p. 102; Johnson *et al.* 2010, p. 138). These changes will likely affect the quality and quantity of northern leopard frog habitat. Some areas, especially in the arid West, will likely see decreases in habitat, while other areas may experience stable or increasing available habitat. The freshwater wetland habitats the northern leopard frog depends upon for breeding and overwintering, particularly in the arid Southwest (Arizona, Colorado, New Mexico, Nevada, and Utah) and the prairie potholes region (Alberta, Iowa, Manitoba, Minnesota, Montana, North Dakota, Saskatchewan, and South Dakota) are expected to be particularly sensitive to climate change (Johnson *et al.* 2010, p. 128). Increases in drought and seasonal precipitation may have profound impacts to habitat; however, we are unable to reliably predict how changes in precipitation will affect current and future northern leopard frog habitat throughout the species' range.

Many experts expect that amphibians may be among the first vertebrates to exhibit broad-scale changes in response to global climate change (Reaser and Blaustein 2005, p. 61). The northern leopard frog is at the upper limit of its physiological tolerance to temperature and dryness throughout the arid and semi-arid habitats in the western United States (Hammerson 1999, pp. 146–147; Hitchcock 2001, pp. 18–19; Rorabaugh 2005, p. 577). As such, if the predictions for temperature increases are realized, these arid areas may no longer support the species. In addition, the northern leopard frog frequently depends upon small, ephemeral wetlands for breeding habitats (Merrell 1968, p. 275), and due to habitat fragmentation, the presence of nonnative aquatic species, and other

factors (such as agricultural and urban development, and roads), the leopard frog is bounded by dispersal barriers throughout its range (Rorabaugh 2005, p. 577). Species persistence is greater for species occupying larger patches of their historical range (Channell and Lomolino 2000, pp. 84–86). Because northern leopard frogs occupy relatively small patches of habitat compared to their historical distribution in some portions of their range, we may expect that climate change could result in further fragmentation of those populations in those portions of its range. In other words, the frogs may exist in smaller and smaller patches that are more remote from the core of their historical range.

As described above, changes in the quality and quantity of habitat are likely to occur throughout the range of the northern leopard frog. There are likely to be additional impacts to frogs in some portions of it range because of these changes. Climate change impacts in the arid and semi-arid areas could include earlier reproduction and more rapid development of larva due to more a more advanced spring, decreased mobility due to drier conditions, and shorter hibernation periods due to longer ice-free periods in the winter (Carey and Alexander 2003, pp. 111–121; Patla and Keinath 2005, pp. 44–46; Johnson *et al.* 2010, p. 133). Higher summer temperatures may result in high egg mortality (in response to freezing temperatures that may follow earlier breeding times) and in drying of breeding habitats prior to metamorphosis (in response to increased evaporation rate) (Smith 2003, p. 34). Climate change may also cause frogs to experience increased physiological stress and decreased immune system function, possibly leading to disease outbreaks (Carey and Alexander 2003, pp. 111–121; Pounds *et al.* 2006, pp. 161–167). Northern leopard frog populations at lower elevations are likely to show changes in phenology sooner than those at higher elevations (Corn 2003, pp. 622–625). Based upon the extended droughts in the Southwest and changes the Service has noted to northern leopard frog habitats in Arizona and New Mexico (Service 2007, pp. 38–41), it is likely that climate change may continue to reduce the amount of habitat available for northern leopard frogs, particularly in the western United States.

Climate change may result in significant impacts to some portions of the range of the northern leopard frog and may synergistically result in increased impacts from disease and other factors discussed above. The overall impacts of climate change will likely be very different across the range of the northern leopard frog, and it is difficult to predict how these effects will manifest themselves in terms of species-level impacts. There may be decreases in habitat in some areas, and increases in other portions of the range. As a result, it is possible that the species' range could expand, contract, or shift. However, we do not know enough about the capacity of this species to adapt to changing environmental conditions to make reliable predictions about future large-scale range contractions or shifts in response to climate change. In the arid West, it is likely that the predictions for greater variability in temperature and precipitation will result in further decreases in wetland habitats, which may exacerbate the negative interactions of native and nonnative species using wetted habitats. However, we expect that there may be portions of the species' range that may experience more favorable conditions, such as increased precipitation and temperature, that will positively affect habitat for the northern leopard frog. In conclusion, although we believe climate change will impact some northern leopard frog habitats in the future, the information we reviewed does not indicate that climate change will adversely impact northern leopard frogs at the species level. Therefore, based on the best available information, we conclude that climate change is not a significant threat individually or in combination to the northern leopard frog at the species level now, nor do we have indication that it will in the future.

Summary of Factor E

The northern leopard frog occupies a wide geographic range across the United States and Canada. As we have stated earlier, because it occurs across such a large area, the habitats it uses are subject to a number of impacts from pesticide use and climate change, and the species is subject to malformations that will impact local, and possibly even regional, populations. However, the wide diversity of wetland and upland habitats that are currently used by the northern leopard frog across its range may provide some protection in the future from changing climates and possibly from the variety of potential agents that cause malformations. Therefore, the best available information indicates that other natural and manmade factors do not constitute a significant threat to the northern leopard frog at the species level now, nor do we have indication that it will in the future.

Finding

As required by the Act, we considered the five factors in assessing whether the northern leopard frog is endangered or threatened throughout all of its range (*i.e.,* in danger of extinction now or in the foreseeable future). We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the northern leopard frog. We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with other Federal, State, and tribal agencies.

There have been historical impacts to the northern leopard frog, in particular. The loss and degradation of wetland habitat, introduction of nonnative species, and disease, have resulted in local and regional extirpations of the species throughout its range, but particularly in the western United States and Canada, as described in the Background section above. Further, some of the threats discussed in this finding work in concert with one another to cumulatively create situations that potentially impact the northern leopard frog beyond the scope of each individual threat. It is likely that for such a widespread species as the northern leopard frog, causes of decline are dependent upon multiple factors or causes. This is particularly true since the northern leopard frog uses both terrestrial and aquatic habitats. For example, as discussed under *Factor A,* degradation of wetland habitats, resulting from agricultural use and the application of pesticides, results in increased immunosuppression and risk of parasitic infection in northern leopard frogs (Christin *et al.* 2003, pp. 1129–1130). These factors can also enhance the potential for malformations, which can result in decreased fitness, and subsequent declines of northern leopard frog populations. Malformations (discussed under *Factor E*) are likely the result of multiple causes. Lannoo (2008) describes the search for ''the'' cause of amphibian malformations, but eloquently determines in his comprehensive review that there is likely no one cause, but many factors that can result in malformations. Similarly, Thiemann and Wassersug (2000) found that the presence of predators and parasites also increased the susceptibility of *Rana* (=*Lithobates*) tadpoles to trematode infection by causing tadpoles to decrease their activity levels. They found that the combination of such stressors as increased predator loads (such as from

widespread predator introductions as discussed under *Factor C*), parasite infection, and pesticide pollution may synergistically result in increased impacts to tadpoles, which could be another factor in declining populations. However, even where these factors may work cumulatively to impact northern leopard frogs, the best available information does not indicate that current populations are being impacted significantly at scales above the population or regional levels.

In summary, in order to determine that the northern leopard frog warrants listing throughout its range, we must find that the best available information indicates it is *in danger of extinction* now or in the foreseeable future. The phrase ''in danger of extinction'' requires a showing that the species is actually likely in danger of extinction now, or likely to become so in the foreseeable future, not merely a showing that the species is facing threats. We must show that the threats are operative on the species such that the species meets the definition of threatened or endangered (*i.e.,* in danger of extinction now or in the foreseeable future). The northern leopard frog occupies a wide geographic range across the United States and Canada. Because it occurs across such a large area, it is subject to a number of impacts that represent potential threats at various scales. The number of threats the species has faced and continues to face may appear significant; however, as discussed above, the factors affecting the northern leopard frog have generally been historical in impact or are occurring now and into the future at scales below the species level as indicated by the presence of apparently stable populations in large areas of its range. Further, while there have been regional declines noted in the range of the species, particularly in the western portions of the United States and Canada, the frog is apparently still considered to be widespread and relatively common in the eastern United States and eastern Canada.

Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that threats, alone or cumulatively, are not of sufficient magnitude at the species level to indicate that the northern leopard frog is in danger of extinction, or likely to become in danger of extinction within the foreseeable future, throughout all of its range.

Significant Portion of Its Range

The Act defines ''endangered species'' as any species which is ''in danger of extinction throughout all or a significant portion of its range,'' and ''threatened species'' as any species which is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The definition of ''species'' is also relevant to this discussion. The Act defines the term ''species'' as follows: ''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 which interbreeds when mature.'' The phrase ''significant portion of its range'' is not defined by the statute, and we have never addressed in our regulations: (1) The consequences of a determination that a species is either endangered or likely to become so throughout a significant portion of its range, but not throughout all of its range; or (2) what qualifies a portion of a range as ''significant.''

Two recent district court decisions have addressed whether the ''significant portion of its range'' language allows the Service to list or protect less than all members of a defined ''species'': *Defenders of Wildlife* v. *Salazar,* 729 F. Supp. 2d 1207 (D. Mont. 2010), concerning the Service's delisting of the Northern Rocky Mountain gray wolf (74 FR 15123, Apr. 2, 2009); and *WildEarth Guardians* v. *Salazar,* 2010 U.S. Dist. LEXIS 105253 (D. Ariz. Sept. 30, 2010), concerning the Service's 2008 finding on a petition to list the Gunnison's prairie dog (73 FR 6660, February 5, 2008). The Service had asserted in both of these determinations that it had authority, in effect, to protect only some members of a ''species,'' as defined by the Act (*i.e.,* species, subspecies, or DPS), under the Act. Both courts ruled that the determinations were arbitrary and capricious on the grounds that this approach violated the plain and unambiguous language of the Act. The courts concluded that reading the ''significant portion of its range'' language to allow protecting only a portion of a species' range is inconsistent with the Act's definition of ''species.'' The courts concluded that once a determination is made that a species (*i.e.,* species, subspecies, or DPS) meets the definition of ''endangered species'' or ''threatened species,'' it must be placed on the list in its entirety and the Act's protections applied consistently to all members of that species (subject to modification of protections through special rules under sections 4(d) and 10(j) of the Act).

Consistent with that interpretation, and for the purposes of this finding, we interpret the phrase ''significant portion of its range'' in the Act's definitions of ''endangered species'' and ''threatened species'' to provide an independent basis for listing; thus there are two situations (or factual bases) under which a species would qualify for listing: a species may be endangered or threatened throughout all of its range; or a species may be endangered or threatened in only a significant portion of its range. If a species is in danger of extinction throughout a significant portion of its range, it, the species, is an ''endangered species.'' The same analysis applies to ''threatened species.'' Therefore, the consequence of finding that a species is endangered or threatened in only a significant portion of its range is that the entire species will be listed as endangered or threatened, respectively, and the Act's protections will be applied across the species' entire range.

We conclude, for the purposes of this finding, that interpreting the ''significant portion of its range'' phrase as providing an independent basis for listing is the best interpretation of the Act because it is consistent with the purposes and the plain meaning of the key definitions of the Act; it does not conflict with established past agency practice, as no consistent, long-term agency practice has been established; and it is consistent with the judicial opinions that have most closely examined this issue. Having concluded that the phrase ''significant portion of its range'' provides an independent basis for listing and protecting the entire species, we next turn to the meaning of ''significant'' to determine the threshold for when such an independent basis for listing exists.

Although there are potentially many ways to determine whether a portion of a species' range is ''significant,'' we conclude, for the purposes of this finding, that the significance of the portion of the range should be determined based on its biological contribution to the conservation of the species. For this reason, we describe the threshold for ''significant'' in terms of an increase in the risk of extinction for the species. We conclude that a biologically based definition of ''significant'' best conforms to the purposes of the Act, is consistent with judicial interpretations, and best ensures species' conservation. Thus, for the purposes of this finding, a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that, without that portion, the species would be in danger of extinction.

We evaluate biological significance based on the principles of conservation biology using the concepts of

redundancy, resiliency, and representation. Resiliency describes the characteristics of a species that allow it to recover from periodic disturbance. Redundancy (having multiple populations distributed across the landscape) may be needed to provide a margin of safety for the species to withstand catastrophic events. Representation (the range of variation found in a species) ensures that the species' adaptive capabilities are conserved. Redundancy, resiliency, and representation are not independent of each other, and some characteristics of a species or area may contribute to all three. For example, distribution across a wide variety of habitats is an indicator of representation, but it may also indicate a broad geographic distribution contributing to redundancy (decreasing the chance that any one event affects the entire species), and the likelihood that some habitat types are less susceptible to certain threats, contributing to resiliency (the ability of the species to recover from disturbance). None of these concepts is intended to be mutually exclusive, and a portion of a species' range may be determined to be ''significant'' due to its contributions under any one of these concepts.

For the purposes of this finding, we determine if a portion's biological contribution is so important that the portion qualifies as ''significant'' by asking whether, without that portion, the representation, redundancy, or resiliency of the species would be so impaired that the species would have an increased vulnerability to threats to the point that the overall species would be in danger of extinction (*i.e.,* would be ''endangered''). Conversely, we would not consider the portion of the range at issue to be ''significant'' if there is sufficient resiliency, redundancy, and representation elsewhere in the species' range that the species would not be in danger of extinction throughout its range if the population in that portion of the range in question became extirpated (extinct locally).

We recognize that this definition of ''significant'' establishes a threshold that is relatively high. On the one hand, given that the consequences of finding a species to be endangered or threatened in a significant portion of its range would be listing the species throughout its entire range, it is important to use a threshold for ''significant'' that is robust. It would not be meaningful or appropriate to establish a very low threshold whereby a portion of the range can be considered ''significant'' even if only a negligible increase in extinction risk would result from its loss. Because nearly any portion of a species' range can be said to contribute some increment to a species' viability, use of such a low threshold would require us to impose restrictions and expend conservation resources disproportionately to conservation benefit: listing would be rangewide, even if only a portion of the range of minor conservation importance to the species is imperiled. On the other hand, it would be inappropriate to establish a threshold for ''significant'' that is too high. This would be the case if the standard were, for example, that a portion of the range can be considered ''significant'' only if threats in that portion result in the entire species' being currently endangered or threatened. Such a high bar would not give the ''significant portion of its range'' phrase independent meaning, as the Ninth Circuit held in *Defenders of Wildlife* v. *Norton,* 258 F.3d 1136 (9th Cir. 2001).

The definition of ''significant'' used in this finding carefully balances these concerns. By setting a relatively high threshold, we minimize the degree to which restrictions will be imposed or resources expended that do not contribute substantially to species conservation. But we have not set the threshold so high that the phrase ''in a significant portion of its range'' loses independent meaning. Specifically, we have not set the threshold as high as it was under the interpretation presented by the Service in the *Defenders* litigation. Under that interpretation, the portion of the range would have to be so important that current imperilment there would mean that the species would be currently imperiled everywhere. Under the definition of ''significant'' used in this finding, the portion of the range need not rise to such an exceptionally high level of biological significance. We recognize that if the species is imperiled in a portion that rises to that level of biological significance, then we should conclude that the species is in fact imperiled throughout all of its range, and that we would not need to rely on the ''significant portion of its range'' language for such a listing. Rather, under this interpretation we ask whether the species would be in danger of extinction everywhere without that portion, *i.e.,* if that portion were completely extirpated.

The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that have no reasonable potential to be significant or to analyzing portions of the range in which there is no reasonable potential for the species to be endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be ''significant,'' and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is ''significant.'' In practice, a key part of the portion status analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the species' range that clearly would not meet the biologically based definition of ''significant,'' such portions will not warrant further consideration.

After reviewing the potential threats throughout the range of the northern leopard frog, we determine that there is a portion of the range that could be considered to have concentrated threats. We defined this area, which we are calling the westernmost portion, as including the current range of the northern leopard frog within British Columbia and Alberta, Canada, and Washington, eastern Oregon (if any native populations remain), Idaho, California (if any native populations remain), Nevada, Utah, Arizona, New Mexico, Colorado, and the portions of Wyoming and Montana that are west of the Continental Divide. Below, we outline the elevated threats found within this westernmost portion of the northern leopard frog's range (see ''Summary of Information Pertaining to the Five Factors'' for complete discussion). We then assess whether this portion of the species' range may meet the biologically based definition of ''significant,'' that is, whether the contribution of this portion of the northern leopard frog's range to the viability of the species is so important that without this westernmost portion of the range, the species would be in danger of extinction.

This westernmost portion of the northern leopard frog's range has

experienced significant declines and continues to experience impacts, likely resulting from the influence of multiple contributing factors, but primarily resulting from the combination of habitat loss, the spread of American bullfrogs and predaceous fish into otherwise suitable breeding habitats, disease, and increased variability in temperature and precipitation (Rorabaugh 2005, pp. 575–577; Smith and Keinath 2007, pp. 29–31; Committee on the Status of Endangered Species in Canada 2009, pp. 31–35; Johnson *et al.* 2011, p. 557). As described above in *Species Information,* the northern leopard frog depends upon a landscape that includes breeding ponds, upland foraging areas, overwintering aquatic habitats, and connectivity among habitats and between populations (Pope *et al.* 2000, p. 2505; Smith 2003, pp. 6–15; Rorabaugh 2005, pp. 571–575). The destruction and degradation of wetland and riparian habitat is thought to represent the most widespread impact to northern leopard frog populations in Arizona (Arizona Game and Fish Department 2009, p. 1), Colorado (Colorado Division of Wildlife 2009, p. 2), Idaho (Idaho Department of Fish and Game 2005, Northern leopard frog species account), Montana (Montana Fish Wildlife and Parks 2009, p. 2), Nevada (Nevada Department of Wildlife 2009, p. 4), New Mexico (New Mexico Department of Game and Fish 2009, p. 3), and Alberta, Canada (Alberta Northern Leopard Frog Recovery Team 2005, p. 6). The loss of aquatic habitats has been compounded by the spread of the American bullfrog and nonnative fish in the West. These species predate on and compete with all life stages of northern leopard frogs and have further stressed northern leopard frog populations in this westernmost portion, likely contributing to population declines. Based upon the extended droughts in the Southwest and changes the Service has noted to northern leopard frog habitats in Arizona and New Mexico (Service 2007, pp. 38–41), it is likely that increased variability in temperature and precipitation will continue to reduce the amount of breeding and wintering habitat available for northern leopard frogs, particularly in the western United States.

After identifying elevated threats in the westernmost portion of the range of the northern leopard frog, we next consider whether this portion of the range should be considered a ''significant portion of its range'' based on the framework laid out above. In order for the westernmost portion of the range to be considered significant, we consider whether there is sufficient resiliency, redundancy, and representation in the remaining portion of the range (which includes the species in the rest of its range; hereafter referred to as the eastern portion of the range) such that the northern leopard frog would not be in danger of extinction if the westernmost portion of the range in question became extirpated (extinct locally). Our analysis, described below, finds that the westernmost portion of the range does not meet this definition of significant, because even without that portion of the range the species, rangewide, would not be in danger of extinction.

To determine whether or not the westernmost portion of the range is ''significant,'' we considered the species' resiliency, redundancy, and representation in the remainder (*i.e.,* the eastern portion) of its range. For resiliency, we evaluated whether the eastern portion of the range of the northern leopard frog, without the westernmost portion, would maintain the characteristics necessary to allow the species to recover from periodic disturbance. The eastern portion we refer to here includes Saskatchewan, eastern Montana, and eastern Wyoming, and continues east through Canada and the United States through the rest of the range of the northern leopard frog. This area encompasses a large proportion of the range of the species and contains a variety of wetland and upland habitats necessary to provide breeding and overwintering habitats, and habitat linkages. This area is also sufficiently large as to provide a margin of safety for the species to withstand disturbance events. We conclude that the eastern portion of the range of the northern leopard frog is sufficiently resilient that even without the westernmost portion of its range, the species would not be in danger of extinction.

As part of our evaluation of redundancy, we evaluated whether the eastern portion of the range of the northern leopard frog, without the westernmost portion, would have enough populations sufficiently distributed across the landscape to allow the species to withstand catastrophic events. Based upon what we know of the current population status in the eastern portion of the range, there are multiple areas (such as South Dakota, North Dakota, Ohio, Ontario, Vermont, New York, and Quebec) where the northern leopard frog is currently maintaining stable, widespread populations. These areas are sufficient in size and apparent distribution to serve as core areas from which northern leopard frogs can recolonize areas that could be subject to catastrophic future events (such as widespread flooding or drought). We conclude that the eastern portion of the range of the northern leopard frog is sufficiently redundant that even without the westernmost portion of its range, the species would not be in danger of extinction.

In our evaluation of representation, we considered whether the eastern portion of the range of the northern leopard frog, without the westernmost portion, contains enough variation to ensure that the species' adaptive capabilities are conserved (such that the genetic, morphological, physiological, behavioral, or ecological diversity of the species overall is maintained). Based upon our current knowledge of the northern leopard frog, we do not have evidence of morphological, physiological, or behavioral differences between individuals from the westernmost portion of the range and individuals in the eastern portion of the range. Although the westernmost portion of the range is located on the periphery of the species' overall range, the eastern portion contains large areas that represent an important genetic evolutionary history between eastern and western northern leopard frogs (Hoffman and Blouin 2004a, 2004b; Wilson *et al.* 2008). This important genetic information is represented within the defined eastern area and would not be lost if the westernmost portion of the range were extirpated. In addition, although not well studied, there are likely broad ecological differences between northern leopard frogs in the westernmost portion of the range compared to those in the eastern portion of the range that result from the geographical differences in habitat, climate, and species interactions. We recognize the ecological importance of conserving peripheral, as well as interior, populations of wide-ranging species. However, due to the diversity of areas the northern leopard frog occupies in the large eastern portion of its range, it is likely that sufficient ecological adaptation potential would be maintained to ensure ecological representation. We conclude that the eastern portion of the range of the northern leopard frog is sufficiently representative that even without the westernmost portion of its range, the species would not be in danger of extinction.

Based on our analysis, we find that the eastern portion of the range of the northern leopard frog contains sufficient redundancy, resiliency, and

representation that, even without the contribution of the westernmost portion of the species' range, the northern leopard frog would not be in danger of extinction. Therefore, we find that the westernmost portion of the northern leopard frog does not constitute a significant portion of the species' range.

In conclusion, based on a review of the best available information, we find the northern leopard frog is not in danger of extinction now or in the foreseeable future throughout all or a significant portion of its range and, therefore, does not warrant listing at this time.

We request that you submit any new information concerning the distribution and status of, or threats to, the northern leopard frog to our Arizona Ecological Services Office (see **ADDRESSES**) whenever it becomes available. New information will help us monitor the northern leopard frog and encourage its conservation. If an emergency situation develops for the northern leopard frog or any other species, we will act to provide immediate protection.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Arizona Ecological Services Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are the staff members of the Arizona Ecological Services Office.

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 26, 2011.

Gregory E. Siekaniec,

Acting Director, Fish and Wildlife Service.

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