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FEDERAL REGISTER

Vol. 76 Wednesday,
No. 197 October 12, 2011

Pages 63149–63536

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2010–0020]

RIN 0579–AD33

Importation of Tomatoes With Stems From the Republic of Korea Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to allow, under certain conditions, the importation into the United States of commercial consignments of tomatoes with stems from the Republic of Korea. The conditions for the importation of tomatoes with stems from the Republic of Korea will include requirements for pest exclusion at the production site, fruit fly trapping inside and outside the production site, and pest-excluding packinghouse procedures. The tomatoes will also be required to be accompanied by a phytosanitary certificate issued by the national plant protection organization of the Republic of Korea with an additional declaration confirming that the tomatoes have been produced in accordance with the requirements. This action will allow for the importation of tomatoes with stems from the Republic of Korea while continuing to provide protection against the introduction of injurious plant pests into the United States.

DATES: *Effective Date:* November 14, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Phillip B. Grove, Regulatory Coordination Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road, Unit 156, Riverdale, MD 20737; (301) 734–6280.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–51, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests.

On March 15, 2011, we published in the **Federal Register** (76 FR 13892–13896, Docket No. APHIS–2010–0020) a proposal [1] to amend the regulations to allow the importation of commercial consignments of tomatoes with stems from the Republic of Korea (South Korea) into the United States if produced under a systems approach. The proposed systems approach included requirements for pest-exclusionary structures, trapping and monitoring inside and outside the pest-exclusionary structures for the fruit fly *Bactrocera depressa,* and packinghouse procedures designed to exclude the quarantine pests. We further proposed to require that consignments of tomatoes with stems from South Korea be accompanied by a phytosanitary certificate with an additional declaration stating that the tomatoes were grown in approved pest-exclusionary structures and were inspected and found free from quarantine pests of concern to the United States.

We solicited comments concerning our proposal for 60 days ending May 16, 2011. We received six comments by that date. They were from private citizens and a State department of agriculture. Four commenters supported the proposed rule. Two commenters were opposed to the proposed rule.

One of these commenters stated their opposition to the proposed rule because the climate and crop production systems of the commenter's State would likely be favorable to many pests that could be imported with tomatoes from South Korea.

We have determined, for the reasons described in the risk management document (RMD) that accompanied the proposed rule, that the measures specified in the RMD will effectively mitigate the risk associated with the importation of tomatoes with stems from South Korea. The commenter did not provide any evidence suggesting that the mitigations are not effective. Therefore, we are not taking the action requested by the first commenter.

The other commenter expressed concern regarding the possibility that the South Korean national plant protection organization (NPPO) could falsify phytosanitary certificates, which could lead to pest introductions that would put U.S. farmers out of business.

South Korea is a signatory to the International Plant Protection Convention (IPPC), like the United States. As a signatory to the IPPC, one of South Korea's responsibilities is to issue phytosanitary certificates with accurate and complete information. We have no reason to doubt that South Korea will do this.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

This final rule amends the regulations to allow, under certain conditions, the importation into the continental United States of fresh tomatoes with stems from the Republic of Korea (South Korea). APHIS has concluded, based on a pest risk analysis, that a systems approach will mitigate the risk associated with importing this fruit.

South Korea expects to export one 40-foot shipping container of fresh tomatoes with stems per year to the United States. A shipping container can hold about 25 metric tons (MT) of tomatoes with stems. In 2009, the

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0020.*

United States produced 1.47 million MT of tomatoes, U.S. imports reached 1.19 million MT, and U.S. exports were 0.17 million MT. Thus, the total U.S. supply of tomatoes for this period was approximately 2.49 million MT (production plus imports minus exports). This quantity greatly dwarfs the relatively small amount that is expected to be imported from South Korea.

We also note that the average price of tomatoes exported from South Korea in 2009 was $2,447 per MT, compared to an average price of U.S. tomato imports of less than half that amount, $1,180 per MT. This large price difference implies that tomato imports from South Korea may not be widely competitive in the United States; South Korean exporters may intend to target U.S. specialty vegetable markets or certain ethnic consumer groups with special preference for Korean tomatoes with stems if they expect to earn prices comparable to South Korea's average 2009 export price level.

Farms producing tomatoes in open fields are classified within the North American Industry Classification System under ''Other vegetable (except potato) and melon farming'' (NAICS 111219). Farms producing tomatoes in greenhouses are classified under ''Other food crops grown under cover'' (NAICS 111419). For both industry classifications, a business is considered to be a small entity if its annual receipts are not more than $750,000.

The average market value of crops sold by farms classified within ''Other vegetable (except potato) and melon farming'' in 2007 was $312,333. We infer that the majority of the 25,809 farms that produced tomatoes in open fields that year were small. The average market value of crops sold by farms classified within ''Food crops grown under cover'' (NAICS 11141) in 2007 was $758,687. We infer that at least some of the 2,926 farms that produced tomatoes in greenhouses were small entities. While the majority of tomato farms are small, the impact of importation of tomatoes with stems from South Korea will be negligible.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule allows tomatoes with stems to be imported into the United States from the Republic of Korea. State and local laws and regulations regarding tomatoes imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0371.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. A new § 319.56–52 is added to read as follows:

§ 319.56–52 Tomatoes with stems from the Republic of Korea.

Fresh tomatoes with stems (*Solanum lycopersicum* L.) (Synonym: *Lycopersicon esculentum* P. Mill.) may be imported into the United States from the Republic of Korea only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Bactrocera depressa, Heliocoverpa armigera, Heliocoverpa assulta, Mamestra brassicae, Ostrinia furnacalis, Scirtothrips dorsalis,* and *Thrips palmi.*

(a) *Registered pest-exclusionary structures.* The tomatoes must be grown in pest-exclusionary structures that are registered with the national plant protection organization (NPPO) of the Republic of Korea and approved by the NPPO of the Republic of Korea and APHIS.

(1) The pest-exclusionary structures must be equipped with double self-closing doors.

(2) Any vents or openings in the pest-exclusionary structures (other than the double self-closing doors) must be covered with 1.6 mm or smaller screening in order to prevent the entry of pests into the pest-exclusionary structures.

(3) The pest-exclusionary structures must be inspected monthly throughout the growing season (March through November) by the NPPO of the Republic of Korea or its approved designee to ensure that phytosanitary procedures are employed to exclude plant pests and diseases and to verify that the screening is intact.

(b) *Trapping for Bactrocera depressa.* Trapping for *B. depressa* is required both inside and outside the pest-exclusionary structures. Trapping must begin at least 2 months prior to the start of harvest and continue until the end of harvest.

(1) *Inside the pest-exclusionary structures.* APHIS-approved traps with an APHIS-approved protein bait must be placed inside the pest-exclusionary structures at a density of at least two traps per pest-exclusionary structure. The traps must be serviced at least once per week. If a single *B. depressa* is captured in a trap inside a pest-exclusionary structure, the NPPO of the Republic of Korea will immediately prohibit that pest-exclusionary structure from exporting tomatoes to the United States and notify APHIS of the action. The prohibition will remain in effect until the NPPO of the Republic of Korea and APHIS agree that the risk has been mitigated.

(2) *Outside the pest-exclusionary structures.* APHIS-approved traps with an approved protein bait must be placed in a 500-meter-wide buffer area around the registered pest-exclusionary structure at a density of one trap per 10 hectares. During the months of March through November, at least one trap must be placed in the buffer area near each pest-exclusionary structure. The traps must be serviced at least once per week. If three *B. depressa* are found

inside the buffer zone within 2 kilometers of each other within a 30-day period, the NPPO of the Republic of Korea will immediately prohibit all registered pest-exclusionary structures within 2 kilometers of the finds from exporting tomatoes to the United States and notify APHIS of the action. The prohibition will remain in effect until the NPPO of the Republic of Korea and APHIS agree that the risk has been mitigated.

(3) Records of trap placement, trap servicing, and fruit fly captures for each pest-exclusionary structure must be kept for at least 1 year and trapping records provided to the NPPO of the Republic of Korea each month. The NPPO of the Republic of Korea must make the records available to APHIS for review upon request.

(c) *Packinghouse procedures.* The tomatoes must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. During the time the packinghouse is in use for exporting tomatoes to the United States, the packinghouse may only accept tomatoes from registered pest-exclusionary structures. A random sample of fruit per lot, as determined by the NPPO of the Republic of Korea and agreed to by APHIS, must be inspected for external pests and the fruit must be cut to reveal internal pests. Each sample must be of sufficient size in order to detect pest infestations. Any damaged, diseased, or infested fruit should be removed and separated from the commodity destined for export. The tomatoes must be safeguarded by an insect-proof mesh, screen, or plastic tarpaulin while in transit from the production site to the packinghouse and while awaiting packing. The tomatoes must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit to the United States. These safeguards must remain intact until the arrival of the tomatoes in the United States or the consignment will not be allowed to enter the United States.

(d) *Commercial consignments.* Tomatoes with stems from the Republic of Korea may be imported in commercial consignments only.

(e) *Phytosanitary certificate.* Each consignment of tomatoes must be accompanied by a phytosanitary certificate of inspection issued by the NPPO of the Republic of Korea bearing the following additional declaration: ''Tomatoes in this consignment were grown in pest-exclusionary structures in accordance with 7 CFR 319.56–52 and were inspected and found free from *Bactrocera depressa, Heliocoverpa armigera, Heliocoverpa assulta, Mamestra brassicae, Ostrinia furnacalis, Scirtothrips dorsalis,* and *Thrips palmi.''*

(Approved by the Office of Management and Budget under control number 0579–0371)

Done in Washington, DC, this 5th day of October 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–26345 Filed 10–11–11; 8:45 am]

BILLING CODE 3410–34–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN 3245–AG17

Small Business Jobs Act: 504 Loan Program Debt Refinancing

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule finalizes the interim final rule that implemented section 1122 of the Small Business Jobs Act of 2010, which authorizes projects approved for financing under Title V of the Small Business Investment Act to include the refinancing of qualified debt. As a result of comments received, this final rule amends the interim final rule to authorize the financing of business expenses as part of a Refinancing Project, to allow the Third Party Loan to be at least as much as the 504 loan instead of requiring that the Third Party Loan provide at least 50% of the financing, and to revise the definition of qualified debt. Other aspects of the interim final rule are adopted as final without change.

DATES: *Effective Date:* This rule is effective October 12, 2011.

FOR FURTHER INFORMATION CONTACT: Andrew B. McConnell, Jr., Office of Financial Assistance, at *jobsact_debtrefinancing@sba.gov* or 202–205–9949.

SUPPLEMENTARY INFORMATION:

I. Background

On February 17, 2011, SBA published an interim final rule with request for comments in the **Federal Register** to implement section 1122 of the Small Business Jobs Act of 2010 (Jobs Act). *See* 76 FR 9213. This provision of the Jobs Act temporarily authorizes projects approved for financing under Title V of the Small Business Investment Act to include the refinancing of qualified debt. Prior to the Jobs Act, in a typical 504 project with a refinancing component, the borrower was required to use a significant portion of the loan proceeds for expansion of the business. See 13 CFR 120.882(e). The temporary Jobs Act program authorizes the use of the 504 Loan Program for the refinancing of debt where there is no expansion of the small business, and is available for loan applications approved by SBA through September 27, 2012.

The interim final rule was effective February 17, 2011 and the comment period was open until May 18, 2011. SBA received written comments from 34 commenters, including 6 banks, 2 small businesses, 17 Certified Development Companies, 3 national trade associations, and 6 individuals. The comments are summarized and addressed below with, where applicable, the citation to the rule provision that has been changed after consideration of the comments.

II. Summary of Comments Received

1. *Financing for Business Expenses—13 CFR 120.882(g)(6).* In the interim final rule, SBA requested comments from the public on whether, and how, to implement the provision in the Jobs Act that authorizes the financing of business expenses in the temporary debt refinance program. Twenty-five of the 34 comments received requested that SBA implement the authority to finance business expenses; none of the comments opposed implementing this authority. Several commenters stated that there is an urgent need for this financing due to the national recession which, they assert, resulted in bank regulator restrictions on lending institutions, limitations on lines of credit, and decreased opportunity for equipment vendor financing. Businesses could enhance their viability and growth potential if they were able to access the accumulated equity in their real estate and other fixed assets for business purposes. No suggestions were received on how to implement the business expense provision.

Based on the comments, SBA is amending the rule to allow a Borrower to request the financing of business expenses as part of its application for the Refinancing Project. Such financing will be available only if the amount of cash that will be provided as a result of the refinancing exceeds the amount to be paid to the lender of the Qualified Debt. The Borrower's application must include a specific description of the business expenses for which the financing is requested and an itemization of the amount of each expense. The funds provided for business expenses must be used solely for the business expenses of the Borrower, such as salaries, rent,

utilities, inventory, and other obligations of the business. The expenses may have been incurred, but not paid, prior to loan application or may be used to pay for expenses that will become due for payment within eighteen months after the date of loan application. Both the CDC and the Borrower will be required to certify in the application that the funds will be used to cover the business expenses of the Borrower. Borrower must be able, upon request, to substantiate the use of the funds provided for business expenses, through, for example, bank statements, invoices marked ''paid'', cleared checks, or any other documents that demonstrate that a business obligation was satisfied with the funds provided.

2. *Third Party Loan Less than 50%*—13 CFR 120.882(g)(5). The interim final rule requires that the Third Party Loan contribute not less than 50% of the Refinancing Project amount, the 504 loan contribute not more than 40% of the Refinancing Project amount, and the Borrower contribute not less than 10% of the Refinancing Project amount. However, while the typical 504 Project includes a Third Party Loan equal to 50% of the Project costs, the regulations for a 504 Project other than debt refinancing require only, with certain exceptions not applicable here, that the financing for the 504 Project include one or more Third Party Loans that total at least as much as the 504 loan. *See* 13 CFR 120.920(a). Sixteen comments were received requesting SBA to apply to a debt refinancing project the same loan structure requirement that applies to other 504 Projects, and not require the Third Party Loan to be 50% of the Refinancing Project. Commenters observed that the 50% contribution is not required by Section 1122 of the Jobs Act. SBA has considered these comments and concludes that it serves the interest of this temporary debt refinancing program to amend the interim final rule to make it consistent with 13 CFR 120.920(a), requiring that the Third Party Loan total at least as much as the 504 loan.

3. *Qualified Debt Criteria: Substantially all of loan proceeds used to acquire Eligible Fixed Asset*—13 CFR 120.882(g) (15) (Definition of Qualified Debt, subparagraph (iii)), and 13 CFR 120.882(e)(1). To qualify for refinancing, the Jobs Act requires, among other criteria, that the debt to be refinanced be a commercial loan ''the proceeds of which were used to acquire an eligible fixed asset''. *See* § 502(7)(C)(i)(III)(aa)(DD) of the Small Business Investment Act. In promulgating the interim final rule, SBA was aware that the Borrower may have refinanced such a loan one or more times after the original financing and used available equity in the asset to finance working capital or other expenses. Consequently, SBA provided in the interim final rule that the commercial loan would meet this criteria if ''substantially all (85% or more) of [the loan] was for the acquisition of Eligible Fixed Assets'', *see* 13 CFR 120.882(g)(15); the remaining 15% of the proceeds must have been used for other purposes for the benefit of the Borrower. SBA stated in the preamble to the interim final rule that the Borrower would be required to certify that the existing debt satisfies these requirements, and that the Third Party Lender would be required to certify that it has no reason to believe that the existing debt does not satisfy these requirements. In addition, SBA stated in the preamble that SBA may require, on a random basis, for a borrower and/or lender to submit additional documentation supporting the ''substantially all'' assertion.

SBA received 19 comments expressing concern as to the ability of a small business to provide adequate documentation to support the ''substantially all'' standard. In particular, for loans involving more than one refinancing and lending institution, the commenters stated that it would be extremely difficult and burdensome to attempt to document the components of the existing debt. Consequently, SBA has reconsidered this criteria and is amending the interim final rule to recognize the economic reality that many loans for which borrowers will be seeking refinancing under the Jobs Act may have already been refinanced one or more times and that borrowers may have been able to borrow against the equity that was created in the Eligible Fixed Asset after its original financing. Accordingly, SBA is amending the rule to provide that, if the Eligible Fixed Asset was originally financed through a commercial loan that would have satisfied the ''substantially all'' standard (the ''original loan'') and that was subsequently refinanced one or more times, with the current commercial loan being the most recent refinancing, the current commercial loan will be deemed to satisfy the ''substantially all'' standard. With respect to situations where the Borrower leased the property acquired with the original loan to one or more tenants, SBA recognizes that the original loan may not have satisfied the leasing policies set forth in 13 CFR 120.131 and 13 CFR 120.870(b), but that the Borrower would be able to demonstrate that it satisfies SBA's leasing policies with respect to existing buildings as of the date of application for assistance under the Jobs Act. SBA believes that such Borrowers should be eligible for this assistance and is amending the rule to provide that, if the original loan was for the construction of a new building, or the acquisition, renovation, or reconstruction of an existing building, and such loan would not have satisfied the leasing policies set forth in 13 CFR 120.131 and 13 CFR 120.870(b), the current commercial loan will be eligible for assistance if the Borrower is able to demonstrate compliance with 13 CFR 120.131(b) for existing building as of the date of application for assistance under the Jobs Act.

SBA will require the Borrower to certify that the existing debt satisfies the applicable requirements, and will require the Third Party Lender to certify that it has no reason to believe that the existing debt does not satisfy these requirements. As stated in the interim final rule, SBA may also still require, on a random basis, for a Borrower and/or lender to submit additional documentation to support the certifications prior to the closing on the 504 debenture, including the documents for the original loan with which the fixed asset was acquired and the subsequent refinancing documents to show that the current commercial loan is the most recent refinancing. SBA will cancel an approved loan if the documents do not support the certifications. If the Borrower and/or lender are unable to produce the additional documentation, each must certify that they have made a diligent search for the documents and that the documents are not in their possession. SBA will not cancel an approved loan based solely on the inability of the Borrower and/or lender to produce the documents, except that, if the lender is the original lending institution that made the loan for the Eligible Fixed Asset (not, for example, an institution that acquired or merged with the original lending institution), SBA would expect that this lender would be able to produce the necessary documents. To make the permanent debt refinancing program, which involves expansions, consistent with this temporary debt refinancing program, SBA is also amending 13 CFR 120.882(e)(1) to provide that if the acquisition of the 504-eligible asset was originally financed through a commercial loan that would have satisfied the ''substantially all'' standard and that was subsequently refinanced one or more times, with the

current commercial loan being the most recent refinancing, the current commercial loan will be deemed to satisfy the requirement of 120.882(e)(1).

4. *Qualified Debt Criteria: Current on all payments due*—13 CFR 120.882(g)(15) (Definition of Qualified Debt, subparagraph (vii)). One of the eligibility criteria for this refinancing program is that the Borrower has been current on all payments for not less than 1 year before the date of application. The interim final rule defines ''current on all payments due'' to mean that ''no payment scheduled to be made during the one year period was either deferred or more than 30 days past due.'' 13 CFR 120.882(g)(15) (definition of ''qualified debt''). One trade association representing lenders that originate the vast majority of 504 transactions stated that SBA should allow considerable flexibility, and requested that SBA define ''current'' to mean that no payment was more than thirty days past due from the contractual requirement at the date of application, without regard to whether these requirements were original or modified payment terms. The commenter contended that this change would allow for cases where lenders worked with borrowers to temporarily modify loan terms to help them get through the recent economic slowdown, and reasoned that SBA will be able to use prudent underwriting to assess whether such modifications indicate whether or not borrowers are creditworthy. SBA agrees and is amending the definition of ''current on all payments due'' to allow a Borrower to be deemed current so long as, at any time within the 12 month period prior to the date of application, no payment was more than thirty days past due from either the original payment terms or modified payment terms (including deferments) if such modification was agreed to in writing by the Borrower and the lender of the existing debt prior to the publication date of these rules in the Federal Register. However, SBA reserves the right to determine, at its discretion on a loan-by-loan basis, whether modified repayment terms would preclude refinancing under this program.

5. *Total Project Cost Supported by Appraisal and Definition of Refinancing Project*—13 CFR 120.882(g)(5) and 120.882(g)(6). Twenty-eight comments were received expressing concern with respect to the basis upon which the amount of the refinancing is determined. Several commenters requested that SBA base the total project cost on the appraised value of the collateral even when it exceeds the amount of the existing debt, which will allow borrowers to access the benefits of the 504 program, including the financing of business expenses, without increasing the risk to the agency. Additional comments were received that the definition of ''Refinancing Project'' is too narrow and needs to be expanded in order to increase eligibility for small businesses. Other commenters requested that SBA remove the limitation on refinancing over-collateralized, high-equity value projects and allow such projects to be financed for borrowers who are otherwise locked out of credit markets. SBA believes that these comments are addressed by the changes made to the rule as indicated above in paragraphs 1 and 2, which, respectively, allow the Refinancing Project to include the financing of business expenses when supported by acceptable collateral, and remove the 50% Third Party Loan requirement.

6. *Decline in Real Estate Values*—One comment was received stating that the Jobs Act debt refinance program does not address the decline in appraised values or the potential of a commercial real estate crisis because assistance is based upon current fair market appraised value. Others made similar comments and requested that the total project cost be supported, but not defined, by the appraised value. These comments suggest that the amount of the Refinancing Project should be based on the existing outstanding principal balance of the Qualified Debt instead of on the value of the available collateral. SBA is not adopting this recommendation as the Small Business Jobs Act expressly provides that ''the amount of the financing is not more than 90% of *the value of the collateral for financing,* * * *'' (Section 1122 (a)(C)(ii)(I))(italics added)).

7. *6-Month Closing Period Extensions*—The interim final rule requires that the 504 loan be disbursed within 6 months after loan approval, unless the Director, Office of Financial Assistance, or his designee approves a request for extension of the disbursement period for good cause. *See* 13 CFR 120.882(g)(12). Nine comments were received requesting that the Agency permit more time than 6 months for disbursement after loan approval, with some commenters stating that 9 months may be needed to prepare fully for closing. SBA believes that the commenters' concerns are adequately addressed by the current authority to grant extensions based on good cause. To facilitate the Agency's consideration of extension requests, the Director, Office of Financial Assistance, has delegated the authority to approve extensions of the disbursement period up to an additional three months for good cause to the Center Director of the Sacramento Loan Processing Center.

8. *Allow Existing 504 Third Party Loan Financing*—Four comments were received in support of allowing existing 504 Third Party Loans to be eligible for this debt refinancing program. SBA is not adopting this recommendation as SBA continues to maintain the position, as stated in the preamble to the interim final rule, that these borrowers have already benefited from government assistance.

9. *Expand Eligibility to Notes Maturing After 12/31/2012*—The interim final rule requires that the existing debt mature on or before December 31, 2012 to be eligible for refinancing, unless such date is extended by SBA, based on its assessment of available resources and market conditions, in a Notice published in the Federal Register. Two comments were received requesting that SBA extend program eligibility to borrowers whose notes mature in more than 24 months after 12/31/2012. On April 4, 2011, SBA published an announcement in the **Federal Register** that loans with any maturity date would be eligible for refinancing if they also meet the other statutory and regulatory requirements. *See* 76 FR 18375.

10. *Allow Liquid Assets as Collateral*—Three comments requested that SBA allow the Borrower to contribute additional collateral in the form of liquid assets. SBA has considered this comment and is not adopting it due to the relative volatility of the value of many other asset classes when compared with real estate or equipment.

11. *Allow Expansion Projects*—Two comments were received requesting that projects involving expansion be allowed as part of this temporary refinancing program, with one commenter specifically requesting that an expansion be allowed where it meets a public policy goal. However, the refinancing authority granted by the Jobs Act expressly provides that it applies to a project that does not involve the expansion of a small business concern. In addition, SBA already allows refinancing with lower fees than this program for projects involving expansion where the existing indebtedness is up to 50% of the project cost of the expansion. *See* 13 CFR 120.882(e). Moreover, with the publication of this rule, SBA is allowing for business expenses and obligations to be financed when supported by acceptable collateral so there is greater flexibility in what can now be financed.

12. *SBA Coordination With Bank Regulators*—Two comments were received that described the difficulties involved in making this debt refinancing program available for loans that the bank regulators may consider Troubled Assets. One of the commenters requested that SBA seek the cooperation of the bank regulators to grant an exception from the requirements involved for Troubled Assets. SBA is always willing to provide bank regulators with information about SBA's programs that may assist them in assessing the refinancing transaction and any effect on the lender and borrower.

13. *Thirty-Year Debenture*—One comment was received requesting that SBA consider a thirty year debenture to ease the debt service constraint in this type of environment. This would assist borrowers by lowering monthly payments which in turn helps cash flow and may allow more borrowers to qualify. This recommendation was not adopted due to the short-term nature of this program and would likely require a change in the subsidy cost modeling. It would also create a limited amount of 30 year securities which would make marketing the securities more difficult.

14. *Loan Loss Reserve for All CDCs*—One commenter provided a general comment about the 504 Loan Program and stated that all CDCs, not only PCLP CDCs, should be required to maintain a loan loss reserve to reimburse SBA for losses on 504 loans in order to discourage CDCs from making ''bad loans.'' The commenter recognized that this change would require new statutory authority. SBA is reviewing this recommendation.

15. *Pool Eligible Real Estate Mortgages Loans*—One comment was received that SBA should allow for the pooling of all eligible real estate mortgages loans even if it is the same institution debt. Currently, Third Party lenders may sell up to 80% of their first mortgages to pool originators in SBA's First Mortgage Loan Pool Program. 13 CFR 120.1700–120.1726. SBA provides a 100% guarantee to investors that purchase the rights to this portion of the loan that have been pooled together as part of this program. Same institution refinanced first mortgages are not currently eligible under this temporary program. SBA is not adopting this recommendation due to concern that it would pose an unacceptable risk by allowing an institution an opportunity to avoid 80% of the risk in a transaction that was not entirely at arm's length. In addition, this option was not in SBA's original subsidy model and could require additional fees.

16. *Extending Legislation*—Twelve comments were received requesting that SBA request an extension of the temporary legislation for the Jobs Act due to the time needed for SBA to develop and implement this new program. SBA is not in a position at this time to determine whether to support an extension of this program.

Finally, SBA has concluded that posting the fees on the agency's Web site in lieu of establishing the specific fee in the regulations would be more advantageous and transparent to the public. As a result, SBA is amending 13 CFR Section 120.882(g)(4) to provide that the amount of the fee will be established by SBA each fiscal year and will be available on SBA's Web site at *http://www.sba.gov/content/504-loan-refinancing-program.*

III. Justification for Immediate Effective Date

The APA requires that ''publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The purpose of this provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. The changes made by this rule benefit the public by expanding, rather than restricting, the opportunities for refinancing under this temporary debt refinancing program. Any delay in the effective date would deny small businesses immediate access to the full benefits of the credit made available through this rule, such as the financing of business expenses, and an immediate effective date will maximize the rule's value to small businesses and its effect on the economy. SBA therefore finds that there is good cause for making this rule effective immediately instead of observing the 30-day period between publication and effective date.

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

Executive Order 12866

OMB has determined that this rule is a ''significant'' regulatory action under Executive Order 12866. In the interim final rule, SBA set forth its initial regulatory impact analysis, which addressed the following: The regulatory objective of the interim final rule; the baseline costs; the potential benefits and costs of the interim final rule to lenders, to CDCs and Borrowers, and to SBA and the Federal Government; and alternatives to the interim final rule.

SBA did not receive any comments which specifically addressed its regulatory impact analysis. However, as discussed above, SBA received several comments requesting that SBA implement the authority to finance business expenses as part of a Refinancing Project. As indicated above, SBA is implementing this authority, which will provide additional benefit to small businesses. The cost differential for an application for assistance with this change is negligible.

In addition, SBA is modifying the cost estimates that were provided in the interim final rule based on a revised estimate of the number of refinance loans that SBA anticipates will be processed during the time remaining for this temporary program. This revised estimate is based on the actual volume of the program to date and the estimated volume of loan applications that will be processed based on the changes made by this Final Rule. SBA now anticipates that 8,520 refinance loans will be processed, of which an estimated 5,795, or 68% will be submitted by ASM (Abridged Submission Method) CDCs and an estimated 2,725, or 32%, will be submitted by non-ASM CDCs. For ASM CDCs, SBA estimates that the average time for completion of each application would consist of 8.4 hours at an average cost of $45 per hour. Therefore, the annual costs of submitting 504 debt refinance applications under the final rule would be 5,795 loan applications × 8.4 hours for an estimated cost of $2,190,510. For Non-ASM CDCs, SBA estimates that the average time for completion of each application would consist of 8.7 hours at an average cost of $45 per hour. Therefore, the annual costs of submitting 504 debt refinance applications under the final rule would be 2,725 loan applications × 8.7 hours for an estimated cost for non-ASM debt refinance applications of $1,066,838. The total estimated costs for ASM and non-ASM applications combined would be $3,257,348 for the two-year period of the Jobs Act.

In addition, based on the length of time SBA takes to review and process 504 applications, SBA is estimated to take an average of 8.4 hours to review and respond to ASM applications and 8.7 hours to review and respond to non-ASM applications. For ASM applications, this equates to 8.4 hours at $45 hour × 5,795 applications for an estimated cost of $2,190,510 for ASM refinance loan application for the two-year program period. For non-ASM applications, this equates to 8.7 hours at

$45 hour for an estimated cost × 2,725 for a total annual estimated cost of $1,066,838 for non-ASM refinance loan application. SBA estimates that its combined cost of reviewing ASM and non-ASM applications to be $3,257,348 for the two year period of the Jobs Act.

In order to carry out this new program, SBA will hire up to 50 additional staff for the Sacramento Loan Processing Center. The Agency must also hire one full-time staff for lender oversight at an average cost of $135,000 per year or a total of $270,000 for the two-year period of the Jobs Act. In addition, contract dollars of $105,000 per year, or $210,000 for the two-year period of the Jobs Act, will be utilized to assist with analysis and oversight. The total estimate cost of oversight of the 504 debt refinance program for the two-year period of the Jobs Act is estimated at $480,000.

For the reasons described above, SBA adopts as final the initial regulatory impact analysis set forth in the interim final rule as revised above.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have preemptive effect 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 levels of government, as specified in the Executive Order. As such it does not warrant the preparation of a Federalism Assessment.

Executive Order 13563

To the extent practicable given the need to make this temporary, 2-year refinance program operational expeditiously in order to assist as many small businesses as possible, the interim final rule and the final rule were developed in keeping with the intent of this Executive Order. SBA solicited suggestions and comments on how best to implement the Jobs Act from the affected stakeholders and the public as a whole. SBA provided notice of a public forum in the **Federal Register**, which was held in Boston, Massachusetts on November 17, 2010. More than 100 persons attended in person or by phone and 23 individuals provided testimony. In addition, SBA announced a comment e-mail address and solicited comments for a 30 day period. The interim final rule was significantly shaped by those comments, especially the decision to keep the same basic 504 financing structure for same institution debt refinancing as for a new institution refinancing another lender's debt. In addition, as indicated above, SBA received written comments on the interim final rule from 34 entities, including 6 banks, 2 small businesses, 17 Certified Development Companies, 3 national trade associations, and 6 private citizens, and the changes made by this final rule reflect the concerns expressed by these commenters.

By adhering as closely as possible to the procedures and conditions of SBA's existing permanent 504 refinancing program, any burden that this rule may have imposed on the affected stakeholders is lessened. In addition, SBA is adopting a new procedure with this rule that specifically addresses concerns that were raised in public comments regarding the burden that was imposed on lenders and borrowers by requiring them to document, on a random basis, that substantially all of the proceeds of the current debt being refinanced was used for eligible collateral. As indicated by the stakeholders, this requirement is especially difficult if a property has been refinanced more than once or if the initial lender had been acquired by another lender. In response to these comments, the final rule provides that, if the Eligible Fixed Asset was originally financed through a commercial loan that would have satisfied the ''substantially all'' standard and that was subsequently refinanced one or more times, with the current commercial loan being the most recent refinancing, the current loan will be deemed to satisfy the ''substantially all'' standard. (This final rule also applies this change to the permanent refinance program authorized by 13 CFR 120.882(e)). Borrowers and lenders will still be required to certify that the debt to be refinanced meets the applicable requirements and, SBA may still require, on a random basis, that Borrowers and/or lenders submit additional documentation to support the certifications. However, in response to the comments, SBA has determined that, if the Borrower and/or lender are unable to produce the additional documentation, SBA will allow them each to certify that they have made a diligent search for the documents and that the documents are not in their possession. SBA will not, as indicated above, deny an application based on the inability of the Borrower and/or lender to produce the documents, except that, if the lender is the original lending institution that made the loan to acquire the Eligible Fixed Asset (not, for example, an institution that acquired or merged with the original lending institution), SBA would expect that this lender would be able to produce the necessary documents.

Paperwork Reduction Act

The SBA has determined that this rule imposes no additional reporting and recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. chapter 35.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires administrative agencies to consider the economic impact of their actions on small entities, including small non-profit businesses and small local governments. Pursuant to the RFA, in finalizing a rule, whenever an agency is required by 5 U.S.C. 553, or any other law, to publish general notice of proposed rulemaking for any proposed rule, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in 5 U.S.C. 603(a), the agency shall prepare a final regulatory flexibility analysis. (See, 5 U.S.C. 604(a)). As discussed in the interim final rule, SBA has determined that there was good cause to publish this rule without notice and comment rulemaking under section 553. In addition, this rule is not an interpretive rule involving the internal revenue code. This rule is, therefore, exempt from the requirements of the RFA.

List of Subjects in 13 CFR Part 120

Community development, Loan programs—business, Loan programs—veterans, Reporting and recordkeeping requirements, Small businesses, Veterans.

Accordingly, the interim final rule amending 13 CFR Part 120 which was published at 76 FR 9218 on February 17, 2011, is adopted as a final rule with the following changes:

PART 120—BUSINESS LOANS

■ 1. The authority citation for 13 CFR part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h) and (m), 650, 687(f), 696(3), and 697(a) and (e); Public Law 111–5, 123 Stat. 115, Public Law 111–240, 124 Stat. 2504.

■ 2. Amend § 120.882 by revising paragraphs (e)(1), (g)(4), (g)(5), (g)(6), and paragraphs (iii) and (vii) in the

definition of ''Qualified debt'' in paragraph (g)(15), to read as follows:

§ 120.882 Eligible Project costs for 504 loans.

* * * * *

(e) * * *

(1) Substantially all (85% or more) of the proceeds of the indebtedness were used to acquire land, including a building situated thereon, to construct a building thereon, or to purchase equipment. The assets acquired must be eligible for financing under the 504 loan program. If the acquisition, construction or purchase of the asset was originally financed through a commercial loan that would have satisfied the ''substantially all'' requirement and that was subsequently refinanced one or more times, with the current commercial loan being the most recent refinancing, the current commercial loan will be deemed to satisfy this paragraph (e)(1).

* * * * *

(g) * * *

(4) In addition to the annual guarantee fee assessed under § 120.971(d)(2), Borrower must pay SBA a supplemental annual guarantee fee to cover the additional cost attributable to the refinancing in an amount established by SBA each fiscal year.

(5) The funding for the Refinancing Project must come from three sources based on the current fair market value of the fixed assets serving as collateral for the Refinancing Project, including a Third Party Loan that is at least as much as the 504 loan, not less than 10% from the Borrower (excluding administrative costs), and not more than 40% from the 504 loan. In addition to a cash contribution, the Borrower's 10% contribution may be satisfied as set forth in § 120.910 or by the equity in any other fixed assets that are acceptable to SBA as collateral for the Refinancing Project, provided that there is an independent appraisal of the fair market value of the asset;

(6)(i) The portion of the Refinancing Project provided by the 504 loan and the Third Party Loan may be no more than 90% of the fair market value of the fixed assets that will serve as collateral;

(ii) The Borrower's application may include a request to finance eligible business expenses as part of the Refinancing Project if the amount of cash funds that will be provided for the Refinancing Project exceeds the amount to be paid to the lender of the Qualified Debt. The Borrower's application must include a specific description of the business expenses for which the financing is requested and an itemization of the amount of each expense. For the purposes of this paragraph (b), ''eligible business expenses'' means the business expenses of the Borrower, such as salaries, rent, utilities, inventory, or other obligations of the business, that were incurred but not paid prior to the date of application or that will become due for payment within eighteen months after the date of application. Both the CDC and the Borrower must certify in the application that the funds will be used to cover eligible business expenses. Borrower must, upon request, substantiate the use of the funds provided for business expenses through, for example, bank statements, invoices marked ''paid,'' cleared checks, or any other documents that demonstrate that a business obligation was satisfied with the funds provided.

* * * * *

(15) * * *

Qualified debt * * *

(iii) Substantially all (85% or more) of which was for an Eligible Fixed Asset. If the Eligible Fixed Asset was originally financed through a commercial loan that would have satisfied the ''substantially all'' standard (the ''original loan'') and that was subsequently refinanced one or more times, with the current commercial loan being the most recent refinancing, the current commercial loan will be deemed to satisfy this paragraph (iii). If the original loan was for the construction of a new building, or the acquisition, renovation, or reconstruction of an existing building, and such loan would not have satisfied the leasing policies set forth in 13 CFR 120.131 and 13 CFR 120.870(b), the current commercial loan will be deemed to satisfy these policies, provided that Borrower demonstrates compliance with 13 CFR 120.131(b) for existing buildings as of the date of application.

* * * * *

(vii) For which the applicant for the refinancing available under this paragraph (g) has been current on all payments due for not less than one year preceding the date of application. For the purposes of this paragraph (vii), ''current on all payments due'' means that no payment was more than 30 days past due from either the original payment terms or modified payment terms (including deferments) if such modification was agreed to in writing by the Borrower and the lender of the existing debt prior to the October 12, 2011. Any delinquency in payment on the loan to be refinanced after approval and before debenture funding must be reported to SBA as an adverse change.

* * * * *

Karen G. Mills,

Administrator.

[FR Doc. 2011–26311 Filed 10–7–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0568; Directorate Identifier 2011–NM–010–AD; Amendment 39–16824; AD 2011–21–01]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Model F.27 Mark 050, 200, 300, 400, 500, 600, and 700 Airplanes; and Model F.28 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) 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:

> [T]he Federal Aviation Administration (FAA) has published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) has published Interim Policy INT/POL/25/12. The review conducted by Fokker Services on the Fokker F27 and F28 type designs in response to these regulations revealed that, under certain failure conditions, a short circuit can develop in the fuel pilot valve solenoid or in the wiring to the solenoid. Such a short circuit may result in an ignition source in the wing tank vapour space.
>
> This condition, if not corrected, could result in a wing fuel tank explosion and consequent loss of the aeroplane.

* * * * *

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

DATES: This AD becomes effective November 16, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 16, 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

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 21, 2011 (76 FR 36011). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> [T]he Federal Aviation Administration (FAA) has published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) has published Interim Policy INT/POL/25/12. The review conducted by Fokker Services on the Fokker F27 and F28 type designs in response to these regulations revealed that, under certain failure conditions, a short circuit can develop in the fuel pilot valve solenoid or in the wiring to the solenoid. Such a short circuit may result in an ignition source in the wing tank vapour space.
>
> This condition, if not corrected, could result in a wing fuel tank explosion and consequent loss of the aeroplane.
>
> For the reasons described above, this AD requires [re-working the wiring and] the installation of a fuse packed in a jiffy junction [i.e., crimped wire in-line junction device] in the wiring to the fuel pilot valve solenoid.

The required actions also include revising the maintenance program to include a certain Critical Design Configuration Control Limitation (CDCCL). 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 36011, June 21, 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 6 products of U.S. registry. We also estimate that it will take about 6 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 up to $2,198 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 up to $16,248, or up to $2,708 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under 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 36011, June 21, 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:

2011–21–01 Fokker Services B.V.: Amendment 39–16824. Docket No. FAA–2011–0568; Directorate Identifier 2011–NM–010–AD.

Effective Date

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

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Services B.V. Model F.27 Mark 050, 200, 300, 400, 500,

600, and 700 airplanes; and Fokker Services B.V. Model F.28 Mark 0070, 0100, 1000, 2000, 3000, and 4000 airplanes; certificated in any category; all serial numbers.

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

Subject

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

Reason

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

[T]he Federal Aviation Administration (FAA) has published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) have published Interim Policy INT/POL/25/12. The review conducted by Fokker Services on the Fokker F27 and F28 type designs in response to these regulations revealed that, under certain failure conditions, a short circuit can develop in the fuel pilot valve solenoid or in the wiring to the solenoid. Such a short circuit may result in an ignition source in the wing tank vapour space.

This condition, if not corrected, could result in a wing fuel tank 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.

Installation of Fuses Packed in Jiffy Junctions

(g) Within 24 months after the effective date of this AD, re-work the wiring and install the fuses packed in jiffy junctions (i.e., crimped wire in-line junction device), in accordance with the Accomplishment Instructions of the applicable Fokker service bulletin identified in table 1 of this AD.

TABLE 1—SERVICE BULLETINS

Fokker Service Bulletin—	Dated—
SBF50–28–024, including Drawing W7916–057, Sheets 006 and 007, Issue E, dated June 23, 2010, Drawing W7987–520, Sheets 1 and 2, dated October 24, 2005, and Manual Change Notification—Maintenance Document MCNM–F50–070, dated June 23, 2010.	June 23, 2010.
SBF28–28–051, including Drawing W57231, Sheets 010 and 011, Issue K, dated June 23, 2010, Drawing W58048, Sheet 2, dated April 29, 2010, and Manual Change Notification—Maintenance Document MCNM–F28–034, dated June 23, 2010.	June 23, 2010.
SBF27–28–069, including Drawing W7202–138, Sheets 001 and 002, Issue B, dated June 23, 2010, and Manual Change Notification—Maintenance Document MCNM–F27–025, dated June 23, 2010.	June 23, 2010.
SBF100–28–042, including Drawing W41192, Sheet 012, Issue AG, dated June 23, 2010, Drawing W59520, Sheet 1, Issue A, dated April 29, 2010, and Manual Change Notification—Maintenance Document MCNM–F100–129, dated June 23, 2010.	June 23, 2010.

Critical Design Configuration Control Limitation (CDCCL)

(h) Before further flight after doing the actions required by paragraph (g) of this AD: Revise the aircraft maintenance program by incorporating the CDCCL specified in paragraph 1.L.(1)(c) of the applicable Fokker service bulletins identified in table 1 of this AD.

No Alternative Actions, Intervals, and/or CDCCLs

(i) After accomplishing the revision required by paragraph (h) of this AD, no alternative CDCCLs may be used unless the CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows:

Although European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0195, dated September 29, 2010, specifies revising the maintenance program to include maintaining CDCCLs, this AD only requires the revision. Requiring a revision of the maintenance program, rather than requiring maintaining CDCCLs, requires operators to record AD compliance only at the time the revision is made. Maintaining CDCCLs specified in the airworthiness limitations must be complied with in accordance with 14 CFR 91.403(c).

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-11-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 2010–0195, dated

September 29, 2010, and the Fokker service bulletins identified in table 1 of this AD, for related information.

Material Incorporated by Reference

(l) You must use the following service information, as applicable, 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) Fokker Service Bulletin SBF50–28–024, including Manual Change Notification—Maintenance Document MCNM–F50–070, dated June 23, 2010, and including Drawing W7916–057, Sheets 006 and 007, Issue E, dated June 23, 2010, and Drawing W7987–520, Sheets 1 and 2, dated October 24, 2005, approved for IBR November 16, 2011.

(2) Fokker Service Bulletin SBF28–28–051, including Manual Change Notification—Maintenance Document MCNM–F28–034, dated June 23, 2010, and including Drawing W57231, Sheets 010 and 011, Issue K, dated June 23, 2010, and Drawing W58048, Sheet 2, dated April 29, 2010, approved for IBR November 16, 2011.

(3) Fokker Service Bulletin SBF27–28–069, including Manual Change Notification—Maintenance Document MCNM–F27–025, dated June 23, 2010, and including Drawing W7202–138, Sheets 001 and 002, Issue B,

dated June 23, 2010, approved for IBR November 16, 2011.

(4) Fokker Service Bulletin SBF100–28–042, including Manual Change Notification—Maintenance Document MCNM–F100–129, dated June 23, 2010, and including Drawing W41192, Sheet 012, Issue AG, dated June 23, 2010, and Drawing W59520, Sheet 1, Issue A, dated April 29, 2010, approved for IBR November 16, 2011.

(5) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; e-mail *technicalservices.fokkerservices@stork.com;* Internet: *http://www.myfokkerfleet.com.*

(6) 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.

(7) 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 23, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–25768 Filed 10–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0999; Directorate Identifier 2010–NM–235–AD; Amendment 39–16825; AD 2011–21–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–243F Airplanes Equipped With Rolls Royce Trent 700 Series Engines

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

ACTION: Final rule; request for comments.

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

During flight tests, unexpected fatigue high loads were measured on the hinges integrated on the 12 o'clock beam which form the upper extreme edge of the thrust reverser unit C duct.

This situation, if not corrected, could lead to the separation of the thrust reverser from the aeroplane and therefore to damage of the aeroplane and hazards to persons or property on the ground.

* * * * *

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

DATES: This AD becomes effective October 27, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of October 27, 2011.

We must receive comments on this AD by November 28, 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.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: 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:

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 2010–0187, dated September 21, 2010 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

During flight tests, unexpected fatigue high loads were measured on the hinges integrated on the 12 o'clock beam which form the upper extreme edge of the thrust reverser unit C duct.

This situation, if not corrected, could lead to the separation of the thrust reverser from the aeroplane and therefore to damage of the aeroplane and hazards to persons or property on the ground.

DGAC [Directorate General for Civil Aviation] AD F–1997–118–047 was issued to prevent structural damage of the thrust reversers.

This [EASA] AD, which supersedes DGAC AD F–1997–118–047R2 [which corresponds with FAA AD 2001–09–14, Amendment 39–12221 (66 FR 23838, May 10, 2001] * * * is issued to extend the applicability to the newly certified model A330–243F.

Required actions include repetitive general visual inspections for cracks of the hinge assemblies and along the beam structure of the right and left engine thrust reversers, detailed inspection for cracking of hinges 2, 3, 4, and 5 of the left and right thrust reversers if no cracking is found during any general inspection, and replacing the affected thrust reverser of each engine if any crack is found. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A330–78–3006, Revision 09, including Appendix 1, dated October 21, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This 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 issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these

products are placed on the U.S. Register in the future.

Differences Between the AD and the MCAI or Service Information

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

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

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0999; Directorate Identifier 2010–NM–235–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–21–02 Airbus: Amendment 39–16825. Docket No. FAA–2011–0999; Directorate Identifier 2010–NM–235–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 27, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–243F airplanes; certificated in any category; equipped with Rolls Royce Trent 700 series engines.

Subject

(d) Air Transport Association (ATA) of America Code 78: Engine Exhaust.

Reason

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

During flight tests, unexpected fatigue high loads were measured on the hinges integrated on the 12 o'clock beam which form the upper extreme edge of the thrust reverser unit C duct.

This situation, if not corrected, could lead to the separation of the thrust reverser from the aeroplane and therefore to damage of the aeroplane and hazards to persons or property 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.

Actions

(g) At the applicable initial and repetitive times specified in paragraph (g)(1) or (g)(2) of this AD, perform a general visual inspection of the hinge assemblies and along the beam structure of the right and left engine thrust reversers for cracks, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–78–3006, Revision 09, excluding Appendix 1, dated October 21, 2009.

(1) For airplanes on which neither Airbus modification 46879 nor Airbus modification 47358 have been embodied in production: Do the inspection before the accumulation of 1,200 total flight cycles after the first flight of the airplane or within 3 months after the effective date of the AD, whichever occurs later. Thereafter, do the inspection at intervals not to exceed 1,200 flight cycles.

(2) For airplanes on which either Airbus modification 46879 or Airbus modification 47358 have been embodied in production: Do the inspection before the accumulation 2,000 total flight cycles after the first flight of the airplane, or within 3 months after the effective date of this AD, whichever occurs later. Thereafter, do the inspection at intervals not to exceed 2,000 flight cycles.

(h) If no crack is found during the general visual inspection required by paragraph (g) of this AD, before further flight, perform a detailed inspection of hinges 2, 3, 4, and 5 of the right and left thrust reversers for cracks, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–78–3006, Revision 09, excluding Appendix 1, dated October 21, 2009. If no crack is found during the detailed inspection, repeat the general visual inspection required by paragraph (g) of this AD at the intervals specified in paragraphs (g)(1) or (g)(2) of this AD, as applicable.

(i) If any cracking is found during any inspection required by paragraph (g) or (h) of

this AD: Before further flight, replace the affected thrust reverser, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–78–3006, Revision 09, excluding Appendix 1, dated October 21, 2009. Repeat the general visual inspection required by paragraph (g) of this AD at the intervals specified in paragraphs (g)(1) or (g)(2) of this AD, as applicable.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

Although European Aviation Safety Agency Airworthiness Directive (EASA) 2010–0187, dated September 21, 2010, is applicable to Airbus Model A330–243, –243F, –341, –342, and –343 airplanes, this AD applies to only A330–243F airplanes. The unsafe condition for Model A330–243, –341, –342, and –343 airplanes is addressed in FAA AD 2001–09–14, amendment 39–12221 (66 FR 23838, May 10, 2001).

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, 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 ANM–116, 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

(k) Refer to MCAI EASA Airworthiness Directive 2010–0187, dated September 21, 2010; and Airbus Mandatory Service Bulletin A330–78–3006, Revision 09, excluding Appendix 1, dated October 21, 2009; for related information.

Material Incorporated by Reference

(l) You must use Airbus Mandatory Service Bulletin A330–78–3006, Revision 09, excluding Appendix 1, dated October 21, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact 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.*

(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 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 23, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–25778 Filed 10–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1000; Directorate Identifier 2011–NM–048–AD; Amendment 39–16828; AD 2011–21–05]

RIN 2120–AA64

Airworthiness Directives; Aviointeriors S.p.A. Passenger Seat 12M Series, Installed on But Not Limited to ATR Model ATR42 Airplanes and Model ATR72 Airplanes

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

ACTION: Final rule; request for comments.

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

Failures of the recline actuator metal fitting have been reported on seat backrests of in-service aircraft. * * *

* * * * *

Actions required by this AD are intended to prevent further failures of the seat backrests which could result in injury to passengers or crew members during an emergency landing.

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

DATES: This AD becomes effective October 27, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of October 27, 2011.

We must receive comments on this AD by November 28, 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.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Lee, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238–7161; fax (781) 238–7170.

SUPPLEMENTARY INFORMATION:

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 2008–0135, dated July 16, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Failures of the recline actuator metal fitting have been reported on seat backrests of in-

service aircraft. EASA AD 2006–0350, which is superseded by this [EASA] AD, was issued to initially mandate a one-time inspection of the applicable backrests, replace all fittings that have tool marks and re-identify the backrest seat P/N (part number). Since the issuance of the [existing EASA] AD, cycle testing performed by Aviointeriors identified a life limitation also for backrests that do not have tool marks.

Consequently the present [EASA] AD mandates the replacement of those backrests before reaching the threshold specified in the compliance paragraph of this [EASA] AD.

Actions required by this [EASA] AD are intended to prevent further failures of the seat backrests which could result in injury to passengers or crew members during an emergency landing.

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

Relevant Service Information

Aviointeriors has issued Vendor Service Bulletin 12M/F68–06, Revision 1, dated October 29, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This 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 issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

There are no airplanes equipped with the affected seats currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these seats are installed on airplanes identified in the U.S. Register in the future.

Differences Between the AD and the MCAI or Service Information

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

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

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–1000; Directorate Identifier 2011–NM–048–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–21–05 Aviointeriors S.p.A.: Amendment 39–16828. Docket No. FAA–2011–1000; Directorate Identifier 2011–NM–048–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 27, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Aviointeriors S.p.A. passenger seats 12M()()–()()()()()(), all part numbers (P/Ns) equipped with backrest P/N 313033000000 or 313033100000; as identified in Section 1.A. of Aviointeriors Vendor Service Bulletin 12M/F68–06, Revision 1, dated October 29, 2009; and that are installed on, but not limited to ATR Model ATR42–200, –300, –320, and –500 airplanes and Model ATR72–101, –201, –102, –202, –211, –212, and –212A airplanes, certificated in any category.

Note 1: This AD applies to certain Aviointeriors passenger seats as installed on any airplane, regardless of whether the airplane has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that

have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance according to paragraph (k) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Subject

(d) Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

Reason

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

Failures of the recline actuator metal fitting have been reported on seat backrests of in-service aircraft. * * *

* * * * *

Actions required by this AD are intended to prevent further failures of the seat backrests which could result in injury to passengers or crew members during an emergency landing.

Compliance

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

Replacement

(g) At the later of the compliance times specified in paragraphs (g)(1) and (g)(2) of this AD, replace backrests having P/N 313033000000 and 313033100000, in accordance with the instructions given in Aviointeriors Vendor Service Bulletin 12M/F68–06, Revision 1, dated October 29, 2009, except as provided by paragraph (i) of this AD.

(1) Before the accumulation of 13,000 total flight cycles on the seat since new.

(2) Within 500 flight cycles or 6 months after the effective date of this AD, whichever occurs first.

Parts Installation

(h) As of the effective date of this AD, no person shall install Aviointeriors passenger seats P/N 12M()()–()()()()()() equipped with backrests having P/N 313033000000 or 313033100000 (being either unmarked or marked with ''0'' as indicated in Section 3 of Aviointeriors Vendor Service Bulletin 12M/F68–06, Revision 1, dated October 29, 2009) on any airplane.

Extended Replacement Compliance Time for Certain Airplanes

(i) For airplanes on which the replacement required by paragraph (g) of this AD cannot be done within the required compliance time specified in paragraph (g) of this AD: The airplane may be dispatched with the affected seat installed provided the actions in paragraph (i)(1) and (i)(2) of this AD are done.

(1) The provisions specified in paragraphs (i)(1)(i), (i)(1)(ii), and (i)(1)(iii) of this AD are complied with.

(i) Seat is placarded as ''Do not occupy'' and measures are taken to be sure that the affected seat remains unoccupied during the flight duration.

(ii) Affected seat does not block any emergency exit.

(iii) Affected seat does not restrict any passenger to get access to the main aisle.

(2) Within 12 months after the effective date of this AD, the backrest is replaced in accordance with the instructions given in Aviointeriors Vendor Service Bulletin 12M/F68–06, Revision 1, dated October 29, 2009.

Credit for Actions Accomplished in Accordance With Previous Service Information

(j) Actions accomplished before the effective date of this AD in accordance with Aviointeriors Vendor Service Bulletin 12M/F68–01, Revision 1, dated October 2, 2006; or Aviointeriors Vendor Service Bulletin 12M/F68–06, dated June 17, 2008; are considered acceptable for compliance with the corresponding actions specified in this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* 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. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Jeffrey Lee, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238–7161; fax (781) 238–7170. 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

(l) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2008–0135, dated July 16, 2008; and Aviointeriors Vendor Service Bulletin 12M/F68–06, Revision 1, dated October 29, 2009; for related information.

Material Incorporated by Reference

(m) You must use Aviointeriors Vendor Service Bulletin 12M/F68–06, Revision 1, dated October 29, 2009, to do the actions required by this AD, unless the AD specifies otherwise. Pages 1, 2, and 10 of this document are identified as Revision 1; the remaining pages are identified as Revision ''new.''

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

(2) For service information identified in this AD, contact Aviointeriors S.p.A., Engineering Product Support Division, Via Appia KM 66,400—04013 Tor Tre Ponti, Italy; telephone 0039–0773–689330 or 0039–0773–689291; fax 0039–0773–631546; e-mail *avio@aviointeriors.it;* Internet *http://www.aviointeriors.it.*

(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 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 23, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–25800 Filed 10–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1312; Directorate Identifier 2010–NM–220–AD; Amendment 39–16826; AD 2011–21–03]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 777–200, –200LR, –300, and –300ER 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 installing foreign object debris (FOD) rubber shields over the primary and secondary external power connectors for certain airplanes, and wrapping silicone tape around the hydraulic tube for certain other airplanes. This AD was prompted by a report of a fire in the main equipment center due to failure of an external power connector, which

caused high-temperature arcing and subsequent splatter of molten copper on an adjacent hydraulic tube, creating a hole in the tube and spraying hydraulic fluid into the power connector, resulting in a fire. In addition there were several reports of overheating or arcing of external power connectors, and one report of a fire due to arcing caused by FOD. We are issuing this AD to prevent FOD from entering the primary and secondary external power connectors, which could result in overheating or arcing and consequent fire in the main equipment center.

DATES: This AD is effective November 16, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 16, 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: Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* (425) 917–6482; *fax:* (425) 917–6590; *e-mail: georgios.roussos@faa.gov.*

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 published in the **Federal Register** on January 18, 2011 (76 FR 2846). That NPRM proposed to require installing foreign object debris (FOD) rubber shields over the primary and secondary external power connectors for certain airplanes, and wrapping fire-resistant silicone tape around the hydraulic tube for certain other airplanes.

Comments

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

Support for the NPRM

American Airlines has accomplished the modifications on the majority of its fleet, and has no objection to the actions and compliance times in the NPRM (76 FR 2846, January 18, 2011). The National Transportation Safety Board supports the NPRM.

Request To Use Latest Production Hydraulic Tube

Japan Airlines (JAL), Continental Airlines, and All Nippon Airways (ANA) asked that operators be allowed to use the latest production hydraulic tube having part number (P/N) 272W4190–192, which already has the silicone tape pre-wrapped, in lieu of modifying the existing hydraulic tube assembly by installing the silicone tape in accordance with Boeing Special Attention Service Bulletin 777–29–0032, dated August 9, 2007. JAL also noted a concern about procuring the hydraulic tube.

We do not agree with the request to use the latest production hydraulic tube as an acceptable alternative to installing the silicone tape. Based on the latest information received from Boeing engineering, the following applies to any possible hydraulic tube replacement: Any hydraulic tube having P/N 272W4190–192 (as specified in Boeing Special Attention Service Bulletin 777–29–0032, dated August 9, 2007), cannot be a direct replacement for the existing part. Hydraulic tubes having P/Ns 272W4190–93, –168, and –192 for production installation require the use of permaswage fittings on either side of the tube. Removal of the tube for its replacement requires that the tube be physically cut past the permaswage fitting, thus making it longer than the original production part. We have made no change to the AD in this regard.

Request To Include Instructions for Continued Airworthiness

Continental and ANA also noted that the service information does not contain proper instructions for continued airworthiness (ICAs) to install the tape on the new line, or inclusion of the equivalent production part number in the Boeing 777 illustrated parts catalog (IPC). Continental added that a pre- and post-service bulletin configuration should be included to provide instructions to use a newer part or to accomplish the actions specified in the service information again.

We acknowledge the commenters' concern, but we do not agree. The Boeing ICAs do include a statement indicating that the production tubes are reworked by using the procedures in Boeing Special Attention Service Bulletin 777–29–0032, dated August 9, 2007. Since there is not direct replacement with a production tube, we are working with Boeing to identify additional information necessary in support of replacing the hydraulic tube. We have made no change to the AD in this regard.

Request To Include Information Notices

United Airlines asked that we revise the NPRM (76 FR 2846, January 18, 2011) to refer to Boeing Service Bulletin Information Notices 777–29–0032 IN 01, dated November 29, 2007, and 777–29–0032 IN 02, dated December 11, 2008, which include clarifications to the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–29–0032, dated August 9, 2007.

We acknowledge that these information notices may be useful to operators to clarify certain instructions specified in Boeing Special Attention Service Bulletin 777–29–0032, dated August 9, 2007. However, Boeing has provided these notices to operators. We do not reference information notices in ADs because those documents are not FAA-reviewed. In addition, the information notices do not contain technical information and are not necessary to accomplish the actions required by the AD. We have made no change to the AD in this regard.

Request To Change the Applicability

Boeing requested that the applicability section in the NPRM (76 FR 2846, January 18, 2011) be changed. Boeing stated that the applicability should be limited to the airplanes identified in the referenced service information, which include only those airplanes on which the modifications required by the AD have not been accomplished in production.

We agree with the commenter for the reason provided and have limited the applicability section in this AD accordingly, in lieu of specifying ''all'' airplanes of the affected model.

Request To Clarify Tape Qualities

Boeing asked that we delete the term ''fire-resistant,'' which describes ''silicone tape,'' as specified in the Summary section, Relevant Service Information section, and paragraph (g)(2) of the NPRM (76 FR 2846, January 18, 2011). Boeing stated that the product data sheet identifies the tape as ''high temperature arc- and track-resistant tape,'' but not ''fire-resistant.''

We agree with the commenter for the reason provided. However, the term ''fire-resistant'' was used in the NPRM (76 FR 2846, January 18, 2011) because it is specified as such in the referenced service information. We have removed it from the Summary section and paragraph (g)(2) of this AD. The Relevant Service Information section of the preamble does not reappear in the final rule.

Request To Clarify Terminology of Tape Dimensions

Boeing asked that we change the language in the ''Exception to Service Information'' section in paragraph (h) of the NPRM (76 FR 2846, January 18, 2011) as follows: ''Figure 1 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–29–0032, dated August 9, 2007, does not identify the units of the dimensions of the silicone tape installed on the hydraulic tube; those dimensions are identified in inches.'' Boeing noted that the dimensions of the tape are identified, but the units of the dimensions are missing. Boeing added that, although the tape can be used as ''electrical'' tape, for this application it is more appropriate to identify it as ''silicone'' tape.

We agree with the commenter for the reasons provided. The word ''electrical'' was used in the NPRM (76 FR 2846, January 18, 2011) because it is specified as such in the referenced service information. We have changed paragraph (h) of this AD to reiterate the commenter's suggested language.

Request To Provide Additional Credit

Boeing asked that the service information specified in paragraph (i) of the NPRM (76 FR 2846, January 18, 2011) under ''Credit for Actions Accomplished in Accordance with Previous Service Information'' be changed to include Boeing Special Attention Service Bulletin 777–29–0032, dated August 9, 2007 (referred to in the NPRM as the service information to use for installing the silicone tape). Boeing stated that the modification accomplished by this service bulletin before the effective date of the AD is identical to the modification accomplished by this service bulletin after the effective date of the AD.

We do not agree that the subject service bulletin should be added to paragraph (i) of this AD. Operators are already given credit for previously accomplished actions as allowed by the phrase in paragraph (f) of this AD which states the following: ''Comply with this AD within the compliance times specified, unless already done.'' We have made no change to the AD in this regard.

Request To Exclude Certain Proposed Actions

Delta Airlines asked that Boeing Special Attention Service Bulletin 777–29–0032, dated August 9, 2007, be excluded from the NPRM (76 FR 2846, January 18, 2011). Delta stated that since the root cause of the external power connector fires and overheating was related to foreign object debris (FOD) shorting out the external power connector inside the airplane, once the FOD shields are installed per Boeing Service Bulletin 777–24–0102, Revision 1, dated June 17, 2010, the protective tape identified in Boeing Special Attention Service Bulletin 777–29–0032, dated August 9, 2007, serves no purpose. Delta added that if damage to the hydraulic tubing is still a concern even after accomplishment of this service bulletin, a routing change to the hydraulic tubing would be a better solution to protecting the tubing from a fire/overheat condition. Delta noted that the tape being installed is not fireproof, only fire-resistant. Delta also stated that the instructions for installing the tape specified in Boeing Special Attention Service Bulletin 777–29–0032, dated August 9, 2007, would be difficult to comply with. Subsequent inspections of the tape installation to ensure compliance with the NPRM would also be difficult when judging the overlap and number of tape wraps, since the tape installation is based on the amount of stretch and a percentage of overlap.

We do not agree to remove Boeing Special Attention Service Bulletin 777–29–0032, dated August 9, 2007, from this AD. Installation of the FOD shields is not the only action necessary to address the identified unsafe condition. FOD shields alone do not resolve the potential for overheating and arcing of the electrical connectors. Based on our evaluation, we have determined that the connector design, lack of proper connector maintenance actions, and the proximity of the hydraulic tubing to the connectors can result in a fire; therefore, accomplishing the actions required by this AD will minimize the threat of fire on the airplane.

Additionally, although the silicone tape is not fireproof, installing the tape provides an acceptable level of protection to the hydraulic tubing in the event of overheating or arcing of the connectors. The procedures for installing the tape are not difficult for compliance and include easy access and liberal application of the tape; several operators have already done this modification and did not encounter any problems. Further, it is the responsibility of operators to maintain the AD-mandated configuration, and this can be done using the procedures specified in Boeing Special Attention Service Bulletin 777–29–0032, dated August 9, 2007. In light of these factors, we have made no change to the AD.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 126 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Number of airplanes affected	Fleet cost
Install FOD rubber shields	6 work-hour × $85 per hour = $510	$134	$644	124	$79,856

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per product	Number of airplanes affected	Fleet cost
Wrap silicone tape	2 work-hour × $85 per hour = $170	0	170	126	21,420

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):

2011–21–03 The Boeing Company: Amendment 39–16826; Docket No. FAA–2010–1312; Directorate Identifier 2010–NM–220–AD.

Effective Date

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

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 777–200, –200LR, –300, and –300ER series airplanes; certificated in any category; as identified in Boeing Service Bulletin 777–24–0102, Revision 1, dated June 17, 2010; and Boeing Special Attention Service Bulletin 777–29–0032, dated August 9, 2007.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Codes 29: Hydraulic power; and 24: Electrical power.

Unsafe Condition

(e) This AD was prompted by a report of a fire in the main equipment center due to failure of an external power connector, which caused high-temperature arcing and subsequent splatter of molten copper on an adjacent hydraulic tube, creating a hole in the tube and spraying hydraulic fluid into the power connector, resulting in a fire. In addition there were several reports of overheating or arcing of external power connectors, and one report of a fire due to arcing caused by foreign object debris (FOD). We are issuing this AD to prevent FOD from entering the primary and secondary external power connectors, which could result in overheating or arcing and consequent fire in the main equipment center.

Compliance

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

Modification

(g) Within 36 months after the effective date of this AD, do the actions required by paragraphs (g)(1) and (g)(2) of this AD.

(1) For airplanes identified in Boeing Service Bulletin 777–24–0102, Revision 1, dated June 17, 2010: Install FOD rubber shields over the primary and secondary external power connectors, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–24–0102, Revision 1, dated June 17, 2010.

(2) For airplanes identified in Boeing Special Attention Service Bulletin 777–29–0032, dated August 9, 2007: Wrap silicone tape around the hydraulic tube, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–29–0032, dated August 9, 2007.

Exception to Service Information

(h) Figure 1 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–29–0032, dated August 9, 2007, does not identify the units of the dimensions of the silicone tape installed on the hydraulic tube; those dimensions are identified in inches.

Credit for Actions Accomplished in Accordance With Previous Service Information

(i) Actions done before the effective date of this AD in accordance with Boeing Service Bulletin 777–24–0102, dated July 12, 2007, are acceptable for compliance with the corresponding requirements of paragraph (g)(1) of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(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 Principal Maintenance Inspector or Principal Avionics Inspector, as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

Related Information

(k) For more information about this AD, contact Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* (425) 917–6482; *fax:* (425) 917–6590; *e-mail: georgios.roussos@faa.gov.*

(l) 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.

Material Incorporated by Reference

(m) You must use Boeing Service Bulletin 777–24–0102, Revision 1, dated June 17, 2010; or Boeing Special Attention Service Bulletin 777–29–0032, dated August 9, 2007; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of the service information contained 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, WA 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 27, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–25754 Filed 10–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0687; Directorate Identifier 2011–CE–017–AD; Amendment 39–16833; AD 2011–21–10]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries GmbH Airplanes With Supplemental Type Certificate (STC) SA03674AT

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Diamond Aircraft Industries GmbH Model (Diamond) DA 40 airplanes equipped with cabin air conditioning vapor cycle system (VCS) installed per STC SA03674AT held by Premier Aircraft Services (originally held by DER Services, Inc.) following DER Services Master Document List MDL–2006–020–1, Revision C, dated February 3, 2009; Revision D, dated April 22, 2009; Revision E, dated May 12, 2010; or Revision F, dated July 6, 2010. This AD was prompted by reports of damage around the VCS compressor mounting areas found during maintenance inspections. This AD requires deactivation of the VCS, removal of the compressor and bracket, and revision to the airplane weight and balance. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective November 16, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 16, 2011.

ADDRESSES: For service information identified in this AD, contact Premier Aircraft Service, 5540 NW 23 Avenue Hangar 14, Ft. Lauderdale, FL 33309, *telephone:* (954) 771–0411; *fax:* (954) 334–1489; *Internet: http://www.flypas.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust St., Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The 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: Hal Horsburgh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, Georgia 30337; *telephone:* (404) 474–5553; *fax:* (404) 474–5606; *e-mail: hal.horsburgh@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 published in the **Federal Register** on June 28, 2011 (76 FR 37684). That NPRM proposed to require removal of the VCS mount, which could result in the air conditioner compressor disconnecting in the engine compartment. This condition could result in engine stoppage or additional damage to the engine.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (76 FR 37684, June 28, 2011) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes and the addition of an optional terminating action after the compressor is removed which will allow for the reinstallation and reactivation of the air conditioning system. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (76 FR 37684, June 28, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 11 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove the VCS compressor, deactivate system, and revise weight and balance.	3 work-hours × $85 per hour = $255	Not applicable	$255	$2,805

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

Authority for This Rulemaking

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

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

Regulatory Findings

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):

2011–21–10 Diamond Aircraft Industries GmbH Airplanes Equipped With Supplemental Type Certificate (STC) SA03674AT: Amendment 39–16833; Docket No. FAA–2011–0687; Directorate Identifier 2011–CE–017–AD.

(a) Effective Date

This AD is effective November 16, 2011.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Diamond Aircraft Industries GmbH Model DA 40 airplanes, all serial numbers, that:

(1) Are equipped with vapor cycle system (VCS) cabin air conditioning installed per Premier Aircraft Service STC SA03674AT following DER Services Master Document List MDL–2006–020–1, Revision C, dated February 3, 2009; Revision D, dated April 22, 2009; Revision E, dated May 12, 2010; or Revision F, dated July 6, 2010; and

(2) are certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2150, Cabin Cooling System.

(e) Unsafe Condition

This AD was prompted by reports of damage around the VCS compressor mounting area found during maintenance inspections. We are issuing this AD to remove the VCS compressor and mount, as a result of excessive wear, which could result in the air conditioner compressor disconnecting in the engine compartment. This condition could result in engine stoppage or additional damage to the engine.

(f) Compliance

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

(g) Required Actions

Within the next 100 hours time-in-service after installation of the VCS installed per STC SA03674AT held by Premier Aircraft Service (originally held by DER Services, Inc.) following DER Services Master Document List MDL–2006–020–1, Revision C, dated February 3, 2009; Revision D, dated April 22, 2009; Revision E, dated May 12, 2010; or Revision F, dated July 6, 2010, or within 30 days after November 16, 2011 (the effective date of this AD), whichever occurs later, do the following actions following Premier Aircraft Service Work Instruction PAS–WI–MSB–40–2011–001, dated March 4, 2011; and Premier Aircraft Service Mandatory Service Bulletin No. PAS–MSB–40–2011–001, dated March 4, 2011:

(1) Deactivate the VCS system.

(2) Pull and collar the compressor breaker and place a placard above the breaker stating ''INOP.''

(3) Remove the VCS compressor and associated mounting hardware.

(4) Revise the airplane weight and balance.

(h) Optional Actions

If all actions in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD have been completed, an optional terminating action allows you to reinstall the VCS compressor and reactivate the air conditioning system following Premier Aircraft Service Service Bulletin No. PAS–SB–40–2011–002, dated August 18, 2011; Seamech International Inc. Vapor Cycle Air Conditioning with Automatic Climate Control Instructions for Continued Airworthiness, ASI–772216A, Revision G, dated August 9, 2011; Seamech International Inc. Kit Compressor Mounting, Drawing SII 2216155, Revision D, dated July 21, 2011; and DER Services Installation Instructions Engineering Order EO–2006–020–1, Revision F, dated August 18, 2011.

(i) Special Flight Permit

The compressor drive belt must be cut and removed before the airplane may be moved for one ferry flight to an approved repair facility to comply with the remainder of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta 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.

(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.

(k) Related Information

For more information about this AD, contact Hal Horsburgh, Aerospace Engineer, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, Georgia 30337; *telephone:* (404) 474–5553; *fax:* (404) 474–5606; *e-mail: hal.horsburgh@faa.gov.*

(l) Material Incorporated by Reference

(1) 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 November 16, 2011:

(i) Premier Aircraft Service Work Instruction PAS–WI–MSB–40–2011–001, dated March 4, 2011; and

(ii) Premier Aircraft Service Mandatory Service Bulletin No. PAS–MSB–40–2011–001, dated March 4, 2011.

(2) If you accomplish the optional actions specified by this AD, you must use the following service information to perform those actions. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information on November 16, 2011:

(i) Premier Aircraft Service Service Bulletin No. PAS–SB–40–2011–002, dated August 18, 2011;

(ii) Seamech International Inc. Vapor Cycle Air Conditioning with Automatic Climate Control Instructions for Continued Airworthiness, ASI–772216A, Revision G, dated August 9, 2011;

(iii) Seamech International Inc. Kit Compressor Mounting, Drawing SII 2216155, Revision D, dated July 21, 2011;

(iv) DER Services Installation Instructions Engineering Order EO–2006–020–1, Revision F, dated August 18, 2011.

(3) For service information identified in this AD, contact Premier Aircraft Service, 5540 NW 23 Avenue Hangar 14, Ft. Lauderdale, FL 33309, *telephone:* (954) 771–0411; *fax:* (954) 334–1489; *Internet: http://www.flypas.com.*

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

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at 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 Kansas City, Missouri, on October 3, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–26001 Filed 10–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0479; Directorate Identifier 2010–NM–154–AD; Amendment 39–16827; AD 2011–21–04]

RIN 2120–AA64

Airworthiness Directives; Bombardier Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 Airplanes; Equipped With Certain Cockpit Door Installations

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

ACTION: Final rule.

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

During structural testing of the cockpit door, it was observed that the door lower hinge block rotated which resulted in disengagement of the mating hinge pin and excessive door deflection. The lower hinge block rotated because it was attached to its support structure with only one attachment bolt, which prevented it from reacting to any moment force. This condition, if not corrected, could result in breakage and uncontrolled release of the cockpit door under certain decompression situations.

After incorporation of Modsum 8Q900267 * * *, an operator reported a failure to complete the cockpit door removal function test. This condition, if not corrected, could result in the inability to remove the cockpit door for emergency egress. * * *

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

DATES: This AD becomes effective November 16, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 16, 2011.

The Director of the Federal Register approved the incorporation by reference of Bombardier Service Bulletin 8–52–54, Revision A, dated November 5, 2004, as of July, 18, 2006 (71 FR 34006, June 13, 2006).

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: Andreas Rambalakos, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7345; fax (516) 794–5531.

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 8, 2011 (76 FR 33173), and proposed to supersede AD 2006–12–16, Amendment 39–14642 (71 FR 34006, June 13, 2006). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During structural testing of the cockpit door, it was observed that the door lower hinge block rotated which resulted in disengagement of the mating hinge pin and excessive door deflection. The lower hinge block rotated because it was attached to its support structure with only one attachment bolt, which prevented it from reacting to any moment force. This condition, if not corrected, could result in breakage and uncontrolled release of the cockpit door under certain decompression situations.

After incorporation of Modsum 8Q900267 * * *, an operator reported a failure to complete the cockpit door removal function test. This condition, if not corrected, could result in the inability to remove the cockpit door for emergency egress. Therefore, * * * this [Canadian] directive is issued to require rework of the cockpit door striker plate and replacement of the latch block for the affected aircraft serial numbers. * * *

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 considered the comment received. The commenter supports the NPRM (76 FR 33173, June 8, 2011).

Conclusion

We reviewed the available data, including the comment received, 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 17 products of U.S. registry.

The actions that are required by AD 2006–12–16 (71 FR 34006, June 13, 2006) and retained in this AD take between 3 and 6 work-hours per product, at an average labor rate of $85 per work-hour. Required parts cost about $2,000 per product. Based on these figures, the estimated cost of the currently required actions is between $2,255 and $2,510 per product.

We estimate that it will take about 3 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $2,000 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 this AD to the U.S. operators to be $38,335, or $2,255 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

2. Is not a ''significant rule'' under 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 33173, June 8, 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 removing Amendment 39–14642 (71 FR 34006, June 13, 2006) and adding the following new AD:

2011–21–04 Bombardier Inc.: Amendment 39–16827. Docket No. FAA–2011–0479; Directorate Identifier 2010–NM–154–AD.

Effective Date

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

Affected ADs

(b) This AD supersedes AD 2006–12–16, Amendment 39–14642 (71 FR 34006, June 13, 2006).

Applicability

(c) This AD applies to Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes, certificated in any category; serial numbers (S/Ns) 003 through 557 inclusive; equipped with cockpit door installation part numbers (P/Ns) identified in table 1 of this AD.

TABLE 1—COCKPIT DOOR INSTALLATIONS AFFECTED BY THIS AD

P/N	Dash number(s)
82510074	All.
82510294	All.
82510310	–001.
8Z4597	–001.
H85250010	All.
82510700	All.
82510704	All except −502 and −503.

Subject

(d) Air Transport Association (ATA) of America Code 52: Doors.

Reason

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

During structural testing of the cockpit door, it was observed that the door lower hinge block rotated which resulted in disengagement of the mating hinge pin and excessive door deflection. The lower hinge block rotated because it was attached to its support structure with only one attachment bolt, which prevented it from reacting to any moment force. This condition, if not corrected, could result in breakage and uncontrolled release of the cockpit door under certain decompression situations.

After incorporation of Modsum 8Q900267 * * * an operator reported a failure to complete the cockpit door removal function test. This condition, if not corrected, could result in the inability to remove the cockpit door for emergency egress. * * *

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 2006–12–16 Amendment 39–14642 (71 FR 34006, June 13, 2006), With New Service Information

Modification

(g) Within 24 months after July 18, 2006 (the effective date of AD 2006–12–16 Amendment 39–14642 (71 FR 34006, June 13, 2006)), modify the cockpit door from a single-point attachment to a two-point attachment in accordance with the Accomplishment Instructions of the applicable service bulletin in table 2 of this AD. For airplane serial numbers 452, 464, 490, 506, and 508 through 557 inclusive: After the effective date of this AD, use Bombardier Service Bulletin 8–52–58, Revision A, dated November 17, 2006.

TABLE 2—BOMBARDIER SERVICE BULLETINS FOR MODIFICATION REQUIRED BY PARAGRAPH (G) OF THIS AD

Use this Bombardier Service Bulletin—	For airplane serial numbers—
8–52–54, Revision A, dated November 5, 2004	003 through 451 inclusive, 453 through 463 inclusive, 465 through 489 inclusive, 491 through 505 inclusive, and 507.
8–52–58, dated May 12, 2004, or Revision A, dated November 17, 2006.	452, 464, 490, 506, and 508 through 557 inclusive.

Note 1: Bombardier Service Bulletin 8–52–54, Revision A, dated November 5, 2004, refers to Bombardier Series 100/300 Modification Summary (Modsum) 8Q100859 as an additional source of guidance for installing a hinge pin with a two-point attachment. Bombardier Service Bulletin 8–52–58, dated May 12, 2004, or Revision A, dated November 17, 2006, refers to Bombardier Series 100/300 Modsum 8Q900267 as an additional source of guidance for reworking and installing the cockpit door, and reworking the lower hinge attachment to provide a downward-facing pin with a two-point attachment.

Prior/Concurrent Requirements

(h) Prior to or concurrently with the modification in paragraph (g) of this AD, do the applicable actions specified in table 3 of this AD, in accordance with a method approved by either the Manager, New York Aircraft Certification (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

TABLE 3—BOMBARDIER SERVICE BULLETINS FOR REQUIREMENTS OF PARAGRAPH (H) OF THIS AD

For airplanes affected by Bombardier Service Bulletin—	That have these serial numbers—	Do these actions—
8–52–54, Revision A, dated November 5, 2004	003 through 407 inclusive, 409 through 412 inclusive, and 414 through 433 inclusive.	Rework the cockpit door emergency release.
		Install a new label regarding alternate release of the door.
8–52–58, dated May 12, 2004, or Revision A, dated November 17, 2006.	452, 464, 490, 506, and 508 through 557 inclusive.	Install the cockpit door.

Note 2: Bombardier Service Bulletin 8–52–54, Revision A, dated November 5, 2004, refers to De Havilland Aircraft of Canada, Limited, Modification 8/2337 as an additional source of guidance for reworking the cockpit door emergency release; and Modification 8/3339 as additional source of guidance for installing a new label regarding alternate release of the door; on airplanes having serial numbers 003 through 407 inclusive, 409 through 412 inclusive, and 414 through 433 inclusive.

Note 3: Bombardier Service Bulletins 8–52–58, dated May 12, 2004; and Revision A, dated November 17, 2006; refer to Bombardier Modsum 8Q200015, as an additional source of guidance for installing the cockpit door, on airplanes having serial numbers 452, 464, 490, 506, and 508 through 557 inclusive.

Actions Done in Accordance With Previous Revision of Service Bulletin

(i) Actions done before July 18, 2006, in accordance with Bombardier Service Bulletin 8–52–54, dated May 12, 2004, are acceptable for compliance with the corresponding requirements in paragraph (g) of this AD.

New Requirements of This AD

(j) For airplanes having S/N 452, 464, 490, 506, and 508 through 557 inclusive, and on which the requirements in paragraph (g) of this AD have been done as of the effective date of this AD: Within 12 months after the effective date of this AD rework the cockpit door striker plate and replace the latch block, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–52–61, dated October 20, 2006.

(k) For airplanes having S/Ns 452, 464, 490, 506, and 508 through 557 inclusive, and on which the requirements in paragraph (g) of this AD have not been done as of the effective date of this AD: Prior to or concurrently with doing the modification required in paragraph (g) of this AD, rework the cockpit door striker plate and replace the latch block, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–52–61, dated October 20, 2006.

FAA AD Differences

Note 4: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: 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.

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

Related Information

(m) Refer to MCAI Canadian Airworthiness Directive CF–2005–34R1, dated August 15, 2007; Bombardier Service Bulletin 8–52–54, Revision A, dated November 5, 2004;

Bombardier Service Bulletin 8–52–58, Revision A, dated November 17, 2006; and Bombardier Service Bulletin 8–52–61, dated October 20, 2006; for related information.

Material Incorporated by Reference

(n) You must use the following service information to do the applicable 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) Bombardier Service Bulletin 8–52–58, Revision A, dated November 17, 2006, approved for IBR November 16, 2011;

(2) Bombardier Service Bulletin 8–52–61, dated October 20, 2006, approved for IBR November 16, 2011;

(3) Bombardier Service Bulletin 8–52–54, Revision A, dated November 5, 2004, approved for IBR July 18, 2006 (71 FR 34006, June 13, 2006).

(4) For service information identified in this AD, contact Bombardier Inc., Q–Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; e-mail *thd.qseries@aero.bombardier.com*; Internet *http://www.bombardier.com*.

(5) 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.

(6) 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 23, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–25770 Filed 10–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0033; Directorate Identifier 2009–NM–099–AD; Amendment 39–16737; AD 2011–14–02]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 767 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) that applies to all Model 767 airplanes. The existing AD currently requires repetitive detailed and high frequency eddy current (HFEC) inspections of the station (STA) 1809.5 bulkhead for cracking, and corrective actions if necessary. This AD expands the inspection area to include the vertical inner chord at STA 1809.5. This AD results from reported fatigue cracking in the vertical inner chord and the forward outer chord while doing the detailed inspection of the horizontal inner chord at STA 1809.5. We are issuing this AD to detect and correct fatigue cracking in the bulkhead structure at STA 1809.5 and the vertical inner chord at STA 1809.5, which could result in failure of the bulkhead structure for carrying the flight loads of the horizontal stabilizer, and consequent loss of controllability of the airplane.

DATES: This AD becomes effective November 16, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 16, 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; *phone:* 206–544–5000, extension 1; *fax:* 206–766–5680; *e-mail: me.boecom@boeing.com; Internet: https://www.myboeingfleet.com.*

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Berhane Alazar, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* 425–917–6577; *fax:* 425–917–6590; *e-mail: Berhane.Alazar@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2006–24–04, Amendment 39–14833 (71 FR 68432, November 27, 2006). The existing AD applies to all Model 767 airplanes. That NPRM was published in the **Federal Register** on February 8, 2010 (75 FR 6154). That NPRM proposed to continue to require repetitive detailed and HFEC inspections of the STA 1809.5 bulkhead for cracking, and corrective actions if necessary. That NPRM also proposed to expand the inspection area to include the vertical inner chord at STA 1809.5.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been received on the NPRM (75 FR 6154, February 8, 2010).

Support for the NPRM

Continental Airlines (CAL) stated that it supports the intent of the NPRM (75 FR 6154, February 8, 2010).

Request To Revise Paragraph (k)(1) of the NPRM

Boeing requested that we revise the compliance time in paragraph (k)(1) of the NPRM (75 FR 6154, February 8, 2010) to state ''whichever occurs later'' rather than ''whichever occurs first.'' Boeing stated that a similar AD, AD 2006–24–04 (71 FR 68432, November 27, 2006) (the AD being superseded), provides a choice of the later of two compliance times. Boeing stated that changing the compliance time language in paragraph (k)(1) of the NPRM would make this AD consistent with AD 2006–24–04.

We agree with the request for the reasons provided by the commenter, and we have revised paragraph (k)(1) of this final rule accordingly.

Request To Add Model 767–300BCF and 767–200SF Structural Repair Manuals (SRMs) To Clarify Terminating Action

Boeing requested that we specify Model 767–300BCF and Model 767–200SF SRMs in paragraphs (i) and (m) of the NPRM (75 FR 6154, February 8, 2010) to clarify the terminating action for converted Model 767–200 and –300 series airplanes. Boeing stated that some Model 767–300 airplanes have been converted to Model 767–300BCF airplanes, and some Model 767–200 airplanes have been converted to Model 767–200SF airplanes. Boeing stated that the Model 767–200SF and Model 767–

300BCF SRMs differ from the Model 767–200 and Model 767–300 SRMs.

We partially agree with the request. The Model 767–300BCF is unique and has its own SRM documents. We have added the Model 767–300BCF SRMs to paragraphs (i) and (j) of this final rule and table 1 of this final rule (table 1 follows paragraph (l) of this final rule; paragraph (l) of this final rule was referred to as paragraph (m) in the NPRM (75 FR 6154, February 8, 2010)).

However, the Boeing Model 767–200SF SRM does not include Subject 53–80–08, which is the subject referenced in paragraphs (i) and (l) of this AD; therefore, we have not changed the AD in regard to this model. The Model 767–200SF is unique and has its own SRM documents. After that material is developed, we will consider requests for approval of an alternative method of compliance (AMOC) under the provisions of paragraph (n) of this final rule.

Request To Clarify and Revise Paragraph (h) of the NPRM

CAL requested that we clarify the AMOC requirements of paragraph (h) of the NPRM (75 FR 6154, February 8, 2010). CAL asserted that paragraph 3.B. of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0131, Revision 1, dated March 12, 2009, allows repair of the vertical inner chord in accordance with Repair 11 of Subject 53–80–08; therefore, the vertical inner chord needs to be added to paragraph (h) of the NPRM as an exclusion to the AMOC requirements.

We agree with commenter's request for the reasons provided. We have revised paragraph (h) of this AD to add the reference to the vertical inner chord, as requested by CAL.

CAL also stated that for repairs or replacements of stringers and non-principal structural elements (PSE) parts (*e.g.,* attach brackets, support clips, etc.), an AMOC should not be necessary. For instance, Parts 3 and 4 of Boeing Alert Service Bulletin 767–53A0131, Revision 1, dated March 12, 2009, specify the detailed inspection of the structure surrounding the forward outer chord of the STA 1809.5 bulkhead, and the corresponding figures illustrate the inspection area, which encloses the stringers and attach fittings. As written, CAL stated that paragraph (h) of the NPRM (75 FR 6154, February 8, 2010) will prevent operators from making stringer repairs/replacements using ''SRM 53–00–03'' without first obtaining an AMOC. CAL stated further that replacing cracked clips and brackets using certain ''Boeing drawings'' should not require an AMOC.

CAL also requested that we revise paragraph (h) of the NPRM (75 FR 6154, February 8, 2010) to read as follows: ''If any cracking is found in the skin or the STA 1809.5 bulkhead's principal structural elements (PSE) other than the forward outer chord, horizontal inner chord, and vertical inner chord during any inspection required by paragraph (g) or (k) of this AD, and Boeing Service Bulletin 767–53A0131, dated March 30, 2006; or Boeing Alert Service Bulletin 767–53A0131, Revision 1, dated March 12, 2009; specifies to contact Boeing for appropriate action: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (n) of this AD. When replacing cracked parts per the Boeing drawings or repairing stringers per 767 SRM 53–00–03, approval in accordance with the procedures specified in paragraph (n) of this AD is not required.''

We partially agree with the request to revise paragraph (h) of this final rule. In order for a method of compliance other than the method(s) provided by the AD to be used, that method must be approved under the provisions of paragraph (n) of this AD. It is crucial that the FAA and Boeing are aware of all repairs made to PSEs or surrounding structure, and that damage tolerance be performed on each repair to establish its effect on the fatigue life of the affected structure.

In addition, we have determined that repairing/replacing the stringers in accordance with the SRM referenced by the commenter is an acceptable method of compliance for those specific requirements of paragraph (h) of this AD. We have revised paragraph (h) of this AD accordingly.

However, we disagree with including references to ''Boeing drawings'' for replacing cracked clips and brackets. We must cite specific service information (with dates and revision levels) in our ADs and would need to have the applicable drawings submitted for review prior to including those drawings in an AD. Each operator may be using different Boeing drawings as reference for replacing cracked clips and brackets. In addition, we do not consider it appropriate to include various provisions in an AD applicable only to certain airplanes or to a single operator's unique use of an affected airplane. Individual operators may request approval of an AMOC, provided sufficient data are submitted to substantiate such a request.

Request To Clarify the Requirements of Paragraph (l) of the NPRM

ABX requested clarification as to why paragraph (l) of the NPRM (75 FR 6154, February 8, 2010) is included. ABX stated that the NPRM specifies the limits in each applicable paragraph, and that the NPRM does not refer to paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–53A0131, Revision 1, dated March 12, 2009. ABX stated that the inclusion of paragraph (l) of the NPRM leads one to believe that somewhere in the NPRM other limits are hidden.

We agree to provide clarification. We have determined that paragraph (l) of the NPRM (75 FR 6154, February 8, 2010) was included unnecessarily because the NPRM did not refer to paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–53A0131, Revision 1, dated March 12, 2009. Therefore, we have removed that paragraph and other references to it from this final rule.

Request To Revise Note 1 of the NPRM

ABX requested that we revise Note 1 of the NPRM (75 FR 6154, February 8, 2010) from ''Guidance on modifying a vertical inner chord * * *'' to ''Approved methods on modifying a vertical inner chord * * *'' ABX stated that Table 1 of the NPRM lists service information that provides guidance on modifying a vertical inner chord. ABX noted that this service information does not appear to be approved by the Manager of the Seattle Aircraft Certification Office (ACO). ABX stated that it believes that this service information should be approved for terminating action for the condition of no cracking found during the most recent detailed and HFEC inspections. ABX noted that the modification, with the removal of the damaged area, is approved as a terminating action when the cracks are found. ABX stated that it believes that the modification should also be approved when no cracks are found.

We partially agree. We agree that accomplishing the terminating modification specified in Boeing Alert Service Bulletin 767–53A0131, Revision 1, dated March 12, 2009, terminates the applicable inspections for airplanes on which cracking is found and those on which cracking is not found. We have removed Note 1 of the NPRM (75 FR 6154, February 8, 2010) from the final rule and, instead, have revised paragraph (l) of the final rule to incorporate the information in Note 1 to specify that the optional terminating modification may also be done in

accordance with the applicable Boeing 767 SRM. In addition, paragraph (m) of this final rule specifies that if any cracking is found during any modification done in accordance with paragraph (l) of this AD, and the applicable Boeing 767 SRM specifies to contact Boeing for appropriate action, the cracking must be repaired in accordance with a method approved by the Manager of the Seattle Aircraft Certification Office. We also note that the SRM is an FAA-approved document.

Explanation of Additional Changes to This AD

We have added a new table 1 to this final rule to provide the applicable, current SRMs; we have re-identified subsequent tables accordingly.

We have changed paragraphs (i) and (l) of this final rule to specify specific steps of the applicable SRM identified in table 1 of this AD. We have also reformatted paragraphs (i) and (l) of this final rule to differentiate the methods of compliance, and added new Note 1 and Note 2 to this final rule to explain the reformatting changes.

We have revised the references to the SRM in the following locations to accurately identify Subject 53–80–08, Fuselage Bulkheads—Section 48: Paragraphs (i)(2)(i) through (i)(2)(v), (i)(3), (i)(4)(i) through (i)(4)(v), (i)(5), (j), and (l)(1) of this AD.

Conclusion

We have carefully reviewed the available data, including the comments that have been received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Explanation of Change to Costs of Compliance

Since issuance of the NPRM (75 FR 6154, February 8, 2010), we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

There are about 975 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Repetitive inspections of STA 1809.5 (required by AD 2006–24–04 (71 FR 68432, November 27, 2006)).	12	$85	None	$1,020 per inspection cycle.	354	$361,080 per inspection cycle.
Inspection of inner chord (new action)	2	85	None	$170 per inspection cycle.	354	$60,180 per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); 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. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

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 Federal Aviation Administration (FAA) amends § 39.13 by removing Amendment 39–14833 (71 FR 68432, November 27, 2006) and by adding the following new airworthiness directive (AD):

2011–14–02 The Boeing Company: Amendment 39–16737. Docket No. FAA–2010–0033; Directorate Identifier 2009–NM–099–AD.

Effective Date

(a) This AD becomes effective November 16, 2011.

Affected ADs

(b) This AD supersedes AD 2006–24–04, Amendment 39–14833, (71 FR 68432, November 27, 2006).

Applicability

(c) This AD applies to all The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Unsafe Condition

(e) This AD results from reported fatigue cracking in the vertical inner chord and the forward outer chord while doing the detailed inspection of the horizontal inner chord at STA 1809.5. The Federal Aviation Administration is issuing this AD to detect and correct fatigue cracking in the bulkhead structure at STA 1809.5 and the vertical inner chord at STA 1809.5, which could result in failure of the bulkhead structure for carrying the flight loads of the horizontal stabilizer, and consequent loss of 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.

Restatement of Requirements of AD 2006–24–04 (71 FR 68432, November 27, 2006), With Updated Service Information

Repetitive Inspections and Corrective Actions

(g) Before the accumulation of 15,000 total flight cycles, or within 3,000 flight cycles after January 2, 2007 (the effective date of AD 2006–24–04 (71 FR 68432, November 27, 2006)), whichever is later: Do the detailed and high frequency eddy current (HFEC) inspections for cracking as specified in Parts 1, 2, 3, and 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0131, dated March 30, 2006; or Revision 1, dated March 12, 2009; and do all corrective actions before further flight; by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0131, dated March 30, 2006; or Revision 1, dated March 12, 2009; except as provided by paragraph (h) of this AD. After the effective date of this AD, use only Boeing Alert Service Bulletin 767–53A0131, Revision 1, dated March 12, 2009. Repeat the inspections thereafter at intervals not to exceed 6,000 flight cycles. Accomplishing the corrective action for the inspections specified in Part 1, 2, 3, or 4, as applicable, of Boeing Alert Service Bulletin 767–53A0131, dated March 30, 2006; or Revision 1, dated March 12, 2009; as applicable; terminates the repetitive inspections for that area only.

Exceptions to Service Bulletin

(h) If any cracking is found in the skin or in any structure other than the forward outer chord, horizontal inner chord, or vertical inner chord during any inspection required by paragraph (g) or (k) of this AD, and Boeing Alert Service Bulletin 767–53A0131, dated March 30, 2006; or Revision 1, dated March 12, 2009; specifies to contact Boeing for appropriate action: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (n) of this AD; except that repairing or replacing stringers in accordance with Subject 53–00–03—Fuselage Stringers, of the applicable SRM identified in table 1 of this AD is an acceptable method of compliance for those specific actions required by this AD.

Optional Terminating Action for the Repetitive Inspections Required by Paragraph (g) of This AD

(i) For airplanes on which no cracking is found during the most recent detailed and HFEC inspections for a specified area as required by paragraph (g) of this AD: Paragraphs (i)(1) through (i)(5) of this AD provide optional terminating action for the repetitive inspections required by paragraph (g) of this AD for the specified area only.

(1) Modification of a specified area in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, terminates the repetitive inspections required by paragraph (g) of this AD for that area only.

(2) Modification of a forward outer chord in accordance with the procedures specified in paragraphs (i)(2)(i) through (i)(2)(v) of this AD, as applicable, terminates the repetitive inspections required by paragraph (g) of this AD for that area only.

(i) For Model 767–200 series airplanes: Steps 4.A through 4.C and Steps 4.G through 4.P of Repair 9, dated April 15, 2006, of Subject 53–80–08, Fuselage Bulkheads—Section 48, of the Boeing 767–200 Structural Repair Manual (SRM), Document D634T201.

(ii) For Model 767–300 series airplanes: Steps 4.A through 4.C and Steps 4.G through 4.P of Repair 9, dated April 15, 2006, of Subject 53–80–08, Fuselage Bulkheads—Section 48, of the Boeing 767–300 SRM, Document D634T210.

(iii) For Model 767–300F series airplanes: Steps 4.A through 4.C and Steps 4.G through 4.P of Repair 9, dated April 15, 2006, of Subject 53–80–08, Fuselage Bulkheads—Section 48, of the Boeing 767–300F SRM, Document D634T215.

(iv) For Model 767–300BCF series airplanes: Steps 4.A through 4.C and Steps 4.G through 4.P of Repair 9, dated April 15, 2006, of Subject 53–80–08, Fuselage Bulkheads—Section 48, of the Boeing 767–300BCF SRM, D634T235.

(v) For Model 767–400 series airplanes: Steps 4.A through 4.C and Steps 4.G through 4.P of Repair 9, dated April 15, 2006, of Subject 53–80–08, Fuselage Bulkheads—Section 48, of the Boeing 767–400 SRM, Document D634T225.

(3) Modification of a forward outer chord in accordance with Steps 4.A through 4.C and 4.G through 4.P of Repair 9 of Subject 53–80–08, Fuselage Bulkheads—Section 48, of the applicable SRM identified in table 1 of this AD also terminates the repetitive inspections required by paragraph (g) of this AD for that area.

(4) Modification of a horizontal inner chord in accordance with the procedures specified in paragraphs (i)(4)(i) through (i)(4)(v) of this AD, as applicable, terminates the repetitive inspections required by paragraph (g) of this AD for that area.

(i) For Model 767–200 series airplanes: Steps 4.A, 4.B, and 4.F through 4.P of Repair 10, dated April 15, 2006, of Subject 53–80–08, Fuselage Bulkheads—Section 48, of the Boeing 767–200 SRM, Document D634T201.

(ii) For Model 767–300 series airplanes: Steps 4.A, 4.B, and 4.F through 4.P of Repair 10, dated April 15, 2006, of Subject 53–80–08, Fuselage Bulkheads—Section 48, of the Boeing 767–300 SRM, Document D634T210.

(iii) For Model 767–300F series airplanes: Steps 4.A, 4.B, and 4.F through 4.P of Repair 10, dated April 15, 2006, of Subject 53–80–08, Fuselage Bulkheads—Section 48, of the Boeing 767–300F SRM, Document D634T215.

(iv) For Model 767–300BCF series airplanes: Steps 4.A, 4.B, and 4.F through 4.P of Repair 10, dated April 15, 2006, of Subject 53–80–08, Fuselage Bulkheads—Section 48, of the Boeing 767–300BCF SRM, Document D634T235.

(v) For Model 767–400 series airplanes: Steps 4.A, 4.B, and 4.F through 4.P of Repair 10, dated April 15, 2006, of Subject 53–80–08, Fuselage Bulkheads—Section 48, of the Boeing 767–400 SRM, Document D634T225.

(5) Modification of a horizontal inner chord in accordance with Steps 4.A, 4.B, and 4.F through 4.P of Repair 10 of Subject 53–80–08, Fuselage Bulkheads—Section 48, of the applicable SRM identified in Table 1 of this AD also terminates the repetitive inspections required by paragraph (g) of this AD for that area.

TABLE 1—REVISED SRMS

SRM	Revision	Date
Boeing 767–200 SRM, Document D634T201	105	December 15, 2010.
Boeing 767–300 SRM, Document D634T210	85	December 15, 2010.
Boeing 767–300F SRM, Document D634T215	49	December 15, 2010.
Boeing 767–300BCF SRM, Document D634T235	9	December 15, 2010.
Boeing 767–400 SRM, Document D634T225	32	December 15, 2010.

Note 1: We have reformatted paragraph (i) of this AD to differentiate the methods of compliance specified in that paragraph.

Credit for Previously Accomplished Repairs

(j) Repair of a forward outer chord done before January 2, 2007, in accordance with Repair 9, dated April 15, 2006, of Subject 53–80–08, Fuselage Bulkheads—Section 48, of the Boeing 767–200 SRM, Document D634T201; Boeing 767–300 SRM, Document D634T210; Boeing 767–300F SRM, Document D634T215; Boeing 767–300BCF SRM, D634T235; or Boeing 767–400 SRM, Document D634T225; as applicable; is acceptable for compliance with the requirements of paragraph (g) of this AD for that area only. Repair of a horizontal inner chord before January 2, 2007, in accordance with Repair 10, dated April 15, 2006, of Subject 53–80–08, Fuselage Bulkheads—Section 48, of the Boeing 767–200 SRM, Document D634T201; Boeing 767–300 SRM, Document D634T210; Boeing 767–300F SRM, Document D634T215; Boeing 767–300BCF SRM, Document D634T235; or Boeing 767–400 SRM, Document D634T225; as applicable; is acceptable for compliance with the terminating requirements of paragraph (g) of this AD for that area only.

New Requirements of This AD

Inspections

(k) At the later of the times specified in paragraphs (k)(1) and (k)(2) of this AD: Do the detailed and HFEC inspections for cracking as specified in Parts 5 and 6 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0131, Revision 1, dated March 12, 2009; and do all applicable corrective actions by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0131, Revision 1, dated March 12, 2009; except as provided by paragraph (h) of this AD. Do all applicable corrective actions before further flight. Repeat the inspections thereafter at intervals not to exceed 6,000 flight cycles. Accomplishing the corrective action for the inspections specified in Part 5 or 6 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0131, Revision 1, dated March 12, 2009, as applicable, terminates the repetitive inspections for that area only.

(1) Before the accumulation of 15,000 total flight cycles or within 6,000 flight cycles after the inspection required by paragraph (g) of this AD, whichever occurs later.

(2) Within 30 days after the effective date of this AD.

Optional Terminating Action for the Repetitive Inspections Required by Paragraph (k) of This AD

(l) For airplanes on which no cracking is found during the most recent detailed and HFEC inspections for a specified area, as required by paragraph (k) of this AD: Paragraphs (l)(1) and (l)(2) of this AD provide optional terminating action for the repetitive inspections required by paragraph (k) of this AD for that area only. After the effective date of this AD, only the applicable SRM identified in table 1 of this AD or a method approved by the Manager, Seattle ACO, may be used.

(1) Modify the specified area in accordance with Steps 4.A through 4.C and 4.G through 4.Q of Repair 11 of Subject 53–80–08, Fuselage Bulkheads—Section 48, of the applicable SRM identified in table 1 or table 2 of this AD, except as provided by paragraph (m) of this AD.

(2) Modify the specified area in accordance with a method approved by the Manager, Seattle ACO.

TABLE 2—PREVIOUS SRMS

Steps—	Dated—	Of—
4.A through 4.C and 4.G through 4.Q of Repair 11 of Subject 53–80–08.	August 15, 2008	Boeing 767–200 SRM, Document D634T201.
4.A through 4.C and 4.G through 4.Q of Repair 11 of Subject 53–80–08.	August 15, 2008	Boeing 767–300 SRM, Document D634T210.
4.A through 4.C and 4.G through 4.Q of Repair 11 of Subject 53–80–08.	August 15, 2008	Boeing 767–300F SRM, Document D634T215.
4.A through 4.C and 4.G through 4.Q of Repair 11 of Subject 53–80–08.	August 15, 2008	Boeing 767–300BCF SRM, Document D634T235.
4.A through 4.C and 4.G through 4.Q of Repair 11 of Subject 53–80–08.	August 15, 2008	Boeing 767–400 SRM, Document D634T225.

Note 2: We have reformatted paragraph (l) of this AD to differentiate the methods of compliance specified in that paragraph.

Exception to SRM Modification Specified in Paragraph (l) of This AD

(m) If, during accomplishment of any modification in accordance with paragraph (l) of this AD, any cracking is found and the applicable SRM referenced in paragraph (l) of this AD specifies to contact Boeing for appropriate action: Before further flight, repair the cracking in accordance with a method approved by the Manager, Seattle ACO. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, Seattle ACO, 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. Or, e-mail information 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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved previously in accordance with AD 2006–24–04 (71 FR 68432, November 27, 2006) are approved as AMOCs for the corresponding provisions of this AD.

Material Incorporated by Reference

(o) You must use the service information specified in paragraph (o)(1) of this AD to do the actions required by this AD, unless the AD specifies otherwise. If you accomplish the optional actions specified by this AD, you must use the service information specified in paragraph (o)(2) of this AD to perform those actions, 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 November 16, 2011:

(1) Boeing Alert Service Bulletin 767–53A0131, Revision 1, dated March 12, 2009.

(2) Subject 53–00–03, Fuselage Stringers, of Chapter 53, Fuselage; or Subject 53–80–08, Fuselage Bulkheads—Section 48, Repair 9—Station 1809.5 Bulkhead—Forward Outer Chord Repair Between S–4 to S–8, Repair 10—Station 1809.5 Bulkhead—Horizontal Inner Chord Repair at Approximately WL 257 and BL 28, or Repair 11—Station 1809.5 Bulkhead—Vertical Inner Chord Repair at Approximately WL 256 and BL 30, as applicable, of Chapter 53, Fuselage; as applicable; of the applicable Structural Repair Manual (SRM) specified in paragraphs (o)(2)(i) through (o)(2)(v) of this AD.

(i) Boeing 767–200 SRM, Document D634T201, Revision 105, dated December 15, 2010. Only the transmittal letter, dated

December 15, 2010, of this document contains the revision level of the document.

(ii) Boeing 767–300 SRM, Document D634T210, Revision 85, dated December 15, 2010. Only page 1 of the transmittal letter, dated December 15, 2010, of this document contains the revision level of the document.

(iii) Boeing 767–300F SRM, Document D634T215, Revision 49, dated December 15, 2010. Only page 1 of the transmittal letter, dated December 15, 2010, of this document contains the revision level of the document.

(iv) Boeing 767–300BCF SRM, Document D634T235, Revision 9, dated December 15, 2010. Only page 1 of the transmittal letter, dated December 15, 2010, of this document contains the revision level of the document.

(v) Boeing 767–400 SRM, Document D634T225, Revision 32, dated December 15, 2010. Only page 1 of the transmittal letter, dated December 15, 2010, of this document contains the revision level of the document.

(3) 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.*

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

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

Issued in Renton, Washington, on September 23, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–25618 Filed 10–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0389; Directorate Identifier 2007–NM–189–AD; Amendment 39–16769; AD 2011–17–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2–1C, A300 B2–203, A300 B2K–3C, A300–B4–103, A300 B4–203, and A300 B4–2C Airplanes

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

ACTION: Final rule.

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

* * * [C]racks * * * in sections 13 to 18 of the fuselage between rivets of longitudinal lap joints between frames 18 and 80 which could affect the structural integrity of the fuselage if not corrected.

* * * * *

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

DATES: This AD becomes effective November 16, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 16, 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 May 10, 2011 (76 FR 26962), and proposed to supersede AD 90–01–10, Amendment 39–6448 (55 FR 261, January 4, 1990). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

This Airworthiness Directive (AD) is issued in order to prevent cracks development in sections 13 to 18 of the fuselage between rivets of longitudinal lap joints between frames 18 and 80 which could affect the structural integrity of the fuselage if not corrected.

This new AD:

—Retains the requirements of DGAC AD 1989–061–092(B)R4 [which corresponds to FAA AD 90–01–10 (55 FR 261, January 4, 1990)], which is cancelled;

—Takes into account a new inspection program as detailed in AIRBUS Service Bulletins (SB) A300–53–0211 Revision 7, which will allow A300 aircraft to reach the Limit of Validity (LOV).

This AD has been republished to correctly refer to SB A300–53–0211 in Note 2 of the Compliance section.

The inspection program consists of repetitive detailed inspections for disbonding and cracking of the fuselage inner doubler; eddy current and ultrasonic inspections of the fuselage longitudinal lap joints for cracking; and repair if necessary (*i.e.,* repairing any cracking or disbonding, or contacting Airbus for repair instructions and doing the repair). 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 26962, May 10, 2011) or on the determination of the cost to the public.

Clarification of Service Bulletin References

Paragraphs (h)(1) and (j)(1) of the NPRM (76 FR 26962, May 10, 2011) refer to Airbus Mandatory Service Bulletin A300–53–0211 as the service information for airplanes on which an inspection of the longitudinal lap joints has been done. For clarity, we have revised the paragraphs to refer to the latest service bulletin revision and, therefore, we have revised paragraphs (h)(1) and (j)(1) of this AD to refer to Airbus Mandatory Service Bulletin A300–53–0211, Revision 07, dated December 1, 2006.

Paragraphs (l)(1), (1)(2), (m)(1), (m)(2), (n)(1), (n)(2), (o)(1), and (o)(2) of the NPRM (76 FR 26962, May 10, 2011) refer to Airbus Service Bulletin A300–53–229 for the definition of ''major'' and ''minor'' disbonding. For clarity, we have revised the paragraphs to refer to the latest service bulletin revision and, therefore, we have revised paragraphs (l)(1), (1)(2), (m)(1), (m)(2), (n)(1), (n)(2), (o)(1), and (o)(2) of this AD to refer to Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997.

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.

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 5 products of U.S. registry.

We estimate that it will take about 3,735 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the AD on U.S. operators to be $1,587,375, or $317,475 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

2. Is not a ''significant rule'' under 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 26962, May 10, 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 removing Amendment 39–6448 (55 FR 261, January 4, 1990) and adding the following new AD:

2011–17–05 Airbus: Amendment 39–16769. Docket No. FAA–2011–0389; Directorate Identifier 2007–NM–189–AD.

Effective Date

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

Affected ADs

(b) This AD supersedes AD 90–01–10, Amendment 39–6448 (55 FR 261, January 4, 1990).

Applicability

(c) This AD applies to Airbus Model A300 B2–1C, A300 B2–203, A300 B2K–3C, A300–B4–103, A300 B4–203, and A300 B4–2C airplanes; certificated in any category; serial numbers 0003 through 0156 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Reason

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

This Airworthiness Directive (AD) is issued in order to prevent cracks development in sections 13 to 18 of the fuselage between rivets of longitudinal lap joints between frames 18 and 80 which could affect the structural integrity of the fuselage if not corrected.

This new AD:

—Retains the requirements of DGAC AD 1989–061–092(B)R4 [which corresponds to FAA AD 90–10–10 (55 FR 261, January 4, 1990)], which is cancelled;

—Takes into account a new inspection program as detailed in AIRBUS Service Bulletins (SB) A300–53–0211 Revision 7, which will allow A300 aircraft to reach the Limit of Validity (LOV).

This AD has been republished to correctly refer to SB A300–53–0211 in Note 2 of the Compliance section.

The inspection program consists of repetitive detailed inspections for disbonding and cracking of the fuselage inner doubler; eddy current and ultrasonic inspections of the fuselage longitudinal lap joints for cracking; and repair if necessary (*i.e.,* repairing any cracking or disbonding, or contacting Airbus for repair instructions and doing the repair).

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.

Repetitive Inspections of ''Special Areas'' and Repair or Modification if Necessary

(g) For airplanes on which an eddy current inspection of the ''special'' areas of the longitudinal lap joints has not been done as of the effective date of this AD in accordance with Airbus Mandatory Service Bulletin A300–53–0211: Prior to the accumulation of 24,000 total flight cycles, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later; do an eddy current inspection for cracking of the ''special'' areas of the longitudinal lap joints, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–53–0211, Revision 07, dated December 1, 2006. If no cracking is found, repeat the inspection thereafter at the applicable intervals specified in Table 1 of this AD. If any crack is found during any inspection required by this paragraph, repair or modify before further flight, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–53–0211, Revision 07, dated December 1, 2006; and do the applicable inspection of the repaired or modified area in accordance with paragraph (k) of this AD. ''Special'' areas of the longitudinal lap joints are defined in Airbus Mandatory Service Bulletin A300–53–0211, Revision 07, dated December 1, 2006.

TABLE 1—REPETITIVE INTERVALS FOR INSPECTING SPECIAL AREAS OF THE LONGITUDINAL LAP JOINTS

For airplanes—	Inspect special area—	Repeat at intervals not to exceed—
All	STGR5 LH and RH (FR54 through FR58)	3,600 flight cycles.
All	STGR22 LH and RH (FR26 through FR40)	2,700 flight cycles.
All	STGR22 RH (FR58 through FR65)	3,000 flight cycles.
All	STGR31 LH/RH (FR26 through FR39)	3,000 flight cycles.
MSN 0003	STGR31 LH/RH (FR54 through FR58)	3,600 flight cycles.

(h) For airplanes on which an eddy current inspection of the ''special'' areas of the longitudinal lap joints has been done before the effective date of this AD in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–53–0211; except for airplanes on which a repair or modification of the ''special'' areas has been done in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–53–0211: Do the next inspection of the ''special'' areas of the longitudinal lap joints at the earlier of the times specified in paragraphs (h)(1) and (h)(2) of this AD, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–53–0211, Revision 07, dated December 1, 2006. If no cracking is found, repeat the inspection thereafter at the applicable intervals specified in Table 2 of this AD. If any crack is found during any inspection required by this paragraph, repair or modify before further flight, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–53–0211, Revision 07, dated December 1, 2006, and do the applicable inspection of the repaired or modified area in accordance with paragraph (k) of this AD. ''Special'' areas of the longitudinal lap joints are defined in Airbus Mandatory Service Bulletin A300–53–0211, Revision 07, dated December 1, 2006.

(1) Within 6,000 flight cycles after doing the last inspection of the ''special'' areas of the longitudinal lap joints, in accordance with Airbus Mandatory Service Bulletin A300–53–0211, Revision 07, dated December 1, 2006.

(2) Within the applicable intervals specified in Table 2 of this AD, or within 60 days after the effective date of this AD, whichever occurs later.

TABLE 2—REPETITIVE INTERVALS FOR INSPECTING SPECIAL AREAS OF THE LONGITUDINAL LAP JOINTS

For airplanes—	Inspect special area—	Repeat at intervals not to exceed—
All	STGR5 LH and RH (FR54 through FR58)	3,600 flight cycles.
All	STGR22 LH and RH (FR26 through FR40)	2,700 flight cycles.
All	STGR22 RH (FR58 through FR65)	3,000 flight cycles.
All	STGR31 LH/RH (FR26 through FR39)	3,000 flight cycles.
MSN 0003	STGR31 LH/RH (FR54 through FR58)	3,600 flight cycles.

Repetitive Inspections of ''Standard Areas'' and Repair or Modification if Necessary

(i) For airplanes on which an eddy current inspection of the ''standard'' areas of the longitudinal lap joints has not been done before the effective date of this AD in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–53–0211: At the applicable time specified in Tables 3 and 4 of this AD, do an eddy current inspection for cracking of the longitudinal lap joints in the ''standard'' areas, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–53–0211, Revision 07, dated December 1, 2006. Repeat the inspection thereafter at the applicable intervals specified in Tables 3 and 4 of this AD. If any crack is found during any inspection required by this paragraph, repair or modify before further flight, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–53–0211, Revision 07, dated December 1, 2006, and do the applicable inspection of the applicable area specified in Tables 3 and 4 of this AD. ''Standard'' areas of the longitudinal lap joints are defined in Airbus Mandatory Service Bulletin A300–53–0211, Revision 07, dated December 1, 2006.

TABLE 3—INITIAL COMPLIANCE TIMES AND REPETITIVE INTERVALS FOR INSPECTING STANDARD AREAS OF THE LONGITUDINAL LAP JOINTS

For airplanes—	Before the accumulation of—	Inspect standard area—	Repeat at intervals not to exceed—
All	32,000 total flight cycles	STGR5, 13, 22 LH and RH, STGR31 LH (FR18 through FR26).	3,600 flight cycles.
All	32,000 total flight cycles	STGR27 RH, STGR39 RH (FR18 through FR20A, FR25A, FR26).	8,000 flight cycles.
All	32,000 total flight cycles	STGR43 LH, STGR46 RH, STGR51 LH (FR19 through FR26).	5,700 flight cycles.
All	32,000 total flight cycles	STGR5 LH/RH (FR26 through FR40); STGR11 LH/RH (FR27 through FR32); STGR13 LH/RH (FR 26 through FR28, FR31 through FR40); STGR27 LH/RH (FR 27 through FR32); STGR43 LH/RH (FR 26 through FR39); STGR49 RH (FR26 through FR39).	3,000 flight cycles.
All	32,000 total flight cycles	STGR47 LH (FR26 through FR39)	5,700 flight cycles.
All	32,000 total flight cycles	STGR5, 13, 22 LH/RH (FR40 through FR54).	5,000 flight cycles.

TABLE 3—INITIAL COMPLIANCE TIMES AND REPETITIVE INTERVALS FOR INSPECTING STANDARD AREAS OF THE LONGITUDINAL LAP JOINTS—Continued

For airplanes—	Before the accumulation of—	Inspect standard area—	Repeat at intervals not to exceed—
All except MSN 0003	32,000 total flight cycles	STGR13, 44, 52 LH/RH (FR54 through FR58); STGR22 LH/RH (FR54, FR55); STGR31 LH/RH (FR54 through FR58).	3,600 flight cycles.

(j) For airplanes on which an eddy current inspection of the ''standard'' areas of the longitudinal lap joints has been done as of the effective date of this AD in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–53–0211; except for airplanes on which a repair or modification of the ''standard areas'' has been done in accordance with Airbus Mandatory Service Bulletin A300–53–0211: Do the next inspection of the ''standard'' areas of the longitudinal lap joints at the earlier of the times specified in paragraphs (j)(1) and (j)(2) of this AD, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–53–0211, Revision 07, dated December 1, 2006. Thereafter, if no cracking is found, repeat the inspection at the applicable intervals specified in Tables 3 and 4 of this AD. If any crack is found during any inspection required by this paragraph, repair or modify before further flight, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–53–0211, Revision 07, dated December 1, 2006, and do the applicable inspection of the repaired or modified area in accordance with paragraph (k) of this AD. ''Standard'' areas of the longitudinal lap joints are defined in Airbus Mandatory Service Bulletin A300–53–0211, Revision 07, dated December 1, 2006.

TABLE 4—INITIAL COMPLIANCE TIMES AND REPETITIVE INTERVALS FOR INSPECTING ADDITIONAL STANDARD AREAS OF THE LONGITUDINAL LAP JOINTS

For airplanes—	Before the accumulation of—	Inspect standard area—	Repeat at intervals not to exceed—
Pre-Mod 1398	32,000 total flight cycles	STGR5, 13 LH/RH 22 LH (FR58 through FR65); STGR31 LH (FR58 through FR72); STGR31 RH (FR65 through FR72).	2,700 flight cycles.
All	32,000 total flight cycles	STGR27 RH, STGR39 RH (FR58, FR59A, FR63A through FR65).	8,000 flight cycles.
Post-Mod 1398	32,000 total flight cycles	STGR5, 13 LH/RH 22 LH (FR58 through FR65); STGR31 LH (FR58 through FR72); STGR 31 RH (FR65 through FR72).	3,000 flight cycles.
Pre-Mod 1398	32,000 total flight cycles	STGR5, 13, 22 LH/RH (FR65 through FR72).	2,300 flight cycles.
Post-Mod 1398	32,000 total flight cycles	STGR5, 13, 22 LH/RH (FR65 through FR72).	3,000 flight cycles.
All	32,000 total flight cycles	STGR44 LH (FR58 through FR72); STGR52 LH/RH (FR58 through FR65); STGR47 RH (FR58 through FR72); STGR57 LH (FR65 through FR72).	3,000 flight cycles.
All	24,000 total flight cycles	STGR22 RH (FR58 through FR65)	3,000 flight cycles.
All	32,000 total flight cycles	STGR6 LH/RH (FR72 through FR80); STGR24 LH/RH (FR76 through FR80).	3,000 flight cycles.
All	32,000 total flight cycles	STRG17 LH/RH (FR76 through FR80); STGR29 LH/RH (FR72 through FR76); STGR35 LH/RH (FR72 through FR80).	5,700 flight cycles.
All	27,000 total flight cycles	STGR51 LH/RH (FR72 through FR80).	5,700 flight cycles.

(1) Within the applicable time in paragraph (j)(1)(i) or (j)(1)(ii) of this AD after doing the last inspection of the ''standard'' areas of the longitudinal lap joints in accordance with Airbus Mandatory Service Bulletin A300–53–0211, Revision 07, dated December 1, 2006.

(i) For longitudinal lap joints with bonded doublers: 6,000 flight cycles.

(ii) For longitudinal lap joints without bonded doublers: 8,000 flight cycles.

(2) Within the applicable time specified in Tables 3 or 4 of this AD, or within 60 days after the effective date of this AD, whichever occurs later.

Post-Repair or Modification Inspections and Repair or Modification if Necessary

(k) For airplanes on which a repair or modification has been done in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–53–0211: At the applicable initial inspection time specified in Table 5 of this AD, do an eddy current inspection for cracking of the repaired or modified areas, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–53–0211, Revision 07, dated December 1, 2006. If no cracking is found, repeat the inspection thereafter at the applicable intervals specified in Table 5 of this AD. If any crack is found during any inspection required by this paragraph, repair or modify before further flight, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–53–0211, Revision 07, dated December 1, 2006.

TABLE 5—POST-REPAIR OR MODIFICATION COMPLIANCE TIME

Repair or retrofit solution/area—as identified in Airbus Mandatory Service Bulletin A300–53–0211—	Initial inspection after repair or retrofit—	Follow-up inspections at intervals not to exceed—
Repair 1: (Without cut out) also applicable to the solution with removed inner doubler.	Skin/doubler thickness	
	• < 1 inch: 10,000 flight cycles after repair	1,000 flight cycles.
	• ≥ 1 inch and < 2 inch: 30,000 flight cycles after repair.	2,000 flight cycles.
	• ≥ 2 inch: 60,000 flight cycles after repair	6,400 flight cycles.
Repair 4 (With cut out)	Within 32,000 flight cycles after repair	5,000 flight cycles.
Repair 4A (With cut out)	Within 24,000 flight cycles after repair	5,300 flight cycles.
Repair 7 (MSN 0095 at STGR52 LH in Section 16)	Within 37,000 flight cycles after repair	12,000 flight cycles.
Repair 9 (MSN 0073 and 0095 STGR44 LH/RH in Sections 16 and 17).	Within 36,000 flight cycles after repair	5,000 flight cycles.
Repair 10 (Post-repair inspections in Figure 13)	Within 20,000 flight cycles after repair	11,000 flight cycles.
Repair 2 (With cut out)	Within 24,000 flight cycles after repair	5,300 flight cycles.
Repair 3 (Without cut out)	Within 24,000 flight cycles after repair	5,300 flight cycles.
Retrofit 1 (Retrofit lap joint)	Within 32,000 flight cycles after retrofit	5,000 flight cycles.
Retrofit 2 Retrofit lower shell (4 panel solution) STGR43 LH (FR26 through FR39), STGR43 RH (FR26 through FR38), and STGR49 RH (FR26 through FR38).	Within 32,000 flight cycles after retrofit	3,000 flight cycles.
Retrofit 2 Retrofit lower shell (4 panel solution) STGR46 RH (FR19 through FR26), and STGR47 LH (FR26 through FR39), and STGR51 LH (FR19 through FR26).	Within 32,000 flight cycles after retrofit	5,700 flight cycles.
Retrofit 3 Retrofit lower shell (3 panel solution) STGR43 LH (FR26 through FR39), and STGR43 RH (FR26 through FR38).	Within 32,000 flight cycles after retrofit	3,000 flight cycles.
Retrofit 3 Retrofit lower shell (3 panel solution) STGR46 RH (FR19 through FR26), and STGR51 LH (FR19 through FR26), and STGR54 LH (FR26 through FR39).	Within 32,000 flight cycles after retrofit	5,700 flight cycles.
Retrofit 3A (STGR43 LH/RH between FR37 and FR39 in Section 14).	Within 32,000 flight cycles after retrofit	5,000 flight cycles.
Retrofit 4 (Retrofit lap joint without cut out)	Within 42,000 flight cycles after retrofit	5,000 flight cycles.
Retrofit 5 (Retrofit lap joint)	Within 42,000 flight cycles after retrofit	5,000 flight cycles.
Retrofit 6 (Retrofit lap joint)	Within 34,000 flight cycles after retrofit	12,000 flight cycles.
Retrofit 7 (Retrofit lap joint)	Within 47,600 flight cycles after retrofit	5,400 flight cycles.

Fuselage Inner Doubler Inspections and Repair if Necessary

(l) For airplanes on which any inspections of the fuselage bonded inner doublers of the longitudinal lap joints in Sections 13 through 18 (except Sections 16 and 17 at Stringer 31 left-hand and right-hand) for disbonding and cracking have not been done as of the effective date of this AD in accordance with Airbus Service Bulletin A300–53–229: Prior to the accumulation of 24,000 total flight cycles or within 15 years since new, whichever occurs first; or within 60 days after the effective date of this AD; whichever occurs later, do a detailed inspection of the fuselage bonded inner doublers of the longitudinal lap joints in Sections 13 through 18 (except Sections 16 and 17 at Stringer 31 left-hand and right-hand) for disbonding and cracking, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997. If no disbonding and no cracking is found, repeat the inspection thereafter at the applicable intervals specified in Table 6 of this AD.

TABLE 6—REPETITIVE INTERVALS FOR INSPECTIONS FOR DISBONDING AND CRACKING

For area—	Inspect at intervals not to exceed—
Sections 13 and 14 as specified in Airbus Service Bulletin A300-53-229, Revision 5, dated April 8, 1997.	Within 7 years or 12,000 flight cycles after doing the inspection, whichever occurs first.
Sections 15 through 18 as specified in Airbus Service Bulletin A300-53-229, Revision 5, dated April 8, 1997.	Within 8.5 years or 12,000 flight cycles after doing the inspection, whichever occurs first.

(1) If no cracking is found and ''minor'' disbonding, as defined in Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997, is found: Repeat the inspection thereafter at intervals not to exceed 1 year for areas below stringer 22, and at intervals not to exceed 2 years for areas above and including stringer 22.

(2) If no cracking is found and ''major'' disbonding, as defined in Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997, is found: Within 1,000 flight cycles after doing the inspection, repair, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997.

(3) If any cracking is found, repair prior to further flight, in accordance with Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997.

(m) For airplanes on which any inspections of the fuselage bonded inner doublers of the longitudinal lap joints in Sections 13 through 18 (except Sections 16 and 17 at Stringer 31 left-hand and right-hand) for disbonding and cracking have been done as of the effective date of this AD in accordance with Airbus Service Bulletin A300–53–229; except for airplanes on which a repair of that area has been done in accordance with Airbus Service

Bulletin A300–53–229: At the applicable time specified in Table 6 of this AD, or within 60 days after the effective date of this AD, whichever occurs later, do a detailed inspection of the fuselage bonded inner doublers of the longitudinal lap joints in Sections 13 through 18 (except Sections 16 and 17 at Stringer 31 left-hand and right-hand) for disbonding and cracking, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997. If no disbonding and no cracking is found, repeat the inspection at the applicable intervals specified in Table 6 of this AD.

(1) If no cracking is found and ''minor'' disbonding, as defined in Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997, is found: Repeat the inspection thereafter at intervals not to exceed 1 year for areas below stringer 22, and at intervals not to exceed 2 years for areas above and including stringer 22.

(2) If no cracking is found and ''major'' disbonding, as defined in Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997, is found: Within 1,000 flight cycles after doing the inspection, repair, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997.

(3) If any cracking is found, repair prior to further flight, in accordance with Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997.

(n) For airplanes on which any inspections of the fuselage bonded inner doublers of the longitudinal lap joints in Sections 16 and 17 at Stringer 31 left-hand and right-hand for disbonding and cracking have not been done as of the effective date of this AD in accordance with Airbus Service Bulletin A300–53–229: Prior to the accumulation of 24,000 total flight cycles or within 12 years since new, whichever occurs first; or within 60 days after the effective date of this AD; whichever occurs later, do a detailed inspection of the fuselage bonded inner doubles of the longitudinal lap joints in Sections 16 and 17 at Stringer 31 left-hand and right-hand for disbonding and cracking, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997. If no disbonding and no cracking is found, repeat the inspection thereafter at intervals not to exceed 7 years or 12,000 flight cycles, whichever occurs first.

(1) If no cracking is found and ''minor'' disbonding, as defined in Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997, is found: Repeat the inspection thereafter at intervals not to exceed 1 year for areas below stringer 22, and at intervals not to exceed 2 years for areas above and including stringer 22. Doing a repair in accordance with Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997, terminates the repetitive inspections required by this paragraph for that area.

(2) If no cracking is found and ''major'' disbonding, as defined in Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997, is found: Within 1,000 flight cycles after doing the inspection, repair, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997.

(3) If any cracking is found, repair prior to further flight, in accordance with Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997.

(o) For airplanes on which any inspections of the fuselage bonded inner doublers of the longitudinal lap joints in Sections 16 and 17 at Stringer 31 left-hand and right-hand for disbonding and cracking have been done as of the effective date of this AD in accordance with Airbus Service Bulletin A300–53–229; except airplanes on which a repair of that area has been done in accordance with Airbus Service Bulletin A300–53–229: Within 7 years or 12,000 flight cycles after doing the inspection, whichever occurs first; or within 60 days after the effective date of this AD; whichever occurs later, do a detailed inspection of the fuselage bonded inner doubles of the longitudinal lap joints in Sections 16 and 17 at Stringer 31 left-hand and right-hand for disbonding and cracking in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997. If no disbonding and corrosion are found, repeat the inspection thereafter at intervals not to exceed 7 years or 12,000 flight cycles, whichever occurs first.

(1) If no cracking is found and ''minor'' disbonding, as defined in Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997, is found: Repeat the inspection thereafter at intervals not to exceed 1 year for areas below stringer 22, and at intervals not to exceed 2 years for areas above and including stringer 22. Doing a repair in accordance with Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997, terminates the repetitive inspections required by this paragraph for that area.

(2) If no cracking is found and ''major'' disbonding, as defined in Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997, is found: Within 1,000 flight cycles after doing the inspection, repair, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997.

(3) If any cracking is found, repair prior to further flight, in accordance with Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997.

(p) Although Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997; and Airbus Mandatory Service Bulletin A300–53–0211, Revision 07, dated December 1, 2006; specify to submit certain information to the manufacturer, this AD does not include that requirement.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

(1) Although the MCAI or service information allows further flight after cracks are found during compliance with the required action, this AD requires that you repair the crack(s) before further flight.

(2) The MCAI or service information does not include enforceable compliance times for certain actions; however, this AD requires that those actions be done at the enforceable times specified in this AD.

(3) Although the MCAI or service information tells you to submit information to the manufacturer, paragraph (p) of this AD specifies that such submittal is not required.

Other FAA AD Provisions

(q) 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: 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

(r) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2007–0091, dated April 10, 2007, corrected June 23, 2008; Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997; and Airbus Mandatory Service Bulletin A300–53–0211, Revision 07, dated December 1, 2006; for related information.

Material Incorporated by Reference

(s) You must use Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997, including Appendix A300SB/53–229, dated April 10, 1989; and Airbus Mandatory Service Bulletin A300–53–0211, Revision 07, dated December 1, 2006; as applicable; to do the actions required by this AD, unless the AD specifies otherwise. Only pages 1, 2, 5, 11, and 12, of Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997, show revision level 5 and issue date April 8, 1997; pages 3, 4–10, and 13–17 show revision level 4 and issue date March 30, 1994, and pages 1–17 of Appendix A300SB/53–229 show issue date April 10, 1989.

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

(2) For service information identified in this AD, contact 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.*

(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 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 23, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–25617 Filed 10–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. FAA–2008–0938; Amendment Nos. 61–128, 91–324, 141–15, and 142–7]

RIN 2120–AJ18

Pilot in Command Proficiency Check and Other Changes to the Pilot and Pilot School Certification Rules; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correcting amendment.

SUMMARY: The FAA is correcting a final rule published on August 31, 2011 (76 FR 54095). In that rule, the FAA amended its regulations to revise the pilot, flight instructor, and pilot school certification requirements. In particular, the FAA expanded the obligation for a pilot-in-command (PIC) proficiency check to pilots of all turbojet-powered aircraft. This expansion included single-pilot turbojet-powered aircraft and, with some exceptions, also included turbojet-powered experimental aircraft. The FAA intended, and those that commented on the proposed rule expected, a period that would allow pilots of these aircraft sufficient time to come into compliance with the new PIC requirement. This document corrects the final rule to establish this period for initial compliance.

DATES: The effective date of this technical correction is October 31, 2011.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this final rule contact Jeffrey Smith, Airman Certification and Training Branch, General Aviation and Commercial Division, AFS–810, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 385–9615; e-mail *Jeffrey.Smith@faa.gov.* For legal questions concerning this final rule contact Michael Chase, Esq., Office of Chief Counsel, AGC–240, Regulations Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3110; e-mail *Michael.Chase@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On August 31, 2011 (76 FR 54095), the FAA published a final rule that amended the pilot, flight instructor, and pilot school certification requirements. The FAA is now issuing a technical amendment to correct the failure to include a period of time to allow the regulated entities to come into compliance with the final rule.

Correction

As part of the final rule, the FAA revised § 61.58 to extend the requirements for PIC proficiency checks. Prior to the final rule, this section only required PIC proficiency checks for pilots acting as PIC in aircraft that were type certificated for more than one pilot flight crewmember. In the Notice of Proposed Rulemaking (NPRM) published on August 31, 2009 (74 FR 44779), the FAA proposed to extend the § 61.58 PIC proficiency check requirements to pilots acting as PIC of any turbojet powered aircraft. The FAA received a significant amount of comments opposing the proposed rule as written due to the impact it would have on pilots operating experimental jets. Based on the comments, the FAA intentionally included the § 61.58 PIC proficiency check requirements for pilots operating experimental turbojet-powered aircraft. However, pilots operating experimental aircraft that possessed only one seat through original design or through modification were excepted from these requirements, and pilots of other experimental turbo-jet powered aircraft were given several alternative means of compliance with the § 61.58 proficiency check requirements.

In contrast to the comments regarding experimental jets, the FAA did not receive any comments during the NPRM phase expressing resistance to § 61.58 PIC proficiency checks for pilots of standard category, single-piloted turbojet-powered aircraft. In fact, several of the commenters expressed the opinion that the proposal was appropriate for standard category aircraft that are type certificated to be flown by a single pilot. The FAA intentionally included the § 61.58 PIC proficiency check requirements for pilots that operate a standard category turbojet aircraft to receive proficiency.

Prior to the final rule, pilots of these aircraft were not required to comply with the provisions of § 61.58; however, the final rule did not include the intended and necessary transition period for these pilots to come into compliance. The final rule becomes effective on October 31, 2011, and, without this correction, does not provide adequate time for compliance with the§ 61.58 PIC proficiency check requirements. This correction to the final rule will allow pilots operating these aircraft 1 additional year, until October 31, 2012, to complete an initial § 61.58 PIC proficiency check.

The FAA believes that some pilots that operate turbojet-powered aircraft undergo annual training and testing in order to satisfy insurance requirements. While the training and testing may be sufficient in scope to complete a § 61.58 PIC proficiency check going forward, prior to the final rule these pilots may not have been able to complete a § 61.58 PIC proficiency check. The FAA intended for there to be sufficient transition period for these pilots to complete a § 61.58 PIC proficiency check within their normal annual training cycle. The intended transition period of 1 year will allow training providers sufficient time to adjust their training program as necessary in order to include a § 61.58 PIC proficiency check as a part of their offered courses. The transition period will also allow pilots not currently receiving annual training the ability to make arrangements to complete a § 61.58 PIC proficiency check. This correction provides this transition period by establishing the initial compliance date for a § 61.58 PIC proficiency check for those pilots not previously subject to the provisions of this section.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 2. Amend § 61.58 by adding paragraphs (j) and (k) to read as follows:

§ 61.58 Pilot-in-command proficiency check: Operation of aircraft requiring more than one pilot flight crewmember.

* * * * *

(j) A pilot-in-command of a turbojet powered aircraft that is type certificated for one pilot does not have to comply with the pilot-in-command proficiency check requirements in paragraphs (a)(1) and (a)(2) of this section until October 31, 2012.

(k) Unless required by the aircraft's operating limitations, a pilot-in-command of an experimental turbojet-powered aircraft does not have to comply with the pilot-in-command proficiency check requirements in paragraphs (a)(1) and (a)(2) of this section until October 31, 2012.

Issued in Washington, DC, on October 4, 2011.

Dennis R. Pratte,

Acting Director, Office of Rulemaking.

[FR Doc. 2011–26229 Filed 10–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 110620344–1586–01]

RIN 0694–AF28

Addition of Certain Persons on the Entity List; Implementation of Entity List Annual Review Change; and Removal of Persons From the Entity List Based on Removal Requests

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by adding two persons to the Entity List. The persons who are added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These persons will be listed under the destination of Hong Kong on the Entity List. In addition, this rule amends the Entity List on the basis of the annual review of the Entity List conducted by the End-User Review Committee (ERC) for entities located in Hong Kong. The ERC conducts the annual review to determine if any entities on the Entity List should be removed or modified. This rule removes one person located in Hong Kong on the basis of the annual review.

Lastly, this rule removes three persons from the Entity List consisting of one person located in Hong Kong and two persons located in New Zealand. These three persons are being removed from the Entity List as a result of requests for removal submitted by each of these three persons, a review of information provided in the removal requests in accordance with BIS regulations, and further review conducted by the ERC.

The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require a license from the Bureau of Industry and Security and that availability of license exceptions in such transactions is limited.

DATES: This rule is effective October 12, 2011.

FOR FURTHER INFORMATION CONTACT: Karen Nies-Vogel, Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, *Phone:* (202) 482–5991, Fax: (202) 482–3911, *E-mail: ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that the availability of license exceptions in such transactions is limited. Entities are placed on the Entity List on the basis of certain sections of part 744 (Control Policy: End-User and End-Use Based) of the EAR.

The ERC, composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, when appropriate, the Treasury, makes all decisions regarding additions to, removals from or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

ERC Entity List Decisions

This rule implements decisions of the ERC to add two additional persons located in Hong Kong to the Entity List and to remove two persons located in Hong Kong from the Entity List (one removal on the basis of a determination made under the annual review of the Entity List and the other removal on the basis of a removal request submitted by the listed person). The additions are described under Additions to the Entity List and the removals are described under Removals from the Entity List. This rule also removes two listed persons from the Entity List located in New Zealand on the basis of a removal request submitted by the listed persons.

Additions to the Entity List

This rule implements the decision of the ERC to add two persons to the Entity List on the basis of section 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The two entries added to the Entity List are Hang Tat Electronics Enterprises Co., an electronic components trading company, and Cho-Man Wong, an employee of Hang Tat, both located in Hong Kong.

The ERC reviewed section 744.11(b) (Criteria for revising the Entity List) in making the determination to add these persons to the Entity List. Under that paragraph, persons for which there is reasonable cause to believe, based on specific and articulable facts, that the persons have been involved, are involved, or pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such persons may be added to the Entity List pursuant to section 744.11. Paragraphs (b)(1)–(b)(5) include an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States. These two persons are believed to have been involved in activities described under paragraphs (b)(4) and (b)(5) of section 744.11. Specifically, Hang Tat Electronics Enterprises Co., an electronic components trading company located in Hong Kong, and Cho-Man Wong, an employee of Hang Tat, have been complicit in violations of the EAR involving the shipment of items from the United States to China through Hong Kong. BIS has determined that Hang Tat and Cho-Man Wong (hereafter collectively, ''Hang Tat'') purchased certain items subject to the EAR from

the United States on multiple occasions with the intention of reselling the items to persons in China, but did not inform the U.S. suppliers that the items would be resold to China, and made the sale of the items to persons in China contingent upon the Chinese customers' receipt of the items in Hong Kong and the Chinese customers' acceptance of the responsibility to obtain any shipment authorizations required for the movement of the items from Hong Kong to China. BIS has reason to believe that Hang Tat knew that the availability of License Exception ''Additional Permissive Reexports'' (APR) (i.e., Section 740.16 of the EAR) is limited to those transactions that are made in accordance with the export authorizations issued by the reexporting country but did not explicitly inform their customers of either the EAR or the Hong Kong government's requirements. BIS also has reason to believe that some portion of the items sold by Hang Tat to persons in China were reexported from Hong Kong to China without the required authorization from the Hong Kong government, and thus were not eligible for License Exception APR, and required a license from BIS for reexport to China. BIS did not issue reexport licenses for these transactions, which therefore were made in violation of the EAR. In addition, the Chinese persons purchasing the items from Hang Tat may be involved in proliferation-related activities. BIS also notes that under the EAR, a license is required to export the subject items from the United States to China. BIS believes that Hang Tat's business practices are contrary to U.S. national security and foreign policy interests.

For the two persons added to the Entity List, the ERC specifies a license requirement for all items subject to the EAR and establishes a license application review policy of a presumption of denial. The license requirement applies to any transaction in which items are to be exported, reexported, or transferred (in-country) to such persons or in which such persons act as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to those persons being added to the Entity List.

This final rule adds the following two persons to the Entity List:

Hong Kong

1. *Cho-Man Wong,* Room 2608, Technology Plaza, 29–35 Sha Tsui Road, Tsuen Wan, Hong Kong; and

2. *Hang Tat Electronics Enterprises Co.,* Room 2608, Technology Plaza, 29–35 Sha Tsui Road, Tsuen Wan, Hong Kong.

Removals From the Entity List

This rule removes four entities from the Entity List consisting of two entities from Hong Kong (one from Hong Kong on the basis of the annual review of the Entity List and one from Hong Kong on the basis of a removal request) and two entities from New Zealand on the basis of removal requests submitted by each of those listed persons, as follows:

a. Removal on the Basis of the Annual Review

This rule implements a decision of the ERC to remove one entity, Pelorus Enterprises Limited, located in Hong Kong, from the Entity List on the basis of the annual review of the Entity List conducted by the ERC, in accordance with the procedures outlined in Supplement No. 5 to part 744 (Procedures for End-User Review Committee Entity List Decisions). The changes from the annual review of the Entity List that are approved by the ERC are implemented in stages as the ERC completes its review of entities listed under different destinations on the Entity List.

This final rule removes the following person located in Hong Kong from the Entity List on the basis of a decision made by the ERC during the annual review:

Hong Kong

1. *Pelorus Enterprises Limited,* 12F Commercial VIP Building, 112–116 Canton Rd., Tsim Sha Tsui, Hong Kong.

b. Removal on the Basis of a Removal Request

This rule implements a decision of the ERC to remove three entities consisting of one person, Polar Star International Co. Ltd., located in Hong Kong, and two persons, Leigh Michau and Q–SPD (Q-Marine International Ltd.), located in New Zealand from the Entity List on the basis of a removal request. The ERC made a determination to remove these three persons as a result of these three entities' requests for removal from the Entity List. Based upon the review of the information provided in each of the three removal requests in accordance with section 744.16 (Procedure for requesting removal or modification of an Entity List entity), and after review by the ERC's member agencies, the ERC determined that these three persons should be removed from the Entity List.

The ERC decision to remove each of these three persons took into account each of these persons' cooperation with the U.S. Government, as well each of these three person's assurances of future compliance with the EAR. In accordance with section 744.16(c), the Deputy Assistant Secretary for Export Administration has sent written notification to each of these three persons, informing these entities of the ERC's decision to remove them from the Entity List. This final rule implements the decision to remove this one Hong Kong person and two New Zealand persons from the Entity List.

This final rule removes the following persons located in Hong Kong and New Zealand from the Entity List:

Hong Kong

1. *Polar Star International Co. Ltd.,* 1905 Yen Sheng Center, 64 Hoi Yuen Rd., Kwun Tong, Kin, Hong Kong.

New Zealand

1. *Leigh Michau,* P.O. Box 34–881, Birkenhead, Auckland, New Zealand; and

2. *Q–SPD (Q-Marine International Ltd.),* P.O. Box 34–881, Birkenhead, Auckland, New Zealand.

The removal of the above referenced four entities from the Entity List eliminates the existing license requirements in Supplement No. 4 to part 744 for exports, reexports and transfers (in-country) to these four entities. However, the removal of these four entities from the Entity List does not relieve persons of other obligations under part 744 of the EAR or under other parts of the EAR. Neither the removal of an entity from the Entity List nor the removal of Entity List-based license requirements relieves persons of their obligations under General Prohibition 5 in section 736.2(b)(5) of the EAR which provides that, ''you may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR.'' Additionally these removals do not relieve persons of their obligation to apply for export, reexport or in-country transfer licenses required by other provisions of the EAR. BIS strongly urges the use of Supplement No. 3 to part 732 of the EAR, ''BIS's 'Know Your Customer' Guidance and Red Flags,'' when persons are involved in transactions that are subject to the EAR.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or en route aboard a

carrier to a port of export or reexport, on October 12, 2011, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before October 27, 2011. Any such items not actually exported or reexported before midnight, on October 27, 2011, require a license in accordance with the EAR.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 12, 2011, 76 FR 50661 (August 16, 2011), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). BIS implements this rule to protect U.S. national security or foreign policy interests by preventing items from being exported, reexported, or transferred (in country) to the persons being added to the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, then entities being added to the Entity List by this action would continue to be able to receive items without a license and to conduct activities contrary to the national security or foreign policy interests of the United States. In addition, because these parties may receive notice of the U.S. Government's intention to place these entities on the Entity List once a final rule was published it would create an incentive for these persons to either accelerate receiving items subject to the EAR to conduct activities that are contrary to the national security or foreign policy interests of the United States and/or to take steps to set up additional aliases, change addresses and take other steps to try to limit the impact of the listing on the Entity List once a final rule was published. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 4, 2010, 75 FR 68673 (November 8, 2010): Notice of January 13, 2011, 76 FR 3009, January 18, 2011.

■ 2. Supplement No. 4 to part 744 is amended:

■ a. By adding two entries in alphabetical order under Hong Kong;

■ b. By removing under Hong Kong, the two Hong Kong entities: ''Pelorus Enterprises Limited, 12F Commercial VIP Building, 112–116 Canton Rd., Tsim Sha Tsui, Hong Kong'' and ''Polar Star International Co. Ltd., 1905 Yen Sheng Center, 64 Hoi Yuen Rd., Kwun Tong, Kin, Hong Kong;'' and

■ c. By removing the entry for New Zealand.

The additions read as follows:

Supplement No. 4 to Part 744—Entity List

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	*	*	*	*
Hong Kong	Cho-Man Wong Room 2608, Technology Plaza 29–35 Sha Tsui Road Tsuen Wan, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER] October 12, 2011.

Country	Entity	License requirement	License review policy	Federal Register citation
*	*	*	*	*
	Hang Tat Electronics Enterprises Co. Room 2608, Technology Plaza 29–35 Sha Tsui Road Tsuen Wan, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	76 FR [INSERT FR PAGE NUMBER] October 12, 2001.
*	*	*	*	*

Dated: October 3, 2011.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2011–26072 Filed 10–11–11; 8:45 am]

BILLING CODE 3510–33–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 12

Authority of Judgment Officers to Hear Cases

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is amending its regulations to authorize any Commission Judgment Officer to conduct formal decisional proceedings. This action will promote the efficient use of the Commission's budget and personnel resources.

DATES: *Effective Date:* October 12, 2011.

FOR FURTHER INFORMATION CONTACT: Laura Richards, Office of the General Counsel, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. *Telephone:* 202–418–5126. *E-mail: lrichards@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 14(b) of the Commodity Exchange Act, 7 U.S.C. 18(b), authorizes the Commodity Futures Trading Commission to promulgate rules, regulations, and orders as it deems necessary or appropriate for the efficient and expeditious administration of its reparations program. Pursuant to Section 14(b), the Commission is amending Rule 12.26(c) to authorize any Commission Judgment Officer to conduct formal decisional proceedings under Subpart E of the Part 12 Rules. Rule 12.26(c) currently provides that formal decisional proceedings are to be conducted by an Administrative Law Judge (''ALJ''). A formal decisional proceeding is held when the amount claimed in damages exceeds $30,000 and the parties have not elected a voluntary decisional proceeding under Subpart C. Voluntary decisional proceedings are heard by a Judgment Officer without regard to the amount in controversy. See Rule 12.26(a). Cases where the amount is controversy is less than $30,000 are conducted as summary decisional proceedings by a Judgment Officer under Subpart D. See Rule 12.26(b).

From time to time, the Commission has raised the ceiling for claims eligible to be heard as summary proceedings, most recently from $10,000 to $30,000.[1] Currently, most reparations cases filed involve amounts less than $30,000 and are assigned to the Judgment Officer. Based on its experience with the reparations program, the Commission has determined that the current limit of $30,000 on the claims that may be assigned to a Judgment Officer is no longer necessary or appropriate. The Commission also has concluded that its Judgment Officer will not be overburdened if reparations cases eligible to be heard as formal decisional proceedings are added to his docket. If necessary, the Commission may designate additional staff as decisional employees assigned to hear reparations cases. *See* Rule 12.2 (defining ''Commission decisional employee'' to mean, *inter alia,* ''[a] Judgment Officer * * * and other Commission employees who may be assigned to hear or to participate in the decision of a particular matter'').

There will be no change to the procedures applicable to formal decisional proceedings and, therefore, no impact on any complainant or respondent. Parties filing or defending claims exceeding $30,000 will have the same procedural safeguards and face the same obligations as before, and the Judgment Officer will exercise all the authority previously held by Commission ALJs and be subject to the same obligations.

[1] Rules Relating to Reparation Proceedings, 59 FR 9631, 9633 (Mar. 1, 1994) (Final Rule) (increasing the ceiling to $30,000 and otherwise amending Part 12).

II. Related Matters

A. No Notice Required Under 5 U.S.C. 553

The Commission has determined that this rule is exempt from the provisions of the Administrative Procedure Act, 5 U.S.C. 553, which generally requires notice of proposed rulemaking and provides other opportunities for public participation. In accordance with the exemptive language of 5 U.S.C. 553, this rule pertains to ''rules of agency organization, procedure or practice,'' as to which there exists agency discretion not to provide notice. If made effective immediately, this rule will promote efficiency and facilitate the Commission's core mission without imposing a new burden. Thus, the Commission has determined to make the rule effective immediately. For the above reasons, the notice requirements under 5 U.S.C. 553 are inapplicable.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.,* requires agencies with rulemaking authority to consider the impact those rules will have on small businesses. The RFA defines the term ''rule'' to mean ''any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title * * * for which the agency provides an opportunity for notice and public comment.'' 5 U.S.C. 601(2). Since this rule is not being issued pursuant to section 553(b), it does not qualify as a ''rule'' as defined in the RFA, and the analysis and the certification process in that section do not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (''PRA''), 44 U.S.C. 3501 *et seq.,* imposes certain requirements on Federal agencies, including the Commission, in connection with conducting or sponsoring any collection of information as defined by the PRA. Amended Rule 12.26(c) is not associated with an information collection as defined by the PRA. Accordingly, the Commission certifies that, for the purposes of the PRA, this new

delegation of authority does not impose a burden within the meaning of the PRA.

D. Cost-Benefit Analysis

Section 15(a) of the Commodity Exchange Act (''Act''), 7 U.S.C. 19(a), requires the Commission to consider the costs and benefits of its action before issuing new regulations under the Act. Section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the regulation outweigh its costs. Nor does it require that each rule be analyzed in isolation when that rule is a component of a larger package of rules or rule revisions. Rather, section 15(a) requires the Commission to ''consider the costs and benefits'' of the subject regulation in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions, or accomplish any of the purposes, of the Act.

The Commission considered the costs and benefits of this rule and has determined that amended Rule 12.26(c) will enhance efficiency by aligning the Commission's staff more closely with its workload.

List of Subjects in 17 CFR Part 12

Administrative practice and procedure, Commodity futures, Consumer protection.

Accordingly, 17 CFR Part 12 is amended as follows:

PART 12—RULES RELATING TO REPARATIONS

■ 1. The authority citation for part 12 continues to read as follows:

Authority: 7 U.S.C. 2(a)(12), 12a(5) and 18.

■ 2. Revise § 12.26(c) to read as follows:

§ 12.26 Commencement of a reparation proceeding.

* * * * *

(c) *Commencement of formal decisional proceeding.* Where the amount claimed as damages in the complaint or as counterclaims exceeds $30,000, exclusive of interest and costs, and either a complainant or a respondent in the complaint, answer or reply, has elected the formal decisional procedure pursuant to subpart E of this part, and has paid the filing fee required by § 12.25, the Director of the Office of Proceedings shall, if in his opinion the facts warrant taking such action, forward the pleadings and the materials of record to the Proceedings Clerk for a proceeding to be conducted in accordance with subpart E of this part. The Proceedings Clerk shall forthwith notify the parties of such action. Such notification shall be accompanied by an order issued by the Proceedings Clerk requiring the parties to complete all discovery, as provided in subpart B of this part, within 50 days thereafter. A formal decisional proceeding commences upon service of such notification and order. As soon as practicable after service of such notification, the Proceedings Clerk shall assign the case to a Judgment Officer. All provisions of this part that refer to and grant authority to or impose obligations upon an Administrative Law Judge shall be read as referring to and granting authority to and imposing obligations upon the Judgment Officer.

Issued in Washington, DC, on September 21, 2011, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2011–25898 Filed 10–11–11; 8:45 am]

BILLING CODE P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 104

RIN 3142–AA07

Notification of Employee Rights Under the National Labor Relations Act

AGENCY: National Labor Relations Board.

ACTION: Final rule; delay of effective date.

SUMMARY: On August 30, 2011, the National Labor Relations Board (Board) published a final rule requiring employers, including labor organizations in their capacity as employers, subject to the National Labor Relations Act (NLRA) to post notices informing their employees of their rights as employees under the NLRA. The Board hereby amends that rule to change the effective date from November 14, 2011, to January 31, 2012. The purpose of this delay is to allow for enhanced education and outreach to employers.

DATES: The effective date of the final rule published at 76 FR 54006, August 30, 2011, is delayed from November 14, 2011 to January 31, 2012.

FOR FURTHER INFORMATION CONTACT: Lester A. Heltzer, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW., Washington, DC 20570, (202) 273–1067 (this is not a toll-free number), 1–866–315–6572 (TTY/TDD).

SUPPLEMENTARY INFORMATION: On August 30, 2011 (76 FR 54006), the National Labor Relations Board published a final rule requiring employers, including labor organizations in their capacity as employers, subject to the National Labor Relations Act (NLRA) to post notices informing their employees of their rights as employees under the NLRA. The Board has determined that in the interest of ensuring broad voluntary compliance with the rule concerning notification of employee rights under the National Labor Relations Act, further public education and outreach efforts would be helpful. The Board has decided to change the effective date of the rule from November 14, 2011, to January 31, 2012, in order to allow time for such an education and outreach effort. Member Brian E. Hayes dissented from the adoption of the final rule. For this reason, he agrees with any postponement of the effective date of the rule. Member Craig Becker would not change the effective date of the rule, but agrees that if the date is to be changed it should be for purposes of public education and outreach.

Signed in Washington, DC, on October 6, 2011.

Mark Gaston Pearce,

Chairman.

[FR Doc. 2011–26369 Filed 10–11–11; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Hawaii State Plan; Change in Level of Federal Enforcement: Military Installations

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: This document gives notice of OSHA's approval of a change to the state of Hawaii's occupational safety

and health state plan to exclude coverage of private sector employers and employees at all military installations. The state of Hawaii, Department of Labor and Industrial Relations, requested in a November 15, 2010 memorandum which was reiterated in a February 22, 2011, letter from the Governor, that jurisdiction be relinquished to federal OSHA for conducting safety and health inspections of private sector employers within the borders of all military installations in Hawaii. Accordingly, OSHA amends its regulations to reflect this change in the level of federal enforcement.

DATES: *Effective Date:* October 12, 2011.

FOR FURTHER INFORMATION CONTACT: *Press inquiries:* Frank Meilinger, Office of Communications, OSHA, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* (202) 693–1999. *General Information and Technical Inquiries:* Laura Seeman, Acting Director, Office of State Programs, Directorate of Cooperative and State Programs, Room N–3700, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2244. An electronic copy of this **Federal Register** notice is available on OSHA's Web site at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Section 18 of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 667, provides that states which wish to assume responsibility for developing and enforcing their own occupational safety and health standards may do so by submitting, and obtaining federal approval of, a state plan. State plan approval occurs in stages which include initial approval under Section 18(c) of the Act and, ultimately, final approval under Section 18(e).

The Hawaii Occupational Safety and Health State Plan was initially approved under Section 18(c) of the Act and 29 CFR Part 1902 on December 28, 1973 (39 FR 1010). The Hawaii program is administered by the Hawaii Occupational Safety and Health (HIOSH) Division of the State Department of Labor and Industrial Relations. On April 30, 1984, OSHA awarded final approval to the Hawaii State Plan pursuant to Section 18(e) and amended Subpart Y of 29 CFR part 1952 to reflect the Assistant Secretary's decision (49 FR 19182). As a result, OSHA relinquished its concurrent standards and enforcement authority with regard to occupational safety and health issues covered by the Hawaii State Plan. Federal OSHA retained its authority over safety and health in maritime employment in the private sector, federal government employers and employees, and enforcement relating to any contractors or subcontractors on any federal establishment where the land is determined to be exclusive federal jurisdiction. (OSHA jurisdiction over the U.S. Postal Service was added on June 9, 2000.)

On November 15, 2010, Pearl Imada Iboshi, former Director of the Hawaii Department of Labor and Industrial Relations, wrote to the federal OSHA Regional Administrator requesting a change in the jurisdictional responsibilities between the Hawaii Occupational Safety and Health Division of the State Department of Labor and Industrial Relations, and federal OSHA regarding military installations in Hawaii. The reasons cited for this change were as follows: (1) to eliminate dual or overlapping state and federal jurisdiction; (2) to ease obtaining security clearances to highly classified and/or restricted areas; (3) to improve coverage of hazardous waterfront working conditions; and (4) to enhance the ability to negotiate with controlling federal agencies on hazard abatement and other compliance issues.

Specifically, HIOSH relinquishes back to federal OSHA the jurisdiction and enforcement authority for conducting safety and health inspections of private sector employers within the borders of all military installations in Hawaii. Hawaii will retain responsibility for coverage of any state and local government employers and employees at these facilities. Accordingly, notice is hereby given of this change in federal enforcement authority over military installations in the state of Hawaii. OSHA is also amending its description of the state plan at 29 CFR part 1952, subpart Y to reflect this change in the level of federal enforcement.

B. Obtaining Copies of Referenced Documents

A copy of the documents referenced in this notice may be obtained from: Office of State Programs, Directorate of Cooperative and State Programs, Occupational Safety and Health Administration, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–2244, fax (202) 693–1671; Office of the Regional Administrator, Occupational Safety and Health Administration, San Francisco Federal Building, 90 7th Street, Suite 18–100, San Francisco, California 94103, (415) 625–2546, fax (415) 625–2526; and the Hawaii Department of Labor and Industrial Relations, HIOSH, 830 Punchbowl Street, Suite 425, Honolulu, Hawaii 96813, (808) 586–9100, fax (808) 586–9104. Other information about the Hawaii State Plan is posted on the state's Web site at *http://hawaii.gov/labor/hiosh.* Electronic copies of this **Federal Register** notice are available on OSHA's Web site at *http://www.osha.gov.*

C. Administrative Procedure

This **Federal Register** document acknowledges a modification made by the state of Hawaii to its occupational safety and health state plan, and does not involve any regulatory action by federal OSHA. States with approved plans have authority to modify the statutes, regulations, and procedures in their plan, using procedures provided under state law. These state plan modifications have legal effect in the state as soon as they are adopted; pre-enforcement approval by federal OSHA is not required. 29 CFR 1953.3(a); *see Florida Citrus Packers* v. *California,* 545 F. Supp. 216, 219 (N.D. Cal. 1982).

The attached **Federal Register** notice is designated a ''final rule.'' That designation is necessary because OSHA publishes a general description of every state plan in 29 CFR part 1952. Because they are set forth in the Code of Federal Regulation, these descriptions can be updated only by publishing a ''final rule'' document in the final rules section of the **Federal Register**. Such rules do not contain any new federal regulatory requirements, but merely provide public information about changes already in effect under state law. Hawaii's determination that military installations will not be covered under the state's plan is within the state's discretion under section 18(b) of the Act. The present **Federal Register** notice simply provides information to the public concerning this action by the state.

For this reason, public notice and comment are unnecessary, and good cause exists for making this final rule effective upon publication in the **Federal Register**. Accordingly, OSHA finds that public participation is unnecessary, and this notice constitutes approval of the change, effective upon publication in the **Federal Register.**

List of Subjects in 29 CFR Part 1952

Military installations, Intergovernmental relations, Law enforcement, Occupational safety and health.

Signed at Washington, DC, on September 26, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

Part 1952 of 29 CFR is hereby amended as follows:

PART 1952—[AMENDED]

■ 1. The authority section for Part 1952 continues to read as follows:

Authority: Section 18 of the OSH Act (29 U.S.C. 667), 29 CFR Part 1902, and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Subpart Y—Hawaii

■ 2. In § 1952.313 revise the second sentence of paragraph (b) to read as follows:

§ 1952.313 Final approval determination.

* * * * *

(b) * * * The plan does not cover maritime employment in the private sector; Federal government employers and employees; enforcement relating to any contractors or subcontractors on any Federal establishment where the land is determined to be exclusive Federal jurisdiction; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; and private sector employers on military installations.

* * * * *

■ 3. In § 1952.314 revise the fourth sentence of paragraph (b) to read as follows:

§ 1952.314 Level of Federal enforcement.

* * * * *

(b) * * * Federal jurisdiction also remains in effect with respect to Federal government employers and employees, enforcement relating to any contractors or subcontractors on any Federal establishment where the land is determined to be exclusive Federal jurisdiction; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; and private sector employers on military installations.

* * * * *

[FR Doc. 2011–26263 Filed 10–11–11; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Michigan State Plan; Change in Level of Federal Enforcement: Indian Tribes

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: This document gives notice of OSHA's approval of a change to the state of Michigan's occupational safety and health state plan to exclude coverage of establishments on Indian reservations which are owned or operated by employers who are enrolled members of Indian tribes. Under the terms of a September 28, 2004 addendum to the September 24, 1973 Operational Status Agreement between OSHA and the Michigan Occupational Safety and Health Administration (MIOSHA), jurisdiction and enforcement have been relinquished back to federal OSHA for conducting safety and health inspections and interventions within the borders of all Indian reservations for employers who are ''enrolled members of Indian reservations'', *i.e.,* members of Indian tribes. Non-member employers within the reservations and member employers located outside the territorial borders of Indian reservations remain under MIOSHA jurisdiction. Accordingly, OSHA amends its regulations to reflect this change in the level of federal enforcement.

DATES: *Effective Date:* October 12, 2011.

FOR FURTHER INFORMATION CONTACT: *Press inquiries:* Frank Meilinger, Office of Communications, OSHA, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* (202) 693–1999. *General Information and Technical Inquiries:* Laura Seeman, Acting Director, Office of State Programs, Directorate of Cooperative and State Programs, Room N–3700, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2244. An electronic copy of this **Federal Register** notice is available on OSHA's Web site at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Section 18 of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 667, provides that states which wish to assume responsibility for developing and enforcing their own occupational safety and health standards may do so by submitting, and obtaining federal approval of, a state plan. Part 1954 of title 29, Code of Federal Regulations, sets out procedures under section 18 of the Act for the evaluation and monitoring of state plans which have been approved under section 18(c) of the Act and 29 CFR part 1902. After initial approval, but prior to final approval, section 18(e) of the Act provides for a period of concurrent jurisdiction.

The Michigan Occupational Safety and Health State Plan was initially approved on September 24, 1973 (38 FR 27388, Oct. 3, 1973). The Michigan program is administered by the Michigan Occupational Safety and Health Administration (MIOSHA) in the Department of Licensing and Regulatory Affairs, previously the Department of Labor and Economic Growth. Prior to 2003, the state plan agency was called the Bureau of Safety and Regulation, Department of Consumer and Industry Services.

If federal monitoring shows that a state program has developed to a degree sufficient to justify suspension of duplicative concurrent federal enforcement activity, U.S. Department of Labor regulations provide that OSHA, through its Regional Administrator, may enter into a procedural agreement (and addenda to such agreements) with the state, usually referred to as an ''operational status agreement'', setting forth areas of federal and state enforcement responsibility (29 CFR 1954.3(f)).

On January 6, 1977, an Operational Status Agreement was entered into between OSHA and the Michigan State Plan agency whereby concurrent federal enforcement authority was suspended with regard to most federal occupational safety and health standards in issues covered by the state's OSHA-approved occupational safety and health plan. Federal OSHA retained its authority over safety and health in private sector maritime employment and with regard to federal government employers and employees, and employees of the U.S. Postal Service (effective June 9, 2000).

On July 18, 2001, Ms. Kathleen M. Wilbur, Director of the Michigan Department of Consumer and Industry Services (now the Michigan Department of Licensing and Regulatory Affairs), first wrote to the OSHA Regional Administrator about the issue of jurisdiction of the Michigan Bureau of Safety and Regulation (now the Michigan Occupational Safety and Health Administration) on Indian reservations. MIOSHA and the Michigan Attorney General's Office had reached

the legal conclusion that MIOSHA, as a state operating under authority of state law, pursuant to a federally approved state plan, did not have authority to inspect and apply MIOSHA statutory and regulatory requirements to Indian-owned and Indian-operated businesses within the territorial borders of Indian reservations. The state reached the conclusion at that time that, with respect to non-Indian owned businesses operating on Indian reservations, the provisions of MIOSHA would apply.

Subsequently, on September 28, 2004, an addendum to the state's Operational Status Agreement between federal OSHA and MIOSHA was signed. This addendum stated that MIOSHA relinquished to federal OSHA the jurisdiction and enforcement authority for conducting safety and health inspections and interventions within the borders of all Indian reservations for employers who are enrolled members of Indian tribes. The addendum also provided that non-member employers within Indian reservations and member employers located outside the territorial borders of Indian reservations remain under MIOSHA jurisdiction. Accordingly, notice is hereby given of this change in federal enforcement authority with regard to employers on Indian land in the state of Michigan. OSHA is also amending its description of the approved state plan at 29 CFR part 1952, Subpart T to reflect this change in the level of federal enforcement.

B. Obtaining Copies of Referenced Documents

A copy of the documents referenced in this notice may be obtained from: Office of State Programs, Directorate of Cooperative and State Programs, Occupational Safety and Health Administration, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–2244, fax (202) 693–1671; Office of the Regional Administrator, Occupational Safety and Health Administration, 230 S. Dearborn Street, 32nd Floor, Room 3244, Chicago, Illinois 60604, (312) 353–2220, fax (312) 353–7774; and the Michigan Occupational Safety and Health Administration, P.O. Box 30643, 7150 Harris Drive, Lansing, Michigan 48909, (517) 322–1817, fax (517) 322–1775. Other information about the Michigan State Plan is posted on the state's Web site at *http://www.michigan.gov/miosha*. Electronic copies of this **Federal Register** notice are available on OSHA's Web site at *http://www.osha.gov/*.

C. Administrative Procedure

This **Federal Register** document acknowledges a modification made by the state of Michigan to its occupational safety and health state plan, and does not involve any regulatory action by federal OSHA. States with approved plans have authority to modify the statutes, regulations, and procedures in their plan, using procedures provided under state law. These state plan modifications have legal effect in the state as soon as they are adopted; pre-enforcement approval by federal OSHA is not required. 29 CFR 1953.3(a); *see Florida Citrus Packers* v. *California,* 545 F. Supp. 216, 219 (N.D. Cal. 1982).

The attached **Federal Register** notice is designated a ''final rule.'' That designation is necessary because OSHA publishes a general description of every state plan in 29 CFR part 1952. Because they are set forth in the Code of Federal Regulation, these descriptions can be updated only by publishing a ''final rule'' document in the final rules section of the **Federal Register.** Such rules do not contain any new federal regulatory requirements, but merely provide public information about changes already in effect under state law. Michigan's determination that certain Indian-owned establishments are not subject to coverage under the state's plan is the result of limitations already in effect under that state's law. The present **Federal Register** notice simply provides information to the public concerning this limitation.

For this reason, public notice and comment are unnecessary, and good cause exists for making this final rule effective upon publication in the **Federal Register.** Accordingly, OSHA finds that public participation is unnecessary, and this notice of approval is effective upon publication in the **Federal Register.**

List of Subjects in 29 CFR Part 1952

Indian tribes, Intergovernmental relations, Law enforcement, Occupational safety and health.

Signed at Washington, DC, on September 26, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

Part 1952 of 29 CFR is hereby amended as follows:

PART 1952—[AMENDED]

■ 1. The authority section for Part 1952 continues to read as follows:

Authority: Section 18 of the OSH Act (29 U.S.C. 667), 29 CFR Part 1902, and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Subpart T—Michigan

■ 2. In § 1952.265 remove the third sentence and add two sentences in its place to read as follows:

§ 1952.265 Level of Federal enforcement.

* * * Federal OSHA will also retain authority for coverage of Federal government employers and employees; and of the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; and of employers who own or operate businesses located within the boundaries of Indian reservations who are enrolled members of Indian tribes. (Non-Indian employers within the reservations and Indian employers outside the territorial boundaries of Indian reservations remain subject to Michigan jurisdiction.). * * *

[FR Doc. 2011–26262 Filed 10–11–11; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 538 and 560

Sudanese Sanctions Regulations; Iranian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is adopting as final, with changes, a previously issued interim final rule. These changes primarily amend the Sudanese Sanctions Regulations and the Iranian Transactions Regulations by issuing general licenses that authorize the exportation or reexportation of food to individuals and entities in an area of Sudan other than the Specified Areas of Sudan and in Iran. Certain specified food items, as well as exports to certain persons, requiring a greater level of scrutiny are excluded from the general licenses.

DATES: *Effective Date:* October 12, 2011.

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

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs is also available via facsimile through a 24-hour fax-on-demand service, *tel.:* 202/622–0077.

Background

OFAC today is adopting as final, with changes, a previously issued interim final rule. *See* 74 FR 61030 (November 23, 2009) (the ''2009 interim final rule''). These changes primarily amend the Sudanese Sanctions Regulations, 31 CFR part 538 (the ''SSR''), and the Iranian Transactions Regulations, 31 CFR part 560 (the ''ITR''), by issuing general licenses that authorize the exportation or reexportation of food (as defined in the general licenses) to Sudan and Iran, respectively. Certain specified food items, as well as exports to certain persons, requiring a greater level of scrutiny are excluded from the general licenses.

The 2009 interim final rule made technical changes to certain sections of the SSR and the ITR relating to the Trade Sanctions Reform and Export Enhancement Act of 2000, as amended (22 U.S.C. 7201 *et seq.*) (''TSRA''). The 2009 interim final rule and accompanying preamble clarified OFAC's policy with respect to the process for issuing one-year licenses to export agricultural commodities, medicine, and medical devices to Sudan and Iran, and the considerations relevant to such licensing decisions. Although a prior notice of proposed rulemaking was not required with respect to the 2009 interim final rule, OFAC solicited comments on the 2009 interim final rule in order to consider how it might make improvements to these sections of the SSR and ITR. OFAC received no comments in response to this solicitation.

TSRA provides that, with certain exceptions, the President may not impose a unilateral agricultural sanction or unilateral medical sanction against a foreign country or foreign entity unless, at least 60 days before imposing such a sanction, the President submits a report to Congress describing the proposed sanction and the reasons for it and Congress enacts a joint resolution approving the report. *See* 22 U.S.C. 7202. Section 906 of TSRA, however, requires in pertinent part that the export of agricultural commodities, medicine, and medical devices to Cuba, or to the government of a country that has been determined by the Secretary of State, pursuant to, *inter alia,* section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), to have repeatedly provided support for acts of international terrorism, or to any entity in such a country, shall be made pursuant to one-year licenses issued by the United States Government, except that the requirements of such one-year licenses shall be no more restrictive than general licenses administered by the Department of the Treasury. *See* 22 U.S.C. 7205(a)(1). Section 906 also specifies that procedures be in place to deny licenses for exports of agricultural commodities, medicine, and medical devices to any entity within such country promoting international terrorism.

Moreover, as provided in section 221 of the USA PATRIOT Act (Pub. L. 107–56) (codified at 22 U.S.C. 7210), nothing in TSRA shall limit the application or scope of any law, including any Executive order or regulation promulgated pursuant to such law, establishing criminal or civil penalties for the unlawful export of any agricultural commodity, medicine, or medical device to a Foreign Terrorist Organization; a foreign organization, group, or person designated pursuant to Executive orders 12947 or 13224 (sanctioning terrorists); weapons of mass destruction or missile proliferators; or designated narcotics trafficking entities. In addition, TSRA itself provides in section 904(2) that the restrictions on the imposition of unilateral agricultural sanctions or unilateral medical sanctions shall not affect any authority or requirement to impose a sanction to the extent such sanction applies to any agricultural commodity, medicine, or medical device that is (A) Controlled on the United States Munitions List (the ''USML''), (B) controlled on any control list established under the Export Administration Act of 1979 or any successor statute, or (C) used to facilitate the design, development, or production of chemical or biological weapons, missiles, or weapons of mass destruction. *See* 22 U.S.C. 7203(2).

Since the issuance of the 2009 interim final rule, OFAC has continued to review its TSRA licensing procedures, particularly the procedures for licensing exports of agricultural commodities. As a result of this review, OFAC has determined to authorize, by general license, the exportation or reexportation to Sudan and Iran of those agricultural commodities that constitute food, subject to certain limited exceptions. For purposes of these general licenses, OFAC has defined *food* as items that are intended to be consumed by and provide nutrition to humans or animals in Sudan or Iran—including vitamins and minerals, food additives and supplements, and bottled drinking water—and seeds that germinate into items that are intended to be consumed by and provide nutrition to humans or animals in Sudan or Iran. The definitions also specify that food does not include alcoholic beverages, cigarettes, gum, or fertilizer.

OFAC has further determined that the exportation or reexportation of a small number of food items (which are set forth in SSR section 538.523(a)(3)(C) and ITR section 560.530(a)(2)(C)) to the Governments of Sudan or Iran, any individual or entity in an area of Sudan other than the Specified Areas of Sudan or in Iran, and persons in third countries purchasing specifically for resale to any of the foregoing, as well as the exportation or reexportation of food to military or law enforcement purchasers or importers (see SSR section 538.523(a)(3)(D) and ITR section 560.530(a)(2)(D)), continue to require the level of review afforded by specific licensing. Specific licenses are still required also for the exportation or reexportation of agricultural commodities that do not fall within the definition of *food* in the general licenses, medicine, and medical devices.

Accordingly, through a new general license set forth at SSR section 538.523(a)(3), OFAC is authorizing the exportation or reexportation of food (other than those food items excluded by SSR section 538.523(a)(3)(C) and other than exports or reexports of food to persons excluded by SSR section 538.523(a)(3)(D)) to the Government of Sudan, individuals or entities in an area of Sudan other than the Specified Areas of Sudan, or persons in third countries purchasing specifically for resale to any of the foregoing, and the conduct of related transactions, provided that all such exports or reexports are shipped within the 12-month period beginning on the date of the signing of the contract for export or reexport. OFAC also is authorizing the exportation or reexportation of food (other than those food items excluded by ITR section 560.530(a)(2)(C) and other than exports or reexports of food to persons excluded by ITR section 560.530(a)(2)(D)) to the Government of Iran, individuals or entities in Iran, or persons in third countries purchasing specifically for resale to any of the foregoing, and the conduct of related transactions, through a new general license set forth at ITR

section 560.530(a)(2), provided that all such exports or reexports are shipped within the 12-month period beginning on the date of the signing of the contract for export or reexport. Each year, by the anniversary of the effective date of this final rule on October 12, 2011, OFAC will determine whether to revoke these general licenses. Unless revoked, these general licenses will remain in effect.

As with the general license authorizing the exportation or reexportation of TSRA-eligible items to the Specified Areas of Sudan (*see* 31 CFR 538.523; 74 FR 46361 (September 9, 2009)), existing prohibitions and safeguards satisfy TSRA's requirement that procedures be in place to deny authorization for exports to entities within Iran or Sudan that are determined to be promoting international terrorism. For instance, the provisions in the terrorism programs set forth in 31 CFR chapter V that generally prohibit U.S. persons from engaging in transactions with persons whose property and interests in property are blocked under those programs render these general licenses inapplicable to exports of food to such entities. In addition, pursuant to section 538.502 of the SSR and section 560.502 of the ITR, OFAC may exclude any person, property, or transaction from the operation of these general licenses or restrict the applicability of these general licenses with respect to particular persons, property, transactions, or classes thereof, including persons determined not to meet the TSRA eligibility standard. Section 501.803 of the Reporting, Procedures and Penalties Regulations, 31 CFR part 501 (the ''RPPR'') similarly provides that OFAC may amend, modify, or revoke these general licenses at any time. Finally, the requirement that all U.S. persons maintain records of any transaction subject to OFAC-administered sanctions for a period of not less than five years pursuant to section 501.601 of the RPPR, and OFAC's authority to obtain these records, pursuant to section 501.602 of the RPPR, allow OFAC to monitor activities under these general licenses in order to determine whether it should exercise these authorities.

The general licenses set forth at SSR section 538.523(a)(3) and ITR section 560.530(a)(2) do not authorize the exportation or reexportation to Sudan or Iran, respectively, of castor beans, castor bean seeds, raw eggs, fertilized eggs (other than fish and shrimp roe), dried egg albumin, live animals, Rosary/Jequirity peas, non-food-grade gelatin powder, and peptones and their derivatives. (*See* SSR section 538.523(a)(3)(C) and ITR section 560.530(a)(2)(C) for the exclusion of these food items.) Additionally, the general licenses do not authorize the exportation or reexportation of food to military or law enforcement purchasers or importers. (*See* SSR section 538.523(a)(3)(D) and ITR section 560.530(a)(2)(D) for the exclusion of these persons.) The general licenses also do not apply to any transaction or dealing with a person whose property and interests in property are blocked under, or who is designated or otherwise subject to any sanction under, *inter alia,* the terrorism, proliferation of weapons of mass destruction, or narcotics trafficking programs administered by OFAC. (*See* SSR section 538.523(d)(5) and ITR section 560.530(d)(5) for these exclusions.)

Specific licenses are still required for the exportation or reexportation of the following to the Government of Sudan (wherever located), to any individual or entity in an area of Sudan other than the Specified Areas of Sudan, or to persons in third countries purchasing specifically for resale to any of the foregoing, and for the conduct of related transactions:

—Agricultural commodities that do not fall within the definition of *food* set forth in SSR section 538.523(a)(3)(B),
—The excluded food items specified in SSR section 538.523(a)(3)(C),
—Food intended for military or law enforcement purchasers or importers,
—Medicine, and
—Medical devices.

Similarly, specific licenses are still required for the exportation or reexportation of the following to the Government of Iran (wherever located), to any individual or entity in Iran, or to persons in third countries purchasing specifically for resale to any of the foregoing, and for the conduct of related transactions:

—Agricultural commodities that do not fall within the definition of *food* set forth in ITR section 560.530(a)(2)(B),
—The excluded food items specified in ITR section 560.530(a)(2)(C),
—Food intended for military or law enforcement purchasers or importers,
—Medicine, and
—Medical devices.

Public Participation

Because the amendment of 31 CFR parts 538 and 560 involves a foreign affairs function, the provisions of Executive Order 12866 of September 30, 1993, and the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to 31 CFR parts 538 and 560 are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects

31 CFR Part 538

Administrative practice and procedure, Agricultural commodities, Banks, Banking, Blocking of assets, Drugs, Exports, Food, Foreign trade, Humanitarian aid, Investments, Loans, Medical devices, Medicine, Penalties, Reporting and recordkeeping requirements, Services, Specially designated nationals, Sudan, Terrorism, Transportation, Weapons of mass destruction.

31 CFR Part 560

Administrative practice and procedure, Agricultural commodities, Banks, Banking, Blocking of assets, Drugs, Exports, Food, Foreign trade, Humanitarian aid, Investments, Iran, Loans, Medical devices, Medicine, Penalties, Reporting and recordkeeping requirements, Services, Specially designated nationals, Terrorism, Transportation, Weapons of mass destruction.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control is adopting the interim final rule of November 23, 2009 (*see* 74 FR 61030), as final, with the following changes:

PART 538—SUDANESE SANCTIONS REGULATIONS

■ 1. The authority citation for part 538 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); 22 U.S.C. 7201–7211; Pub. L. 109–344, 120 Stat. 1869; Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13067, 62 FR 59989, 3 CFR, 1997

Comp., p. 230; E.O. 13412, 71 FR 61369, 3 CFR, 2006 Comp., p. 244.

Subpart D—Interpretations

■ 2. Amend § 538.405 by revising paragraph (d) and adding a new note to paragraph (d) to read as follows:

§ 538.405 Transactions incidental to a licensed transaction authorized.

* * * * *

(d) Financing of licensed sales for exportation or reexportation of the excluded food items specified in § 538.523(a)(3)(iii), other agricultural commodities not included in the definition of *food* set forth in § 538.523(a)(3)(ii), food (as defined in § 538.523(a)(3)(ii)) intended for military or law enforcement purchasers or importers, medicine, and medical devices to the Government of Sudan, to an area of Sudan other than the Specified Areas of Sudan, or to persons in third countries purchasing specifically for resale to any of the foregoing. *See* § 538.525.

Note to § 538.405(d): *See* § 538.523(a)(3) for a general license authorizing the exportation or reexportation of food (including bulk agricultural commodities listed in appendix A to this part) to the Government of Sudan, individuals or entities in an area of Sudan other than the Specified Areas of Sudan, or persons in third countries purchasing specifically for resale to any of the foregoing, and the conduct of related transactions.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 3. Amend § 538.523 by revising the first two sentences of paragraph (a)(1) and revising paragraph (a)(2), adding new paragraph (a)(3), adding new notes 1 and 2 to new paragraph (a)(3), revising paragraphs (b)(1), (b)(2), (d)(5), (e)(1) introductory text, (e)(2), and (e)(3), and adding new paragraph (f) to read as follows:

§ 538.523 Commercial sales, exportation, and reexportation of agricultural commodities, medicine, and medical devices.

(a)(1) *One-year specific license requirement.* The exportation or reexportation of the excluded food items specified in paragraph (a)(3)(iii) of this section, agricultural commodities that do not fall within the definition of *food* set forth in paragraph (a)(3)(ii) of this section, food (as defined in paragraph (a)(3)(ii) of this section) intended for military or law enforcement purchasers or importers, medicine or medical devices to the Government of Sudan, to any individual or entity in an area of Sudan other than the Specified Areas of Sudan, or to persons in third countries purchasing specifically for resale to any of the foregoing, shall only be made pursuant to a one-year specific license issued by the Office of Foreign Assets Control for contracts entered into during the one-year period of the license and shipped within the 12-month period beginning on the date of the signing of the contract. No specific license will be granted for the exportation or reexportation of agricultural commodities, medicine, or medical devices to any entity or individual in Sudan promoting international terrorism, to any narcotics trafficking entity designated pursuant to Executive Order 12978 of October 21, 1995 (60 FR 54579, October 24, 1995) or the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901–1908), or to any foreign organization, group, or persons subject to any restriction for its or their involvement in weapons of mass destruction or missile proliferation.

* * *

(2) *General license for the Specified Areas of Sudan.* The exportation or reexportation of agricultural commodities (including bulk agricultural commodities listed in appendix A to this part), medicine, and medical devices to any individual or entity in the Specified Areas of Sudan, or to persons in third countries purchasing specifically for resale to any of the foregoing, and the conduct of related transactions, including, but not limited to, the making of shipping and cargo inspection arrangements, the obtaining of insurance, the arrangement of financing and payment, shipping of the goods, receipt of payment, and the entry into contracts (including executory contracts), are hereby authorized, provided that all such exports or reexports are shipped within the 12-month period beginning on the date of the signing of the contract for export or reexport, and provided that such activities or transactions relating to the exportation or reexportation of the excluded food items specified in paragraph (a)(3)(iii) of this section, agricultural commodities that do not fall within the definition of *food* set forth in paragraph (a)(3)(ii) of this section, food (as defined in paragraph (a)(3)(ii) of this section) intended for military or law enforcement purchasers or importers, medicine, and medical devices do not involve any property or interests in property of the Government of Sudan and do not relate to the petroleum or petrochemical industries in Sudan. The transshipment of agricultural commodities that fall within the definition of *food* set forth in paragraph (a)(3)(ii) of this section, other than the excluded food items specified in paragraph (a)(3)(iii) of this section and other than food intended for military or law enforcement purchasers or importers, through an area of Sudan other than the Specified Areas of Sudan destined for the Specified Areas of Sudan also is authorized by this general license. Nothing in this general license authorizes the transshipment of the excluded food items specified in paragraph (a)(3)(iii) of this section, agricultural commodities that do not fall within the definition of *food* set forth in paragraph (a)(3)(ii) of this section, food (as defined in paragraph (a)(3)(ii) of this section) intended for military or law enforcement purchasers or importers, medicine, and medical devices through an area of Sudan other than the Specified Areas of Sudan destined for the Specified Areas of Sudan. *See* § 538.417.

* * * * *

(3)(i) *General license for the exportation or reexportation of food.* Except as provided in paragraphs (a)(3)(iii) and (a)(3)(iv) of this section, the exportation or reexportation of food (including bulk agricultural commodities listed in appendix A to this part) to the Government of Sudan, to any individual or entity in an area of Sudan other than the Specified Areas of Sudan, or to persons in third countries purchasing specifically for resale to any of the foregoing, and the conduct of related transactions, including, but not limited to, the making of shipping and cargo inspection arrangements, the obtaining of insurance, the arrangement of financing and payment, shipping of the goods, receipt of payment, and the entry into contracts (including executory contracts), are hereby authorized, provided that all such exports or reexports are shipped within the 12-month period beginning on the date of the signing of the contract for export or reexport.

(ii) *Definition of Food.* For purposes of this general license, the term *food* means items that are intended to be consumed by and provide nutrition to humans or animals in Sudan, including vitamins and minerals, food additives and supplements, and bottled drinking water, and seeds that germinate into items that are intended to be consumed by and provide nutrition to humans or animals in Sudan. For purposes of this general license, the term *food* does not include alcoholic beverages, cigarettes, gum, or fertilizer.

(iii) *Excluded food items.* Paragraph (a)(3)(i) of this section does not authorize the exportation or reexportation of the following food

items: castor beans, castor bean seeds, raw eggs, fertilized eggs (other than fish and shrimp roe), dried egg albumin, live animals, Rosary/Jequirity peas, non-food-grade gelatin powder, and peptones and their derivatives.

(iv) *Excluded persons.* Paragraph (a)(3)(i) of this section does not authorize the exportation or reexportation of food to military or law enforcement purchasers or importers.

Note 1 to § 538.523(a)(3): Consistent with section 906(a)(1) of the Trade Sanctions Reform and Export Enhancement Act of 2000 (22 U.S.C. 7205), each year by the anniversary of its effective date on October 12, 2011, the Office of Foreign Assets Control will determine whether to revoke this general license. Unless revoked, the general license will remain in effect.

Note 2 to § 538.523(a)(3): *See* § 538.418 for additional requirements with respect to financial transactions in Sudan.

(b) *General license for arrangement of exportation or reexportation of covered products subject to the one year specific license requirement of paragraph (a)(1) of this section.*

(1) With respect to sales pursuant to paragraph (a)(1) of this section, the making of shipping arrangements, cargo inspection, obtaining of insurance, and arrangement of financing (consistent with § 538.525) for the exportation or reexportation of the excluded food items specified in paragraph (a)(3)(iii) of this section, agricultural commodities that do not fall within the definition of *food* set forth in paragraph (a)(3)(ii) of this section, food (as defined in paragraph (a)(3)(ii) of this section) intended for military or law enforcement purchasers or importers, medicine, or medical devices to the Government of Sudan, to any individual or entity in an area of Sudan other than the Specified Areas of Sudan, or to persons in third countries purchasing specifically for resale to any of the foregoing, are authorized.

(2) Entry into executory contracts (including executory pro forma invoices, agreements in principle, or executory offers capable of acceptance such as bids in response to public tenders) for the exportation or reexportation of the excluded food items specified in paragraph (a)(3)(iii) of this section, agricultural commodities that do not fall within the definition of *food* set forth in paragraph (a)(3)(ii) of this section, food (as defined in paragraph (a)(3)(ii) of this section) intended for military or law enforcement purchasers or importers, medicine, or medical devices to the Government of Sudan, to any individual or entity in an area of Sudan other than the Specified Areas of Sudan, or to persons in third countries purchasing specifically for resale to any of the foregoing, is authorized, provided that the performance of an executory contract is expressly made contingent upon the prior issuance of the one-year specific license described in paragraph (a)(1) of this section.

* * * * *

(d) * * *

(5) Nothing in this section authorizes any transaction or dealing with a person whose property and interests in property are blocked under, or who is designated or otherwise subject to any sanction under, the terrorism, proliferation of weapons of mass destruction, or narcotics trafficking programs administered by OFAC, 31 CFR parts 536, 544, 594, 595, 597, and 598, or with any foreign organization, group, or person subject to any restriction for its involvement in weapons of mass destruction or missile proliferation, or involving property blocked pursuant to this chapter or any other activity prohibited by this chapter not otherwise authorized in or pursuant to this part.

(e) * * *

(1) *Agricultural commodities.* For the purposes of this part, agricultural commodities are:

* * * * *

(2) *Medicine.* For the purposes of this part, the term medicine has the same meaning given the term ''drug'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

(3) *Medical device.* For the purposes of this part, the term medical device has the meaning given the term ''device'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

(f) *Excluded items.* For the purposes of this part, agricultural commodities do not include furniture made from wood; clothing manufactured from plant or animal materials; agricultural equipment (whether hand tools or motorized equipment); pesticides, insecticides, or herbicides; or cosmetics (unless derived entirely from plant materials).

■ 4. Amend § 538.525 by revising the section heading and the introductory text of paragraph (a) to read as follows:

§ 538.525 Payment for and financing of commercial sales of certain agricultural commodities, medicine, and medical devices.

(a) *General license for payment terms.* The following payment terms for sales, pursuant to § 538.523(a)(1), of the excluded food items specified in § 538.523(a)(3)(iii), agricultural commodities that do not fall within the definition of *food* set forth in § 538.523(a)(3)(ii), food (as defined in § 538.523(a)(3)(ii)) intended for military or law enforcement purchasers or importers, medicine, or medical devices to the Government of Sudan, to any individual or entity in an area of Sudan other than the Specified Areas, or to persons in third countries purchasing specifically for resale to any of the foregoing are authorized:

* * * * *

■ 5. Amend § 538.526 by revising the section heading and paragraph (a) to read as follows:

§ 538.526 Brokering commercial sales of agricultural commodities, medicine, and medical devices.

(a) *General license for brokering sales by U.S. persons.* United States persons are authorized to provide brokerage services on behalf of U.S. persons for the sales and exportations or reexportations by United States persons that are described in paragraphs (a)(1), (a)(2), and (a)(3) of § 538.523, provided that the sale and exportation or reexportation is authorized, as applicable, by a one-year specific license issued pursuant to paragraph (a)(1) of § 538.523 or by one of the general licenses set forth in paragraphs (a)(2) and (3) of § 538.523.

* * * * *

■ 6. Amend Appendix A to part 538 by revising Note 1 to read as follows:

Appendix A to Part 538—Bulk Agricultural Commodities

Notes: 1. Appendix A sets forth bulk agricultural commodities eligible for sale pursuant to the licensing procedures and general licenses in § 538.523.

* * * * *

PART 560—IRANIAN TRANSACTIONS REGULATIONS

■ 7. The authority citation for part 560 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa–9; 22 U.S.C. 7201–7211; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); Pub. L. 111–195, 124 Stat. 1312 (22 U.S.C. 8501–8551); E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp.,

p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217.

■ 8. Amend § 560.405 by revising paragraph (d) and adding a new note to paragraph (d) to read as follows:

§ 560.405 Transactions incidental to a licensed transaction authorized.

* * * * *

(d) Financing of licensed sales for exportation or reexportation of the excluded food items specified in § 560.530(a)(2)(iii), other agricultural commodities not included in the definition of *food* set forth in § 560.530(a)(2)(ii), food (as defined in § 560.530(a)(2)(ii)) intended for military or law enforcement purchasers or importers, medicine, or medical devices to Iran, to the Government of Iran, or to persons in third countries purchasing specifically for resale to any of the foregoing (see § 560.532); and

Note to § 560.405(d): *See* § 560.530(a)(2) for a general license authorizing the exportation or reexportation of food (including bulk agricultural commodities listed in appendix B to this part) to the Government of Iran, individuals or entities in Iran, or persons in third countries purchasing specifically for resale to any of the foregoing, and the conduct of related transactions.

* * * * *

■ 9. Amend § 560.530 by revising paragraph (a), adding a note to new paragraph (a)(2), and revising paragraph (b), the introductory text to paragraph (c), paragraph (d)(5), and paragraphs (e)(1) introductory text, (e)(2), and (e)(3), and adding new paragraph (f) to read as follows:

§ 560.530 Commercial sales, exportation, and reexportation of agricultural commodities, medicine, and medical devices.

(a)(1) *One-year specific license requirement.* The exportation or reexportation of the excluded food items specified in paragraph (a)(2)(iii) of this section, agricultural commodities that do not fall within the definition of *food* set forth in paragraph (a)(2)(ii) of this section, food (as defined in paragraph (a)(2)(ii) of this section) intended for military or law enforcement purchasers or importers, medicine, or medical devices to the Government of Iran, to any individual or entity in Iran, or to persons in third countries purchasing specifically for resale to any of the foregoing, shall only be made pursuant to a one-year specific license issued by the Office of Foreign Assets Control for contracts entered into during the one-year period of the license and shipped within the 12-month period beginning on the date of the signing of the contract. No specific license will be granted for the exportation or reexportation of agricultural commodities, medicine, or medical devices to any entity or individual in Iran promoting international terrorism, to any narcotics trafficking entity designated pursuant to Executive Order 12978 of October 21, 1995 (60 FR 54579, October 24, 1995) or the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901–1908), or to any foreign organization, group, or persons subject to any restriction for its or their involvement in weapons of mass destruction or missile proliferation. Executory contracts entered into pursuant to paragraph (b)(2) of this section prior to the issuance of the one-year specific license described in this paragraph shall be deemed to have been signed on the date of issuance of that one-year specific license (and, therefore, the exporter is authorized to make shipments under that contract within the 12-month period beginning on the date of issuance of the one-year specific license).

(2)(i) *General license for the exportation or reexportation of food.* Except as provided in paragraphs (a)(2)(iii) and (a)(2)(iv) of this section, the exportation or reexportation of food (including bulk agricultural commodities listed in appendix B to this part) to the Government of Iran, to any individual or entity in Iran, or to persons in third countries purchasing specifically for resale to any of the foregoing, and the conduct of related transactions, including, but not limited to, the making of shipping and cargo inspection arrangements, the obtaining of insurance, the arrangement of financing and payment, shipping of the goods, receipt of payment, and the entry into contracts (including executory contracts), are hereby authorized, provided that all such exports or reexports are shipped within the 12-month period beginning on the date of the signing of the contract for export or reexport.

(ii) *Definition of Food.* For purposes of this general license, the term *food* means items that are intended to be consumed by and provide nutrition to humans or animals in Iran, including vitamins and minerals, food additives and supplements, and bottled drinking water, and seeds that germinate into items that are intended to be consumed by and provide nutrition to humans or animals in Iran. For purposes of this general license, the term *food* does not include alcoholic beverages, cigarettes, gum, or fertilizer.

(iii) *Excluded food items.* Paragraph (a)(2)(i) of this section does not authorize the exportation or reexportation of the following food items: castor beans, castor bean seeds, raw eggs, fertilized eggs (other than fish and shrimp roe), dried egg albumin, live animals, Rosary/Jequirity peas, non-food-grade gelatin powder, and peptones and their derivatives.

(iv) *Excluded persons.* Paragraph (a)(2)(i) of this section does not authorize the exportation or reexportation of food to military or law enforcement purchasers or importers.

Note to § 560.530(a)(2): Consistent with section 906(a)(1) of the Trade Sanctions Reform and Export Enhancement Act of 2000 (22 U.S.C. 7205), each year by the anniversary of its effective date on October 12, 2011, the Office of Foreign Assets Control will determine whether to revoke this general license. Unless revoked, the general license will remain in effect.

(b) *General licensefor arrangement of exportation or reexportation of covered products subject to the one-year specific license requirement of paragraph (a)(1) of this section.*

(1) With respect to sales pursuant to paragraph (a)(1) of this section, the making of shipping arrangements, cargo inspections, obtaining of insurance, and arrangement of financing (consistent with § 560.532) for the exportation or reexportation of the excluded food items specified in paragraph (a)(2)(iii) of this section, agricultural commodities that do not fall within the definition of *food* set forth in paragraph (a)(2)(ii) of this section, food (as defined in paragraph (a)(2)(ii) of this section) intended for military or law enforcement purchasers or importers, medicine, or medical devices to the Government of Iran, to any individual or entity in Iran, or to persons in third countries purchasing specifically for resale to any of the foregoing, are authorized.

(2) Entry into executory contracts (including executory pro forma invoices, agreements in principle, or executory offers capable of acceptance such as bids in response to public tenders) for the exportation or reexportation of the excluded food items specified in paragraph (a)(2)(iii) of this section, agricultural commodities that do not fall within the definition of *food* set forth in paragraph (a)(2)(ii) of this section, food (as defined in paragraph (a)(2)(ii) of this section) intended for military or law enforcement purchasers or importers, medicine, or medical devices to the Government of Iran, to any individual or entity in Iran, or to persons in third countries purchasing specifically for resale to any of the foregoing, is authorized, provided that

the performance of an executory contract is expressly made contingent upon the prior issuance of the one-year specific license described in paragraph (a)(1) of this section.

(c) *Instructions for obtaining one-year specific licenses.* In order to obtain the one-year specific license described in paragraph (a)(1) of this section, the exporter must provide to the Office of Foreign Assets Control:

* * * * *

(d) * * *

(5) Nothing in this section authorizes any transaction or dealing with a person whose property and interests in property are blocked under, or who is designated or otherwise subject to any sanctions under, the terrorism, proliferation of weapons of mass destruction, or narcotics trafficking programs administered by OFAC, 31 CFR parts 536, 544, 594, 595, 597, and 598, or with any foreign organization, group, or person subject to any restriction for its involvement in weapons of mass destruction or missile proliferation, or involving property blocked pursuant to this chapter or any other activity prohibited by this chapter not otherwise authorized in or pursuant to this part.

(e) * * *

(1) *Agricultural commodities.* For the purposes of this part, agricultural commodities are:

* * * * *

(2) *Medicine.* For the purposes of this part, the term medicine has the same meaning given the term ''drug'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

(3) *Medical device.* For the purposes of this part, the term medical device has the meaning given the term ''device'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

(f) *Excluded items.* For the purposes of this part, agricultural commodities do not include furniture made from wood; clothing manufactured from plant or animal materials; agricultural equipment (whether hand tools or motorized equipment); pesticides, insecticides, or herbicides; or cosmetics (unless derived entirely from plant materials).

■ 10. Amend § 560.532 by revising the section heading, the introductory text of paragraph (a), and the first sentence of paragraph (b) to read as follows:

§ 560.532 Payment for and financing of commercial sales of certain agricultural commodities, medicine, and medical devices.

(a) *General license for payment terms.* The following payment terms for sales, pursuant to § 560.530(a)(1), of the excluded food items specified in § 560.530(a)(2)(iii), agricultural commodities that do not fall within the definition of *food* set forth in § 560.530(a)(2)(ii), food (as defined in § 560.530(a)(2)(ii)) intended for military or law enforcement purchasers or importers, medicine, or medical devices to the Government of Iran, to any individual or entity in Iran, or to persons in third countries purchasing specifically for resale to any of the foregoing are authorized:

* * * * *

(b) *Specific licenses for alternate payment terms.* Specific licenses may be issued on a case-by-case basis for payment terms and trade financing not authorized by the general license in paragraph (a) of this section for sales pursuant to § 560.530(a)(1). * * *

* * * * *

■ 11. Amend § 560.533 by revising the section heading and paragraph (a) to read as follows:

§ 560.533 Brokering commercial sales of agricultural commodities, medicine, and medical devices.

(a) *General license for brokering sales by U.S. persons.* United States persons are authorized to provide brokerage services on behalf of U.S. persons for the sales and exportations or reexportations by United States persons that are described in paragraphs (a)(1) and (a)(2) of § 560.530, provided that the sale and exportation or reexportation is authorized, as applicable, by a one-year specific license issued pursuant to paragraph (a)(1) of § 560.530 or by the general license set forth in paragraph (a)(2) of § 560.530.

* * * * *

■ 12. Amend Appendix B to part 560 by revising Note 1 to read as follows:

Appendix B to Part 560—Bulk Agricultural Commodities

Notes: 1. Appendix B sets forth bulk agricultural commodities eligible for sale pursuant to the licensing procedures and the general license in § 560.530.

* * * * *

Dated: October 4, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–26175 Filed 10–11–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 538 and 560

Sudanese Sanctions Regulations; Iranian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is amending the Sudanese Sanctions Regulations and the Iranian Transactions Regulations to authorize the processing of funds transfers for the operating expenses or other official business of third-country diplomatic or consular missions in Sudan or Iran, respectively. OFAC also is amending the Sudanese Sanctions Regulations and the Iranian Transactions Regulations to authorize the transportation of human remains to or from Sudan and Iran, respectively, for burial, cremation, or interment.

DATES: *Effective Date:* October 12, 2011.

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

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, *tel.:* 202/622–0077.

Background

OFAC is amending the Sudanese Sanctions Regulations, 31 CFR part 538 (the ''SSR''), and the Iranian Transactions Regulations, 31 CFR part 560 (the ''ITR''), to authorize the processing of funds transfers for the operating expenses or other official

business of third-country diplomatic or consular missions in, respectively, Sudan and Iran. OFAC also is amending the SSR and the ITR to authorize the transportation of human remains to or from Sudan and Iran, respectively, for burial, cremation, or interment. In addition, the amendments authorize the importation into the United States for non-commercial purposes of finished tombstones or grave markers of Sudanese or Iranian origin.

Section 538.204 of the SSR generally prohibits the importation into the United States, directly or indirectly, of any goods or services of Sudanese origin. Section 538.205 of the SSR generally prohibits the exportation or reexportation, directly Sudan of any goods, technology, or services from the United States or by a United States person, wherever located, or requiring the issuance of a license by a Federal agency. As set forth in section 538.212(g)(1) of the SSR, these prohibitions do not apply to activities or related transactions with respect to the Specified Areas of Sudan, as defined in SSR section 538.320, provided that, *inter alia,* they do not involve any property or interests in property of the Government of Sudan or the petroleum or petrochemical industries in Sudan. (Section 538.418 of the SSR contains guidance regarding additional restrictions on financial transactions involving Sudan, including the Specified Areas of Sudan.)

Section 560.201 of the ITR generally prohibits the importation into the United States of any goods or services of Iranian origin or owned or controlled by the Government of Iran. Section 560.204 of the ITR generally prohibits the exportation, reexportation, sale, or supply, directly or indirectly, from the United States or by a U.S. person, wherever located, of any goods, technology, or services to Iran or the Government of Iran. Sections 560.206 and 560.208 of the ITR contain additional prohibitions that also may apply to U.S. persons' trade-related transactions with Iran or facilitation of transactions by foreign persons with Iran.

Third-country diplomatic and consular funds transfers. To ensure that the prohibitions in the SSR and the ITR do not impede the diplomatic or consular activities of third-country missions in Sudan and Iran, OFAC is adding new section 538.534 to the SSR and new section 560.541 to the ITR. These new sections authorize the processing of funds transfers otherwise prohibited by the SSR and the ITR for the operating expenses or other official business of third-country diplomatic or consular missions in Sudan and Iran, respectively.

Importation and exportation of human remains for burial, cremation, or interment. To ensure that the prohibitions in the SSR and the ITR do not have an unintended impact on the timely handling of human remains, OFAC is adding new section 538.535 to the SSR and new section 560.542 to the ITR. Paragraph (a) Of each new section authorizes the importation into the United States of human remains for burial, cremation, or interment, paragraph (b) authorizes the importation into the United States for non-commercial purposes of finished tombstones or grave markers, and paragraph (c) authorizes the exportation from the United States or by U.S. persons of human remains for burial, cremation, or interment.

Public Participation

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

Paperwork Reduction Act

The collections of information related to the SSR and ITR are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects

31 CFR Part 538

Banks, Banking, Currency, Diplomatic and consular missions, Exports, Human remains, Imports, Sudan.

31 CFR Part 560

Banks, Banking, Currency, Diplomatic and consular missions, Exports, Human remains, Imports, Iran.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR parts 538 and 560 as follows:

PART 538—SUDANESE SANCTIONS REGULATIONS

■ 1. The authority citation for part 538 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); 22 U.S.C. 7201–7211; Pub. L. 109–344, 120 Stat. 1869; Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13067, 62 FR 59989, 3 CFR, 1997 Comp., p. 230; E.O. 13412, 71 FR 61369, 3 CFR, 2006 Comp., p. 244.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 2. Add a new § 538.534 to subpart E to read as follows:

§ 538.534 Third-country diplomatic and consular funds transfers.

U.S. depository institutions, U.S. registered brokers or dealers in securities, and U.S. registered money transmitters are authorized to process funds transfers for the operating expenses or other official business of third-country diplomatic or consular missions in Sudan, provided such transfers are not by, to, or through a person who is included within the term *Government of Sudan,* as defined in § 538.305.

■ 3. Add a new § 538.535 to subpart E to read as follows:

§ 538.535 Importation and exportation of human remains for burial, cremation, or interment authorized.

(a) The importation into the United States of human remains for burial, cremation, or interment, as well as of coffins or other receptacles containing such human remains, from Sudan is authorized.

(b) The importation into the United States for non-commercial purposes of finished tombstones or grave markers of Sudanese origin is authorized.

(c) The direct or indirect exportation from the United States, or by a United States person, wherever located, of human remains for burial, cremation, or interment, as well as of coffins or other receptacles containing such human remains, to Sudan is authorized.

(d) This section does not authorize the importation into the United States of Sudanese-origin cultural property or other items of archaeological, historical, or rare scientific importance.

Note 1 to § 538.535: See § 538.418 for additional restrictions on financial transactions involving Sudan, including the Specified Areas of Sudan.

PART 560—IRANIAN TRANSACTIONS REGULATIONS

■ 4. The authority citation for part 560 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa–9; 22 U.S.C. 7201–7211; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); Pub. L. 111–195, 124 Stat. 1312 (22 U.S.C. 8501–8551); E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217.

Subpart E—Licensing, Authorizations, and Statements of Licensing Policy

■ 5. Add a new § 560.541 to subpart E to read as follows:

§ 560.541 Third-country diplomatic and consular funds transfers.

United States depository institutions and United States registered brokers or dealers in securities are authorized to process funds transfers, in a manner consistent with § 560.516, for the operating expenses or other official business of third-country diplomatic or consular missions in Iran.

■ 6. Add a new § 560.542 to subpart E to read as follows:

§ 560.542 Importation and exportation of human remains for burial, cremation, or interment authorized.

(a) The importation into the United States of human remains for burial, cremation, or interment, as well as of coffins or other receptacles containing such human remains, from Iran is authorized.

(b) The importation into the United States for non-commercial purposes of finished tombstones or grave markers of Iranian origin is authorized.

(c) The direct or indirect exportation from the United States, or by a United States person, wherever located, of human remains for burial, cremation, or interment, as well as of coffins or other receptacles containing such human remains, to Iran is authorized.

(d) This section does not authorize the importation into the United States of Iranian-origin cultural property or other items of archaeological, historical, or rare scientific importance.

Note 1 to § 560.542: United States depository institutions and United States registered brokers or dealers in securities may transfer funds in connection with transactions authorized pursuant to this section in a manner consistent with § 560.516.

Dated: October 4, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–26176 Filed 10–11–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0228]

Safety Zone, Brandon Road Lock and Dam to Lake Michigan Including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, and Calumet-Saganashkee Channel, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel on all waters of the Chicago Sanitary and Ship Canal from Mile Marker 295.7 to Mile Marker 297.0 daily from 7:30 a.m. through 10:30 a.m. on October 24–25, 2011 and from 8 a.m. through 6 p.m. on October 26, 2011. This action is necessary to protect the waterways, waterway users, and vessels from hazards associated with the Illinois Department of Natural Resources' fish suppression operations to clear all fish between barrier IIA and IIB, in conjunction with the U.S. Army Corps of Engineers' scheduled maintenance shutdown of Barrier IIB.

During the enforcement period, entry into, transiting, mooring, laying-up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

DATES: The regulations in 33 CFR 165.930 will be enforced from 7:30 a.m. through 10:30 a.m. on October 24 through 25, 2011 and from 8 a.m. to 6 p.m. on October 26, 2011.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail CWO Jon Grob, Prevention Department, Coast Guard Sector Lake Michigan, telephone 414–747–7188, e-mail address *Jon.K.Grob@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel, Chicago, IL, listed in 33 CFR 165.930, on all waters of the Chicago Sanitary and Ship Canal from Mile Marker 295.7 to Mile Marker 297.0 daily from 7:30 a.m. through 10:30 a.m. on October 24–25, 2011 and from 8 a.m. to 6 p.m. on October 26, 2011.

This enforcement action is necessary because the Captain of the Port, Sector Lake Michigan has determined that the Illinois Department of Natural Resources' fish suppression operations to clear all fish between barrier IIA and IIB, in conjunction with the U.S. Army Corps of Engineers scheduled maintenance shutdown of Barrier IIB, poses risks to life and property. The combination of vessel traffic and the fish removal operations in the water makes the controlling of vessels through the impacted portion of the Chicago Sanitary and Ship Canal necessary to prevent injury and property loss.

In accordance with the general regulations in § 165.23 of this part, entry into, transiting, mooring, laying up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

This notice is issued under authority of 33 CFR 165.930 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Captain of the Port, Sector Lake Michigan, will also provide notice through other means, which may include, but are not limited to, Broadcast Notice to Mariners, Local Notice to Mariners, local news media, distribution in leaflet form, and on-scene oral notice.

Additionally, the Captain of the Port, Sector Lake Michigan, may notify representatives from the maritime industry through telephonic and email notifications.

Dated: September 26, 2011.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2011–26254 Filed 10–11–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0907]

RIN 1625–AA00

Safety Zone; The Old Club Cannonade, Lake St. Clair, Muscamoot Bay, Harsens Island, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake St. Clair, Muscamoot Bay, Harsens Island, MI. This safety zone is intended to restrict vessels from a portion of Lake St. Clair during the Cannonade event.

DATES: This rule is effective from 1:30 p.m. through 4:30 p.m. on October 15, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0907 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0907 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LT Adrian Palomeque, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9580, e-mail *Adrian.F.Palomeque@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because waiting for a notice and comment period to run would be impracticable and contrary to the public interest. Notice of this event was not received in sufficient time for the Coast Guard to solicit public comments before the event's start. Thus, waiting for a notice and comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public from the hazards associated with maritime cannon firing event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

Background and Purpose

On October 15, 2011, a private party is holding a land based live fire event that will include cannon balls fired from a point on Lake St. Clair. The cannon firing will occur between 1:30 p.m. and 4:30 p.m., October 15, 2011. The Captain of the Port Detroit has determined that this event will create public hazards. Particularly, cannon balls being fired into Lake St. Clair could cause death, serious bodily harm, or property damage.

Discussion of Rule

Because of the aforementioned hazards, the Captain of the Port Detroit has determined that a temporary safety zone is necessary to ensure the safety of people and vessels during the firing of the cannons. The safety zone will encompass all waters on Lake St. Clair in an area bound by the coordinates starting at the cannon firing position located at 42°32.5′ N, 082°40.1′ W extending west to the Old Channel Light located at position 42°32.5′ N, 082°41.6′ W angling northeast to position 42°33.5′ N, 082°40.6′ W then angling southeast to the point of origin creating a triangle shaped safety zone from 1:30 p.m. until 4:30 p.m. on October 15, 2011. This area is near the southern end of Harsens Island in Muscamoot Bay. All geographic coordinates are North American Datum of 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on scene representative. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone around the launch platform will be relatively small and exist for only a minimal time. Thus, restrictions on vessel movement within any particular area of Lake St. Clair are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in

this portion of Lake St. Clair between 1:30 p.m. through 4:30 p.m. on October 15, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities because vessels can easily transit around the zone. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866, as supplemented by Executive Order 13566, and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction because it involves the establishment of a safety zone. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add 165.T09–0907 to read as follows:

§ 165. T09–0907 Safety zone; The Old Club Cannonade, Lake St. Clair, Harsens Island, MI.

(a) *Location.* The safety zone will encompass all waters on Lake St. Clair in an area bound by the coordinates starting at the cannon firing position

located at 42°32.5′ N, 082°40.1′ W extending west to the Old Channel Light located at position 42°32.5′ N, 082°41.6′ W angling northeast to position 42°33.5′ N, 082°40.6′ W then angling southeast to the point of origin creating a triangle shaped safety zone from 1:30 p.m. until 4:30 p.m. on October 15, 2011. This area is near the southern end of Harsens Island in Muscamoot Bay. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Effective and Enforcement Period.* This rule is effective and will be enforced from 1:30 p.m. through 4:30 p.m. on October 15, 2011.

(c) *Regulations.* (1) In accordance with the general regulations in Section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his on-scene representative.

Dated: September 26, 2011.

J.E. Ogden,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2011–26255 Filed 10–11–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0489]

RIN 1625–AA87

Security Zones; Captain of the Port Lake Michigan Zone

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: Based on a review of safety and security zones around critical infrastructure in the Chicago area, the Captain of the Port Sector Lake Michigan has determined that to better protect such infrastructure, while also mitigating burdens on waterway users, it is necessary to amend the Lake Michigan at Chicago Harbor & Burnham Park Harbor—Safety and Security Zone regulation and the Security Zones; Captain of the Port Lake Michigan regulation. Specifically, the Coast Guard is amending these two regulations to reduce the size of an existing security zone, disestablish another security zone, and create three new security zones.

DATES: This rule is effective November 14, 2011.

ADDRESSES: Comments and material received from the public, if any, as well as documents indicated in this preamble as being available in the docket, are part of docket USCG–2011–0489 and are available online at *http://www.regulations.gov.* This material is also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and the U.S. Coast Guard Sector Lake Michigan, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call LTJG Furyisa Miller, Waterways Department, Coast Guard MSU Chicago, Chicago, IL at (630) 986–2122 or e-mail her at *Furyisa.I.Miller@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 9, 2011, we published a notice of proposed rulemaking entitled Security Zones; Captain of the Port Lake Michigan Zone in the **Federal Register** (76 FR 48751). We received no comments on this rule. No public meeting was requested, and none was held.

Background and Purpose

The Coast Guard recently worked with local governmental agencies to review the safety and security zones around critical infrastructure in the Chicago area. Based on this review, the Captain of the Port Sector Lake Michigan had determined that to better protect critical infrastructure while also mitigating burdens on waterway users it is necessary to reduce the size of an existing security zone, disestablish an existing security zone, and establish three new security zones.

Discussion of Comments and Changes

No comments were received regarding this rule, and the regulatory text of this final rule is the same as in the proposed rule; we made no changes.

Discussion of Rule

For the reasons discussed above, the Captain of the Port Sector Lake Michigan amends 33 CFR 165.904 and 165.910. Specifically, this rule will reduce the size of the safety and security zone entitled Lake Michigan at Chicago Harbor & Burnham Park Harbor-Safety and Security Zone, which is located at 33 CFR 165.904. The revised zone will be significantly reduced in size due to the disestablishment of Meigs Airfield and the need to secure only Burnham Park harbor during high profile visits that require security zone enforcement. This reduction of the Chicago Harbor & Burnham Park Harbor-Safety and Security Zone will result in the zone encompassing all U.S. navigable waters of Lake Michigan from the southeast corner of Northerly Island shoreward of a line across the entrance of the harbor connecting coordinates 41°51′09″ N, 087°36′36″ W and 41°51′11″ N, 087°36′22″ W.

In addition to reducing the size of the security zone described in § 165.904(a), this rule also disestablishes a security zone. Specifically, this rule disestablishes the security zone in 33 CFR 165.910(a)(1) entitled Security Zones; Captain of the Port Lake Michigan; Navy Pier Northside.

Finally, this rule establishes three new security zones in 33 CFR 165.910. The first new security zone, designated paragraph (a)(1) which was formerly used for the Navy Pier Northside

security zone discussed above, will be located in the vicinity of the Jardine Water Treatment Plant Chicago, Illinois. The Jardine Water Filtration Plant security zone will encompass all U.S. navigable waters of Lake Michigan within an arc of a 100-yard radius with its center located on the approximate position 41°53′46″ N, 087°36′23″ W.

The second new security zone is located in the vicinity of the Wilson Avenue Crib, Chicago, Illinois. It encompasses all U.S. navigable waters of Lake Michigan within the arc of a circle with a 100-yard radius with its center in approximate position 41°58′00″ N, 087°35′30″ W.

The third new security zone is located in the vicinity of the new Four Mile Intake Crib in Chicago, Illinois. It encompasses all U.S. navigable waters encompasses waters of Lake Michigan within the arc of a circle with a 100-yard radius with its center in approximate position 41°52′40″ N, 087°32′45″ W.

In accordance with 33 CFR 165.33, no person or vessel may enter or remain in one of the security zones discussed in this rule without permission of the Captain of the Port Sector Lake Michigan. The Captain of the Port Sector Lake Michigan, at his or her discretion, may permit persons and vessels to enter the security zones addressed in this rule. For instance, the Captain of the Port Sector Lake Michigan may permit those U.S. Coast Guard certificated passenger vessels that normally load and unload passengers at the north side of Navy Pier to operate in the Jardine Water Filtration Plant security zone.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The security zones amended and established by this rule will be relatively small and enforced for relatively short time. Also, each security zone is designed to minimize its impact on navigable waters. Furthermore, each security zone has been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the security zones. Thus, restrictions on vessel movements within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through each security zone when permitted by the Captain of the Port, Sector Lake Michigan. On the whole, the Coast Guard expects insignificant adverse impact to mariners from the activation of these security zones.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners and operators of vessels intending to transit or anchor in the security zones addressed in this rule. These security zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The security zones in this rule would be in small areas surrounding the intake cribs or areas near shore to Chicago's water filtration plants; the security zones have been designed to allow traffic to pass safely around these zones whenever possible.

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not affect the taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**. This rule involves the establishment, disestablishment, and changing of security zones, and thus, paragraph 34(g) of figure 2–1 in Commandant Instruction M16475.lD applies.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Amend § 165.904 by revising paragraph (a) to read as follows:

§ 165.904 Lake Michigan at Chicago Harbor & Burnham Park Harbor—Safety and Security Zone.

(a) *Location.* All waters of Lake Michigan within Burnham Park Harbor shoreward of a line across the entrance of the harbor connecting coordinates 41°51′09″ N, 087°36′36″W and 41°51′11″ N, 087°36′22″ W.

* * * * *

■ 3. In § 165.910 revise paragraph (a)(1) heading and paragraph (a)(1)(i), and add paragraphs (a)(10) and (a)(11) to read as follows:

§ 165.910 Security Zones; Captain of the Port Lake Michigan.

(a) * * *

(1) *Jardine Water Filtration Plant.* (i) *Location.* All waters of Lake Michigan within the arc of a 100-yard radius with its center located on the north wall of Jardine Water Filtration Plant, approximate position 41°53′46″ N, 087°36′23″ W; (NAD 83)

* * * * *

(10) *Wilson Avenue Intake Crib.* All waters of Lake Michigan within the arc of a circle with a 100-yard radius of the Wilson Avenue Crib with its center in approximate position 41°58′00″ N, 087°35′30″ W. (NAD83)

(11) *Four Mile Intake Crib.* All waters of Lake Michigan within the arc of a circle with a 100-yard radius of the Four Mile Crib with its center in approximate position 41°52′40″ N, 087°32′45″ W. (NAD83)

* * * * *

Dated: September 27, 2011.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2011–26125 Filed 10–11–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521–0640–02]

RIN 0648–XA757

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Yellowfin Sole in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of the 2011 yellowfin sole total allowable catch (TAC) assigned to the Bering Sea and Aleutian Islands trawl limited access sector to the Amendment 80 cooperative in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the 2011 total allowable catch of yellowfin sole to be fully harvested.

DATES: Effective October 6, 2011, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2011 yellowfin sole TAC assigned to the Bering Sea and Aleutian Islands trawl limited access sector is 34,153 metric tons (mt) and to the Amendment 80 cooperative is 138,875 mt as established by the final 2011 and 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011).

The Administrator, Alaska Region, NMFS, has determined that 2,000 mt of the yellowfin sole TAC assigned to the BSAI trawl limited access sector will not be harvested. Therefore, in accordance with § 679.91(f), NMFS reallocates 2,000 mt of yellowfin sole from the BSAI trawl limited access sector to the Amendment 80 cooperatives in the BSAI. In accordance

with § 679.91(f), NMFS will reissue cooperative quota permits for the reallocated yellowfin sole following the procedures set forth in § 679.91(f)(3).

The harvest specifications for yellowfin sole included in the harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011) are revised as follows: 32,153 mt to the BSAI trawl limited access sector and 140,875 mt to the Amendment 80 cooperatives in the BSAI. Table 7a is correctly revised and republished in its entirety as follows:

TABLE 7a—FINAL 2011 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, AND BSAI FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

Sector	Pacific ocean perch			Flathead sole	Rock sole	Yellowfin sole
	Eastern Aleutian District	Central Aleutian District	Western Aleutian District	BSAI	BSAI	BSAI
TAC	5,660	4,960	8,370	41,548	85,000	196,000
CDQ	606	531	896	4,446	9,095	20,972
ICA	100	75	10	5,000	5,000	2,000
BSAI trawl limited access	495	435	149	0	0	32,153
Amendment 80	4,459	3,919	7,315	32,102	70,905	140,875
Alaska Groundfish Cooperative	2,364	2,078	3,879	6,269	19,902	59,798
Alaska Seafood Cooperative	2,095	1,841	3,436	25,833	51,003	81,077

Note: Sector apportionments may not total precisely due to rounding.

This will enhance the socioeconomic well-being of harvesters dependent upon yellowfin sole in this area. The Regional Administrator considered the following factors in reaching this decision: (1) The current catch of yellowfin sole by the BSAI trawl limited access sector and, (2) the harvest capacity and stated intent on future harvesting patterns of the Amendment 80 cooperative that participates in this BSAI fishery.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of yellowfin sole from the BSAI trawl limited access sector to the Amendment 80 cooperative in the BSAI. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 29, 2011.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.91 and is exempt from review under Executive Order 12866.

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

Dated: October 6, 2011.

Steven Thur,

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

[FR Doc. 2011–26304 Filed 10–6–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 197
Wednesday, October 12, 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

5 CFR Chapter XXXVI

[Docket No. DHS–2008–0168]

RIN 1601–AA17; 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of Homeland Security

AGENCY: Office of the Secretary, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security (DHS), with the concurrence of the Office of Government Ethics (OGE), is proposing supplemental standards of ethical conduct for DHS employees. The proposed regulations would supplement the OGE Standards of Ethical Conduct for Employees of the Executive Branch (OGE Standards) and, among other things, would set forth employee restrictions on the purchase of certain Government-owned property, require employees to report allegations of waste, fraud, and abuse, require employees to seek prior approval for certain outside employment and activities, prohibit employees in some DHS components from engaging in certain types of outside employment and activities, require designated components to develop instructions regarding the procedures for obtaining prior approval for outside employment and activities, and designate components within DHS as a separate agency for purposes of determining whether the donor of a gift is a ''prohibited source'' and of identifying an employee's agency for the regulations governing teaching, speaking, and writing.

DATES: Comments on this proposed rule are invited and must be received by December 12, 2011.

ADDRESSES: You may submit comments, in writing, to DHS on this proposed rule, identified by docket number DHS–2008–0168, by any of the following methods:

- *On-line: http://www.regulations.gov.*
- *E-mail: ferne.mosley@dhs.gov.* Include the reference ''Proposed DHS Supplemental Standards'' in the subject line of the message.
- *Fax:* 202–282–9099.
- *Mail:* Ferne L. Mosley, Deputy Ethics Official, OGC MAIL STOP 0485, Department of Homeland Security, 245 Murray Lane, Washington, DC 20528–0485.

FOR FURTHER INFORMATION CONTACT: Ferne L. Mosley, Deputy Ethics Official, Department of Homeland Security, 202–447–3302.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, at 57 FR 35006–35087, OGE issued a final rule setting forth the uniform Standards of Ethical Conduct for Employees of the Executive Branch (the ''OGE Standards''), which, as corrected and amended, are codified at 5 CFR part 2635. Effective on February 3, 1993, the OGE Standards established uniform ethics rules applicable to all executive branch personnel.

Pursuant to 5 CFR 2635.105, executive branch agencies are authorized to publish, with the concurrence of OGE, supplemental regulations deemed necessary to implement their respective ethics programs. The following proposed supplemental regulations are necessary and appropriate in view of DHS programs and operations, in view of the consolidation of numerous legacy agencies with varying or no supplemental ethics regulations, and to fulfill the purposes of the OGE Standards. In addition, some outside employment interests and activities, if held by employees of certain DHS components, could cause a reasonable person to question an employee's impartiality and objectivity; this rule would prohibit those outside employment activities. DHS, with the concurrence of OGE, would issue the supplemental DHS regulations in a new chapter XXXVI, consisting of part 4601 of 5 CFR.

II. Analysis of the Proposed Regulations

A. Proposed § 4601.101 General

This section would identify to whom the supplemental regulations apply. It would also cross-reference to other ethics regulations and guidance applicable to DHS employees—including regulations on financial disclosure, financial interests, and employee responsibilities and conduct—and implementing DHS guidance and procedures issued in accordance with the OGE Standards.

This section would further define the term ''agency designee'' as it appears in § 2635.102(b) of 5 CFR, to identify those persons within DHS who are designated to act on requests and make determinations relating to 5 CFR part 2635 and this part. The section would also define the term ''outside employment'' and list the types of employment and activities that would require prior approval. It also lists activities for which prior approval would not be required, such as the uncompensated activities on behalf of a charitable or nonprofit organization (other than the reimbursement of expenses) that do not involve fiduciary duties and do not relate to the employee's official duties as defined by 5 CFR 2635.802. In addition, this section would define the term ''Chief Deputy Ethics Official'' as the persons within DHS who are delegated authority by the DHS Designated Agency Ethics Official (DAEO) to manage and coordinate the ethics programs within the Department's components and offices.

B. Proposed § 4601.102 Designation of DHS Components as Separate Agencies

This section would identify certain components within DHS as separate agencies for the purposes of the provisions governing prior approval for outside activities, accepting gifts from non-Federal sources, outside teaching, speaking, and writing activities, and issuing prior approval instructions. For those specified purposes, DHS has designated eight DHS components as separate agencies and has designated the remainder of the DHS components as a single agency. For the limited purpose of issuing prior approval instructions, DHS has designated the Office of the Inspector General as a separate agency.

In addition, paragraph c of this section explains the applicability of these requirements to detailed employees within the Department. An employee on detail from his employing agency to another agency for a period in excess of 30 calendar days is subject to the supplemental regulations and

instructions of the agency to which he is detailed rather than his employing agency. For example, if a U.S. Customs and Border Protection (CBP) employee is detailed to U.S. Immigration and Customs Enforcement (ICE) for 60 days, the CBP employee will be subject to ICE's supplemental regulations and instructions during the period of his detail with ICE.

C. Proposed § 4601.103 Prior Approval for Outside Employment and Activities

This section would require employees to obtain written approval prior to engaging in certain outside employment and activities. This prior approval requirement would be an integral part of DHS's ethics program. The prior approval requirement is necessary to ensure that an employee's participation in certain outside employment or activities does not adversely affect operations within the employing agency or place the employee at risk of violating applicable Federal conduct statutes and regulations. In addition, prior approval is necessary to avoid the appearance that an outside employment or activity was obtained through a misuse of the employee's official position and to address a number of other potential ethics concerns.

Because DHS provides millions of dollars in grants and engages in enforcement, regulatory, and security functions across a multitude of industry sectors, requiring prior approval is necessary to ensure that a reasonable person will not question the integrity of DHS programs and operations. In fulfilling its mission, DHS would be hindered if members of the public did not have confidence in DHS employees' ability to act impartially while performing their official duties.

Proposed § 4601.103(a) would require employees to obtain approval from the DHS employee's agency for certain outside employment or activities, with or without compensation, unless the employing agency issues an instruction or manual exempting such outside employment or activities. Proposed § 4601.104(b) would describe the standard the agency must follow for approval of requests for outside employment and activities. Proposed § 4601.103(c) would describe the responsibilities of DHS agencies for issuing instructions to employees on how to request prior approval of outside employment and activities.

Because Special Government Employees may serve at the Department only for a limited time during a 365-day period and for a limited purpose (such as service on a Federal Advisory Committee or service as a consultant), the nature of their service to the Department does not require that they be subject to the prior approval requirement for outside employment or the additional restrictions applicable to CBP, Federal Emergency Management Agency (FEMA), or ICE employees.

D. Proposed § 4601.104 Additional Rules for U.S. Customs and Border Protection (CBP) Employees

This section would prohibit CBP employees, except Special Government Employees, from being employed by, or from engaging in, activities in support of or on behalf of, an entity that engages in a trade or business performing specified customs, immigration, or agriculture activities or services. This section would also require a CBP employee with a spouse, a relative who is a financial dependent or household member, or another household member or financial dependent who is employed in a position that the CBP employee is prohibited from occupying to notify his or her agency designee in writing of the above-described employment circumstances. In addition, the employee is disqualified from participating in an official capacity in any particular matter involving such person or the person's employer unless authorized to do so by the agency designee, with the advice and clearance of the CBP Chief Deputy Ethics Official.

E. Proposed § 4601.105 Additional Rules for Federal Emergency Management Agency (FEMA) Employees

This section would prohibit certain FEMA employees, except Special Government Employees, both intermittent and non-intermittent, from working for a FEMA contractor. It also provides the procedures for requesting a waiver of these additional restrictions.

F. Proposed § 4601.106 Additional Rules for U.S. Immigration and Customs Enforcement (ICE) Employees

This section would prohibit ICE employees, except Special Government Employees, from being employed by, or from engaging in activities in support of or on behalf of, an entity that engages in a trade or business performing specified customs, immigration, or agriculture activities or services. This section would also require an ICE employee with a spouse, a relative who is a financial dependent or household member, or another household member or financial dependent who is employed in a position that the ICE employee is prohibited from occupying to notify his or her agency designee in writing of the above-described employment circumstances. In addition, the employee is disqualified from participating in an official capacity in any particular matter involving such person or the person's employer unless authorized to do so by the agency designee, with the advice and clearance of the ICE Chief Deputy Ethics Official.

G. Proposed § 4601.107 Prohibited Purchases of Property

This section would prohibit the purchase by employees of certain Government property under the control of, seized by, forfeited, under the direction of, or incident to, the employee's agency. It would also set forth the exception and waiver provisions under this section.

H. Proposed § 4601.108 Reporting Waste, Fraud, Abuse, and Corruption

This section would require all DHS employees to report allegations of waste, fraud, abuse, or corruption to the appropriate authorities within DHS, such as the DHS Office of Inspector General, the appropriate Office of Internal Affairs, or Office of Professional Responsibility. Employee responsibilities for reporting suspicions of violations of law or regulation to the DHS Office of Inspector General are found in DHS Directive 0810.1, and these regulations complement but do not displace those responsibilities.

III. Regulatory Analyses

A. Executive Orders 12866 and 13563

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Accordingly, the Office of Management and Budget has not reviewed it.

B. Small Entities

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

List of Subjects in 5 CFR Part 4601

Conflict of interests, Government employees.

For the reasons set forth in the preamble, the Department of Homeland Security, with the concurrence of the Office of Government Ethics, is proposing to amend title 5 of the Code of Federal Regulations by adding a new chapter XXXVI, consisting of part 4601, to read as follows:

TITLE 5—ADMINISTRATIVE PERSONNEL

CHAPTER XXXVI—DEPARTMENT OF HOMELAND SECURITY

PART 4601—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF HOMELAND SECURITY

Sec.
4601.101 General.
4601.102 Designation of DHS components as separate agencies.
4601.103 Prior approval for outside employment and activities.
4601.104 Additional rules for United States Customs and Border Protection (CBP) employees.
4601.105 Additional rules for Federal Emergency Management Agency (FEMA) employees.
4601.106 Additional rules for United States Immigration and Customs Enforcement (ICE) employees.
4601.107 Prohibited purchases of property.
4601.108 Reporting waste, fraud, abuse and corruption.

Authority: 5 U.S.C. 301, 7301, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.702, 2635.703, 2635.802(a), 2635.803, 2635.807(a)(2)(ii).

§ 4601.101 General.

(a) *Applicability.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of Homeland Security (DHS) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch (OGE Standards) in 5 CFR part 2635.

(b) *Cross-references to other ethics regulations and guidance.* In addition to the OGE Standards in 5 CFR part 2635 and this part, DHS employees are subject to the executive branch financial disclosure regulations contained in 5 CFR parts 2634, the executive branch financial interests regulations contained in 5 CFR part 2640, the executive branch employee responsibilities and conduct regulations contained in 5 CFR part 735, and DHS guidance and procedures on employee conduct, including those issued under paragraph (c) of this section.

(c) *DHS agency instructions.* Prior to publication, the DHS Designated Agency Ethics Official (DAEO) must approve any instructions or manuals that DHS agencies, as designated in § 4601.102 of this part, issue to provide explanatory ethics-related guidance and to establish procedures necessary to implement this part and part 2635 of this title.

(d) *Definitions.* (1) *Agency designee* as used in this part and in part 2635 of this title, means an employee who has been identified in an instruction or manual issued by an agency under paragraph (c) of this section to make a determination, give an approval, or take other action required or permitted by this part or part 2635 of this title with respect to another employee.

(2) *Outside employment* as used in this part means any form of non-Federal employment, activity, or business relationship involving the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, advisor, consultant, contractor, general partner, trustee, teacher, or speaker. It includes any writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless the participation involves acting in a fiduciary capacity, providing professional services or the rendering of advice for compensation other than the reimbursement of expenses, or the activity relates to the employee's official duties within the meaning of 5 CFR 2635.802.

(3) *Chief Deputy Ethics Official* (CDEO) as used in this part shall be the persons delegated authority by the DHS DAEO to manage and coordinate the ethics programs within the DHS components pursuant to the DAEO's authority in 5 CFR 2638.204.

§ 4601.102 Designation of DHS components as separate agencies.

(a) Pursuant to 5 CFR 2635.203(a), DHS designates each of the following components as a separate agency for purposes of the regulations in subpart B of 5 CFR part 2635 governing gifts from outside sources, including determining whether the donor of a gift is a prohibited source under 5 CFR 2635.203(d); for purposes of the regulations in § 4601.103(c) of this part governing the establishment of procedures for obtaining prior approval for outside employment; for purposes of the regulations in § 4601.103(c) of this part governing the designation of officials; and for the purposes of the regulations in 5 CFR 2635.807 governing teaching, speaking, and writing:

(1) Federal Emergency Management Agency (FEMA);

(2) Federal Law Enforcement Training Center;

(3) Transportation Security Administration;

(4) United States Citizenship and Immigration Services;

(5) United States Coast Guard;

(6) United States Customs and Border Protection (CBP);

(7) United States Immigration and Customs Enforcement (ICE); and

(8) United States Secret Service.

(b)(1) DHS will treat employees of DHS components not designated as separate agencies in paragraph (a) of this section, including employees of the Office of the Secretary, as employees of the remainder of DHS. For purposes of the regulations in subpart B of 5 CFR part 2635 governing gifts from outside sources, including determining whether the donor of a gift is a prohibited source under 5 CFR 2635.203(d); for purposes of the regulations in § 4601.103(c) of this part governing the establishment of procedures for obtaining prior approval for outside employment; for purposes of the regulations in § 4601.103(c) of this part governing the designation of officials; and for purposes of the regulations in 5 CFR 2635.807 governing teaching, speaking, and writing, DHS will treat the remainder of DHS as a single agency that is separate from the components designated as separate agencies in paragraph (a) of this section.

(2) For the limited purposes of establishing procedures for obtaining prior approval for outside employment and designating officials pursuant to § 4601.103 of this part, DHS will treat the DHS Office of the Inspector General as a separate agency.

(c) An employee on detail from his employing agency to another agency for a period in excess of 30 calendar days is subject to the supplemental regulations and instructions of the agency to which he is detailed rather than his employing agency.

§ 4601.103 Prior approval for outside employment and activities.

(a) *General requirement for approval.* A DHS employee, other than a Special Government Employee, shall obtain prior written approval before engaging in any outside employment or activity,

with or without compensation, unless the employee's agency has exempted the employment, activity, or class of employment or activities from this requirement by an instruction or manual issued pursuant to paragraph (c) of this section.

(b) *Standard for approval.* Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including part 2635 of title 5 and this part.

(c) *Agency responsibilities.* (1) With the approval of the DHS DAEO, each agency as set forth in § 4601.102 of this part shall issue instructions or a manual governing the submission of requests for approval of outside employment and activities and designating appropriate officials to act on such requests not later than sixty (60) days after the effective date of this part.

(2) The instructions or manual may exempt particular employment or activities or categories of employment or activities from the prior approval requirement of this section if such employment or activities would generally be approved and are not likely to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part. Agencies may include in their instructions or manual examples of outside employment or activities that are permissible or prohibited consistent with this part and part 2635 of this title.

(3) In the absence of a manual or instruction identifying a person designated to act upon a request for approval for outside employment, the Chief Deputy Ethics Official at each agency shall act upon a request.

§ 4601.104 Additional rules for United States Customs and Border Protection (CBP) employees.

The following rules apply to employees of CBP, except Special Government Employees, and are in addition to §§ 4601.101 through 4601.103 and §§ 4601.107 and 4601.108 of this part:

(a) *Prohibitions on outside employment and activities.* (1) No CBP employee shall be employed by or engage in activities in support of or on behalf of a customs broker, international carrier, bonded warehouse, foreign trade zone as defined in 15 CFR 400.2(e), cartman, law firm engaged in the practice of customs, immigration, or agriculture law, entity engaged in the enforcement of customs, immigration, or agriculture law, importation department of a business, or business or other entity which assists aliens or engages in services related to customs, immigration, or agriculture matters.

(2) No CBP employee shall, in any private capacity, engage in employment or an activity related to the importation or exportation of merchandise or agricultural products requiring inspection, or the entry of persons into or departure of persons from the United States.

(b) *Restrictions arising from employment of the spouse, relatives, members of the employee's household, or financial dependents.* (1) A CBP employee shall notify in writing his or her agency designee when any of the following circumstances exist:

(i) The spouse of the CBP employee is employed in a position that the CBP employee would be prohibited from occupying by paragraph (a) of this section;

(ii) A relative (as defined in 5 CFR 2634.105(o)), who is financially dependent on or who is a member of the household of the CBP employee, is employed in a position that the CBP employee would be prohibited from occupying by paragraph (a) of this section; or

(iii) Any person, other than the spouse or relative of the CBP employee, who is financially dependent on or who is a member of the household of the CBP employee, is employed in a position that the CBP employee would be prohibited from occupying by paragraph (a) of this section.

(2) The CBP employee shall be disqualified from participating in an official capacity in any particular matter involving the individuals identified in paragraph (b)(1) of this section, or the employer thereof, unless the agency designee, with the advice and clearance of the CBP Chief Deputy Ethics Official, authorizes the CBP employee to participate in the matter using the standard in 5 CFR 2635.502(d), or the waiver provisions in 18 U.S.C. 208(b)(1), as appropriate.

§ 4601.105 Additional rules for Federal Emergency Management Agency (FEMA) Employees.

The following rules apply to employees of FEMA, except Special Government Employees, and are in addition to §§ 4601.101 through 4601.103 and §§ 4601.107 and 4601.108 of this part:

(a) *Prohibited outside employment (intermittent employees).* Except as provided in paragraph (c) of this section, no intermittent FEMA employees hired under the authority of 42 U.S.C. 5149, which includes all Disaster Assistance Employees or Stafford Act Employees and Cadre of On-Call Response Employees, shall work for a current FEMA contractor while a FEMA employee, whether or not they are on activated status.

(b) *Prohibited outside employment (non-intermittent employees).* Except as provided in paragraph (c) of this section, no non-intermittent FEMA employee shall work for any current FEMA contractor as an outside employer.

(c) *Waivers.* The FEMA Chief Deputy Ethics Official or his or her agency designee may grant a written waiver of any prohibition in paragraphs (a) and (b) of this section with the DAEO's concurrence. To grant the waiver, the FEMA Chief Deputy Ethics Official or his or her agency designee must determine that the waiver is consistent with 5 CFR part 2635 and not otherwise prohibited by law; that the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality; and that the waiver will not undermine the public's confidence in the employee's impartiality and objectivity in administering FEMA programs. A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification statement.

§ 4601.106 Additional rules for United States Immigration and Customs Enforcement (ICE) employees.

The following rules apply to employees of ICE, except Special Government Employees, and are in addition to §§ 4601.101 through 4601.103 and §§ 4601.107 and 4601.108 of this part:

(a) *Prohibitions on outside employment and activities.* (1) No ICE employee shall be employed by or engage in activities in support of or on behalf of a customs broker, international carrier, bonded warehouse, foreign trade zone as defined in 15 CFR 400.2(e), cartman, law firm engaged in the practice of customs, immigration or agriculture law, entity engaged in the enforcement of customs, immigration or agriculture law, importation department of a business, or business or other entity which assists aliens or engages in services related to customs, immigration or agriculture matters.

(2) No ICE employee shall, in any private capacity, engage in employment or an activity related to the importation or exportation of merchandise or agricultural products requiring inspection, or the entry of persons into or the departure of persons from the United States.

(b) *Restrictions arising from employment of spouse, relatives, members of the employee's household,*

or financial dependents. (1) An ICE employee shall notify in writing his or her agency designee when any of the following circumstances exist:

(i) The spouse of the ICE employee is employed in a position that the ICE employee would be prohibited from occupying by paragraph (a) of this section;

(ii) A relative (as defined in 5 CFR 2634.105(o)) who is financially dependent on or who is a member of the household of the ICE employee is employed in a position that the ICE employee would be prohibited from occupying by paragraph (a) of this section; or

(iii) Any person, other than the spouse or relative of the ICE employee, who is financially dependent on or who is a member of the household of the ICE employee, is employed in a position that the ICE employee would be prohibited from occupying by paragraph (a) of this section.

(2) The ICE employee shall be disqualified from participating in an official capacity in any particular matter involving the individuals described in paragraph (b)(1) of this section or the employer thereof, unless the agency designee, with the advice and clearance of the ICE Chief Deputy Ethics Official, authorizes the ICE employee to participate in the matter using the standard in 5 CFR 2635.502(d), or the waiver provisions in 18 U.S.C. 208(b)(1), as appropriate.

§ 4601.107 Prohibited purchases of property.

(a) *General prohibition.* Except as provided in paragraph (c) of this section, no DHS employee may purchase, directly or indirectly, property that is:

(1) Owned by the Federal Government and under the control of the employee's agency, unless the sale of the property is being conducted by the General Services Administration; or

(2) Seized or forfeited under the direction or incident to the functions of the employee's agency.

(b) For purposes of this section, the employee's agency is the relevant separate agency component as set forth in § 4601.102 of this part.

(c) *Waiver.* Employees may make a purchase prohibited by paragraph (a) of this section where a written waiver of the prohibition is issued in advance by the agency designee with the clearance of the DAEO or his designee. A waiver may only be granted if it is not otherwise prohibited by law or regulation and the purchase of the property will not cause a reasonable person with knowledge of the particular circumstances to question the employee's impartiality, or create the appearance that the employee has used his official position or nonpublic information for his personal gain.

§ 4601.108 Reporting waste, fraud, abuse and corruption.

Employees shall report immediately any suspicions of violations of law or regulation involving Department of Homeland Security programs or operations to appropriate authorities, such as the Office of the Inspector General.

Janet Napolitano,

Secretary, Department of Homeland Security.

Don W. Fox,

Acting Director, Office of Government Ethics.

[FR Doc. 2011–26160 Filed 10–11–11; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 71, 77, 78, and 90

[Docket No. APHIS–2010–0125]

Secretary's Advisory Committee on Animal Health; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This is a notice to inform the public of an upcoming meeting of the Secretary's Advisory Committee on Animal Health. The meeting is organized by the Animal and Plant Health Inspection Service to discuss matters of animal health.

DATES: The meeting will be held November 1 and 2, 2011, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held in the United States Access Board conference room, 1331 F Street, NW., Suite 800, Washington, DC 20004. Opportunities for participation are described in the Supplementary Information section of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Michael R. Doerrer, Chief Operating Officer, Veterinary Services, APHIS, USDA, 4700 River Road, Unit 37, Riverdale, MD 20737; (301) 734–5034; *e-mail: SACAH.Management@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The Secretary's Advisory Committee on Animal Health (the Committee) advises the Secretary of Agriculture on matters of animal health, including means to prevent, conduct surveillance on, monitor, control, or eradicate animal diseases of national importance. In doing so, the Committee will consider public health, conservation of natural resources, and the stability of livestock economies.

Tentative topics for discussion at the upcoming meeting include:

- Proposed Rule on Traceability for Livestock Moving Interstate
- Wildlife Diseases
- Foot-and-Mouth Disease Vaccination
- Tuberculosis Framework
- Update on CoreOne (SCS) Rollout

Additional topics may be added to an updated agenda, which will be posted to the Committee's Web site at *http://www.aphis.usda.gov/animal_health/acah/* no later than October 25, 2011.

The meeting will be open to the public and attendees should plan to arrive between 8 a.m. and 9 a.m. Attendees should be prepared to provide picture identification to enter the United States Access Board conference room. The Animal and Plant Health Inspection Service (APHIS), which is organizing the meeting, asks that those planning to attend the meeting inform APHIS by sending an email through an access portal (SACAH Signup button) on the Committee's Web site or directly to *SACAH.Management@aphis.usda.gov.* Please provide your name and organizational affiliation (if any), state which meeting date or dates you plan to attend, and indicate whether you wish to present an oral statement during the meeting.

Other Public Participation

Members of the public may also join the meeting via teleconference in ''listen-only'' mode. Participants who wish to listen in on the teleconference may do so by dialing 18887903291, followed by a public passcode, 1411045.

Twitter users may join through @USDA_APHIS and add #SACAH to any tweet that mentions @USDA_APHIS on the days of the meeting. If you do not have a Twitter account, you may still view live chats during the meeting on November 1 and 2, 2011, at *http://www.twitter.com/USDA_APHIS.*

Questions and written statements for the meeting may be submitted up to 5 working days in advance of the meeting for the Committee's consideration. Questions and written statements may be sent via e-mail to *SACAH.Management@aphis.usda.gov* or mailed to the person listed under **FOR FURTHER INFORMATION CONTACT** at the beginning of this notice. Statements may also be filed with the Committee after

the meeting by sending them to *SACAH.Management@aphis.usda.gov.*

This notice of the meeting agenda is given pursuant to section 10 of the Federal Advisory Committee Act (5 U.S.C. App. 2).

Done in Washington, DC, this 5th day of October 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–26354 Filed 10–11–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2011–BT–TP–0042]

RIN 1904–AC53

Energy Efficiency Program: Test Procedures for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for information.

SUMMARY: Through this Request for Information (RFI), the U.S. Department of Energy (DOE) is initiating a rulemaking and data collection process to consider amendments to DOE's test procedures for residential water heaters, direct heating equipment, and pool heaters. This rulemaking is intended to fulfill DOE's statutory obligation to review its test procedures for covered products at least once every seven years. To inform interested parties and to facilitate the process, DOE has gathered data and has identified several issues that might warrant modifications to the current applicable test procedures, including topics on which DOE is particularly interested in receiving comment. In overview, the issues outlined in this document mainly concern the scope, draw patterns, and test conditions for residential water heaters, possible clarifications and improvement of the direct heating equipment test procedures as applied to vented hearth heaters, and coverage of electric pool heaters. Additionally, this RFI briefly discusses and seeks input on certain potential changes to the test procedures for these products that DOE anticipates may be included in a subsequent notice of proposed rulemaking (NOPR). DOE welcomes written comments from the public on any subject related to the test procedures for residential heating products (including topics not specifically raised in this RFI).

DATES: Written comments and information are requested on or before November 28, 2011.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2011–BT–TP–0042 and/or RIN 1904–AC53, by any of the following methods:

- *E-mail: HeatingProducts-2011-TP-0042@ee.doe.gov.* Include EERE–2011–BT–TP–0042 and/or RIN 1904–AC53 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585– 0121. *Telephone:* (202) 586–2945. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024. *Telephone:* (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

All submissions received must include the agency name and docket number and/or RIN for this rulemaking. No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section III of this document (Public Participation).

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information may be sent to Mr. Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–7892. E-mail: *Mohammed.Khan@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, Mailstop GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9507. *E-mail: Eric.Stas@hq.doe.gov.*

For information on how to submit or review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–2945. *E-mail: Brenda.Edwards@ee.doe.gov.*

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I. Authority and Background

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (''EPCA'' or ''the Act''), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) sets forth a variety of provisions designed to improve energy efficiency and establishes the Energy Conservation Program for Consumer Products Other Than Automobiles.[2] These include residential water heaters, direct heating equipment, and pool heaters (or collectively, ''heating products''), the subject of today's notice. (42 U.S.C. 6292(a)(4),(9), and (11))

Under EPCA, this program generally consists of four parts: (1) Testing; (2) labeling; (3) establishing Federal energy conservation standards; and (4) certification and enforcement procedures. The testing requirements consist of test procedures that

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

[2] All references to EPCA in this document refer to the statute as amended through the Energy Independence and Security Act of 2007, Public Law 110–140 (Dec. 19, 2007).

manufacturers of covered products must use as both the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA, and for making representations about the efficiency of those products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s)) Similarly, DOE must use these test requirements to determine whether the products comply with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA provides, in relevant part, that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, and must not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine the extent to which the proposed test procedure would alter the product's measured energy efficiency. (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would significantly alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

Further, the Energy Independence and Security Act of 2007 (EISA 2007) amended EPCA to require that at least once every 7 years, DOE must review test procedures for all covered products and either amend test procedures (if the Secretary determines that amended test procedures would more accurately or fully comply with the requirements of 42 U.S.C. 6293(b)(3)) or publish notice in the **Federal Register** of any determination not to amend a test procedure. (42 U.S.C. 6293(b)(1)(A)) Under this requirement, DOE must review the test procedures for the various types of heating products not later than December 19, 2014 (*i.e.,* 7 years after the enactment of EISA 2007). Thus, the final rule resulting from this rulemaking will satisfy the requirement to review the test procedures for heating products within seven years of the enactment of EPCA.

DOE's test procedures for residential water heaters are found in the Code of Federal Regulations (CFR) at 10 CFR 430.23(e) and 10 CFR part 430, subpart B, appendix E. The test procedures include provisions for determining the energy efficiency (energy factor (EF)), as well as the annual energy consumption of these products.

There are separate test procedures for the two types of direct heating equipment (*i.e.,* vented home heating equipment and unvented home heating equipment), specifically 10 CFR 430.23(g) and 10 CFR part 430, subpart B, appendix G for unvented home heating equipment, and 10 CFR 430.23(o) and 10 CFR part 430, subpart B, appendix O for vented home heating equipment. (Hereafter in this notice, the terms ''vented heater'' and ''unvented heater'' are used as shorthand to describe the two types of direct heating equipment.) The vented heater test procedures include provisions for determining energy efficiency (annual fuel utilization efficiency (AFUE)), as well as annual energy consumption. The unvented heater test procedures currently have no provisions for determining energy efficiency, as all unvented heaters are considered 100-percent efficient. However, for unvented heaters that are the primary heating source for the home, there is a calculation of annual energy consumption based on a single assignment of active mode hours. For unvented heaters that are not the primary heating source for the home, there are no calculation provisions for either efficiency or annual energy consumption. Given that unvented heaters are considered 100-percent efficient, DOE has not established a test procedure for determining energy efficiency of these products (and thus, has not established energy conservation standards for these products), as there would be no energy savings that would result from such actions.

DOE's test procedures for pool heaters are found at 10 CFR 430.23(p) and 10 CFR part 430, subpart B, appendix P. The test procedures include provisions for determining two energy efficiency descriptors (*i.e.,* thermal efficiency and pool heater heating seasonal efficiency), as well as seasonal energy consumption.

In addition to the test procedure review provision discussed above, EISA 2007 also amended EPCA to require DOE to amend its test procedures for all covered products to include measurement of standby mode and off mode energy consumption. (42 U.S.C. 6295(gg)(2)(A)) Consequently, DOE is currently conducting a rulemaking to amend the test procedures for residential water heaters, direct heating equipment, and pool heaters to include provisions for measuring the standby mode and off mode energy consumption of those products. DOE published a NOPR in the **Federal Register** on August 30, 2010, which proposed updates to the DOE test procedures for heating products to address the standby mode and off mode test procedure requirements under EPCA.[3] 75 FR 52892. DOE published a supplemental notice of proposed rulemaking (SNOPR) in the **Federal Register** on September 13, 2011, which calls for the use of the second edition of International Electrotechnical Commission (IEC) Standard 62301, ''Household Electrical Appliances—Measurement of standby power,'' in lieu of the first edition and also provides guidance on rounding and sampling. 76 FR 56347. However, that rulemaking was limited to the proposed test procedure updates to address the above-referenced standby mode and off mode requirements, and consequently, it did not address several other potential issues in DOE's existing test procedures for heating products. DOE plans to address these non-standby/off mode issues separately in this rulemaking. The potential issues that DOE has preliminarily identified and plans to address in this rulemaking are discussed in detail below in section II of this RFI.

II. Discussion

A. Test Procedure for Residential Water Heaters

1. Scope

DOE's test procedures for water heaters codified at 10 CFR 430.23(e) and 10 CFR part 430, subpart B, appendix E address gas-fired, electric, and oil-fired storage-type (*i.e.,* storage volume not less than 20 gallons (76 L)) and gas-fired and electric instantaneous-type (*i.e.,* storage volume less than 2 gallons (7.6 L)) water heaters. However, the procedure does not define electric instantaneous water heaters. In addition, it does not address the following types of products: (1) Gas-fired water heaters that have a storage volume at or above 2 gallons and less than 20 gallons (76 L); (2) electric storage water heaters with storage volume less than 20 gallons (76 L); and (3) storage water heaters with very large storage capacities, including oil-fired water heaters with storage volumes greater than 50 gallons (190 L), gas-fired water heaters with storage volumes above 100 gallons (379 L), and electric

[3] For more information, please visit DOE's Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/waterheaters.html.*

water heaters with storage volumes above 120 gallons (454 L). For this rulemaking, DOE is considering an expansion of the scope of the test procedure to include definitions and test methods for these types of products.

a. Water Heaters With Storage Volumes Between 2 Gallons (7.6 L) and 20 Gallons (76 L)

DOE's current test procedures are not applicable to water heaters with storage tanks that are at or above 2 gallons (7.6 L) and less than 20 gallons (76 L). In recent years, however, water heaters with such capacities have begun to populate the market. The definitions in the test procedure specify that instantaneous-type water heaters have a storage volume of less than two gallons (7.6 L) and that storage-type water heaters have a storage volume of 20 gallons (76 L) or more. 10 CFR part 430, subpart B, appendix E, sections 1.7 and 1.12. The definition for ''Storage-type Water Heater of More than 2 Gallons (7.6 Liters) and Less than 20 Gallons (76 Liters)'' is currently reserved. *Id.* at section 1.12.5. DOE is tentatively planning to address this gap in coverage by prescribing definitions and test procedures specifically for water heaters with storage volumes at or above 2 gallons (7.6 L) and less than 20 gallons (76 L). DOE seeks comment on the need for test procedures for products in this size range, as well as factors that should be considered when establishing a definition and test procedures for water heaters with storage volumes at or above 2 gallons (7.6 L) and 20 gallons (76 L). Additionally, DOE seeks comment on the need to characterize water heaters by attributes other than storage volume, such as heating or delivery capacity.

b. Electric Instantaneous Water Heaters

DOE's current test procedures do not contain a definition for electric instantaneous water heaters, but rather have a space reserved to define them. 10 CFR part 430, subpart B, appendix E, section 1.7.1. However, EPCA defines electric instantaneous water heaters as having an input capacity of 12 kW or less, which impacts scope of coverage. (42 U.S.C. 6291(27)(B)) Electric instantaneous water heaters are tankless water heaters (with storage volumes at or below 2 gallons (7.6 L)) that utilize electric heating elements to heat water on demand. The heating power required for electric instantaneous water heaters intended for whole home applications is typically much higher than the power capability commonly found in storage-type electric water heaters. Given the emergence of electric instantaneous water heaters on the market, DOE is tentatively planning to address this gap in the test procedure by prescribing a definition specifically for electric instantaneous water heaters. DOE seeks comment on the need for a definition for these products. Although DOE is bound by EPCA to limit its regulations to units with an input capacity of no more than 12kW, it also seeks comment on other factors to consider when establishing a definition for electric instantaneous water heaters.

Additionally, DOE notes that the 24-hour simulated use test in DOE's test procedure for instantaneous water heaters at 10 CFR 430, Subpart B, Appendix E, section 5.2.4 is titled ''24-hour Simulated Use Test for Gas Instantaneous Water Heaters.'' However, upon reviewing the procedure in section 5.2.4 and the corresponding calculations in section 6 of the test procedure, DOE believes the test method is also applicable for electric instantaneous water heaters and is currently being used to determine the energy factor of those products. DOE plans to propose modifying section 5.2.4 to clarify the method for testing electric instantaneous water heaters and prevent confusion. DOE will also consider whether additional provisions may help clarify the test procedure as it applies to electric instantaneous water heaters. DOE seeks comments on the need to update its test procedure for determining the energy efficiency of electric instantaneous water heaters.

c. Storage Water Heaters With Very Large Storage Capacities

The current DOE test procedure for residential water heaters only applies to gas-fired water heaters with storage volumes less than or equal to 100 gallons (379 L), electric storage water heaters with storage volumes less than or equal to 120 gallons (454 L), and oil-fired water heaters with storage volumes less than or equal to 50 gallons (190 L). 10 CFR part 430, subpart B, appendix E, sections 1.12.1, 1.12.2, and 1.12.4. In defining storage type water heaters, EPCA covers residential gas-fired storage water heaters with an input of 75,000 Btu per hour or less, electric storage water heaters with an input of 12 kilowatts or less, and oil-fired storage water heaters that have an input rating of 105,000 Btu/h or less. (42 U.S.C. 6291(27)(A)) DOE is not aware of any residential water heaters available on the market with storage volumes above 100 gallons, 120 gallons, and 50 gallons for gas-fired, electric, and oil-fired water heaters, respectively, that would be covered as residential products under EPCA. Due to the lack of water heaters with very large storage volumes that meet the definition of a residential water heater, DOE believes it is unnecessary to expand the scope of the test procedure to include gas-fired products over 100 gallons, electric products over 120 gallons, or oil-fired products over 50 gallons, and seeks comment on this conclusion.

2. Draw Pattern

The current residential water heater test procedure includes a 24-hour simulated-use test for determining energy factor. 10 CFR part 430, subpart B, appendix E, sections 5.1.5 and 5.2.4. The 24-hour test specifies that 6 draws of equal volume be removed from the water heater in the first 6 hours of the test for a total draw of 64.3 gallons (243 L). Following the six draws, the water heater sits in an idle mode for the duration of the 24-hour test. *Id.* The draw pattern is the same regardless of the characteristics (*e.g.,* storage volume, input capacity) of the water heater.

Recent data [4 5 6] suggest that the draw pattern can impact the energy factor of a water heater and can potentially offer an advantage to one type of water heater technology over another. In addition, these studies suggest that the existing draw pattern in the simulated use test may not be representative of actual draw patterns to which water heaters are subjected in the field. DOE recognizes that different water heaters will be subjected to different field demands (consumer usage patterns) because of their operational or performance differences. For example, it is a reasonable expectation that a small-volume storage water heater (*e.g.,* 30 gallons) designed for low-occupancy dwellings would not have to meet or be subjected to the same hot water demand or usage pattern that a large-volume water heater (*e.g.,* 75 gallon) is designed to accommodate. Given this understanding, if DOE continues to use a simulated use test (DOE is also considering a series of discrete tests to replace the simulated use test; see section II.A.3 below), DOE will consider revising the draw pattern to be more representative of typical usage patterns

[4] Healy, WM, Ullah, T, and Roller, J., ''Input-Output Approach to Predicting the Energy Efficiency of Residential Water Heaters—Testing of Gas Tankless and Electric Storage Water Heaters,'' ASHRAE Transactions 117 (2011).

[5] Hoeschele, M.A. and Springer, D.A. ''Field and Laboratory Testing of Gas Tankless Water Heater Performance,'' *ASHRAE Transactions* 114 (2): 453–461 (2008).

[6] Bohac, D, Schoenbauer, B., Hewett, M., Lobenstein, M.S., Butcher, T. ''Actual Savings and Performance of Natural Gas Tankless Water Heaters,''. Center for Energy and Environment Report for Minnesota Office of Energy Security (August 30, 2010).

experienced in the field. DOE may also consider amendments to its test procedure to provide for different draw patterns for different water heaters based upon the characteristics of each water heater, such as the amount of hot water the unit can provide, the storage volume, or the heating rate (*i.e.,* input rate). DOE seeks comments on possible improvements that could be made to DOE's existing 24-hour simulated use test procedure for water heaters. In particular, DOE seeks comments on typical residential hot water usage patterns (*e.g.,* the number of draws during a day's use, the timing of and spacing between those draws, the lengths of the draws, the flow rates at which those draws are taken) and considerations for establishing different draw patterns based on differing water heater characteristics.

3. Discrete Performance Tests

As noted above, DOE is considering a series of discrete tests as an alternative approach to using a 24-hour simulated use test in determining energy factor for residential water heaters. The results of the discrete tests would be used as inputs into an algorithm to calculate the energy factor. The discrete tests would determine factors such as thermal efficiency (or coefficient of performance (COP)), recovery efficiency, standby energy loss coefficient, and cycling losses. The results of these tests, and possibly other tests, could then be mathematically combined to calculate an energy factor rating.

DOE believes that using the mathematically-combined results of discrete tests to calculate energy factor offers several benefits, but it also has some drawbacks when compared to using a 24-hour simulated use test. Discrete tests may lead to simpler, more repeatable tests, and DOE tentatively believes the results of discrete tests could potentially be used as inputs to simulation models for predicting energy consumption and that an array of different installations and field conditions could be modeled. However, DOE is uncertain of the feasibility of characterizing water heaters and developing an energy factor algorithm based on empirical data because it is not aware of any such algorithms that have been thoroughly proven to be effective at estimating the energy factor. Another challenge would be that the tests may need to vary for different technologies, thereby raising possible concerns about test equitability. DOE also notes that a simulated use test has the advantage of placing the same demand on any water heater suitable for a particular application, thereby arguably leading to a more equitable test. DOE seeks comments on the benefits and drawbacks of using a series of discrete performance tests in place of the current 24-hour simulated use test for determining the energy factor of residential water heaters. DOE also requests comments on the feasibility and equitability of a series of discrete tests and possible approaches for establishing discrete tests that can result in an energy factor rating.

4. Test Conditions

a. Water Delivery Temperature

The current residential water heater test procedure calls for hot water to be delivered at 135 °F +/− 5 °F (57.2 °C +/− 2.8 °C). 10 CFR part 430, subpart B, appendix E, section 2.4. However, the Underwriters Laboratories (UL) standards specify that manufacturers must ship residential water heaters with thermostats set at temperatures no greater than 125 °F (52 °C) to safeguard against scalding hazards. (UL 174, *Standard for Household Electrical Storage Tank Water Heaters, Underwriters Laboratories* (April 29, 2004)) DOE's research suggests that the majority of water heaters are shipped with the thermostat preset to 120 °F (49 °C). In the analysis for the April 2010 final rule amending energy conservation standards for water heaters, the Department estimated that the average set point temperature for a residential water heater was 124.2 °F (51.2 °C), with an estimated 61 percent of water heaters being installed with a set point at 120 °F (49 °C). (For more information see chapter 7 of the technical support document (TSD) for DOE's April 16, 2010 final rule (75 FR 20112) for energy conservation standards for residential heating products.[7])

The set point impacts the performance of various types of water heaters differently, and as a result, DOE plans to reexamine the appropriateness of the set point specifications in the test procedure. A higher delivery temperature has a disproportionately large and negative impact on heat pump water heater efficiency, because heat pump water heaters can have markedly different performance at elevated stored water temperature compared to temperatures more representative of typical residential usage. For other types of water heaters, heat transfer characteristics between the heating source and the water may differ at lower delivery temperatures, thereby affecting efficiency.

DOE notes that some end uses (*e.g.,* dishwasher operation) require hot water delivered at 130 °F to 140 °F (54 °C to 60 °C) for effective operation. While most of these machines contain booster heaters that can increase the water temperature, there are some machines not so equipped that require the water heater to be set to a higher temperature in order to operate properly. Additionally, concerns exist about the potential for the growth of Legionella in hot water stored below 135 °F (57 °C). ASHRAE Guideline 12, ''*Minimizing the Risk of Legionellosis Associated with Building Water Systems,*''[8] states that the temperature range most favorable for amplification of legionellae bacteria is 77–108 °F (25–42 °C), and that document recommends that when practical, hot water should be stored at temperatures of 120 °F (49 °C) or above. However, the guideline also states that for high-risk situations (such as in health care facilities and nursing homes), hot water should be stored above 140 °F (60 °C).

DOE believes the test procedure for residential water heaters should be representative of the conditions typically encountered in the field. DOE also recognizes that not all water heaters in the field will be set at 135 °F (57 °C), because the majority of water heaters are shipped pre-set at 120 °F (49 °C), and DOE does not believe most consumers change their water heaters' set points. DOE seeks comment on the appropriate set point temperature for the residential water heater test procedure.

b. Ambient Temperature and Relative Humidity

The residential water heater test procedure generally requires that testing be performed in an environment fixed at 67.5 °F +/− 2.5 °F (19.7 °C +/− 1.4 °C). For heat pump water heaters, however, the environmental conditions are more tightly constrained at 67.5 °F +/− 1 °F (19.7 °C +/− 0.6 °C) and 50 percent +/− 1 percent relative humidity, because the heat pump water heater energy use is highly dependent on the ambient temperature and relative humidity. Because water heaters are placed in a wide variety of locations within and outside of a home, and given the large impact of these factors on heat pump water heater efficiency, DOE plans to reexamine the ambient air test conditions specified in the test procedure in order to assess whether the currently-specified conditions are

[7] Docket number EE–2006–BT–STD–0129. The TSD is available online at: *http://www.eere.energy.gov/buildings/appliance_standards/residential/heating_products_fr_tsd.html.*

[8] For more information visit: *http://www.ashrae.org.*

representative of those conditions that are typically encountered in residential installations. Therefore, to help assess the ambient temperature and relative humidity requirements in the residential water heater test procedure for this rulemaking, DOE seeks comment on the appropriate ambient temperature and relative humidity testing points and tolerances for all types of residential water heaters.

5. Other Issues

DOE also seeks comments on other relevant issues that would affect the test procedures for residential water heaters. Although DOE has attempted to identify those portions of the test procedure where it believes amendments may be warranted, interested parties are welcome to provide comments on any aspect of the test procedure, including updates of referenced standards, as part of this comprehensive 7-year-review rulemaking.

B. Test Procedure for Direct Heating Equipment

1. Vented Hearth Heaters

The vented home heating equipment test procedures are codified at 10 CFR 430.23(o) and 10 CFR part 430, subpart B, appendix O. Appendix O provides for a complete evaluation of the efficiency of vented direct heating equipment in order to determine the product's AFUE, which is the regulating metric set by EPCA. (42 U.S.C. 6291(22)(A)) In the April 2010 final rule adopting energy conservation standards for heating products, DOE established a separate product class of vented home heating equipment for vented hearth heaters, and determined that DOE's test procedures in Appendix O would apply to vented hearth products.

DOE is interested in whether the test procedure for vented home heating equipment is being applied uniformly for vented hearth heaters. This would apply to both the actual testing provisions and the application of the equations to determine annual efficiency (*i.e.,* AFUE) and annual energy consumption. DOE currently believes that vented hearth heater manufacturers can use the existing test procedure provisions for manually-controlled vented heaters to produce uniform and representative measures of energy consumption and efficiency. However, DOE also believes that technical clarifications or other improvements designed to avoid non-uniform application should always be considered. To this end, DOE seeks information on any clarification, updates, or technical improvements that would allow for uniform and representative measures of energy consumption and efficiency across all vented hearth heaters.

2. Other Issues

DOE also seeks comments on other relevant issues that would affect the test procedures for residential direct heating equipment (both vented type and unvented type). Although DOE has attempted to identify those portions of the test procedure where it believes amendments may be warranted, interested parties are welcome to provide comments on any aspect of the test procedure, including updates of referenced standards, as part of this comprehensive 7-year-review rulemaking.

C. Test Procedure for Pool Heaters

1. Electric Pool Heaters

DOE's test procedures for pool heaters are found at 10 CFR 430.23(p) and 10 CFR part 430, subpart B, appendix P. In its definition of ''efficiency descriptor,'' EPCA specifies that for pool heaters, the efficiency descriptor shall be ''thermal efficiency.'' (42 U.S.C. 6291(22)(E)) Further, EPCA defines the ''thermal efficiency of pool heaters'' as the ''measure of the heat in the water delivered at the heater outlet divided by the heat input of the pool heater as measured under test conditions specified in section 2.8.1 of the *American National Standard for Gas Fired Pool Heaters,* Z21.56–1986, or as may be prescribed by the Secretary.'' (42 U.S.C. 6291(26)) [9] As part of a recent test procedure rulemaking, DOE proposed a new efficiency metric for pool heaters, titled ''integrated thermal efficiency.'' 75 FR 52892, 52899–901 (August 30, 2010).[10] The proposed integrated thermal efficiency metric builds on the existing thermal efficiency metric and includes the additional electrical energy consumption during standby mode and off mode operation, as required by EISA 2007. (42 U.S.C. 6295(gg)(2)(A)) DOE notes that because current energy conservation standards for pool heaters do not account for standby mode and off mode energy use, manufacturers are not required to certify compliance using the integrated thermal efficiency metric at this time. Until such time as compliance is required with amended energy conservation standards that do account for standby mode and off mode energy consumption, manufacturers are to continue using the thermal efficiency metric for certification and compliance purposes.

Certain types of pool heaters are powered by energy sources other than gas, and DOE believes that absent modifications, the currently incorporated ANSI Z21.56 test method for gas-fired pool heaters may not be appropriate for pool heaters that operate with electricity (including heat pump pool heaters) or oil. However, DOE notes that its test procedure for pool heaters at 10 CFR 430 Subpart B, Appendix P already contains slight modifications to allow the ANSI Z21.56 test method to be applied to oil-fired pool heaters, and DOE does not believe further action is necessary for those products. In the December 2009 NOPR for energy conservation standards for heating products DOE determined that as currently drafted, the DOE test procedure for pool heaters is not suitable for electric pool heaters (including heat pump pool heaters), largely based upon the fact that EPCA specifies that ''thermal efficiency'' must be the efficiency descriptor for these products. DOE sought comment regarding potential ways to apply a thermal efficiency metric to electric pool heaters (including heat pump pool heaters). 74 FR 65852, 65866–67 (Dec. 11, 2009).

For electric pool heaters (including those units using heat pump technology), the relevant energy input is electricity instead of gas. ''Thermal efficiency,'' as determined using ANSI Z21.56, is a measure of heat in the water delivered at the heater outlet (in Btu/h) divided by the heat input (in Btu/h) of the fuel. It is possible to develop an integrated thermal efficiency rating for a heat pump pool heater by converting the power input in watts to the input in Btu/h. However, if such an integrated thermal efficiency metric were applied to heat pump pool heaters, DOE notes that the numerical result would be efficiency ratings of over 100 percent, which may cause confusion for consumers because heat pumps are typically rated using industry standards for Coefficient of Performance (COP). In contrast, electric pool heaters that operate with resistance heating (as opposed to heat pump technology), are typically rated with a thermal efficiency metric. Consequently, the ratings for electric pool heaters using these two competing technologies are not always directly comparable. Another consideration for heat pump pool heaters is that performance depends

[9] In an August 2010 NOPR, DOE proposed to use the most recent version of this standard, ANZI Z21.56–2006. 75 FR 52892, 52899–901 (August 30, 2010).

[10] DOE subsequently published an SNOPR for this rulemaking on September 13, 2011. 76 FR 56347. However, this SNOPR did not modify the proposal for integrated thermal efficiency contained in the August 2010 NOPR.

upon the ambient temperature and humidity, so environmental conditions for testing are much more important for heat pump pool heaters than for gas-fired pool heaters.

In light of the above, DOE tentatively plans to update the pool heater test procedures by adding provisions to address electric heat pump pool heaters through use of a COP performance metric drawn from industry standards, coupled with a separate conversion to thermal efficiency (*i.e.,* the regulating metric specified in EPCA) and integrated thermal efficiency (*i.e.,* the new regulating metric, as amended by EISA 2007). Because there are currently no energy conservation standards for electric heat pump pool heaters, no certification or reporting would be required for those products until such time as DOE sets minimum energy conservation standards for those products (which will include energy consumption in active, standby, and off modes). However, after a test method is adopted for electric heat pump pool heaters, manufacturers would be required to use the DOE test method for making efficiency representations and would be able to use the COP metric, the integrated thermal efficiency metric, or both for making efficiency representations during this interim period. Compliance with the amended test procedure for representations purposes would be required 180 days after the date of publication of the test procedure final rule. Once DOE sets energy conservation standards for pool heaters, EPCA requires the use of the thermal efficiency metric. Therefore, if DOE were to set energy conservation standards for heat pump pool heaters, manufacturers would then be required to rate their products using the integrated thermal efficiency metric, although they would still have the option of making supplemental representations of efficiency using the COP metric.

DOE requests comment on the applicability of the ANSI Z21.56 test method for pool heaters that are powered by energy sources other than gas. Additionally, DOE seeks comment on its tentative plans for updating the pool heater test procedure to include electric pool heaters and information on potential methods to apply the integrated thermal efficiency metric to electric pool heaters (including heat pump pool heaters).

2. Other Issues

DOE also seeks comments on other relevant issues that would affect the test procedures for residential pool heaters. Although DOE has attempted to identify those portions of the test procedure where it believes amendments may be warranted, interested parties are welcome to provide comments on any aspect of the test procedure as part of this comprehensive 7-year-review rulemaking.

III. Public Participation

DOE invites all interested parties to submit in writing by November 28, 2011, comments and information on matters addressed in this notice and on other matters relevant to DOE's consideration of amended test procedures for residential water heaters, direct heating equipment, and pool heaters.

After the close of the comment period, DOE will begin collecting data, conducting relevant analyses, and reviewing the public comments. These actions will be taken to aid in the development of a test procedure NOPR for residential water heaters, direct heating equipment, and pool heaters.

DOE considers public participation to be a very important part of the process for developing test procedures. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this rulemaking should contact Ms. Brenda Edwards at (202) 586–2945, or via e-mail at *Brenda.Edwards@ee.doe.gov.*

Issued in Washington, DC, on September 29, 2011.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–25815 Filed 10–11–11; 8:45 am]

BILLING CODE 6450–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG26

Small Business Size Standards: Information

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to increase small business size standards for 15 industries in North American Industry Classification System (NAICS) Sector 51, Information. As part of its ongoing comprehensive review of all size standards, SBA has evaluated all receipts based size standards in NAICS Sector 51 to determine whether the existing size standards should be retained or revised. This proposed rule is one of a series of proposals that examines size standards of industries grouped by NAICS Sector. The SBA issued a White Paper entitled ''Size Standards Methodology'' and published a document in the October 21, 2009, issue of the **Federal Register** that ''Size Standards Methodology'' is available on its Web site at *http://www.sba.gov/size* for public review and comments. The ''Size Standards Methodology'' White Paper explains how SBA establishes, reviews and modifies its receipts based and employee based small business size standards. In this proposed rule, SBA has applied its methodology that pertains to establishing, reviewing and modifying a receipts based size standard.

DATES: SBA must receive comments to this proposed rule on or before December 12, 2011.

ADDRESSES: You may submit comments, identified by RIN 3245–AF26, by one of the following methods: (1) Federal eRulemaking Portal: *http://www.regulations.gov;* follow the instructions for submitting comments; or, (2) Mail/Hand Delivery/Courier: Khem R. Sharma, PhD, Chief, Size Standards Division, 409 Third Street, SW, Mail Code 6530, Washington, DC 20416. The SBA will not accept comments submitted by e-mail.

SBA will post all comments to this proposed rule 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,* you must submit such information to U.S. Small Business Administration, Khem R. Sharma, PhD, Chief, Size Standards Division, 409 Third Street, SW, Mail Code 6530, Washington, DC 20416, or send an e-mail to *sizestandards@sba.gov.* You should highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. The SBA will review your information and determine whether it will make the information public or not.

FOR FURTHER INFORMATION CONTACT: Khem R. Sharma, PhD, Chief, Size Standards Division, (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION: To determine eligibility for Federal small business assistance, SBA establishes small business definitions (referred to as size standards) for private sector industries in the United States. The SBA uses two primary measures of business size—average annual receipts and average number of employees. The SBA uses financial assets, electric output, and refining capacity to measure the size of a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC), Certified Development Company (504) and 7(a) Loan Programs use either the industry based size standards or net worth and net income based alternative size standards to determine eligibility for those programs. At the start of the current comprehensive size standards review, there were 41 different size standards covering 1,141 NAICS industries and 18 sub-industry activities (''exceptions'' in SBA's Table of size standards). Thirty-one of these size standards were based on average annual receipts, seven were based on average number of employees, and three were based on other measures. In addition, SBA has established 11 other size standards for its financial and procurement programs.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy, in particular the changes in the Federal contracting marketplace and industry structure. The last time SBA conducted a comprehensive review of all size standards was during the late 1970s and early 1980s. Since then, most reviews of size standards were limited to in-depth analyses of specific industries in response to requests from the public and Federal agencies. The SBA also makes periodic inflation adjustments to its monetary based size standards. The SBA's latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

Because of changes in the Federal marketplace and industry structure since the last overall review, SBA recognizes that current data may no longer support some of its existing size standards. Accordingly, in 2007, SBA began a comprehensive review of all size standards to determine if they are consistent with current data, and to adjust them when necessary. In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data are also consistent with Executive Order 13563 on improving regulation and regulatory review.

Rather than review all size standards at one time, SBA has adopted a more manageable approach of reviewing a group of industries within an NAICS Sector. An NAICS Sector generally consists of 25 to 75 industries, except for the manufacturing sector, which has considerably more. Once SBA completes its review of size standards for industries in an NAICS Sector, it will issue a proposed rule to revise size standards for those industries for which currently available data and other relevant factors support doing so.

Below is a discussion of SBA's size standards methodology for establishing receipts based size standards, which SBA applied to this proposed rule, including analyses of industry structure, Federal procurement trends and other factors for industries reviewed in this proposed rule, the impact of the proposed revisions to size standards on Federal small business assistance, and the evaluation of whether a revised size standard would exclude dominant firms from being considered small.

Size Standards Methodology

SBA has recently developed a ''Size Standards Methodology'' for establishing, reviewing and modifying size standards when necessary. The SBA has published this document on its Web site at *http://www.sba.gov/size* for public review and comments and included it, as a supporting document, in the electronic docket of this proposed rule at *http://www.regulations.gov.* The SBA does not apply every feature of its methodology to every size standard evaluation because not all features are appropriate for every industry. For example, since this proposed rule covers all industries with receipts based standards in NAICS Sector 51, the methodology described here applies to establishing receipts based standards. However, the methodology is made available in its entirety for parties who are interested in SBA's overall approach to establishing, evaluating, and modifying small business size standards. The SBA always explains its analysis in individual proposed and final rules relating to size standards for specific industries.

The SBA welcomes comments from the public on a number of issues concerning its ''Size Standards Methodology,'' such as suggestions on alternative approaches to establishing and modifying size standards; whether there are alternative or additional factors that SBA should consider; whether SBA's approach to small business size standards makes sense in the current economic environment; whether SBA's use of anchor size standards is appropriate in the current economy; whether there are gaps in SBA's methodology because of the lack of comprehensive data; and whether there are other facts or issues that SBA should consider. Comments on the SBA's methodology should be submitted via (1) the Federal eRulemaking Portal: *http://www.regulations.gov;* the docket number is SBA–2009–0008; follow the instructions for submitting comments; or, (2) Mail/Hand Delivery/Courier: Khem R. Sharma, PhD, Chief, Size Standards Division, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416. As with comments received to this and other proposed rules, SBA will post all comments on its methodology on *http://www.regulations.gov.* As of October 12, 2011, SBA has received seven comments to its ''Size Standards Methodology.'' The comments are available to the public at *http://www.regulations.gov.* The SBA continues to welcome comments on its methodology from interested parties.

Congress granted discretion to SBA's Administrator to establish detailed small business size standards. 15 U.S.C. 632(a)(2). Section 3(a)(3) of the Small Business Act (15 U.S.C. 632(a)(3)) requires that ''* * * the [SBA] Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.'' Accordingly, the economic structure of an industry serves as the underlying basis for developing and modifying small business size standards. The SBA identifies the small business segment of an industry by examining data on the economic characteristics defining the industry structure itself (as described below). In addition to the analysis of an industry's structure, SBA also considers current economic conditions, together with its own mission, program objectives, and the Administration's current policies, suggestions from industry groups and Federal agencies, and public comments

on the proposed rule, when it establishes small business size standards. The SBA also examines whether a size standard based on industry and other relevant data successfully exclude businesses that are dominant in the industry.

This proposed rule includes information regarding the factors SBA evaluated and the criteria the Agency used to propose any adjustments to size standards in NAICS Sector 51. It also explains why SBA has proposed to adjust some size standards in NAICS Sector 51 but not others. This proposed rule affords the public an opportunity to review and comment on SBA's proposals to revise size standards in NAICS Sector 51 as well as on the data and methodology it uses to evaluate and revise a size standard.

Industry Analysis

For the current comprehensive size standards review, SBA has established three ''base'' or ''anchor'' size standards—$7.0 million in average annual receipts for industries that have receipts based size standards, 500 employees for manufacturing and other industries that have employee based size standards (except for Wholesale Trade), and 100 employees for industries in the Wholesale Trade Sector. The SBA established 500 employees as the anchor size standard for manufacturing industries at its inception in 1953. Shortly thereafter, SBA established $1 million in average annual receipts as the anchor size standard for nonmanufacturing industries. The SBA has periodically increased the receipts based anchor size standard for inflation, and it stands today at $7 million. Since 1986, SBA has set 100 employees as the size standard for all industries in the Wholesale Trade Sector for SBA financial assistance programs. However, NAICS codes for Wholesale Trade Industries (NAICS Sector 42) and their 100 employee size standard for the Wholesale Trade Sector do not apply to Federal procurement programs. Rather, for Federal procurement purposes the size standard is 500 employees for all industries in Wholesale Trade (NAICS Sector 42), and for all industries in Retail Trade (NAICS Sector 44–45) under the SBA's nonmanufacturer rule (13 CFR 121.406(b)).

These long-standing anchor size standards have stood the test of time and gained legitimacy through practice and general public acceptance. An anchor size standard is neither a minimum nor a maximum. It is a common size standard for a large number of industries that have similar economic characteristics and serves as a reference point in evaluating size standards for individual industries. The SBA uses the anchor in lieu of trying to establish precise small business size standards for each industry. Otherwise, theoretically, the number of size standards might be as high as the number of industries for which SBA establishes size standards (1,141). Furthermore, the data SBA analyzes are static, but the U.S. economy is not. Hence, absolute precision is impossible. Therefore, SBA presumes an anchor size standard is appropriate for a particular industry unless that industry displays economic characteristics that are considerably different from others with the same anchor size standard.

When evaluating a size standard, SBA compares the economic characteristics of the specific industry under review to the average characteristics of industries with one of the three anchor size standards (referred to as the ''anchor comparison group''). This allows SBA to assess the industry structure and to determine whether the industry is appreciably different from the other industries in the anchor comparison group. If the characteristics of a specific industry under review are similar to the average characteristics of the anchor comparison group, the anchor size standard is considered appropriate for that industry. The SBA may consider adopting a size standard below the anchor when (1) all or most of the industry characteristics are significantly smaller than the average characteristics of the anchor comparison group, or (2) other industry considerations strongly suggest that the anchor size standard would be an unreasonably high size standard for the industry.

If the specific industry's characteristics are significantly higher than those of the anchor comparison group, a size standard higher than the anchor size standard may be appropriate. The larger the differences are between the characteristics of the industry under review and those of the anchor comparison group, the larger will be the difference between the appropriate industry size standard and the anchor size standard. To determine a size standard above the anchor size standard, SBA analyzes the characteristics of a second comparison group. For industries with receipts based size standards, including those in NAICS Sector 51 that are reviewed in this proposed rule, SBA has developed a second comparison group consisting of industries with the highest levels of receipts based size standards. To determine the level of a size standard above the anchor size standard, SBA analyzes the characteristics of this second comparison group. The size standards for this group of industries range from $23 million to $35.5 million in average annual receipts, with the weighted average size standard for the group being $29 million. The SBA refers to this comparison group as the ''higher level receipts based size standard group.''

The primary factors that SBA evaluates when analyzing the structural characteristics of an industry include average firm size, startup costs and entry barriers, industry competition, and distribution of firms by size. The SBA also evaluates, as an additional primary factor, the possible impact that revising size standards might have on Federal contracting assistance to small businesses. These are, generally, the five most important factors SBA examines when establishing or revising a size standard for an industry. However, SBA will also consider and evaluate other information that it believes is relevant to a particular industry (such as technological changes, growth trends, SBA financial assistance, other program factors, *etc.*). The SBA also considers possible impacts of size standard revisions on eligibility for Federal small business assistance, current economic conditions, the Administration's policies, and suggestions from industry groups and Federal agencies. Public comments on a proposed rule also provide important additional information. The SBA thoroughly reviews all public comments before making a final decision on its proposed size standard. Below are brief descriptions of each of the five primary factors that SBA has evaluated in each industry in NAICS Sector 51 being reviewed in this proposed rule. A more detailed description of this analysis is provided in the SBA's ''Size Standards Methodology,'' available at *http://www.sba.gov/size.*

1. *Average firm size.* The SBA computes two measures of average firm size: Simple average and weighted average. For industries with receipts based size standards, the simple average is the total receipts of the industry divided by the total number of firms in the industry. The weighted average firm size is the sum of weighted simple averages in different receipts size classes, where weights are the shares of total industry receipts for respective size classes. The simple average weighs all firms within an industry equally, regardless of their size. The weighted average overcomes that limitation by giving more weight to larger firms.

If the average firm size of an industry under review is significantly higher

than the average firm size of industries in the anchor comparison industry group, this will generally support a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the anchor comparison industry group, it will be a basis to adopt the anchor size standard, or, in rare cases, a standard lower than the anchor.

2. *Startup costs and entry barriers.* Startup costs reflect a firm's initial size in an industry. New entrants to an industry must have sufficient capital and other assets to start and maintain a viable business. If new firms entering a particular industry have greater capital requirements than firms in industries in the anchor comparison group, this can be a basis for establishing a size standard higher than the anchor standard. In lieu of data on actual startup costs, SBA uses average assets as a proxy measure to assess the levels of capital requirements for new entrants to an industry.

To calculate average assets, SBA begins with the sales to total assets ratio for an industry from the Risk Management Association's Annual Statement Studies. The SBA then applies these ratios to the average receipts of firms in that industry. An industry with a significantly higher level of average assets than that of the anchor comparison group is likely to have higher startup costs; this in turn will support a size standard higher than the anchor. Conversely, if the industry has a significantly smaller average assets compared to the anchor comparison group, the anchor size standard, or, in rare cases, one lower than the anchor, may be appropriate.

3. *Industry competition.* Industry competition is generally measured by the share of total industry receipts generated by the largest firms in an industry. The SBA generally evaluates the share of industry receipts generated by the four largest firms in each industry. This is referred to as the ''four-firm concentration ratio,'' a commonly used economic measure of market competition. The SBA compares the four-firm concentration ratio for an industry under review to the average four-firm concentration ratio for industries in the anchor comparison group. If a significant share of economic activity within the industry is concentrated among a few relatively large companies, all else being equal, SBA will establish a size standard higher than the anchor size standard. The SBA does not consider the four-firm concentration ratio as an important factor in assessing a size standard if its value for an industry under review is less than 40 percent. For industries in which the four-firm concentration ratio is 40 percent or more, SBA examines the average size of the four largest firms in determining a size standard.

4. *Distribution of firms by size.* The SBA examines the shares of industry total receipts accounted for by firms of different receipts and employment size classes in an industry. This is an additional factor that SBA evaluates in assessing competition within an industry. If most of an industry's economic activity is attributable to smaller firms, this would indicate that small businesses are competitive in that industry. This supports adopting the anchor size standard. If most of an industry's economic activity is attributable to larger firms, this would indicate that small businesses are not competitive in that industry. This would support adopting a size standard above the anchor.

Concentration among firms is a measure of inequality of distribution. To evaluate the degree of inequality of distribution within an industry, SBA computes the Gini coefficient by constructing the Lorenz curve. The Lorenz curve presents the cumulative percentages of units (firms) along the horizontal axis and the cumulative percentages of receipts (or other measures of size) along the vertical axis. (For further detail, please refer to SBA's ''Size Standards Methodology'' on its Web site at *http://www.sba.gov/size.*) Gini coefficient values vary from zero to one. If an industry's total receipts reflect equal distribution among the industries, the Gini coefficient will equal zero. If a single firm accounts for an industry's total receipts, the Gini coefficient will equal one.

SBA compares the Gini coefficient value for an industry under review with that for industries in the anchor comparison group. If an industry shows a higher Gini coefficient value than industries in the anchor comparison industry group this may, all else being equal, warrant a higher size standard than the anchor. Conversely, if an industry shows a similar or lower Gini coefficient than industries in the anchor group, the anchor standard, or, in some cases, a standard lower than the anchor, may be adopted.

5. *Impact on Federal contracting and SBA loan programs.* The SBA examines the possible impact a size standard change may have on Federal small business assistance. This most often focuses on the share of Federal contracting dollars awarded to small businesses in the industry in question. In general, if the small business share of Federal contracting in an industry with significant Federal contracting is appreciably less than the small business share of the industry's total receipts, there is justification for considering a size standard higher than the existing size standard. The disparity between the small business Federal market share and industry-wide small business share may be due to various factors, such as extensive administrative and compliance requirements associated with Federal contracts, different skill sets required for Federal contracts as compared to typical commercial contracting work, and the size of Federal contracts. These, and other factors, will likely influence the type of firms that compete for Federal contracts. By comparing the Federal contracting small business share with the industry-wide small business share, SBA includes in its size standards analysis the latest Federal contracting trends. This analysis may indicate a size standard larger than the current standard.

SBA considers Federal contracting trends in the size standards analysis only if (1) the small business share of Federal contracting dollars is at least 10 percent lower than the small business share of total industry receipts, and (2) the amount of total Federal contracting averages $100 million or more during the latest three fiscal years. These thresholds reflect a significant level of contracting where a revision to a size standard may have an impact on contracting opportunities to small businesses.

Besides the impact on small business Federal contracting, SBA also evaluates the influence of a proposed size standard on SBA's loan programs. For this, SBA examines the volume and number of SBA guaranteed loans within an industry and the size of firms obtaining those loans. This allows SBA to assess whether the existing or proposed size standard for a particular industry may restrict the level of financial assistance to small firms. If the analysis shows that current size standards have impeded financial assistance to small businesses, this can support higher size standards. However, if small businesses under current size standards have been receiving significant amounts of financial assistance through SBA's loan programs, or if the businesses receiving SBA's financial assistance are much smaller than the existing size standards, this factor may not be considered in determining the size standards.

Sources of Industry and Program Data

The SBA's primary source of industry data used in this proposed rule is a special tabulation of the data from 2007 Economic Census (see *http://www.census.gov/econ/census07/*) prepared by the U.S. Bureau of the Census (Census Bureau) for the Agency. The special tabulation provides SBA with industry-specific data on the number of firms, number of establishments, number of employees, annual payroll, and annual receipts of companies by the size of firm based on the 2007 Economic Census. The data reflect the size classes of the company's overall enterprise size; however, the data by NAICS industry within a particular size class represents the company's total values for a specific industry only. The special tabulation enables SBA to evaluate average firm size, the four-firm concentration ratio, and distribution of firms by various receipts and employment size classes.

In some cases, where data were not available due to disclosure prohibitions in the Census Bureau's tabulation, SBA either estimated missing values using available relevant data or examined data at a higher level of industry aggregation, such as at the NAICS 2-digit (Sector), 3-digit (Subsector) or 4-digit (Industry Group) level. In some instances, SBA had to base its analysis only on those factors for which data were available or estimates of missing values were possible.

To calculate average assets SBA used sales to total assets ratios from the Risk Management Association's Annual Statement Studies, 2007–2009.

To evaluate Federal contracting trends, SBA examined data on Federal contract awards for fiscal years 2007–2009. The data are available from the U.S. General Service Administration's Federal Procurement Data System—Next Generation (FPDS–NG).

To assess the impact on financial assistance to small businesses, SBA examined data on its own guaranteed loan programs for fiscal years 2008–2010.

Data sources and estimation procedures SBA uses in its size standards analysis are documented in detail in the SBA's ''Size Standards Methodology'' White Paper, which is available at *http://www.sba.gov/size.*

Dominance in Field of Operation

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) defines a small business concern as one that is (1) independently owned and operated, (2) not dominant in its field of operation, and (3) within a specific small business definition or size standard established by the SBA Administrator. The SBA considers as part of its evaluation whether a business concern at a proposed size standard would be dominant in its field of operation. For this, SBA generally examines the industry's market share of firms at the proposed standard. Market share and other factors may indicate whether a firm can exercise a major controlling influence on a national basis in an industry where a significant number of business concerns are engaged. If a contemplated size standard would include a dominant firm, SBA would consider a lower size standard to exclude the dominant firm from being defined as small.

Selection of Size Standards

To simplify size standards for the ongoing comprehensive review of receipts based size standards, SBA has proposed to select size standards for industries from a limited number of levels. For many years, SBA has been concerned about the complexity of determining small business status caused by a large number of varying receipts based size standards (*see* 69 FR 13130 (March 4, 2004) and 57 FR 62515 (December 31, 1992)). At the start of current comprehensive size standards review, there were 31 different levels of receipts based size standards. They ranged from $0.75 million to $35.5 million, and many of them applied to one or only a few industries. The SBA believes that to have so many different size standards with small variations among them is unnecessary and difficult to justify analytically. To simplify managing and using size standards, SBA proposes that there be fewer size standard levels. This will produce more common size standards for businesses operating in related industries. This will also result in greater consistency among the size standards for industries that have similar economic characteristics.

The SBA proposes, therefore, to apply one of eight receipts based size standards to each industry in NAICS Sector 51 that has a receipts based standard. In NAICS Sector 51, 20 industries have size standards based on annual receipts, and 12 have size standards based on the number of employees. In this proposed rule, SBA has not reviewed employee based size standards for those 12 industries and the current standards will remain in effect until SBA reviews industries with employee based size standards. The eight ''fixed'' receipts based size standard levels are $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30 million, and $35.5 million. To establish these eight receipts based size standard levels, SBA considered the current minimum, the current maximum, and the most commonly used current receipts based size standards. Currently, the most commonly used receipts based size standards cluster around the following: $2.5 million to $4.5 million, $7 million, $9 million to $10 million, $12.5 million to $14.0 million, $25.0 million to $25.5 million, and $33.5 million to $35.5 million. The SBA selected $7 million as one of eight fixed levels of receipts based size standards because it is also an anchor standard for receipts based standards. The lowest or minimum receipts based size level will be $5 million. Other than the standards for agriculture and those based on commissions (such as real estate brokers and travel agents), $5 million include those industries with the lowest receipts based standards, which ranged from $2 million to $4.5 million at the start of the current comprehensive size standards review. Among the higher level size clusters, SBA has set four fixed levels: Namely, $10 million, $14 million, $25.5 million, and $35.5 million. Because there are large intervals between some of the fixed levels, SBA also established two intermediate levels: Namely, $19 million between $14 million and $25.5 million, and $30 million between $25.5 million and $35.5 million. These two intermediate levels reflect roughly the same proportional differences as between the other two successive levels.

Evaluation of Industry Structure

SBA evaluated the structure of the 20 industries in NAICS Sector 51, Information, to assess the appropriateness of the current receipts based size standards. As described above, SBA compared data on the economic characteristics of each of the 20 industries in NAICS Sector 51 to the average characteristics of industries in two comparison groups. The first comparison group consists of all industries with $7.0 million size standards and is referred to as the ''receipts based anchor comparison group.'' Because the goal of SBA's size standards review is to assess whether a specific industry's size standard should be the same as or different from the anchor size standard, this is the most logical group of industries to analyze. In addition, this group includes a sufficient number of firms to provide a meaningful assessment and comparison of industry characteristics.

If the characteristics of an industry under review are similar to the average characteristics of industries in the anchor comparison group, the anchor

size standard is generally considered appropriate for that industry. If an industry's structure is significantly different from industries in the anchor group, a size standard lower or higher than the anchor size standard might be appropriate. The level of the new size standard is based on the difference between the characteristics of the anchor comparison group and a second industry comparison group. As described above, the second comparison group for receipts based standards consists of industries with the highest receipts based size standards, ranging from $23 million to $35.5 million. The average size standard for this group is $29 million. The SBA refers to this group of industries as the ''higher level receipts based size standard comparison group.'' The SBA determines differences in industry structure between an industry under review and the industries in the two comparison groups by comparing data on each of the industry factors, including average firm size, average assets size, the four-firm concentration ratio, and the Gini coefficient of distribution of firms by size. Table 1 shows two measures of the average firm size (simple and weighted), the average assets size, the four-firm concentration ratio, the average receipts of the four largest firms, and the Gini coefficient for both anchor level and higher level comparison groups for receipts based size standards.

TABLE 1—AVERAGE CHARACTERISTICS OF RECEIPTS BASED COMPARISON GROUPS

Receipts based comparison group	Avg. firm size ($ million)		Avg. assets size ($ million)	Four-firm concentration ratio (%)	Avg. receipts of four largest firms ($ million) *	Gini coefficient
	Simple average	Weighted average				
Anchor Level	1.32	19.63	0.84	16.6	196.4	0.693
Higher Level	5.07	116.84	3.20	32.1	1,376.0	0.830

* To be used for industries with a four-firm concentration ratio of 40% or greater.

Derivation of Size Standards Based on Industry Factors

For each industry factor in Table 1, SBA derives a separate size standard based on the differences between the values for the industry under review and the values for the two comparison groups. If the industry value for a particular factor is near the corresponding factor for the anchor comparison group, SBA will consider the $7.0 million anchor size standard appropriate for that factor.

An industry factor with a value significantly above or below the anchor comparison group will generally warrant a size standard above or below the $7.0 million anchor. The new size standard in these cases is based on the proportional difference between the industry value and the values for the two comparison groups.

For example, if an industry's simple average receipts are $3.3 million, that would support a $19 million size standard. The $3.3 million level is 52.8 percent between the average firm size of $1.32 million for the anchor comparison group and $5.07 million for the higher level comparison group (($3.30 million − $1.32 million) ÷ ($5.07 million − $1.32 million) = 0.528 or 52.8%). This proportional difference is applied to the difference between the $7.0 million anchor size standard and average size standard of $29 million for the higher level size standard group and then added to $7.0 million to estimate a size standard of $18.616 million ([{$29.0 million − $7.0 million} * 0.528] + $7.0 million = $18.616 million). The final step is to round the estimated $18.616 million size standard to the nearest fixed size standard level, which in this example is $19 million.

SBA applies the above calculation to derive a size standard for each industry factor. Detailed formulas involved in these calculations are presented in the SBA's ''Size Standards Methodology,'' available on SBA's Web site at *http://www.sba.gov/size.* (However, note that figures in the ''Size Standards Methodology'' White Paper are based on 2002 Economic Census data and are different from those presented in this proposed rule. That is because when SBA prepared its ''Size Standards Methodology,'' the 2007 Economic Census data were not yet available.) Table 2 (below) shows ranges of values for each industry factor and the levels of size standards supported by those values.

TABLE 2—VALUES OF INDUSTRY FACTORS AND SUPPORTED SIZE STANDARDS

If simple avg. receipts size ($ million)	*Or if* weighted avg. receipts size ($ million)	*Or if* avg. assets size ($ million)	*Or if* avg. receipts of largest four firms ($ million)	*Or if* Gini coefficient	Then size standard is ($ million)
< 1.15	< 15.22	< 0.73	< 142.8	< 0.686	5.0
1.15 to 1.57	15.22 to 26.26	0.73 to 1.00	142.8 to 276.9	0.686 to 0.702	7.0
1.58 to 2.17	26.27 to 41.73	1.01 to 1.37	277.0 to 464.5	0.703 to 0.724	10.0
2.18 to 2.94	41.74 to 61.61	1.38 to 1.86	464.6 to 705.8	0.725 to 0.752	14.0
2.95 to 3.92	61.62 to 87.02	1.87 to 2.48	705.9 to 1,014.1	0.753 to 0.788	19.0
3.93 to 4.86	87.03 to 111.32	2.49 to 3.07	1,014.2 to 1,309.0	0.789 to 0.822	25.5
4.87 to 5.71	111.33 to 133.41	3.08 to 3.61	1,309.1 to 1,577.1	0.823 to 0.853	30.0
> 5.71	> 133.41	> 3.61	> 1,577.1	> 0.853	35.5

Derivation of Size Standard Based on Federal Contracting Factor

Besides industry structure, SBA also evaluates Federal contracting data to assess how successful small businesses are at obtaining Federal contracts under current size standards. For the current comprehensive size standards review, SBA has decided to designate a size standard at one level higher than the current size standard for industries where the small business share of total Federal contracting dollars is 10 to 30 percentage points lower than the small business share of total industry receipts

and at two levels higher than the current size standard where the difference is more than 30 percentage points.

Because of the complex relationships among several variables affecting small business participation in the Federal marketplace, SBA has chosen not to designate a size standard for the Federal contracting factor alone that is higher than two levels above the current size standard. The SBA believes that a larger adjustment to size standards based on Federal contracting activity should be based on a more detailed analysis of the impact of any subsequent revision to the current size standard. In limited situations, however, SBA may conduct a more extensive examination of Federal contracting experience. This may enable SBA to support a different size standard than indicated by this general rule and take into consideration significant and unique aspects of small business competitiveness in the Federal contract market. The SBA welcomes comments on its methodology of incorporating the Federal contracting factor in the size standard analysis and suggestions for alternative methods and other relevant information on small business experience in the Federal contract market.

Of the 20 industries reviewed in this proposed rule, five industries averaged $100 million or more annually in Federal contracting during fiscal years 2007–2009. However, the Federal contracting factor was not significant and no size standard was calculated for this factor for any of these five industries. The small business share of total Federal contracting dollars was already higher than the small business share of the total industry receipts for four of these five industries. In the one industry, the small business share of total Federal contracting dollars was less than the small business share of total industry receipts, but the difference was less than 10 percent. Thus, the latest data show that Federal contracting activity is insignificant for most of the industries in NAICS Sector 51, and for the majority of those industries where it is significant, small businesses seem to be doing well in terms of their share of the Federal marketplace relative to their share of the industry's total sales.

New Size Standards Based on Industry and Federal Contracting Factors

Table 3 shows the results of analyses of industry and Federal contracting factors for each industry covered by this proposed rule. Many of the NAICS industries in columns 2, 3, 4, 6, and 7 show two numbers. The upper number is the value for the industry factor shown on the top of the column and the lower number is the size standard supported by that factor. For the four-firm concentration ratio, SBA estimates a size standard if its value is 40 percent or more. If the four-firm concentration ratio for an industry is less than 40 percent, there is no estimated size standard for that factor. If the four-firm concentration ratio is more than 40 percent, SBA indicates in column 6 the average size of the industry's top four firms together with a size standard based on that average. As mentioned earlier, no size standard is derived for the Federal contracting factor as that factor was significant in none of the industries in NAICS Sector 51 reviewed in this proposed rule. Column 9 shows a calculated new size standard for each industry. This is the average of the size standards supported by each factor and rounded to the nearest fixed size level. Analytical details involved in the averaging procedure are described in the SBA's ''Size Standard Methodology.'' For comparison with the new standards, the current size standards are in column 10 of Table 3.

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY

[Millions of dollars]

NAICS code/industry title	Simple average firm size ($ million)	Weighted average firm size ($ million)	Average assets size ($ million)	Four-firm ratio (%)	Four-firm average size ($ million)	Gini coefficient	Federal contract factor (%)	Calculated new size standard ($ million)	Current size standard ($ million)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
511210 Software Publishers	$22.9	$358.8	$16.0	38.9	$13,171.0	0.903	31.0	$35.5	$25.0
	35.5	35.5	35.5			$35.5			
512110 Motion Picture and Video Production	5.1	591.5	2.4	52.7	7,893.3	0.932	.....	30.0	29.5
	30.0	35.5	19.0		35.5	$35.5			
512120 Motion Picture and Video Distribution	4.1	34.9	.....	30.6	157.2	0.814	.....	25.5	29.5
	25.5	10.0				$25.5			
512131 Motion Picture Theaters (except Drive-Ins)	6.2	304.1	7.4	53.9	1,699.2	0.909	.....	35.5	7.0
	35.5	35.5	35.5		35.5	$35.5			
512132 Drive-In Motion Picture Theaters	0.4	1.8	.....	23.0	5.5	0.322	.....	5.0	7.0
	5.0	5.0				$5.0			
512191 Teleproduction and Other Postproduction Services	2.2	46.5	1.4	27.1	296.6	0.817	.....	19.0	29.5
	14.0	14.0	10.0			$25.5			
512199 Other Motion Picture and Video Industries	3.2	78.8	1.7	75.7	151.8	0.866	.....	19.0	7.0
	19.0	19.0	14.0		7.0	$35.5			
512210 Record Production	1.0	26.2	0.5	46.7	39.5	0.711	.....	7.0	7.0
	5.0	7.0	5.0		5.0	$10.0			
512240 Sound Recording Studios	0.5	4.6	0.2	9.8	21.0	0.520	.....	5.0	7.0
	5.0	5.0	5.0			$5.0			
512290 Other Sound Recording Industries	1.1	19.7	.....	30.9	34.6	0.718	.....	10.0	7.0
	5.0	7.0				$10.0			
515111 Radio Networks	7.9	112.1	.....	61.4	633.4	0.889	.....	30.0	7.0
	35.5	30.0			14.0	$35.5			
515112 Radio Stations	4.7	149.1	6.6	42.2	1,569.4	0.885	.....	35.5	7.0
	25.5	35.5	35.5		30.0	$35.5			

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY—Continued

[Millions of dollars]

NAICS code/industry title	Simple average firm size ($ million)	Weighted average firm size ($ million)	Average assets size ($ million)	Four-firm ratio (%)	Four-firm average size ($ million)	Gini coefficient	Federal contract factor (%)	Calculated new size standard ($ million)	Current size standard ($ million)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
515120 Television Broadcasting	39.8 35.5	367.3 35.5	56.8 35.5	43.3	3,893.7 35.5	0.878 $35.5	.....	35.5	14.0
515210 Cable and Other Subscription Programming	101.2 35.5	1,186.4 35.5	82.0 35.5	62.0	6,964.8 35.5	0.911 $35.5	.....	35.5	15.0
517410 Satellite Telecommunications	6.2 35.5	111.8 30.0	.....	42.4	471.1 14.0	0.894 $35.5	9.2	30.0	15.0
517919 All Other Telecommunications	4.0 25.5	184.3 35.5	.....	46.8	1,572.9 30.0	0.908 $35.5	-2.3	30.0	25.0
518210 Data Processing, Hosting, and Related Services	7.3 35.5	74.4 19.0	5.9 35.5	25.8	4,301.8	0.854 $35.5	18.0	30.0	25.0
519110 News Syndicates	8.1 35.5	105.5 25.5	.....	68.8	368.0 10.0	0.894 $35.5	.....	25.5	7.0
519120 Libraries and Archives	0.9 5.0	24.7 7.0	.....	27.3	126.7	0.754 $19.0	.....	14.0	7.0
519190 All Other Information Services	5.1 30.0	141.6 35.5	.....	54.5	320.2 10.0	0.916 $35.5	8.8	25.5	7.0

Special Considerations

Employee Based Size Standards

In this proposed rule, SBA has not reviewed 12 industries in NAICS Sector 51 that currently have employee based size standards. The SBA will review those industries when it reviews the Manufacturing Sector (NAICS Sector 31–33) and other industries that have employee based size standards. The SBA proposes, therefore, to leave the size standards for those 12 industries at their current levels until it reviews the employee based size standards.

Evaluation of SBA Loan Data

Before deciding on an industry's size standard, SBA also considers the impact of new or revised standards on SBA's loan programs. Accordingly, SBA examined its 7(a) and 504 Loan Program data for fiscal years 2008–2010 to assess whether the existing or proposed size standards need further adjustments to ensure credit opportunities for small businesses through those programs. For the industries reviewed in this rule, the data show that it is mostly small businesses much smaller than the current size standards that use the SBA's 7(a) and 504 loans. Therefore, no size standard in NAICS Sector 51, Information, needs an adjustment based on this factor.

Proposed Changes to Size Standards

Table 4, below, summarizes the results of SBA analyses of size standards from Table 3. The results support increases in size standards in 15 industries, decreases in four industries, and no change in one industry.

TABLE 4—SUMMARY OF SIZE STANDARDS ANALYSIS

NAICS code	NAICS industry title	Calculated new size standard ($ million)	Current size standard ($ million)
511210	Software Publishers	$35.5	$25.0
512110	Motion Picture and Video Production	30.0	29.5
512120	Motion Picture and Video Distribution	25.5	29.5
512131	Motion Picture Theaters (except Drive-Ins)	35.5	7.0
512132	Drive-In Motion Picture Theaters	5.0	7.0
512191	Teleproduction and Other Postproduction Services	19.0	29.5
512199	Other Motion Picture and Video Industries	19.0	7.0
512210	Record Production	7.0	7.0
512240	Sound Recording Studios	5.0	7.0
512290	Other Sound Recording Industries	10.0	7.0
515111	Radio Networks	30.0	7.0
515112	Radio Stations	35.5	7.0
515120	Television Broadcasting	35.5	14.0
515210	Cable and Other Subscription Programming	35.5	15.0
517410	Satellite Telecommunications	30.0	15.0
517919	All Other Telecommunications	30.0	25.0
518210	Data Processing, Hosting, and Related Services	30.0	25.0
519110	News Syndicates	25.5	7.0
519120	Libraries and Archives	14.0	7.0

TABLE 4—SUMMARY OF SIZE STANDARDS ANALYSIS—Continued

NAICS code	NAICS industry title	Calculated new size standard ($ million)	Current size standard ($ million)
519190	All Other Information Services	25.5	7.0

However, lowering small business size standards is not in the best interest of small businesses in the current economic environment. The U.S. economy was in recession from December 2007 to June 2009, the longest and deepest of any recessions since World War II. The economy lost more than eight million non-farm jobs during 2008–2009. In response, Congress passed and the President signed into law the American Recovery and Reinvestment Act of 2009 (Recovery Act) to promote economic recovery and to preserve and create jobs. Although the recession officially ended in June 2009, the unemployment rate was 9.4 percent or higher from May 2009 to December 2010. It moderated to 8.8 percent in March 2011, but it increased to 9.2 percent in June 2011. The unemployment rate is forecast to remain around this elevated level at least through the end of 2011. More recently, Congress passed and the President signed the Small Business Jobs Act of 2010 (Jobs Act) to promote small business job creation. The Jobs Act puts more capital into the hands of entrepreneurs and small business owners; strengthens small businesses' ability to compete for contracts; includes recommendations from the President's Task Force on Federal Contracting Opportunities for Small Business; creates a better playing field for small businesses; promotes small business exporting, building on the President's National Export Initiative; expands training and counseling; and provides $12 billion in tax relief to help small businesses invest in their firms and create jobs.

Reducing size standards based solely on analytical results would decrease the number of firms that could participate in Federal financial and procurement assistance for small businesses. That would run counter to what SBA and the Federal government are doing to help small businesses. Reducing size eligibility for Federal procurement opportunities, especially under current economic conditions, would not preserve or create more jobs; rather, it would have the opposite effect. Therefore, in this proposed rule, SBA has decided not to propose to reduce the size standards for any industries. For industries where analyses might seem to support lowering size standards, SBA proposes to retain the current size standards. As stated previously, the Small Business Act requires the Administrator to ''* * * consider other factors deemed to be relevant * * *'' to establishing small business size standards. The current economic conditions and the impact on job creation are quite relevant to establishing small business size standards. The SBA nevertheless invites comments and suggestions on whether it should lower size standards as suggested by analyses of industry and program data or retain the current standards for those industries in view of current economic conditions.

As discussed above, SBA has decided that lowering small business size standards would be inconsistent with what the Federal government is doing to stimulate the economy and encourage job growth through the Recovery Act and the Jobs Act. Therefore, for those industries for which analyses suggested decreasing their size standards, SBA proposes to retain the current size standards. Thus, of the 20 industries in NAICS Sector 51 that were reviewed in this proposed rule, SBA proposes to increase size standards for 15 industries and retain the current standards for five industries. Industries for which SBA has proposed to increase their size standards and proposed standards are in Table 5.

In addition, not lowering size standards is consistent with SBA's prior actions for NAICS Sector 44–45 (Retail Trade), NAICS Sector 72 (Accommodation and Food Services), and NAICS Sector 81 (Other Services), which the Agency proposed (74 FR 53924, 74 FR 53913, and 74 FR 53941, October 21, 2009) and adopted in its final rules (75 FR 61597, 75 FR 61604, and 75 FR 61591, October 6, 2010). It is also consistent with the Agency's recently proposed rules for NAICS Sector 54 (Professional, Technical, and Scientific Services) (76 FR 14323, March 16, 2011), NAICS Sector 48–49 (Transportation and Warehousing) (76 FR 27935, May 13, 2011), and NAICS Sector 56 (Administrative and Support, Waste Management and Remediation Services) that is being published elsewhere in this issue of the **Federal Register**. In each of those final and proposed rules, SBA opted not to reduce small business size standards for the same reasons it has provided above in this proposed rule.

TABLE 5—SUMMARY OF PROPOSED SIZE STANDARD REVISIONS

NAICS code	NAICS industry title	Proposed size standard ($ million)	Current size standard ($ million)
511210	Software Publishers	$35.5	$25.0
512110	Motion Picture and Video Production	30.0	29.5
512131	Motion Picture Theaters (except Drive-Ins)	35.5	7.0
512199	Other Motion Picture and Video Industries	19.0	7.0
512290	Other Sound Recording Industries	10.0	7.0
515111	Radio Networks	30.0	7.0
515112	Radio Stations	35.5	7.0
515120	Television Broadcasting	35.5	14.0
515210	Cable and Other Subscription Programming	35.5	15.0
517410	Satellite Telecommunications	30.0	15.0
517919	All Other Telecommunications	30.0	25.0
518210	Data Processing, Hosting, and Related Services	30.0	25.0

TABLE 5—SUMMARY OF PROPOSED SIZE STANDARD REVISIONS—Continued

NAICS code	NAICS industry title	Proposed size standard ($ million)	Current size standard ($ million)
519110	News Syndicates	25.5	7.0
519120	Libraries and Archives	14.0	7.0
519190	All Other Information Services	25.5	7.0

Evaluation of Dominance in Field of Operation

The SBA has determined that for the industries in NAICS Sector 51, Information, for which it has proposed to increase size standards, no firm at or below the proposed size standard is large enough to dominate its field of operation. At the proposed size standards, if adopted, the small business shares of total industry receipts among those industries vary from less than 0.1 percent to 2.4 percent, with an average of 0.8 percent. These levels of market share effectively preclude a firm at or below the proposed size standards from exerting control on its industry.

Request for Comments

The SBA invites public comments on the proposed rule, especially on the following issues.

1. To simplify size standards, SBA proposes eight fixed size levels for receipts based size standards: $5.0 million, $7.0 million, $10.0 million, $14.0 million, $19.0 million, $25.5 million, $30.0 million, and $35.5 million. The SBA invites comments on whether simplification of size standards in this way is necessary and if these proposed fixed size levels are appropriate. The SBA welcomes suggestions on alternative approaches to simplifying small business size standards.

2. The SBA seeks feedback on whether the proposed levels of size standards are appropriate given the economic characteristics of each industry. The SBA also seeks feedback and suggestions on alternative standards, if they would be more appropriate, including whether an employee based standard for certain industries or exceptions is a more suitable measure of size, and if so, what that employee level should be.

3. The SBA's proposed size standards are based on its evaluation of five primary factors: Average firm size, average assets size (a proxy for startup costs and entry barriers), four-firm concentration ratio, distribution of firms by size, and the level and small business share of Federal contracting dollars. The SBA welcomes comments on these factors and/or suggestions on other factors that it should consider in assessing industry characteristics when evaluating or revising size standards. The SBA also seeks information on relevant data sources, if available.

4. The SBA gives equal weight to each of the five primary factors in all industries. The SBA seeks feedback on whether it should continue to give equal weight to each factor or whether it should give more weight to one or more factors for certain industries. Recommendations to weigh some factors more than others should include suggestions on specific weights for each factor for those industries along with supporting information.

5. For some industries, SBA proposes to increase the existing size standards by a large amount (such as NAICS 512131, 515111, and 515112), while for others the proposed increases are modest. The SBA seeks feedback on whether it should, as a policy, limit the increase to a size standard and/or whether it should, as a policy, establish minimum or maximum values for its size standards. The SBA seeks suggestions on appropriate levels of changes to size standards and on their minimum or maximum levels.

6. To simplify size standards, SBA has established or proposed common size standards for closely related industries in other NAICS Sectors. Based on SBA's analysis of the industry data, too much variation exists among the industries in NAICS Sector 51 to propose a common size standard for most industries. Therefore, for industries reviewed in this proposed rule, SBA has proposed size standards based on an analysis of each specific industry. SBA welcomes comments on whether it should adopt common size standards for certain industries in NAICS Sector 51, and if so, how are those industries related in a way to require a common size standard.

7. For analytical simplicity and efficiency, in this proposed rule, SBA has refined its size standard methodology to obtain a single value as a proposed size standard instead of a range of values, as seen in its past size regulations. The SBA welcomes any comments on this procedure and suggestions on alternative methods.

Public comments on the above issues are very valuable to SBA for validating its size standard methodology and its proposed revisions to size standards in this proposed rule. This will help SBA to move forward with its review of size standards for other NAICS Sectors. Commenters addressing size standards for a specific industry or a group of industries should include relevant data and/or other information supporting their comments. If comments relate to using size standards for Federal procurement programs, SBA suggests that commenters provide information on the size of contracts awarded, the size of businesses that can undertake the contracts, start-up costs, equipment and other asset requirements, the amount of subcontracting, other direct and indirect costs associated with the contracts, the use of mandatory sources of supply for products and services, and the degree to which contractors can mark up those costs.

Compliance With Executive Orders 12866, 13563, 12988 and 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. 800).

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

The SBA believes that the proposed size standards revisions for a number of industries in NAICS Sector 51, Information, will better reflect the economic characteristics of small businesses and the Federal government marketplace. The SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To assist the intended

beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The recently enacted Small Business Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions. The supplementary information section of this proposed rule explains SBA's methodology for analyzing a size standard for a particular industry.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status because of this rule is gaining eligibility for Federal small business assistance programs. These include SBA's financial assistance programs, economic injury disaster loans, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted opportunities for small businesses under SBA's business development programs, such as 8(a), Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses (WOSB), and service-disabled veteran-owned small business concerns (SDVO SBC). Federal agencies may also use SBA size standards for a variety of other regulatory and program purposes. These programs assist small businesses to become more knowledgeable, stable, and competitive. In the 15 industries for which SBA has proposed increasing size standards, SBA estimates that more than 500 additional firms will obtain small business status and become eligible for these programs. That number is 1.2 percent of the total number of firms that are classified as small under the current standards in all 20 industries in NAICS Sector 51 covered by this proposed rule. If adopted as proposed, this would increase the small business share of total industry receipts in those industries from about 13 percent under the current size standards to 15 percent.

Three groups will benefit from these proposed size standards, if they are adopted as proposed: (1) Some businesses that are above the current size standards will gain small business status under the higher size standards, thereby enabling them to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby enabling them to continue their participation in the programs; and (3) Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs.

During fiscal years 2007–2009, nearly 98 percent of Federal contracting dollars spent in industries reviewed in this proposed rule were accounted for by the 15 industries for which SBA has proposed to increase size standards. The SBA estimates that additional firms gaining small business status under the proposed size standards could potentially obtain Federal contracts totaling up to $15 million to $20 million annually under SBA's small business, 8(a), SDB, HUBZone, WOSB, and SDVO SBC Programs, and other unrestricted procurements. The added competition for many of these procurements could also result in lower prices to the Government for procurements reserved for small businesses, although SBA cannot quantify this benefit.

Under SBA's 7(a) Business Loan and 504 Programs, based on the 2008–2010 data, SBA estimates that about 5 to 10 additional loans totaling about $1.0 million to $2.0 million in Federal loan guarantees could be made to these newly defined small businesses under the proposed standards. Increasing the size standards will likely result in more small business guaranteed loans to businesses in these industries, but it would be impractical to try to estimate their exact number and total amount loaned. Under the Jobs Act, SBA can now guarantee substantially larger loans than in the past. In addition, the Jobs Act established an alternative size standard ($15 million in tangible net worth and $5 million in net income after income taxes) for business concerns that do not meet the size standards for their industry. Therefore, SBA finds it similarly difficult to quantify the exact impact of these proposed standards on its 7(a) and 504 Loan Programs.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent on the occurrence and severity of a disaster, SBA cannot make a meaningful estimate of benefits for future disasters.

To the extent that 500 newly defined additional small firms could become active in Federal procurement programs, the proposed changes, if adopted, may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement opportunities; additional firms seeking SBA guaranteed lending programs; additional firms eligible for enrollment in the Central Contractor Registration's (CCR) Dynamic Small Business Search database; and additional firms seeking certification as 8(a) or HUBZone firms or qualifying for small business, WOSB, SDVO SBC, or SDB status. Among those newly defined small businesses seeking SBA assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. These added costs will be minimal because mechanisms are already in place to handle these administrative requirements.

Additionally, the costs to the Federal Government may be higher on some Federal contracts. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to small business set-aside contracting might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. However, the additional costs associated with fewer bidders are expected to be minor since, as a matter of law, procurements may be set aside for small businesses or reserved for the 8(a), HUBZone, WOSB, or SDVO SBC Programs only if awards are expected to be made at fair and reasonable prices. In addition, higher costs may result when more full and open contracts are awarded to HUBZone and SDB businesses that receive price evaluation preferences.

The proposed size standards may have distributional effects among large and small businesses. Although SBA cannot estimate with certainty the actual outcome of the gains and losses among small and large businesses, it can identify several probable impacts. There may be a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal contracts for small businesses. In addition, some Federal contracts may be awarded to HUBZone or SDB concerns instead of large businesses since those two categories of small businesses may be eligible for an evaluation adjustment for contracts when they compete on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal

contracts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the number of contracts transferred from large and from currently defined small businesses. The SBA cannot estimate the potential distributional impacts of these transfers with any degree of precision because FPDS–NG data only identify the size of businesses receiving Federal contracts as either ''small business'' or ''other than small business''; FPDS–NG does not provide the exact size of the business.

The proposed revisions to the existing size standards for Industries in NAICS Sector 51, Information, are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to the small business programs designed to assist them.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action including possible distributions impacts that relate to Executive Order 13563 is included above in the Regulatory Impact Analysis under Executive Order 12866.

In an effort to engage interested parties in this action, SBA has presented its methodology (discussed above under Supplementary Information) to various industry associations and trade groups. The SBA also met with various industry groups to obtain their feedback on its methodology and other size standards issues. The SBA also presented its size standards methodology to businesses in 13 cities in the U.S. and sought their input as part of the Jobs Act tours. The presentation also included information on latest status of the comprehensive size standards review and on how interested parties can provide SBA with input and feedback on size standards review.

Additionally, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at several Federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA size standards and whether current standards meet their programmatic needs (both procurement and non-procurement). The SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing this proposed rule.

The review of size standards in NAICS Sector 51, Information, is consistent with EO 13563, section 6 calling for retrospective analyses of existing rules. As discussed previously, the last overall review of size standards occurred during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. The SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, SBA has begun a comprehensive review of its size standards to ensure that existing size standards have supportable bases and to revise them when necessary. In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18 month period from the date of its enactment and do a complete review of all size standards not less frequently than once every 5 years thereafter.

Executive Order 12988

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

Executive Order 13132

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

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule would not impose any new reporting or record keeping requirements.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule, if finalized, may have a significant impact on a substantial number of small businesses in NAICS Sector 51, Information. As described above, this rule may affect small businesses seeking Federal contracts; loans under SBA's 7(a), 504 Guaranteed Loan and Economic Injury Disaster Loan Programs, as well as assistance under other Federal small business programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What are the need for and objective of the rule?; (2) What is SBA's description and estimate of the number of small entities to which the rule will apply?; (3) What are the projected reporting, recordkeeping, and other compliance requirements of the rule?; (4) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule?; and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

1. What are the need for and objective of the rule?

Most of the size standards in NAICS Sector 51, Information, have not been reviewed since the early 1980s. Technology, productivity growth, international competition, mergers and acquisitions, and updated industry definitions may have changed the structure of many industries in that Sector. Such changes can be sufficient to support revisions to current size standards for some industries. Based on its analysis of the latest data available, SBA believes that the revised standards in this proposed rule more appropriately reflect the size of businesses in those industries that need Federal assistance. The recently enacted Small Business Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

2. What is SBA's description and estimate of the number of small entities to which the rule will apply?

If the proposed rule is adopted in its present form, SBA estimates that about 500 additional firms will become small because of increases in size standards in 15 industries. That represents 1.2 percent of the total number of firms that are classified as small under the current standards in all 20 industries in NAICS Sector 51 covered by this proposed rule. This will result in an increase in the small business share of total industry receipts for this Sector from about 13 percent under the current size standards to 15 percent under the proposed standards. The proposed standards, if adopted, will enable more small businesses to retain their small business status for a longer period. Many firms have lost their small business eligibility and find it difficult to compete at such low levels with companies that are significantly larger than they are. The SBA believes the competitive impact will be positive for existing small businesses and for those that exceed the current size standards but are on the very low end of those that are not small. They might otherwise be called or referred to as mid sized businesses, although SBA only defines what is small; other entities are other than small.

3. What are the projected reporting, record keeping and other compliance requirements of the rule and an estimate of the classes of small entities, which will be subject to the requirements?

Proposed size standards changes do not impose any additional reporting or record keeping requirements on small entities. However, qualifying for Federal procurement and a number of other programs requires that entities register in the Central Contractor Registration (CCR) database and certify at least annually that they are small in the Online Representations and Certifications Application (ORCA). Therefore, businesses opting to participate in those programs must comply with CCR and ORCA requirements. There are no costs associated with either CCR registration or ORCA certification. Changing size standards alters the access to SBA programs that assist small businesses but does not impose a regulatory burden as they neither regulate nor control business behavior.

4. What are the relevant Federal rules which may duplicate, overlap, or conflict with the rule?

Under section 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988, November 24, 1995). The SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an agency to establish an alternative small business definition after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

5. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA proposes to amend part 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for 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 Pub. L. 105–135, sec. 401 *et seq.,* 111 Stat. 2592.

2. In § 121.201, in the table, revise the entries for ''511210'', ''512110'', ''512131'', ''512199'', ''512290'', ''515111'', ''515112'', ''515120'', ''515210'', ''517410'', ''517919'', ''518210'', ''519110'', ''519120'', and ''519190'' to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* *	* * *	*	*
511210	Software Publishers	$35.5	
* *	* * *	*	*
512110	Motion Picture and Video Production	30.0	
* *	* * *	*	*
512131	Motion Picture Theaters (except Drive-Ins)	35.5	
* *	* * *	*	*
512199	Other Motion Picture and Video Industries	19.0	
* *	* * *	*	*
512290	Other Sound Recording Industries	10.0	
* *	* * *	*	*
515111	Radio Networks	30.0	

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
515112	Radio Stations	35.5	
515120	Television Broadcasting	35.5	
515210	Cable and Other Subscription Programming	35.5	
* *	* * *	*	*
517410	Satellite Telecommunications	30.0	
* *	* * *	*	*
517919	All Other Telecommunications	30.0	
* *	* * *	*	*
518210	Data Processing, Hosting, and Related Services	30.0	
* *	* * *	*	*
519110	News Syndicates	25.5	
519120	Libraries and Archives	14.0	
* *	* * *	*	*
519190	All Other Information Services	25.5	
* *	* * *	*	*

Dated: July 22, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–26208 Filed 10–7–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1068; Directorate Identifier 2010–NM–189–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 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 installing an automatic shutoff system for the center and auxiliary tank fuel boost pumps, as applicable, and installing a placard in the airplane flight deck if necessary; replacing the P5–2 fuel system module assembly; and installing the un-commanded on (UCO) protection system for the center and auxiliary tank fuel boost pumps, as applicable. This proposed AD would also require revisions to the Limitations and Normal Procedures sections of the airplane flight manual to advise the flightcrew of certain operating restrictions for airplanes equipped with an automatic shutoff system. This proposed AD would also require revising the maintenance program by incorporating new airworthiness limitations for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. This proposed AD was prompted by fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent operation of the center and auxiliary tank fuel boost pumps with continuous low pressure, which could lead to friction sparks or overheating in the fuel pump inlet that could create a potential ignition source inside the center and auxiliary fuel tanks. These conditions, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by November 28, 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: Tak Kobayashi, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; *telephone:* 425–917–6499; fax: 425–917–6590; *e-mail: Takahisa.Kobayashi@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–2011–1068; Directorate Identifier 2010–NM–189–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

The manufacturer has found that certain failures will result in the center and auxiliary tank fuel boost pumps continuing to run after the tank has been depleted. Depending on the failure, pump low pressure may not be annunciated, or power may not be removed from the pump when the pump has been commanded ''OFF.'' Operation of the center and auxiliary tank fuel boost pumps with continuous low pressure could lead to friction sparks or overheating in the fuel pump inlet. This condition, if not corrected, could result in a fuel tank explosion and consequent loss of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 737–28A1216, Original Issue, dated July 29, 2010, which describes procedures for installing the automatic shutoff system for the center and auxiliary fuel tank boost pumps, as applicable, on Model 737–300, –400, and –500 series airplanes; and refers to Airworthiness Limitation (AWL) No. 28–AWL–20 and No. 28–AWL–21 that are related to the modifications specified in that service bulletin.

We have also reviewed Boeing Alert Service Bulletin 737–28A1228, Original Issue, dated August 2, 2010, which describes procedures for installing the automatic shutoff system for the center and auxiliary fuel tank boost pumps, as applicable, on Model 737–100, –200, and –200C series airplanes; and refers to AWL No. 28–AWL–21 and AWL No. 28–AWL–22 that are related to the modifications specified in that service bulletin.

Boeing Alert Service Bulletins 737–28A1216, Original Issue, dated July 29, 2010; and 737–28A1228, Original Issue, dated August 2, 2010; specify prior or concurrent accomplishment of Boeing Service Bulletin 737–28A1210, Original Issue, dated August 2, 2010, which describes procedures for replacing the P5–2 fuel system module assembly with a new or modified P5–2 fuel system module assembly having a new part number, for Model 737–100, –200, –200C, –300, –400, and –500 series airplanes.

Boeing Service Bulletin 737–28A1210, Original Issue, dated August 2, 2010, refers to BAE Systems Service Bulletin 69–37335–28–04, Revision 2, dated February 10, 2010, as an additional source of guidance for modifying and updating the existing P5–2 fuel system module assembly part numbers to new part numbers.

We have also reviewed Boeing Alert Service Bulletin 737–28A1227, Revision 1, dated July 18, 2011. The service information describes procedures for installing the ''un-commanded ON'' protection system for the center and auxiliary fuel boost pumps, as applicable, on airplanes. The installation includes installing new relays and toggle switches in the J2802 box assembly located in the electronic equipment bay (E/E bay), and changing and adding new wire bundles that route from the J2802 box assembly to the P5 forward overhead panel and the P6 disconnect panels. This service bulletin also refers to AWL No. 28–AWL–24 and No. 28–AWL–25 that are related to the modifications specified in that service bulletin for Model 737–100, –200, and –200C series airplanes; and AWL No. 28–AWL–23 and No. 28–AWL–24 that are related to the modifications specified in that service bulletin for Model 737–300, –400, and –500 airplanes.

We have also reviewed Section C, ''Fuel Systems Airworthiness Limitations,'' of Section 9 of the Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), Document D6–38278–CMR, Revision July 2011, which contains the following airworthiness limitations:

- For Model 737–300, –400, and –500 series airplanes that have incorporated Boeing Alert Service Bulletin 737–28A1216, AWLs No. 28–AWL–20 and No. 28–AWL–21 are airworthiness limitation instructions (ALIs) for an operational check of the installed automatic shutoff system.
- For Model 737–100, –200, and –200C series airplanes that have incorporated Boeing Alert Service Bulletin 737–28A1228, AWLs No. 28–AWL–21 and No. 28–AWL–22 are ALIs for an operational check of the installed automatic shutoff system.
- For Model 737–300, –400, and –500 series airplanes that have incorporated Boeing Alert Service Bulletin 737–28A1227, AWLs No. 28–AWL–23 and No. 28–AWL–24 are ALIs for an operational check of the installed

power-failed-on (un-commanded ON) protection system.

• For Model 737–100, –200, and –200C series airplanes that have incorporated Boeing Alert Service Bulletin 737–28A1227, AWL No. 28–AWL–24 and No. 28–AWL–25 are ALIs for an operational check of the installed power-failed-on (un-commanded ON) protection system.

Other Relevant Rulemaking

On April 18, 2001, we issued AD 2001–08–24, Amendment 39–12201 (66 FR 20733, April 25, 2001), for all Model 737 series airplanes. That AD requires revising the airplane flight manual to prohibit extended dry operation of the center tank fuel pumps (with no fuel passing through the pumps). We issued that AD to prevent ignition of fuel vapors due to the generation of sparks and a potential ignition source inside the center tank caused by metal-to-metal contact during dry fuel pump operation, which could result in a fire or explosion of the fuel tank. Accomplishment of the actions required by paragraphs (g), (h), (i), and (l) of this AD, and paragraph (j) or (k) of this AD, as applicable, is acceptable for compliance with the requirements of paragraph (a) of AD 2001–08–24.

On December 16, 2009, we issued AD 2008–10–09 R1, Amendment 39–16148 (74 FR 69264, December 31, 2009), for all Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. That AD requires revising the maintenance program to incorporate new airworthiness limitations (AWLs) for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. That AD also requires an initial inspection to phase in certain repetitive AWL inspections, and repair if necessary. We issued that AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane. Incorporation of AWLs No. 28–AWL–21 and No. 28–AWL–22 for Model 737–100, –200, and 200C series airplanes; and AWLs No. 28–AWL–20 and No. 28–AWL–21 for Model 737–300, –400, and –500 series airplanes; in accordance with paragraphs (g)(1) and (g)(2) of AD 2008–10–09 R1, terminates the requirements of the corresponding AWLs incorporation required by paragraph (l) of this AD.

FAA's Determination

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.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.''

This proposed AD would also require installing a placard adjacent to the pilot's primary flight display on all airplanes not equipped with an automatic shutoff system for the center tank fuel boost pumps and auxiliary fuel boost pumps, to specify that fuel usage restrictions given in AD 2001–08–24 (66 FR 20733, April 25, 2001) are required. Installing an automatic shutoff system on an airplane would end the need for the placard installation for only that airplane.

This proposed AD would also require revisions to the Limitations and Normal Procedures sections of the applicable Boeing 737 Airplane Flight Manual (AFM) to advise the flightcrew of certain operating restrictions related to the automatic shutoff system for the center and auxiliary tank fuel boost pumps.

Differences Between the Proposed AD and the Service Information

Although Boeing Service Bulletin 737–28A1210, Revision 1, dated May 13, 2011; and Boeing Alert Service Bulletins 737–28A1227, Revision 1, dated July 18, 2011; and 737–28A1228, Original Issue, dated August 2, 2010; specify that certain operators may contact the manufacturer for modification instructions, this proposed AD would require those operators to do the modification using a method approved by the FAA.

We received a copy of Boeing Information Notice 737–28A1216 IN 01, dated March 25, 2011; and Boeing Information Notice 737–28A1228 IN 01, dated March 25, 2011, which describe an issue pertaining to installation of the J2802 box on airplanes with airstairs. When the J2802 box is installed in accordance with Boeing Alert Service Bulletin 737–28A1216, Original Issue, dated July 29, 2010; or 737–28A1228, Original Issue, dated August 2, 2010; the forward face of the box will interfere with the airstairs and the airstairs support structure. Boeing is currently designing a new J2802 box for airplanes with airstairs. Installation of the automatic shutoff system required by paragraph (g) of this AD only applies to the affected airplanes without airstairs. In addition, installation of the 'un-commanded ON' protection system required by paragraph (m) of this AD only applies to the affected airplanes without airstairs. We may consider further rulemaking for installations of the automatic shutoff system and the 'un-commanded ON' protection system on those affected airplanes with airstairs. Installation of a placard required by paragraph (i) of this AD applies to all affected airplanes regardless of airstairs. Once the automatic shutoff system is installed on any airplanes in an operator's fleet, a placard must be installed on all affected airplanes not equipped with an automatic shutoff system.

Although Boeing Alert Service Bulletins 737–28A1216, Original Issue, dated July 29, 2010; and 737–28A1228, Original Issue, dated August 2, 2010; refer to Boeing Alert Service Bulletin 737–28A1210, Original Issue, dated August 2, 2010, as a concurrent requirement, this AD refers to Boeing Service Bulletin 737–28A1210, Revision 1, dated May 13, 2011. Since the P5–2 fuel system module assembly part numbers and the associated airplane group numbers, as shown in the figures of Boeing Alert Service Bulletin 737–28A1210, Original Issue, dated August 2, 2010, may be incorrect for certain airplanes due to interchangeability of certain part numbers, this AD requires Revision 1 of that service bulletin.

Costs of Compliance

We estimate that this proposed AD will affect 701 airplanes of U.S. registry. Of those 701 airplanes, 554 airplanes are without airstairs.

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
Install auto shutoff protection for Model 737–100, –200, –200C airplanes (98 airplanes).	Between 92 and 152 work-hours × $85 per hour = Between $7,820 and $12,920 [1].	Between $10,127 and $15,123 [1].	Between $17,947 and $28,043 [1].	Between $1,758,806 and $2,748,214 [1].
Install auto shutoff protection for Model 737–300, –400, and –500 airplanes (456 airplanes).	Between 92 and 152 work-hours × $85 per hour = Between $7,820 and $12,920 [1].	Between $9,869 and $14,265 [1].	Between $17,689 and $27,185 [1].	Between $8,066,184 and $12,396,360 [1].
Install P5–2 module	1 work-hour × $85 per hour = $85	$0	$85	$47,090.
Install 'un-commanded ON' protection	Between 38 and 63 work-hours × $85 per hour = Between $3,230 and $5,355 [1].	Between $3,440 and $5,699 [1].	Between $6,670 and $11,054 [1].	Between $3,695,180 and $6,123,916 [1].
Revise aircraft flight manual	1 work-hour × $85 per hour = $85	$0	$85	$47,090.
Revise Maintenance Program	1 work-hour × $85 per hour = $85	$0	$85	$47,090.

[1] Depending on group.

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–2011–1068; Directorate Identifier 2010–NM–189–AD.

Comments Due Date

(a) We must receive comments by November 28, 2011.

Affected ADs

(b) This AD affects AD 2001–08–24, Amendment 39–12201 (66 FR 20733, April 25, 2001). Also, AD 2008–10–09 R1, Amendment 39–16148 (74 FR 69264, December 31, 2009), affects this AD.

Applicability

(c) The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes; certificated in any category.

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

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 28, Fuel.

Unsafe Condition

(e) This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent operation of the center and auxiliary tank fuel boost pumps with continuous low pressure, which could lead to friction sparks or overheating in the fuel pump inlet that could create a potential ignition source inside the center and auxiliary fuel tanks. These conditions, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Installation of Automatic Shutoff System for the Center and Auxiliary Tank Fuel Boost Pumps

(g) Within 36 months after the effective date of this AD, do the actions required by paragraph (g)(1), (g)(2), or (g)(3) of this AD, as applicable. If a placard has been previously installed on an airplane, in accordance with the requirements of paragraph (i) of this AD, the placard may be removed from the flight deck of only that airplane after the automatic shutoff system has been installed, as specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD, as applicable. Installing automatic shutoff systems on all airplanes in an operator's fleet, in accordance with this paragraph, terminates the placard installation required by paragraph (i) of this AD, for all airplanes in an operator's fleet.

(1) For Model 737–100, –200, and –200C series airplanes without airstairs, in Groups 2 through 16, as identified in Boeing Alert Service Bulletin 737–28A1228, Original

Issue, dated August 2, 2010: Install the automatic shutoff system for the center and auxiliary fuel tank boost pumps, as applicable, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1228, Original Issue, dated August 2, 2010.

(2) For Model 737–100, –200, and –200C series airplanes in Group 1, as identified in Boeing Alert Service Bulletin 737–28A1228, Original Issue, dated August 2, 2010: Install the automatic shutoff system for the center and auxiliary fuel tank boost pumps, as applicable, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO). For a modification method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

(3) For Model 737–300, –400, and –500 series airplanes without airstairs, as identified in Boeing Alert Service Bulletin 737–28A1216, Original Issue, dated July 29, 2010: Install the automatic shutoff system for the center and auxiliary fuel tank boost pumps, as applicable, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1216, Original Issue, dated July 29, 2010.

Concurrent Installation of the P5–2 Fuel System Module Assembly

(h) Before or concurrently with accomplishing the actions required by paragraph (g) of this AD, do the actions required by paragraph (h)(1) or (h)(2) of this AD, as applicable.

(1) For airplanes in Group 2, as identified in Boeing Service Bulletin 737–28A1210, Revision 1, dated May 13, 2011: Replace the P5–2 fuel system module assembly with a modified or new P5–2 fuel system module assembly having a new part number, in accordance with Boeing Service Bulletin 737–28A1210, Revision 1, dated May 13, 2011.

Note 2: Boeing Service Bulletin 737–28A1210, Revision 1, dated May 13, 2011, refers to BAE Systems Service Bulletin 69–37335–28–04, Revision 2, dated February 10, 2010, as an additional source of guidance for modifying and updating the existing P5–2 fuel system module assembly part numbers to new part numbers.

(2) For airplanes in Group 1 as identified in Boeing Service Bulletin 737–28A1210, Revision 1, dated May 13, 2011: Replace the P5–2 fuel system module assembly, in accordance with a method approved by the Manager, Seattle ACO. For a modification method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

Concurrent Installation of a Placard for Mixed Fleet Operation

(i) Concurrently with installing the automatic shutoff system on any airplane in an operator's fleet, as required by paragraph (g) of this AD, install a placard adjacent to the pilot's primary flight display on all airplanes in the operator's fleet not equipped with an automatic shutoff system for the center and auxiliary tank fuel boost pumps, as applicable. The placard reads as follows (alternative placard wording may be used if approved by an appropriate FAA Principal Operations Inspector):

''AD 2001–08–24 fuel usage restrictions required.''

Installing an automatic shutoff system on an airplane, in accordance with the requirements of paragraph (g) of this AD, terminates the placard installation required by this paragraph for only that airplane. Installing automatic shutoff systems on all affected airplanes in an operator's fleet, in accordance with the requirements of paragraph (g) of this AD, terminates the placard installation required by this paragraph for all affected airplanes in an operator's fleet.

Airplane Flight Manual (AFM) Revisions for Airplanes Without Boeing Auxiliary Fuel Tanks

(j) For airplanes without Boeing auxiliary fuel tanks: Concurrently with accomplishing the actions required by paragraph (g) of this AD, do the actions specified in paragraphs (j)(1) and (j)(2) of this AD.

(1) Revise Section 1 of the Limitations section of the applicable Boeing 737 AFM to include the following statement. This may be done by inserting a copy of this AD into the AFM.

''CENTER TANK FUEL PUMPS

Intentional dry running of a center tank fuel pump (low pressure light illuminated) is prohibited.''

Note 3: When a statement identical to that in paragraph (j)(1) of this AD has been included in the general revisions of the applicable Boeing 737 AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

(2) Revise Section 3 of the Normal Procedures section of the applicable Boeing 737 AFM to include the following statements. This may be done by inserting a copy of this AD into the AFM. Alternative statements that meet the intent of the following requirements may be used if approved by an appropriate FAA Principal Operations Inspector.

''NORMAL FUEL USAGE

Center tank fuel pumps must not be ''ON'' unless personnel are available in the flight deck to monitor low pressure lights.

For ground operation, center tank fuel pump switches must not be positioned ''ON'' unless the center tank fuel quantity exceeds 1,000 pounds (453 kilograms), except when defueling or transferring fuel. Upon positioning the center tank fuel pump switches ''ON,'' verify momentary illumination of each center tank fuel pump low pressure light.

For ground and flight operations, the corresponding center tank fuel pump switch must be positioned ''OFF'' when a center tank fuel pump low pressure light illuminates [1]. Both center tank fuel pump switches must be positioned ''OFF'' when the first center tank fuel pump low pressure light illuminates if the center tank is empty. [1] When established in a level flight attitude, both center tank pump switches should be positioned ''ON'' again if the center tank contains usable fuel.

DEFUELING AND FUEL TRANSFER

When transferring fuel or defueling center or main tanks, the fuel pump low pressure lights must be monitored and the fuel pumps positioned to ''OFF'' at the first indication of the fuel pump low pressure [1].

Defueling the main tanks with passengers on board is prohibited if the main tank fuel pumps are powered [2].

Defueling the center tank with passengers on board is prohibited if the center tank fuel pumps are powered and the auto-shutoff system is inhibited [2].

[1] Prior to transferring fuel or defueling, conduct a lamp test of the respective fuel pump low pressure lights.

[2] Fuel may be transferred from tank to tank or the aircraft may be defueled with passengers on board, provided fuel quantity in the tank from which fuel is being taken is maintained at or above 2,000 pounds (907 kilograms).''

AFM Revisions for Airplanes With Boeing Auxiliary Fuel Tanks

(k) For airplanes with Boeing auxiliary fuel tanks: Concurrently with accomplishing the actions required by paragraph (g) of this AD, do the actions specified in paragraphs (k)(1) and (k)(2) of this AD.

(1) Revise Section 1 of the Limitations section of the applicable Boeing 737 AFM to include the following statements. This may be done by inserting a copy of this AD into the AFM.

''CENTER WING (AND BOEING AUXILIARY) TANK FUEL PUMPS

Intentional dry running of a center wing or auxiliary tank fuel pump (low pressure light illuminated) is prohibited.''

Note 4: When a statement identical to that in paragraph (k)(1) of this AD has been included in the general revisions of the applicable Boeing 737 AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

(2) Revise Section 3 of the Normal Procedures section of the applicable Boeing 737 AFM to include the following statements. This may be done by inserting a copy of this AD into the AFM. Alternative statements that meet the intent of the following requirements may be used if approved by an appropriate FAA Principal Operations Inspector.

''CENTER WING (AND BOEING AUXILIARY) TANK FUEL PUMPS

Center wing or auxiliary tank fuel pumps must not be ''ON'' unless personnel are available in the flight deck to monitor low pressure lights.

For ground operation, center wing (or auxiliary) tank fuel pump switches must not be positioned ''ON'' unless the center wing (or auxiliary) tank fuel quantity exceeds 1,000 pounds (453 kilograms), except when defueling or transferring fuel. Upon positioning the center wing (or auxiliary) tank fuel pump switches ''ON,'' verify momentary illumination of each center wing

(or auxiliary) tank fuel pump low pressure light.

For ground and flight operations, the corresponding center wing (or auxiliary) tank fuel pump switch must be positioned ''OFF'' when a center wing (or auxiliary) tank fuel pump low pressure light illuminates [1]. Both center wing (or auxiliary) tank fuel pump switches must be positioned ''OFF'' when the first center wing (or auxiliary) tank fuel pump low pressure light illuminates if the center wing (or auxiliary) tank is empty.

[1] When established in a level flight attitude, both center wing (or auxiliary) tank pump switches should be positioned ''ON'' again if the center wing (or auxiliary) tank contains usable fuel.

DEFUELING AND FUEL TRANSFER

When transferring fuel or defueling center wing, auxiliary or main tanks, the fuel pump low pressure lights must be monitored and the fuel pumps positioned to ''OFF'' at the first indication of the fuel pump low pressure [1].

Defueling the main tanks with passengers on board is prohibited if the main tank fuel pumps are powered [2].

Defueling the center wing (or auxiliary) tank with passengers on board is prohibited if the center wing (or auxiliary) tank fuel pumps are powered and the auto-shutoff system is inhibited [2].

[1] Prior to transferring fuel or defueling, conduct a lamp test of the respective fuel pump low pressure lights.

[2] Fuel may be transferred from tank to tank or the aircraft may be defueled with passengers on board, provided fuel quantity in the tank from which fuel is being taken is maintained at or above 2,000 pounds (907 kilograms).''

Airworthiness Limitations (AWLs) Revision for Automatic Shutoff System

(l) Concurrently with accomplishing the actions required by paragraph (g) of this AD, or within 30 days after the effective date of this AD, whichever occurs later: Revise the maintenance program by incorporating the AWLs specified in paragraphs (l)(1), (l)(2), (l)(3), and (l)(4) of this AD, as applicable. The initial compliance time for the actions specified in the applicable AWLs is within 1 year after accomplishing the installation required by paragraph (g) of this AD, or within 1 year after the effective date of this AD, whichever occurs later.

(1) For Model 737–100, –200, and –200C series airplanes without Boeing auxiliary fuel tanks installed: AWL No. 28–AWL–21 of Section C, ''Fuel Systems Airworthiness Limitations,'' of Section 9 of the Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), Document D6–38278–CMR, Revision July 2011.

(2) For Model 737–100, –200, and –200C series airplanes with Boeing auxiliary fuel tanks installed: AWL No. 28–AWL–21 and AWL No. 28–AWL–22 of Section C, ''Fuel Systems Airworthiness Limitations,'' of Section 9 of the Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), Document D6–38278–CMR, Revision July 2011. (3) For Model 737–300, –400, and –500 series airplanes without Boeing auxiliary fuel tanks installed: AWL No. 28–AWL–20 of Section C, ''Fuel Systems Airworthiness Limitations,'' of Section 9 of the Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), Document D6–38278–CMR, Revision July 2011.

(4) For Model 737–300, –400, and –500 series airplanes with Boeing auxiliary fuel tanks installed: AWL No. 28–AWL–20 and AWL No. 28–AWL–21 of Section C, ''Fuel Systems Airworthiness Limitations,'' of Section 9 of the Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), Document D6–38278–CMR, Revision July 2011.

Installation of 'Un-Commanded ON' Protection System

(m) Within 60 months after the effective date of this AD, do the actions required by paragraph (m)(1) or (m)(2) of this AD, as applicable.

(1) For airplanes without airstairs in Groups 2 through 8, as identified in Boeing Alert Service Bulletin 737–28A1227, Revision 1, dated July 18, 2011: Install the 'un-commanded ON' protection system for the center and auxiliary tank fuel boost pumps, as applicable, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1227, Revision 1, dated July 18, 2011.

(2) For airplanes in Group 1, as identified in Boeing Alert Service Bulletin 737–28A1227, Revision 1, dated July 18, 2011: Install the 'un-commanded ON' protection system for the center and auxiliary tank fuel boost pumps, as applicable, in accordance with a method approved by the Manager, Seattle ACO. For an installation method to be approved by the Manager, Seattle ACO, as required by this paragraph, the manager's approval letter must specifically refer to this AD.

AWLs Revision for 'Un-Commanded ON' Protection System

(n) Concurrently with accomplishing the actions required by paragraph (m) of this AD, or within 30 days after the effective date of this AD, whichever occurs later: Revise the maintenance program by incorporating the AWLs specified in paragraphs (n)(1), (n)(2), (n)(3), and (n)(4) of this AD, as applicable. The initial compliance time for the actions specified in applicable AWLs is within 1 year after accomplishing the installation required by paragraph (m) of this AD, or within 1 year after the effective date of this AD, whichever occurs later.

(1) For Model 737–100, –200, and –200C series airplanes without Boeing auxiliary fuel tanks: AWL No. 28–AWL–24 of Section C, ''Fuel Systems Airworthiness Limitations,'' of Section 9 of the Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), Document D6–38278–CMR, Revision July 2011.

(2) For Model 737–100, –200, and –200C series airplanes with Boeing auxiliary fuel tanks: AWL No. 28–AWL–24 and AWL No. 28–AWL–25 of Section C, ''Fuel Systems Airworthiness Limitations,'' of Section 9 of the Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), Document D6–38278–CMR, Revision July 2011.

(3) For Model 737–300, –400, and –500 series airplanes without Boeing auxiliary fuel tanks: AWL No. 28–AWL–23 of Section C, ''Fuel Systems Airworthiness Limitations,'' of Section 9 of the Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), Document D6–38278–CMR, Revision July 2011.

(4) For Model 737–300, –400, and –500 series airplanes with Boeing auxiliary fuel tanks: AWL No. 28–AWL–23 and AWL No. 28–AWL–24 of Section C, ''Fuel Systems Airworthiness Limitations,'' of Section 9 of the Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), Document D6–38278–CMR, Revision July 2011.

No Alternative Inspections or Inspection Intervals

(o) After accomplishing the applicable actions specified in paragraphs (l) and (n) of this AD, no alternative inspections or inspection intervals may be used unless the inspections or inspection intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (t) of this AD.

Credit for Actions Accomplished in Accordance With Previous Service Information

(p) Replacement of the P5–2 fuel system module assembly done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 737–28A1210, Original Issue, dated August 2, 2010, is acceptable for compliance with the requirements of paragraph (h) of this AD.

(q) Actions accomplished before the effective date of this AD in accordance with the Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–38278–CMR, Revision May 2009; or Revision August 2010; are acceptable for compliance with the corresponding requirements of paragraphs (l) and (n) of this AD.

Method of Compliance for Paragraph (l) of This AD

(r) Incorporating AWLs No. 28–AWL–21 and No. 28–AWL–22 for Model 737–100, –200, and –200C series airplanes; and AWLs No. 28–AWL–20 and No. 28–AWL–21 for Model 737–300, –400, and –500 series airplanes; in accordance with paragraphs (g)(1) and (g)(2) of AD 2008–10–09 R1 (74 FR 69264, December 31, 2009), is acceptable for compliance with the corresponding AWL incorporation required by paragraph (l) of this AD.

Method of Compliance for Paragraph (a) of AD 2001–08–24

(s) Accomplishing the actions required by paragraphs (g), (h), (i), and (l) of this AD, and paragraph (j) or (k) of this AD, as applicable, is an acceptable method of compliance with the requirements of paragraph (a) of AD 2001–08–24, Amendment 39–12201 (66 FR 20733, April 25, 2001).

Alternative Methods of Compliance (AMOCs)

(t)(1) The Manager, Seattle ACO, 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

(u) For more information about this AD, contact Tak Kobayashi, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *telephone:* 425–917–6499; fax: 425–917–6590; *e-mail: Takahisa.Kobayashi@faa.gov.*

(v) 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, the FAA, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on October 3, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–26242 Filed 10–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0893; Airspace Docket No. 11–ANM–18]

Proposed Modification of Class E Airspace; The Dalles, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at The Dalles, OR. Controlled airspace is necessary to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Columbia Gorge Regional/The Dalles Municipal Airport, The Dalles, OR. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport. This action also changes the airport name.

DATES: Comments must be received on or before November 28, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2011–0893; Airspace Docket No. 11–ANM–18, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2011–0893 and Airspace Docket No. 11–ANM–18) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2011–0893 and Airspace Docket No. 11–ANM–18''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace at Columbia Gorge Regional/

The Dalles Municipal Airport, The Dalles, OR, to accommodate aircraft using RNAV (GPS) standard instrument approach procedures at the airport. This action would enhance the safety and management of aircraft operations at Columbia Gorge Regional/The Dalles Municipal Airport, The Dalles, OR. This also would note the airport's name change from The Dalles Municipal Airport to Columbia Gorge Regional/The Dalles Municipal Airport.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies controlled airspace at Columbia Gorge Regional/The Dalles Municipal Airport, The Dalles, OR.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM OR E5 The Dalles, OR [Modified]

Columbia Gorge Regional/The Dalles Municipal Airport, OR
(Lat. 45°37′07″ N., long. 121°10′02″ W.)
Klickitat VOR/DME
(Lat. 45°42′49″ N., long. 121°06′03″ W.)

That airspace extending upward from 700 feet above the surface within a 12.9-mile radius of Columbia Gorge Regional/The Dalles Municipal Airport; that airspace extending upward from 1,200 feet above the surface within a 20.1-mile radius of the VOR/DME extending clockwise from the 088° radial to the 272° radial.

Issued in Seattle, Washington, on October 3, 2011.

John Warner,

Manager, Operations Support Group, Western Service Center

[FR Doc. 2011–26266 Filed 10–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 523

RIN 3141–AA45

Review and Approval of Existing Ordinances or Resolutions

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: On November 18, 2010, the National Indian Gaming Commission (NIGC) issued a Notice of Inquiry and Notice of Consultation advising the public that the NIGC was conducting a comprehensive review of its regulations and requesting public comment on the process for conducting the regulatory review. On April 4, 2011, after holding eight consultations and reviewing all comments, NIGC published a Notice of Regulatory Review Schedule setting out a consultation schedule and process for review.

Based on the above review, the Commission proposes to rescind our regulations pertaining to the approval of existing ordinances and resolutions that were enacted by a Tribe prior to February 22, 1993 and that have not been submitted to the NIGC Chair, and to notify the public that it does not intend to take action at this time on certain other regulations identified in the Notice of Regulatory Review Schedule.

DATES: The agency must receive comments on or before December 12, 2011.

ADDRESSES: You may submit comments by any one of the following methods, however, please note that comments sent by electronic mail are strongly encouraged.

- *E-mail comments to: reg.review@nigc.gov.*
- *Mail comments to:* National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005.
- *Hand deliver comments to:* 1441 L Street, NW., Suite 9100, Washington, DC 20005.
- *Fax comments to:* National Indian Gaming Commission at 202–632–0045.

FOR FURTHER INFORMATION CONTACT: Lael Echo-Hawk, Counselor to the Chairwoman, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100 Washington, DC 20005. *Telephone:* 202–632–7009; *e-mail: reg.review@nigc.gov.*

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* authorizes the NIGC to promulgate such regulations and guidelines as it deems appropriate to implement certain provisions of the Act. 25 U.S.C. 2706(b)(10). On November 12, 2010, the Commission issued a Notice of Inquiry (NOI) requesting comment on which of its regulations were most in need of revision, in what order the Commission should review its regulations, and the process NIGC should utilize to make revisions. The NOI was published in the **Federal Register** on November 18, 2010. 75 FR 70680. The Commission's regulatory

review process established a Tribal consultation schedule of 33 meetings over 11 months with a description of the regulation groups to be covered at each consultation.

Removal of Part 523—Review and Approval of Existing Ordinances or Resolutions

Part 523 applies only to gaming ordinances or resolutions enacted by Tribes prior to January 22, 1993, and not yet submitted to the Chairwoman. Comments received in response to the NOI and during Tribal consultation meetings indicated any ordinances or resolutions enacted prior to January 22, 1993 have already been submitted to the Chairwoman. Accordingly, comments support the repeal of this Part. A review of the Commission documents also did not find any ordinances or resolutions meeting the criteria of this Part. Because this regulation appears to be no longer necessary, the Commission proposes to remove this Part.

List of Subjects in 25 CFR Part 523

Gambling, Indian—lands, Indian—Tribal government, Reporting and recordkeeping requirements.

Accordingly, under the authority 25 U.S.C. 2701, the National Indian Gaming Commission proposes to amend 25 CFR chapter III by removing and reserving part 523.

PART 523—[REMOVED AND RESERVED]

Dated: October 3, 2011, in Washington, DC.

Tracie L. Stevens,

Chairwoman.

Steffani A. Cochran,

Vice-Chairwoman.

Daniel J. Little,

Associate Commissioner.

[FR Doc. 2011–25930 Filed 10–11–11; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 571

RIN 3141–AA49

Issuance of Investigation Completion Letters

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend our regulations to provide for an investigation completion letter to be issued to a Tribe if the Agency's authorized staff will not recommend the commencement of an enforcement proceeding against a respondent.

DATES: Submit comments on or before December 12, 2011.

ADDRESSES: You may submit comments by any one of the following methods, however, please note that comments sent by electronic mail are strongly encouraged.

- *E-mail comments to: reg.review@nigc.gov.*
- *Mail comments to:* National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005.
- *Hand deliver comments to:* 1441 L Street, NW., Suite 9100, Washington, DC 20005.
- *Fax comments to:* National Indian Gaming Commission at 202–632–0045.

FOR FURTHER INFORMATION CONTACT: Lael Echo-Hawk, Counselor to the Chairwoman, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005. *Telephone:* 202–632–7009; *e-mail: reg.review@nigc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* was signed into law on October 17, 1988. The Act establishes the National Indian Gaming Commission (''Commission'') and sets out a comprehensive framework for the regulation of gaming on Indian lands. The purposes of IGRA include providing a statutory basis for the operation of gaming by Indian Tribes as a means of promoting Tribal economic development, self-sufficiency, and strong Tribal governments; ensuring that the Indian Tribe is the primary beneficiary of the gaming operation; and declaring that the establishment of independent federal regulatory authority for gaming on Indian lands, the establishment of federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating Tribal revenue. 25 U.S.C. 2702.

On November 18, 2010, the National Indian Gaming Commission (NIGC) issued a Notice of Inquiry and Notice of Consultation (NOI) advising the public that the NIGC was conducting a comprehensive review of its regulations and requesting public comment on which of its regulations were most in need of revision, in what order the Commission should review its regulations, and the process NIGC should utilize to make revisions. 75 FR 70680 (Nov. 18, 2010). On April 4, 2011, after holding eight consultations and reviewing all comments, NIGC published a Notice of Regulatory Review Schedule (NRR) setting out a consultation schedule and process for review. 76 FR 18457. The Commission's regulatory review process established a Tribal consultation schedule with a description of the regulation groups to be covered at each consultation. This part 571 was included in the regulatory review.

II. Development of the Proposed Rule

The Commission conducted a total of 9 Tribal consultations as part of its review of part 571. Tribal consultations were held in every region of the country and were attended by over 137 Tribes and 381 Tribal leaders or their representatives. In addition to Tribal consultations, on June 28, 2011, the Commission requested public comment on a preliminary draft of amendments to part 571. After considering the comments received from the public and through Tribal consultations, the Commission proposes one amendment to part 571: inclusion of a process for issuing an investigation completion letter.

The Notice of Regulatory Review Schedule (NRR) announced the Commission's intent to review whether part 571 needed revised to clarify the NIGC's authority to access records located off-site, including at sites maintained and owned by third-parties. Additionally, comments received during consultation indicated a need to provide a response to Tribes who had been the subject of an investigation but never issued a notice of violation.

A. NIGC Authority To Access Off-Site Records

In response to comments received from the NOI, the NRR included review of whether the regulations should include language clarifying the NIGC's authority to access records located off-site, including at sites maintained and owned by third parties. A discussion draft containing this revision was posted for comment. Some comments received indicated that this revision was not objectionable, so long as the Commission was not accessing Tribal government records or Class III records. Other comments did not object to the proposed amendment, but stated that it was unnecessary because under the provision of the Act, the Commission has subpoena authority ''to require by subpoena the attendance and testimony

of witnesses and the production of all books, papers, and documents relating to any matter under consideration or investigation.'' 25 U.S.C. 2715. Another commentator stated that this issue is already adequately addressed by regulation. Another comment stated that this would be an expansion of the NIGC's authority and would constitute an unwarranted intrusion into a Tribe's ability to self-govern.

The Commission agrees with the comments that an amendment is unnecessary because IGRA and NIGC regulations already provide broad authority to access off-site records, including sites maintained and owned by third parties. The amendment contained in the preliminary draft of this regulation did not change this already comprehensive subpoena authority. The proposed revision is thus unnecessary and has not been included in this proposed rule.

B. Investigation Completion Letter

During consultation, the Commission heard that the regulations should include a process for notifying a Tribe that an investigation has been concluded. Tribal representatives explained that in some instances they were never notified of the results of investigations opened by the NIGC years ago. The lack of any response left Tribes in a situation where when asked, the Tribe had to indicate that they were under investigation. The discussion draft attempted to formalize NIGC's informal process of advising a Tribe, through NIGC's authorized representative, after an investigation was terminated. All comments received on the discussion draft were supportive of the concept. However, several comments indicated that such a letter should be mandatory and not discretionary. Because each investigation and Tribe are different, the Commission believes it is important to provide the NIGC with the discretion to evaluate each investigation on a case-by-case basis and to decide to issue a letter based on the facts and circumstances in that particular investigation. The proposed rule retains that discretion. Additionally, the discussion draft titled this section ''Investigation Closure Letter'', however, commentators recommended changing the title to ''Investigation Completion Letter'' stating that ''closure'' is a term used for closure of a gaming operation. The Commission made this recommended change in this proposed rule.

Regulatory Matters

Regulatory Flexibility Act

This proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more. This rule will not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies or geographic regions and does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency within the Department of the Interior, is exempt from compliance with the Unfunded Mandates Reform Act. 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that this proposed rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of General Counsel has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

National Environmental Policy Act

The Commission has determined that this proposed rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*

Paperwork Reduction Act

This proposed rule does not require information collection under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.,* and is therefore not subject to review by the Office of Management and Budget.

List of Subjects in 25 CFR Part 571

Gambling, Indian—lands, Indian—Tribal government, Reporting and recordkeeping requirements.

Accordingly, for the reasons discussed in the preamble, the Commission proposes to amend 25 CFR part 571 to read as follows:

PART 571—MONITORING AND INVESTIGATIONS

1. The authority citation for part 571 continues to read as follows:

Authority: 25 U.S.C. 2701 *et seq.*

2. Add § 571.4 to read as follows:

§ 571.4 Investigation completion letter.

In instances where NIGC agency staff have concluded its investigation of a particular matter and will not recommend the commencement of an enforcement proceeding against a respondent at that time, the Commission's authorized representative, in his or her discretion, may advise the party by letter that the investigation has been completed. An investigation completion letter does not constitute a finding that no violation of IGRA, NIGC regulations, or a Tribe's approved gaming ordinance occurred. Further, an investigation completion letter does not preclude the reopening of an investigation or the initiation of an enforcement action by the Chair.

Dated: October 3, 2011, in Washington, DC.

Tracie L. Stevens,

Chairwoman.

Steffani A. Cochran,

Vice-Chairwoman.

Daniel J. Little,

Associate Commissioner.

[FR Doc. 2011–25923 Filed 10–11–11; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AB65

Proximity Detection Systems for Continuous Mining Machines in Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; scheduling of public hearing.

SUMMARY: The Mine Safety and Health Administration (MSHA) is announcing

the date and location of an additional public hearing on the Agency's proposed rule addressing Proximity Detection Systems for Continuous Mining Machines in Underground Coal Mines, published on August 31, 2011.

DATES: The public hearing dates and locations are listed in the **SUPPLEMENTARY INFORMATION** section of this document. Comments must be received by midnight Eastern Standard Time on November 14, 2011.

ADDRESSES: Comments, requests to speak, and informational materials for the rulemaking record may be sent to MSHA by any of the following methods. Clearly identify all submissions in the subject line of the message with ''RIN 1219–AB65''.

(1) *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

(2) *Electronic mail: zzMSHA-comments@dol.gov.* Include ''RIN 1219–AB65'' in the subject line of the message.

(3) *Facsimile:* 202–693–9441. Include ''RIN 1219–AB65'' in the subject line of the message.

(4) *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939.

(5) *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *fontaine.roslyn@dol.gov* (E-mail), 202–693–9440 (Voice), or 202–693–9441 (Fax).

SUPPLEMENTARY INFORMATION:

I. Availability of Information

MSHA published the proposed rule in the **Federal Register** on August 31, 2011 (76 FR 54163); it is available at *http://www.regulations.gov* and on MSHA's Web site at *http://www.msha.gov/REGS/FEDREG/PROPOSED/2011PROP/2011-22125.PDF.*

II. Public Hearings

On August 31, 2011, MSHA announced that it would hold three public hearings on its proposed rule for Proximity Detection Systems on Continuous Mining Machines in Underground Coal Mines. Due to requests from the public and to provide maximum opportunity for public participation in this rulemaking, MSHA is adding an additional public hearing. MSHA will hold an additional public hearing on October 27, 2011, in Evansville, Indiana.

The hearings will begin 9 a.m. with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. Persons do not have to make a written request to speak; however, persons and organizations wishing to speak are encouraged to notify MSHA in advance for scheduling purposes. MSHA requests that parties making presentations at the hearings submit them no later than five days prior to the hearing. Presentations and accompanying documentation will be included in the rulemaking record.

The hearings will be conducted in an informal manner. Formal rules of evidence or cross examination will not apply. The hearing panel may ask questions of speakers and speakers may ask questions of the hearing panel. Verbatim transcripts of the proceedings will be prepared and made a part of the rulemaking record. Copies of the transcripts will be available to the public. The transcripts may also be viewed at *http://www.regulations.gov* and *http://www.msha.gov/tscripts.htm.* MSHA will accept comments and other appropriate information for the record from any interested party, including those not presenting oral statements. Comments must be received by midnight Eastern Standard Time on November 14, 2011.

For the convenience of interested parties, the chart below includes the dates and locations of the four scheduled public hearings:

Date	Location	Contact No.
October 18, 2011	Embassy Suites Denver, Downtown/Convention Center, 1420 Stout St., Denver, CO 80202	303–592–1000
October 20, 2011	Embassy Suites Charleston, 300 Court St., Charleston, WV 25301	304–347–8700
October 25, 2011	Courtyard Washington, Meadow Lands, 1800 Tanger Blvd., Washington, PA 15301	724–222–5620
October 27, 2011	Fairfield Inn Evansville West, 5400 Weston Road, Evansville, Indiana 47712	812–429–0900

Dated: October 7, 2011.

Joseph A. Main,

Assistant Secretary of Labor, for Mine Safety and Health.

[FR Doc. 2011–26446 Filed 10–7–11; 4:15 pm]

BILLING CODE 4510–43–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–0106]

RIN 1625–AA08

Special Local Regulations; Recurring Marine Events in the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the list of special local regulations established for recurring marine events at various locations within the Fifth Coast Guard District. This proposed rule would add 6 new annual recurring marine events, change event date(s) for 12 previously established events, and delete 4 previously listed marine events. Special local regulations are being proposed to provide for the safety of life on navigable waters during these events, reduce the Coast Guard's administrative workload and expedite public notification of events. Entry into or movement within these proposed regulated areas during the enforcement periods is prohibited without approval of the appropriate Captain of the Port.

DATES: Comments and related material must be received by the Coast Guard on or before November 14, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0106 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Dennis Sens, Prevention Division, Fifth Coast Guard District; telephone 757–398–6204, e-mail *Dennis.M.Sens@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0106), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2011–0106'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0106'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

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

Basis and Purpose

The Coast Guard proposes to revise the list of permanent special local regulations at 33 CFR 100.501, established for recurring marine events at various locations within the geographic boundary of the Fifth Coast Guard District. The Fifth Coast Guard District is comprised of the land areas and U.S. navigable waters adjacent to North Carolina, Virginia, District of Columbia, Maryland, Delaware and portions of Pennsylvania and New Jersey. For a detailed description of the geographical area of the district and each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25.

The Coast Guard proposes to revise the list of special local regulations at 33 CFR 100.501 by adding 6 new annual recurring events, revising 12 previously established locations and deleting 4 previously listed marine events and corresponding regulated areas that are no longer occurring. The special local regulated areas removed from this section include: Night in Venice, Ocean City, NJ; Baltimore County Community Waterfront Festival, Martin Lagoon, MD; Annapolis Triathlon Swim, Spa Creek, Severn River, MD; and Virginia state hydroplane championships, Western Branch, Elizabeth River, VA. Currently there are 57 special local regulations that are established and enforced at various periods throughout the year that are held on an annual basis. This rule will increase the total number of special local regulations to 59. The table to 33 CFR 100.501 would be renumbered with section divisions that would facilitate future changes.

The Coast Guard proposes to revise regulations at 33 CFR 100.501 by adding 6 new marine event locations to the permanent special local regulations listed in this section. The new special local regulations are listed in the following table, including reference by section as printed in the Table to § 100.501.

Number	Table to § 100.501 section	Location
1.	a.3	Big Timber Creek, Westville, NJ.
2.	a.4	North Atlantic Ocean, Atlantic City, NJ.
3.	b.5	Chester River, Chestertown, MD.
4.	b.14	Patapsco River, Northwest Harbor, Baltimore, MD.
5.	b.19	Patuxent River, Solomons, MD.
6.	c.23	Mattaponi River, Wakema, VA.

The Coast Guard proposes to revise regulations at 33 CFR 100.501 by modifying 12 existing regulated areas. This revision involves changes to the event date(s) only. The revised special local regulations are listed in the following table, including reference by section as printed in the Table to § 100.501.

Number	Table to § 100.501 section	Location	Revision
1.	b.1	Severn River, Annapolis MD	Event date.
2.	b.7	Severn River, Annapolis, MD	Event date.
3.	b.9	Chester River, near Chestertown, MD	Event date.
4.	b.11	Prospect Bay, Kent Narrows, MD	Event date.
5.	b.13	Patapsco River, Baltimore, MD	Event date.
6.	b.16	Choptank River, Cambridge, MD	Event date.
7.	c.1	Western Branch, Elizabeth River, Portsmouth, VA	Event date.
8.	c.6	Elizabeth River, Norfolk, VA	Event date.
9.	c.7	North Atlantic Ocean, Ocean City, MD	Event date.
10.	d.1	Pasquotank River, Elizabeth City, NC	Event date.
11.	d.3	Bogue Sound, Morehead City, NC	Event date.
12.	d.4	Wrightsville Channel, Wilmington, NC	Event date.

This regulation currently includes events such as sailing regattas, power boat races, swim races, holiday parades, crew and other paddle craft races. Currently, there are 57 annual recurring marine events and many other non-recurring events within the Fifth Coast Guard District. In the past, the Coast Guard regulated these events by creating individual special local regulations on a case by case basis. Most of these events required only the establishment of a regulated area and assignment of a patrol commander to ensure safety. Issuing individual, annual special local regulations has created a significant administrative burden on the Coast Guard.

Additionally, for the majority of these events, the Coast Guard does not receive notification of the event, or important details of the event are not finalized by event organizers, with sufficient time to publish a notice of proposed rulemaking and final rule before the event date. The Coast Guard must therefore create temporary final rules that sometimes are completed only days before the event. This results in delayed notification to the public, potentially placing the public and event participants at risk.

This proposed rule would significantly relieve the administrative burden on the Coast Guard, and at the same time allow the sponsor of the event and the Coast Guard to notify the public of these events in a timely manner. The public would be provided with notice of events through the table attached to this regulation. This table lists each recurring marine event that may be regulated by the Coast Guard, and indicates the sponsor, as well as the date(s) and location of the event. Because the dates and locations of these events may change slightly from year to year, the specific information on each event, including the exact dates, specific areas, and description of the regulated area, would be provided to the public through a Local Notice to Mariners published before the event, as well as through Broadcast Notice to Mariners. This table would also be updated by the Coast Guard periodically to add new recurring events, remove events that no longer occur, and update listed events to ensure accurate information is provided.

Based on the nature of marine events, large number of participants and spectators, and the event locations, the Coast Guard has determined that the events listed in this rule could pose a risk to participants or waterway users if normal vessel traffic were to interfere with the event. Possible hazards include risks of participant injury or death resulting from near or actual contact with non-participant vessels traversing through the regulated areas. In order to protect the safety of all waterway users including event participants and spectators, this proposed rule would establish special local regulations for the time and location of each marine event.

This proposed rule prevents vessels from entering, transiting, mooring or anchoring within areas specifically designated as regulated areas during the periods of enforcement unless authorized by the Captain of the Port, or designated Coast Guard Patrol Commander. The designated ''Patrol Commander'' includes Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on their behalf. On-scene patrol commander may be augmented by local, State or Federal officials authorized to act in support of the Coast Guard.

Discussion of Proposed Rule

This proposed rule would apply to each event listed in the attached table to this rule. Events listed in the table are events that recur annually in the Fifth Coast Guard District. The table provides the event name and sponsor, as well as an approximate date and location of the event.

For each event listed in the table, an event patrol, with a Patrol Commander in charge, may be assigned. The Patrol Commander may control the movement of all vessels in the regulated area(s). When hailed or signaled by a patrol vessel, a vessel in these areas would be required to immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both. The Coast Guard Patrol Commander may terminate the event, or the operation of any vessel participating in the event, at any time it is deemed necessary for the protection of life or property.

Only event sponsors, designated participants, and official patrol vessels would be allowed to enter a regulated area. All persons and vessels not registered with the event sponsor as participants or official patrol vessels are considered spectators. Spectators may not enter the regulated area and may be confined to a designated spectator area to view the event. Spectators may contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If permission is granted, spectators would be required to pass directly through the regulated area at safe speed and without loitering.

The numbering sequence for marine events listed in the table to § 100.501 has been revised. Within the table, each subparagraph will be numbered in numerical sequence for each Coast Guard Sector in the Fifth District. This administrative change will facilitate future updates by eliminating the need to republish the entire table when events are added, deleted or modified.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and

executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that those Orders.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. The effect of this proposed action merely establishes the dates on which the existing regulations would be enforced and consolidates them within one regulation. It would not impose any additional restrictions on vessel traffic.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the areas where marine events are being held. This proposed regulation will not have a significant impact on a substantial number of small entities because it will only be enforced on marine events that have been permitted by the Coast Guard Captain of the Port. The Captain of the Port will ensure that small entities are able to operate in the areas where events are occurring. Additionally, in most cases, vessels will be able to safely transit around the regulated area at all times, and, with the permission of the Patrol Commander, vessels may transit through the regulated area.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sail board racing. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

2. Revise section 100.501 to read as follows:

§ 100.501 Special Local Regulations; Marine Events in the Fifth Coast Guard District.

The following regulations apply to the marine events listed in the Table to § 100.501. These regulations will be effective annually, for the duration of each event listed in the Table to § 100.501. Annual notice of the exact dates and times of the effective period of the regulation with respect to each event, the geographical area, and details concerning the nature of the event and the number of participants and type(s) of vessels involved will be published in Local Notices to Mariners and via Broadcast Notice to Mariners over VHF–FM marine band radio.

(a) *Definitions.* The following definitions apply to this section: (1) *Coast Guard Patrol Commander.* A Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the respective Coast Guard Sector—Captain of the Port to enforce these regulations.

(2) *Official Patrol* means any vessel assigned or approved by the respective Captain of the Port with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Spectators.* All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(b) *Official Patrol.* The Coast Guard may assign an official patrol, as described in § 100.40 of this part, to each regulated event listed in the table. Additionally, a Patrol Commander may be assigned to oversee the patrol. The official patrol and Patrol Commander may be contacted on VHF–FM Channel 16.

(c) *Special Local Regulations.* (1) The Coast Guard Patrol Commander may direct the movement of all vessels in the regulated area(s). When hailed or signaled by an official patrol vessel, a vessel in these areas shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) The Coast Guard Patrol Commander may terminate the event, or the operation of any vessel participating in the event, at any time for the protection of life or property.

(3) Only event sponsor-designated participants and official patrol vessels are allowed to enter the regulated area.

(4) Spectators are only allowed inside the designated spectator area. Spectators may contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If permission is granted, spectators must pass directly through the regulated area at safe speed and without loitering.

(d) *Contact Information.* Questions about marine events should be addressed to the local Coast Guard Captain of the Port for the area in which the event is occurring. Contact information is listed below. For a description of the geographical area of each Coast Guard Sector—Captain of the Port zone, please see subpart 3.25 of this chapter.

(1) Coast Guard Sector Delaware Bay—Captain of the Port Philadelphia, Pennsylvania: (215) 271–4944.

(2) Coast Guard Sector Baltimore—Captain of the Port Baltimore, Maryland: (410) 576–2525.

(3) Coast Guard Sector Hampton Roads—Captain of the Port Norfolk, Virginia: (757) 483–8567.

(4) Coast Guard Sector North Carolina—Captain of the Port North Carolina: (877) 229–0770 or (910) 772–2200.

(e) *Application for Marine Events.* The application requirements of § 100.15 of this part apply to all events listed in the Table to § 100.501. For information on applying for a marine event, contact the Captain of the Port for the area in which the event will occur at the phone numbers listed above.

All coordinates listed in the Table to § 100.501 reference Datum NAD 1983.

TABLE TO § 100.501

Number	Event date	Event	Sponsor	Location
(a.) Coast Guard Sector Delaware Bay—COTP Zone				
1	June—1st Sunday	Atlantic County Day at the Bay.	Atlantic County, New Jersey	The waters of Great Egg Harbor Bay, adjacent to Somers Point, New Jersey, bounded by a line drawn along the following boundaries: the area is bounded to the north by the shoreline along John F. Kennedy Park and Somers Point, New Jersey; bounded to the east by the State Route 52 bridge; bounded to the south by a line that runs along latitude 39°18′00″ N; and bounded to the west by a line that runs along longitude 074°37′00″ W.

TABLE TO § 100.501—Continued

Number	Event date	Event	Sponsor	Location
2	June—3rd Saturday	Annual Escape from Fort Delaware Triathlon.	Escape from Fort Delaware Triathlon, Inc.	All waters of the Delaware River between Pea Patch Island and Delaware City, Delaware, bounded by a line connecting the following points: latitude 39°36′35.7″ N, longitude 075°35′25.6″ W, to latitude 39°34′57.3″ N, longitude 075°33′23.1″ W, to latitude 39°34′11.9″ N, longitude 075°34′28.6″ W, to latitude 39°35′52.4″ N, longitude 075°36′33.9″ W.
3	June—Last Saturday	Westville Parade of Lights	Borough of Westville and Westville Power Boat.	All waters of Big Timber Creek in Westville, NJ from shoreline to shoreline bounded on the south from the Route 130 Bridge and to the north by the entrance of the Delaware River.
4	July—3rd Sunday	OPA Atlantic City Grand Prix	Offshore Performance Assn. (OPA).	The waters of the Atlantic Ocean, adjacent to Atlantic City, New Jersey, bounded by a line drawn between the following points: southeasterly from a point along the shoreline at latitude 39°21′50″ N, longitude 074°24′37″ W, to latitude 39°20′40″ N, longitude 074°23′50″ W, thence southwesterly to latitude 39°19′33″ N, longitude 074°26′52″ W, thence northwesterly to a point along the shoreline at latitude 39°20′43″ N, longitude 074°27′40″ W, thence northeasterly along the shoreline to latitude 39°21′50″ N, longitude 074°24′37″ W.
5	July—On or about July 4th	U.S. holiday celebrations	City of Philadelphia	The waters of the Delaware River adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge.
6	August—2nd Friday, Saturday and Sunday.	Point Pleasant OPA/NJ Offshore Grand Prix.	Offshore Performance Association (OPA) and New Jersey Offshore Racing Assn.	The waters of the Atlantic Ocean bounded by a line drawn from a position along the shoreline near Normandy Beach, NJ at latitude 40°00′00″ N, longitude 074°03′30″ W, thence easterly to latitude 39°59′40″ N, longitude 074°02′00″ W, thence southwesterly to latitude 39°56′35″ N, longitude 074°03′00″ W, thence westerly to a position near the Seaside Heights Pier at latitude 39°56′35″ N, longitude 074°04′15″ W, thence northerly along the shoreline to the point of origin.
7	July—3rd Wednesday and Thursday.	New Jersey Offshore Grand Prix.	Offshore Performance Assn. & New Jersey Offshore Racing Assn.	The waters of the Manasquan River from the New York and Long Branch Railroad to Manasquan Inlet, together with all of the navigable waters of the United States from Asbury Park, New Jersey, latitude 40°14′00″N; southward to Seaside Park, New Jersey latitude 39°55′00″N, from the New Jersey shoreline seaward to the limits of the Territorial Sea. The race course area extends from Asbury Park to Seaside Park from the shoreline, seaward to a distance of 8.4 nautical miles.
8	August—4th Wednesday	Thunder Over the Boardwalk Air show.	Atlantic City Chamber of Commerce.	The waters of the Atlantic Ocean, adjacent to Atlantic City, New Jersey, bounded by a line drawn between the following points: southeasterly from a point along the shoreline at latitude 39°21′31″ N, longitude 074°25′04″ W, thence to latitude 39°21′08″ N, longitude 074°24′48″ W, thence southwesterly to latitude 39°20′16″ N, longitude 074°27′17″ W, thence northwesterly to a point along the shoreline at latitude 39°20′44″ N, longitude 074°27′31″ W, thence northeasterly along the shoreline to latitude 39°21′31″ N, longitude 074°25′04″ W.
9	September—3rd Saturday	Annual Escape from Fort Delaware Triathlon.	Escape from Fort Delaware Triathlon, Inc.	All waters of the Delaware River between Pea Patch Island and Delaware City, Delaware, bounded by a line connecting the following points: latitude 39°36′35.7″ N, longitude 075°35′25.6″ W, to latitude 39°34′57.3″ N, longitude 075°33′23.1″ W, to latitude 39°34′11.9″ N, longitude 075°34′28.6″ W, to latitude 39°35′52.4″ N, longitude 075°36′33.9″ W.
10	September—last Friday, Saturday and Sunday; October—first Friday, Saturday and Sunday.	Sunset Lake Hydrofest	Sunset Lake Hydrofest Assn	All waters of Sunset Lake, New Jersey, from shoreline to shoreline, south of latitude 38°58′32″ N.
11	October—2nd Saturday and Sunday.	The Liberty Grand Prix	Offshore Performance Assn. (OPA).	The waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge.
12	October—1st Monday (Columbus Day).	U.S. holiday celebrations	City of Philadelphia	The waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge.
13	December—On December 31st (New Year's Eve).	U.S. holiday celebrations	City of Philadelphia	The waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge.

TABLE TO § 100.501—Continued

Number	Event date	Event	Sponsor	Location
(b.) Coast Guard Sector Baltimore—COTP Zone				
1	March—4th or last Saturday; or April 1st Saturday.	Safety at Sea Seminar	U.S. Naval Academy	All waters of the Severn River from shoreline to shoreline, bounded to the northwest by a line drawn from the south shoreline at latitude 39°00′38.9″ N., longitude 076°31′05.2″ W. thence to the north shoreline at latitude 39°00′54.7″ N., longitude 076°30′44.8″ W., this line is approximately 1300 yards northwest of the U.S. 50 fixed highway bridge. The regulated area is bounded to the southeast by a line drawn from the Naval Academy Light at latitude 38°58′39.5″ N., longitude 076°28′49″ W. thence southeast to a point 700 yards east of Chinks Point, MD at latitude 38°58′1.9″ N., longitude 076°28′1.7″ W. thence northeast to Greenbury Point at latitude 38°58′29″ N., longitude 076°27′16″ W.
2	March—last Friday, Saturday and Sunday; April and May—every Friday, Saturday and Sunday.	USNA Crew Races	U.S. Naval Academy	All waters of the Severn River from shoreline to shoreline, bounded to the northwest by a line drawn from the south shoreline at latitude 39°00′38.9″ N., longitude 076°31′05.2″ W. thence to the north shoreline at latitude 39°00′54.7″ N., longitude 076°30′44.8″ W., this line is approximately 1300 yards northwest of the U.S. 50 fixed highway bridge. The regulated area is bounded to the southeast by a line drawn from the Naval Academy Light at latitude 38°58′39.5″ N., longitude 076°28′49″ W. thence southeast to a point 700 yards east of Chinks Point, MD at latitude 38°58′1.9″ N., longitude 076°28′1.7″ W. thence northeast to Greenbury Point at latitude 38°58′29″ N., longitude 076°27′16″ W.
3	April—2nd Saturday	St. Mary's Seahawk Sprint	St. Mary's College of Maryland.	All waters of the St. Mary's River, from shoreline to shoreline, bounded to the south by a line at latitude 38°10′05″ N, and bounded to the north by a line at latitude 38°12′00″ N.
4	May—1st Sunday	Nanticoke River Swim and Triathlon.	Nanticoke River Swim and Triathlon, Inc.	All waters of the Nanticoke River, including Bivalve Channel and Bivalve Harbor, bounded by a line drawn from a point on the shoreline at latitude 38°18′00″ N, longitude 075°54′00″ W, thence westerly to latitude 38°18′00″ N, longitude 075°55′00″ W, thence northerly to latitude 38°20′00″ N, longitude 075°53′48″ W, thence easterly to latitude 38°19′42″ N, longitude 075°52′54″ W.
5	May—Saturday before Memorial Day.	Chestertown Tea Party Reenactment Festival.	Chestertown Tea Party Festival.	All waters of the Chester River, within a line connecting the following positions: latitude 39°12′27″ N, longitude 076°03′46″ W; thence to latitude 39°12′19″ N, longitude 076°03′53″ W; thence to latitude 39°12′15″ N, longitude 076°03′41″ W; thence to latitude 39°12′26″ N, longitude 076°03′38″ W; thence to the point of origin at latitude 39°12′27″ N, longitude 076°03′46″ W.
6	May—3rd Friday, Saturday and Sunday.	Dragon Boat Races at Thompson Boathouse, Georgetown, Washington, DC.	Dragon Boat Festival, Inc	The waters of the Upper Potomac River, Washington, DC, from shoreline to shoreline, bounded upstream by the Francis Scott Key Bridge and downstream by the Roosevelt Memorial Bridge.
7	May—3rd Tuesday and Wednesday before Memorial Day (observed).	Blue Angels Air Show	U.S. Naval Academy	All waters of the Severn River from shoreline to shoreline, bounded to the northwest by a line drawn from the south shoreline at latitude 39°00′38.9″ N., longitude 076°31′05.2″ W. thence to the north shoreline at latitude 39°00′54.7″ N., longitude 076°30′44.8″ W., this line is approximately 1300 yards northwest of the U.S. 50 fixed highway bridge. The regulated area is bounded to the southeast by a line drawn from the Naval Academy Light at latitude 38°58′39.5″ N., longitude 076°28′49″ W. thence southeast to a point 700 yards east of Chinks Point, MD at latitude 38°58′1.9″ N., longitude 076°28′1.7″ W. thence northeast to Greenbury Point at latitude 38°58′29″ N., longitude 076°27′16″ W.
8	June—2nd Sunday	The Great Chesapeake Bay Bridges Swim Races and Chesapeake Challenge One Mile Swim.	Great Chesapeake Bay Swim, Inc.	The waters of the Chesapeake Bay between and adjacent to the spans of the William P. Lane Jr. Memorial Bridge shore to shore 500 yards north of the north span of the bridge from the western shore at latitude 39°00′36″ N, longitude 076°23′05″ W and the eastern shore at latitude 38°59′14″ N, longitude 076°20′00″ W, and 500 yards south of the south span of the bridge from the western shore at latitude 39°00′16″ N, longitude 076°24′30″ W and the eastern shore at latitude 38°58′38.5″ N, longitude 076°20′06″ W.
9	June—3rd, 4th or last Saturday or July—2nd or 3rd Saturday.	Maryland Swim for Life	District of Columbia Aquatics Club.	The waters of the Chester River from shoreline to shoreline, bounded on the south by a line drawn at latitude 39°10′16″ N, near the Chester River Channel Buoy 35 (LLN–26795) and bounded on the north at latitude 39°12′30″ N by the Maryland S.R. 213 Highway Bridge.

TABLE TO § 100.501—Continued

Number	Event date	Event	Sponsor	Location
10	June—last Saturday and Sunday.	Bo Bowman Memorial—Sharptown Regatta.	Virginia/Carolina Racing Assn.	All waters of the Nanticoke River, near Sharptown, Maryland, between Maryland S.R. 313 Highway Bridge and Nanticoke River Light 43 (LLN–24175), bounded by a line drawn between the following points: southeasterly from latitude 38°32′46″ N, longitude 075°43′14″ W, to latitude 38°32′42″ N, longitude 075°43′09″ W, thence northeasterly to latitude 38°33′04″ N, longitude 075°42′39″ W, thence northwesterly to latitude 38°33′09″ N, longitude 075°42′44″ W, thence southwesterly to latitude 38°32′46″ N, longitude 075°43′14″ W.
11	June—3rd, 4th or last Saturday and Sunday or August—1st Saturday and Sunday.	Thunder on the Narrows	Kent Narrows Racing Assn	All waters of Prospect Bay enclosed by the following points: latitude 38°57′52.0″ N, longitude 076°14′48.0″ W, to latitude 38°58′02.0″ N, longitude 076°15′05.0″ W, to latitude 38°57′38.0″ N, longitude 076°15′29.0″ W, to latitude 38°57′28.0″ N, longitude 076°15′23.0″ W, to latitude 38°57′52.0″ N, longitude 076°14′48.0″ W.
12	Labor Day weekend—Saturday and Sunday, or Monday.	Ragin on the River	Port Deposit, MD, Chamber of Commerce.	The waters of the Susquehanna River, adjacent to Port Deposit, Maryland, from shoreline to shoreline, bounded on the south by the U.S. I–95 fixed highway bridge, and bounded on the north by a line running southwesterly from a point along the shoreline at latitude 39°36′22″ N, longitude 076°07′08″ W, thence to latitude 39°36′00″ N, longitude 076°07′46″ W.
13	September—2nd Saturday or the Saturday after Labor Day.	Dragon Boat Races in the Inner Harbor.	Associated Catholic Charities, Inc.	The waters of the Patapsco River, Baltimore, MD, Inner Harbor from shoreline to shoreline, bounded on the east by a line drawn along longitude 076°36′30″ W.
14	June—3rd, 4th or last Saturday or Sunday.	Baltimore Dragon Boat Challenge.	Baltimore Dragon Boat Club	The waters of Patapsco River, Northwest Harbor, in Baltimore, MD, from shoreline to shoreline, within an area bounded on the east by a line drawn along longitude 076°35′ W and bounded on the west by a line drawn along longitude 076°36′.
15	September—4th or last Saturday and Sunday.	Cambridge Offshore Challenge.	Chesapeake Bay Powerboat Association.	All waters of the Choptank River, from shoreline to shoreline, bounded to the west by the Route 50 Bridge and bounded to the east by a line drawn along longitude 076° W, between Goose Point, MD and Oystershell Point, MD.
16	September—4th or last Saturday.	Chesapeakeman Ultra Triathlon.	Columbia Triathlon Assn. Inc	All waters of the Choptank River within 200 yards either side of a line drawn northwesterly from a point on the shoreline at latitude 38°33′45″ N, longitude 076°02′38″ W, thence to latitude 38°35′06″ N, longitude 076°04′42″ W, a position located at Great Marsh Park, Cambridge, MD.
17	October—last Saturday or November—1st Saturday.	Tug of War	City of Annapolis	The waters of Spa Creek from shoreline to shoreline, extending 400 feet from either side of a rope spanning Spa Creek from a position at latitude 38°58′36.9″ N, longitude 076°29′03.8″ W on the Annapolis shoreline to a position at latitude 38°58′26.4″ N, longitude 076°28′53.7″ W on the Eastport shoreline.
18	December—2nd Saturday	Eastport Yacht Club Boat Parade.	Eastport Yacht Club	The approaches to Annapolis Harbor, the waters of Spa Creek, and the Severn River, shore to shore, bounded on the south by a line drawn from Carr Point, at latitude 38°58′58.0″ N, longitude 076°27′40.0″ W, thence to Horn Point Warning Light (LLNR 17935), at 38°58′24.0″ N, longitude 076°28′10.0″ W, thence to Horn Point, at 38°58′20.0″ N, longitude 076°28′27.0″ W, and bounded on the north by the State Route 450 Bridge.
19	Memorial Day weekend—Thursday, Friday, Saturday and Sunday, or Labor Day weekend—Thursday, Friday, Saturday and Sunday.	Air Expo	U.S. Naval Air Station Patuxent River, MD.	All waters of the lower Patuxent River, near Solomons, Maryland, located between Fishing Point and the base of the break wall marking the entrance to the East Seaplane Basin at Naval Air Station Patuxent River, within an area bounded by a line connecting position latitude 38°17′39″ N, longitude 076°25′47″ W; thence to latitude 38°17′47″ N, longitude 076°26′00″ W; thence to latitude 38°18′09″ N, longitude 076°25′40″ W; thence to latitude 38°18′00″ N, longitude 076°25′25″ W, located along the shoreline at U.S. Naval Air Station Patuxent River, Maryland, and All waters of the lower Patuxent River, near Solomons, Maryland, located between Hog Point and Cedar Point, within an area bounded by a line drawn from a position at latitude 38°18′41″ N, longitude 076°23′43″ W; to latitude 38°18′16″ N, longitude 076°22′35″ W; thence to latitude 38°18′12″ N, longitude 076°22′37″ W; thence to latitude 38°18′36″ N, longitude 076°23′46″ W, located adjacent to the shoreline at U.S. Naval Air Station Patuxent River, Maryland.

TABLE TO § 100.501—Continued

Number	Event date	Event	Sponsor	Location
(c.) Coast Guard Sector Hampton Roads—COTP Zone				
1	April—3rd Saturday and Sunday.	Hydroplane races	Virginia Boat Racing Assn	All waters of the Western Branch, Elizabeth River bounded by a line connecting the following points: latitude 36°50′06″ N, longitude 076°22′27″ W, thence to latitude 36°50′06″ N, longitude 076°21′57″ W, thence to latitude 36°50′15″ N, longitude 076°21′55.8″ W, thence to latitude 36°50′15″ N, longitude 076°22′27″ W, thence to point of origin.
2	April—4th Friday and Saturday.	Crawford Bay Crew Classic	Port Events, Inc	The waters of the Southern Branch, Elizabeth River from shoreline to shoreline bounded to the south by a line drawn from latitude 36°49′11.0″ N, longitude 076°17′33.0″ W to latitude 36°49′11.0″ N, longitude 076°17′22.0″ W and bounded to the north by a line drawn from latitude 36°50′17.5″ N, longitude 076°17′45.0″ W to latitude 36°50′17.5″ N, longitude 076°17′30.0″ W.
3	April—4th Saturday and Sunday.	Wet Spring Regatta	Windsurfing Enthusiasts of Tidewater.	The waters of Willoughby Bay contained within the following coordinates: latitude 36°58′36″ N, longitude 076°18′42″ W, to latitude 36°58′00″ N, longitude 076°18′00″ W, to latitude 36°57′49″ N, longitude 076°18′14″ W, to latitude 36°57′36″ N, longitude 076°17′55″ W, to latitude 36°57′26″ N, longitude 076°18′06″ W, to latitude 36°58′15″ N, longitude 076°19′08″ W, to latitude 36°58′36″ N, longitude 076°18′42″ W.
4	May—2nd Friday and Saturday.	Hydroplane races	Virginia Boat Racing Assn	*Regulated area* includes all waters of the Western Branch, Elizabeth River bounded by a line connecting the following points: latitude 36°50′06″ N, longitude 076°22′27″ W, thence to latitude 36°50′06″ N, longitude 076°21′57″ W, thence to latitude 36°50′15″ N, longitude 076°21′55.8″ W, thence to latitude 36°50′15″ N, longitude 076°22′27″ W, thence to point of origin.
5	May—last Friday, Saturday and Sunday or June—1st Friday, Saturday and Sunday.	Blackbeard Festival	Hampton Event Makers	The waters of Sunset Creek and Hampton River shore to shore bounded to the north by the C & O Railroad Bridge and to the south by a line drawn from Hampton River Channel Light 16 (LL 5715), located at latitude 37°01′03.0″ N, longitude 76°20′26.0″ W, to the finger pier across the river at Fisherman's Wharf, located at latitude 37°01′01.5″ N, longitude 76°20′32.0″ W. Spectator Vessel Anchorage Areas—Area A: Located in the upper reaches of the Hampton River, bounded to the south by a line drawn from the western shore at latitude 37°01′48.0″ N, longitude 76°20′22.0″ W, across the river to the eastern shore at latitude 37°01′44.0″ N, longitude 76°20′13.0″ W, and to the north by the C & O Railroad Bridge. The anchorage area will be marked by orange buoys. Area B: Located on the eastern side of the channel, in the Hampton River, south of the Queen Street Bridge, near the Riverside Health Center. Bounded by the shoreline and a line drawn between the following points: Latitude 37°01′26.0″ N, longitude 76°20′24.0″ W, latitude 37°01′22.0″ N, longitude 76°20′26.0″ W, and latitude 37°01′22.0″ N, longitude 76°20′23.0″ W. The anchorage area will be marked by orange buoys.
6	June—1st Friday, Saturday and Sunday or 2nd Friday, Saturday and Sunday.	Norfolk Harborfest	Norfolk Festevents, Ltd	The waters of the Elizabeth River and its branches from shore to shore, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, Virginia, latitude 36°50′51.0″ N, longitude 076°18′09.0″ W and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51′00.0″ N, longitude 076°17′52.0″ W; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′50.0″ N, longitude 076°18′10.0″ W, to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at latitude 36°50′29.0″ N, longitude 076°17′52.0″ W; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia at latitude 36°50′10.0″ N, longitude 076°17′47.0″ W, and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50′08.0″ N, longitude 076°17′39.0″ W; and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50′21.5″ N, longitude 076°17′14.5″ W, and Norfolk at latitude 36°50′35.0″ N, longitude 076°17′10.0″ W.

TABLE TO § 100.501—Continued

Number	Event date	Event	Sponsor	Location
7	May—Last Saturday and Sunday.	Ocean City Maryland Offshore Grand Prix.	Offshore Performance Assn. Racing, LLC.	The waters of the Atlantic Ocean commencing at a point on the shoreline at latitude 38°25′42″ N, longitude 075°03′06″ W; thence east southeast to latitude 38°25′30″ N, longitude 075°02′12″ W, thence south southwest parallel to the Ocean City shoreline to latitude 38°19′12″ N, longitude 075°03′48″ W; thence west northwest to the shoreline at latitude 38°19′30″ N, longitude 075°05′00″ W. The waters of the Atlantic Ocean bounded by a line drawn from a position along the shoreline near Ocean City, MD at latitude 38°22′25.2″ N, longitude 075°03′49.4″ W, thence easterly to latitude 38°22′00.4″ N, longitude 075°02′34.8″ W, thence southwesterly to latitude 38°19′35.9″ N, longitude 075°03′35.4″ W, thence westerly to a position near the shoreline at latitude 38°20′05″ N, longitude 075°04′48.4″ W, thence northerly along the shoreline to the point of origin.
8	June—3rd Saturday	Cock Island Race	Ports Events, Inc	The waters of the Elizabeth River and its branches from shore to shore, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, Virginia, latitude 36°50′51.0″ N, longitude 076°18′09.0″ W and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51′00.0″ N, longitude 076°17′52.0″ W; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′50.0″ N, longitude 076°18′10.0″ W, to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at latitude 36°50′29.0″ N, longitude 076°17′52.0″ W; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia at latitude 36°50′10.0″ N, longitude 076°17′47.0″ W, and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50′08.0″ N, longitude 076°17′39.0″ W; and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50′21.5″ N, longitude 076°17′14.5″ W, and Norfolk at latitude 36°50′35.0″ N, longitude 076°17′10.0″ W.
9	June—last Saturday	RRBA Spring Radar Shootout.	Rappahannock River Boaters Association (RRBA).	The waters of the Rappahannock River, adjacent to Layton, VA, from shoreline to shoreline, bounded on the west by a line running along longitude 076°58′30″ W, and bounded on the east by a line running along longitude 076°56′00″ W.
10	July—3rd Sunday	Watermen's Heritage Festival Workboat Races.	Watermen's Museum of Yorktown, VA.	The waters of the York River, Yorktown, Virginia, bounded on the west by a line drawn along longitude 076°31′25″ W, bounded on the east by a line drawn along longitude 076°30′55″ W, bounded on the south by the shoreline and bounded on the north by a line drawn parallel and 400 yards north of the southern shoreline.
11	July—last Wednesday and following Friday.	Pony Penning Swim	Chincoteague Volunteer Fire Department.	The waters of Assateague Channel from shoreline to shoreline, bounded to the east by a line drawn from latitude 37°55′01″ N, longitude 075°22′40″ W, to latitude 37°54′50″ N, longitude 075°22′46″ W, and to the west by a line drawn from latitude 37°54′54.0″ N, longitude 075°23′00″ W, to latitude 37°54′49″ N, longitude 075°22′49″ W.
12	August—1st Friday, Saturday and Sunday.	Power boat race	East Coast Boat Racing Club of New Jersey.	The waters of the Chesapeake Bay, along the shoreline adjacent to Cape Charles, Virginia, to and including waters up to 300 yards offshore, parallel with the Cape Charles Beach shoreline in this area. The area is bounded on the south by a line running northwesterly from the Cape Charles shoreline at latitude 37°16′.2″ N, longitude 076°01′28.5″ W, to a point offshore approximately 300 yards at latitude 37°16′3.4″ N, longitude 076°01′36.6″ W, and bounded on the north by a line running northwesterly from the Cape Charles shoreline at latitude 37°16′26.2″ N, longitude 076°01′14″ W, to a point offshore approximately 300 yards at latitude 37°16′28.9″ N, longitude 076°01′24.1″ W.
13	August—2nd Friday, Saturday and Sunday.	Hampton Cup Regatta	Virginia Boat Racing Association.	The waters of Mill Creek, adjacent to Fort Monroe, Hampton, Virginia, enclosed by the following boundaries: to the north, a line drawn along latitude 37°01′00″ N, to the east a line drawn along longitude 076°18′30″ W, to the south a line parallel with the shoreline adjacent to Fort Monroe, and the west boundary is parallel with the Route 258—Mercury Boulevard Bridge.

TABLE TO § 100.501—Continued

Number	Event date	Event	Sponsor	Location
14	September—2nd Friday and Saturday.	Ocean City, MD power boat race.	Offshore Performance Assn. Racing, LLC.	The waters of the Atlantic Ocean commencing at a point on the shoreline at latitude 38°25′42″ N, longitude 075°03′06″ W; thence east southeast to latitude 38°25′30″ N, longitude 075°02′12″ W, thence south southwest parallel to the Ocean City shoreline to latitude 38°19′12″ N, longitude 075°03′48″ W; thence west northwest to the shoreline at latitude 38°19′30″ N, longitude 075°05′00″ W. The waters of the Atlantic Ocean bounded by a line drawn from a position along the shoreline near Ocean City, MD at latitude 38°22′25.2″ N, longitude 075°03′49.4″ W, thence easterly to latitude 38°22′00.4″ N, longitude 075°02′34.8″ W, thence southwesterly to latitude 38°19′35.9″ N, longitude 075°03′35.4″ W, thence westerly to a position near the shoreline at latitude 38°20′05″ N, longitude 075°04′48.4″ W, thence northerly along the shoreline to the point of origin.
15	September—2nd Friday, Saturday and Sunday.	Hampton Bay Days Festival	Hampton Bay Days Inc	The waters of Sunset Creek and Hampton River shore to shore bounded to the north by the C & O Railroad Bridge and to the south by a line drawn from Hampton River Channel Light 16 (LL 5715), located at latitude 37°01′03.0″ N, longitude 076°20′26.0″ W, to the finger pier across the river at Fisherman's Wharf, located at latitude 37°01′01.5″ N, longitude 076°20′32.0″ W.
16	October—1st Saturday and Sunday.	Virginia Boat Racing Association.	Clarksville Hydroplane Challenge.	The waters of the John H. Kerr Reservoir, adjacent to the State Route 15 Highway Bridge and Occoneechee State Park, Clarksville, Virginia, from shoreline to shoreline, bounded on the south by a line running northeasterly from a point along the shoreline at latitude 36°37′14″ N, longitude 078°32′46.5″ W, thence to latitude 36°37′39.2″ N, longitude 078°32′08.8″ W, and bounded on the north by the State Route 15 Highway Bridge.
17	October—2nd Friday	U.S. Navy Fleet Week Celebration.	U.S. Navy	The waters of the Elizabeth River and its branches from shore to shore, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, Virginia, latitude 36°50′51.0″ N, longitude 076°18′09.0″ W and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51′00.0″ N, longitude 076°17′52.0″ W; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′50.0″ N, longitude 076°18′10.0″ W, to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at latitude 36°50′29.0″ N, longitude 076°17′52.0″ W; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia at latitude 36°50′10.0″ N, longitude 076°17′47.0″ W, and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50′08.0″ N, longitude 076°17′39.0″ W; and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50′21.5″ N, longitude 076°17′14.5″ W, and Norfolk at latitude 36°50′35.0″ N, longitude 076°17′10.0″ W.
18	October—2nd Saturday and Sunday.	Hydroplane races	Virginia Boat Racing Assn ...	All waters of the Western Branch, Elizabeth River bounded by a line connecting the following points: latitude 36°50′06″ N, longitude 076°22′27″ W, thence to latitude 36°50′06″ N, longitude 076°21′57″ W, thence to latitude 36°50′15″ N, longitude 076°21′55.8″ W, thence to latitude 36°50′15″ N, longitude 076°22′27″ W, thence to point of origin.
19	October—2nd Sunday	Poquoson Seafood Festival Workboat Races.	City of Poquoson	The waters of the Back River, Poquoson, Virginia, bounded on the north by a line drawn along latitude 37°06′30″ N, bounded on the south by a line drawn along latitude 37°06′15″ N, bounded on the east by a line drawn along longitude 076°18′52″ W and bounded on the west by a line drawn along longitude 076°19′30″ W.
20	October—last Saturday and Sunday.	Hampton Roads Sailboard Classic.	Windsurfing Enthusiasts of Tidewater.	The waters of Willoughby Bay contained within the following coordinates: latitude 36°58′36″ N, longitude 076°18′42″ W, to latitude 36°58′00″ N, longitude 076°18′00″ W, to latitude 36°57′49″ N, longitude 076°18′14″ W, to latitude 36°57′36″ N, longitude 076°17′55″ W, to latitude 36°57′26″ N, longitude 076°18′06″ W, to latitude 36°58′15″ N, longitude 076°19′08″ W, to latitude 36°58′36″ N, longitude 076°18′42″ W.

TABLE TO § 100.501—Continued

Number	Event date	Event	Sponsor	Location
21	November—1st Friday and Saturday.	International Search and Rescue Competition.	U.S. Coast Guard and Canadian Auxiliaries.	The waters of the Southern Branch of the Elizabeth River including the North Ferry Landing, from shoreline to shoreline, bounded to the north by a line drawn along Latitude 36°50′23″ N and bounded to the south by a line drawn along Latitude 36°50′12″ N.
22	November—4th or last Saturday.	Holidays in the City	Norfolk Festevents, Ltd., ...	The waters of the Elizabeth River and its branches from shore to shore, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, Virginia, latitude 36°50′51.0″ N, longitude 076°18′09.0″ W and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51′00.0″ N, longitude 076°17′52.0″ W; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′50.0″ N, longitude 076°18′10.0″ W, to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at latitude 36°50′29.0″ N, longitude 076°17′52.0″ W; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia at latitude 36°50′10.0″ N, longitude 076°17′47.0″ W, and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50′08.0″ N, longitude 076°17′39.0″ W; and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50′21.5″ N, longitude 076°17′14.5″ W, and Norfolk at latitude 36°50′35.0″ N, longitude 076°17′10.0″ W.
23	August—3rd Saturday and Sunday or 4th Saturday and Sunday.	Mattaponi Drag Boat Race ..	Mattaponi Volunteer Rescue Squad and Dive Team.	All waters of Mattaponi River immediately adjacent to Rainbow Acres Campground, King and Queen County, Virginia. The regulated area includes a section of the Mattaponi River approximately three-quarter mile long and bounded in width by each shoreline, bounded to the east by a line that runs parallel along longitude 076°52′43″ W, near the mouth of Mitchell Hill Creek, and bounded to the west by a line that runs parallel along longitude 076°53′41″ W just north of Wakema, Virginia.
(d.) Coast Guard Sector North Carolina—COTP Zone				
1	June—1st Saturday and Sunday.	Carolina Cup Regatta	Virginia Boat Racing Assn ...	The waters of the Pasquotank River, adjacent to Elizabeth City, NC, from shoreline to shoreline, bounded on the west by the Elizabeth City Draw Bridge and bounded on the east by a line originating at a point along the shoreline at latitude 36°17′54″ N, longitude 076°12′00″ W, thence southwesterly to latitude 36°17′35″ N, longitude 076°12′18″ W at Cottage Point.
2	August—1st Friday, Saturday and Sunday.	SBIP—Fountain Powerboats Kilo Run and Super Boat Grand Prix.	Super Boat International Productions (SBIP), Inc.	The waters of the Pamlico River including Chocowinity Bay, from shoreline to shoreline, bounded on the south by a line running northeasterly from Camp Hardee at latitude 35°28′23″ N, longitude 076°59′23″ W, to Broad Creek Point at latitude 35°29′04″ N, longitude 076°58′44″ W, and bounded on the north by the Norfolk Southern Railroad Bridge.

TABLE TO § 100.501—Continued

Number	Event date	Event	Sponsor	Location
3	September—3rd and or 4th or last Sunday.	Crystal Coast Super Boat Grand Prix.	Super Boat International Productions Inc.	The waters of Bogue Sound, adjacent to Morehead City, NC, from the southern tip of Sugar Loaf Island approximate position latitude 34°42′55″ N, longitude 076°42′48″ W, thence westerly to Morehead City Channel Day beacon 7 (LLNR 38620), thence southwest along the channel line to Bogue Sound Light 4 (LLRN 38770), thence southerly to Causeway Channel Day beacon 2 (LLNR 38720), thence southeasterly to Money Island Day beacon 1 (LLNR 38645), thence easterly to Eight and One Half Marina Day beacon 2 (LLNR 38685), thence easterly to the western most shoreline of Brant Island approximate position latitude 34°42′36″ N, longitude 076°42′11″ W, thence northeasterly along the shoreline to Tombstone Point approximate position latitude 34°42′14″ N, longitude 076°41′20″ W, thence southeasterly to the east end of the pier at Coast Guard Sector North Carolina approximate position latitude 34°42′00″ N, longitude 076°40′52″ W, thence easterly to Morehead City Channel Buoy 20 (LLNR 29427), thence northerly to Beaufort Harbor Channel LT 1BH (LLNR 34810), thence northwesterly to the southern tip of Radio Island approximate position latitude 34°42′22″ N, longitude 076°40′52″ W, thence northerly along the shoreline to approximate position latitude 34°43′00″ N, longitude 076°41′25″ W, thence westerly to the North Carolina State Port Facility, thence westerly along the State Port to the southwest corner approximate position latitude 34°42′55″ N, longitude 076°42′12″ W, thence westerly to the southern tip of Sugar Loaf Island the point of origin.
4	September—3rd, 4th or last Saturday; October—last Saturday; November—1st and or 2nd Saturday.	Wilmington YMCA Triathlon	Wilmington, NC, YMCA	The waters of, and adjacent to, Wrightsville Channel, from Wrightsville Channel Day beacon 14 (LLNR 28040), located at 34°12′18″ N, longitude 077°48′10″ W, to Wrightsville Channel Day beacon 25 (LLNR 28080), located at 34°12′51″ N, longitude 77°48′53″ W.

Dated: September 12, 2011.

William D. Lee,

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

[FR Doc. 2011–26256 Filed 10–11–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[EPA–HQ–OAR–2009–0491; FRL–9478–6]

RIN 2060–AR22

Revisions to Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of public hearing.

SUMMARY: EPA is announcing that a public hearing will be held on October 28, 2011, for the proposed rule, ''Revisions to the Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone'', which was signed on October 6, 2011 and posted on EPA's website on October 6, 2011. The hearing will be held, as provided in this notice and in the proposed rule, if requested, and will take place in Washington, DC.

DATES: The public hearing, if requested, will be held on October 28, 2011. To request a hearing, please contact the person listed in the following **FOR FURTHER INFORMATION CONTACT** section by October 19, 2011.

ADDRESSES: The public hearing, if requested by October 19, 2011, will be held in Room 152 at EPA offices, 1310 L Street, NW., Washington, DC 20005 beginning at 9 a.m. and continuing until 5 p.m. if necessary. The EPA Web site for the rulemaking, which includes the proposal and information about the public hearing, can be found at *http://www.epa.gov/crossstaterule.* If no request is made by October 19, 2011, no hearing will be held. An announcement that a hearing was not requested and so will not be held will be made on EPA's Web site referenced above.

FOR FURTHER INFORMATION CONTACT: If you would like to present oral testimony at the public hearing, if held, please contact Ms. Gabrielle Stevens, Clean Air Markets Division, Office of Atmospheric Programs, Mail Code 6204J, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460, telephone number (202) 343–9252, *e-mail address: stevens.gabrielle@epa.gov* (preferred method for registering), no later than 2 business days prior to the public hearing if timely request for a hearing has been made. The last day to register will be October 26, 2011. If using e-mail, please provide the following information: Name, affiliation, address, e-mail address, and telephone and fax numbers.

Questions concerning the proposed rule should be addressed to Ms. Gabrielle Stevens, Clean Air Markets Division, Office of Atmospheric Programs, Mail Code 6204J, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460, telephone number (202) 343–9252, e-mail address: *stevens.gabrielle@epa.gov.*

SUPPLEMENTARY INFORMATION: The public hearing is to provide the public with an opportunity to present oral comments regarding proposed revisions to EPA's Final Transport Rule (Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals). EPA is proposing to amend the assurance penalty provisions of the rule to make them effective beginning January 1, 2014. EPA is also proposing, or seeking comment on, revisions to address discrepancies in unit-specific modeling assumptions that affect proper calculation of Transport Rule state budgets, new unit set-asides, Indian

country new unit set-asides, and assurance levels as follows: (1) Revise an error in Michigan's annual NO_X budget to account for an erroneously assumed selective catalytic reduction (SCR) emission control device at one unit; (2) revise an error in Nebraska's annual NO_X budget to account for an erroneously assumed SCR emission control device at one unit; (3) revise an error in the Texas SO_2 budget to account for erroneously assumed flue gas desulphurization (FGD, or scrubber) emission control devices at three units and revised assumptions regarding flue gas treatment in existing scrubbers at seven units; (4) revise an error in the Arkansas ozone-season new unit set-aside to account for erroneously omitted projected emissions from one new unit; (5) revise an error in the Texas new unit set-aside to account for erroneously omitted projected emissions for SO_2, ozone-season NO_X, and annual NO_X; (6) revise New Jersey's ozone-season NO_X, annual NO_X and annual SO_2 budgets to account for an erroneously assumed scrubber and selective catalytic reduction emission control device at one unit and generation required for reliability purposes at six units, (7) revise Wisconsin's annual SO_2 and annual NO_X budgets to account for an erroneously assumed FGD and SCR device at two units, and (8) revise New York's annual SO_2, annual NO_X, and ozone season NO_X budgets based on required operational constraints likely to necessitate non-economic generation at ten units; (9) revise Louisiana's ozone season NO_X budget taking into account operational constraints likely to necessitate non-economic generation at twelve units; (10) revise Mississippi's ozone season NO_X budget taking into account operational constraints likely to necessitate non-economic generation at four units; (11) revise Texas's annual NO_X and ozone season NO_X budgets based on operational constraints likely to necessitate non-economic generation at seven units; and (12) revise Florida's ozone-season NO_X budget taking into account the unavailability of a previously operating nuclear unit. EPA is also proposing to add an additional limit on the allocation of allowances to units covered by certain consent decrees. In addition, EPA is proposing to correct technical errors in the rule text.

Public hearing: The proposal for which EPA will hold the public hearing, if requested, is available at *http://www.epa.gov/crossstaterule* and also in the docket identified below. The public hearing, if requested, will provide interested parties the opportunity to present data, views, or arguments concerning the proposal. EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. Written comments on the proposed rule must be postmarked November 14, 2011 unless a public hearing is requested in which event comments must be received on or before November 28, 2011.

Commenters should notify Ms. Stevens if they will need specific equipment or if there are other special needs related to providing comments at the hearing. EPA will provide equipment for commenters to show overhead slides or make computerized slide presentations if we receive special requests in advance. Oral testimony will be limited to 5 minutes for each commenter. EPA encourages commenters to provide EPA with a copy of their oral testimony electronically (via e-mail or CD) or in hard copy form.

The hearing schedule, including lists of speakers, will be posted on EPA's Web site *http://www.epa.gov/crossstaterule.* Verbatim transcripts of the hearing and written statements will be included in the docket for the rulemaking. Written statements (duplicate copies preferred) should be submitted to Docket ID No. EPA–HQ–2009–0491, at the address posted on EPA's webpage referenced above. Interested parties are strongly urged to monitor and consult the referenced Web site regarding the scheduled hearing.

EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule.

How can I get copies of this document and other related information?

EPA has established a docket for the proposed rule ''Revisions to the Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone'' under Docket ID No. EPA–HQ–OAR–2009–0491 (available at *http://www.regulations.gov*).

As stated previously, the proposed rule was signed on October 6, 2011 and is available at *http://www.epa.gov/crossstaterule* and in the above-cited docket.

Dated: October 6, 2011.

Elizabeth Craig,

Acting Director, Office of Atmospheric Programs.

[FR Doc. 2011–26314 Filed 10–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257, 261, 264, 265, 268, 271 and 302

[EPA–HQ–RCRA–2011–0392; FRL–9476–6]

RIN 2050–AE81

Hazardous and Solid Waste Management System: Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Data Availability and Request for Comment.

SUMMARY: This Notice announces and invites comment on additional information obtained by the Environmental Protection Agency (Agency or EPA) in conjunction with the proposed rule: Hazardous and Solid Waste Management System: Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities that was published in the **Federal Register** on June 21, 2010 (75 FR 35127). This information is generally categorized as: Chemical constituent data from coal combustion residuals (CCRs); Facility and waste management unit data; Information on additional alleged damage cases; Adequacy of State programs; and Beneficial Use. In addition, EPA is considering a variety of possible approaches to update and enhance the risk assessment and the regulatory impact analysis (RIA) supporting the development of the final rule. EPA is specifically soliciting comments on the validity and propriety of the use of all new information, data, and potential analyses being noticed today. The Agency is only requesting comment on the information either specifically identified in this Notice or located in the docket for this Notice and is not reopening any other aspect of the proposal or the underlying support documents that were previously available for comment. Comments submitted on any issues other than those specifically identified in this Notice will be considered ''late comments,'' and EPA will not respond to such comments, nor will they be

considered part of the rulemaking record.

DATES: Submit comments on or before November 14, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2011–0392, by one of the following methods:

(1) *http://www.regulations.gov:* Follow the online instructions for submitting comments.

(2) *E-mail:* Comments may be sent by electronic mail (e-mail) to *rcra-docket@epa.gov,* Attention Docket ID No. EPA–HQ–RCRA–2011–0392. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

(3) *Fax:* Comments may be faxed to 202–566–9744. Attention Docket ID No. EPA–HQ–RCRA–2011–0392.

(4) *Mail:* Send two copies of your comments to Hazardous and Solid Waste Management System: Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities: Notice of Data Availability and Request for Comment, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Attention Docket ID No. EPA–HQ–RCRA–2011–0392.

(5) *Hand Delivery:* Deliver two copies of your comments to the Hazardous and Solid Waste Management System: Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities: Notice of Data Availability and Request for Comment Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Attention Docket ID No. EPA–HQ–RCRA–2011–0392. 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–RCRA–2011–0392. EPA's policy is that all comments received will be included in the public 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 *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 *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Hazardous and Solid Waste Management System: Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities: Notice of Data Availability and Request for Comment Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–0270. 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.

FOR FURTHER INFORMATION CONTACT: Steve Souders, Office of Resource Conservation and Recovery (5304P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, telephone (703) 308–8431, e-mail address *souders.steve@epa.gov* or Jason Mills, Office of Resource Conservation and Recovery (5305P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, telephone (703) 305–9091, e-mail address *mills.jason@epa.gov.* For more information on this rulemaking, please visit: *www.epa.gov/epawaste/nonhaz/industrial/special/fossil/ccr-rule/index.htm.*

SUPPLEMENTARY INFORMATION:

I. How should I submit CBI to the agency?

Do not submit information that you consider to be CBI electronically through *http://www.regulations.gov* or by e-mail. Send or deliver information identified as CBI only to the following address: RCRA CBI Document Control Officer, Office of Resource Conservation and Recovery (5305P), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–RCRA–2011–0392. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD–ROM, 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 CBI). Information so marked will not be disclosed, except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any 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 and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please contact: LaShan Haynes, Office of Resource Conservation and Recovery (5305P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002,

telephone (703) 605–0516, e-mail address *haynes.lashan@epa.gov.*

II. Purpose of This Notice

With this Notice, EPA is reopening the comment period on the proposed rule: Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals from Electric Utilities (75 FR 35127, June 21, 2010), herein referred to as the ''2010 proposed rule,'' for the limited purpose of obtaining public comment on additional information that may be relevant to the development of a final rule. Some of the information includes data or analyses that were received during the comment period for the 2010 proposed rule and that could have the potential to play a role in support for decisions in the final rule. It also includes information obtained based on further EPA research conducted both during and after the close of the comment period, and which was therefore not available for public comment during the prior comment period on the proposed rule. The NODA describes several general categories of information and data. In addition, this Notice describes some new information and data we have received that could be used in potential updates and enhancements to the risk assessment and RIA for the final rule.[1] Note, however, that the NODA does not provide an exhaustive presentation of all of the information and data that EPA is placing in the associated docket and seeking comment on. All the information subject to this notice can be accessed as described in Unit III of this notice.

EPA is still in the process of evaluating this information and deliberating the provisions of a final rule. Therefore EPA cannot definitively state whether this information will provide support for any provision of the final rule, or that the Agency has determined that it is appropriate to rely on this information in developing the final rule. In addition, it should not be assumed that the specific information identified in this Notice is the full sum of information received in comments that will be considered or that will influence the Agency's decisions in this rulemaking. However, in the interests of ensuring that the public has had a full and complete opportunity to comment on the information that EPA has so far identified as having the potential to weigh in EPA's decisions on the final rule, EPA is reopening the comment period for the limited purpose of allowing the public to comment on the validity and propriety of using this information, data, and potential analyses in developing the final rule. EPA will also review this information to ensure the data is of sufficient quality before relying on it in deliberations on the final rule.[2] EPA will use its Information Quality Guidelines, as appropriate, to evaluate information to be used in the Risk Assessment as well as all other information which supports the regulatory determination.[3] In addition, EPA will also rely on the EPA Science Policy Council Assessment Factors Guidance to evaluate the quality and relevance of scientific and technical information.[4]

As noted above, all of the information on which EPA is requesting comment is either specifically identified in this Notice or is located in the docket supporting this Notice. EPA is not reopening the comment period on any other aspect of the proposed rule. This is not an opportunity for the public to supplement their comments on the proposed rule, or to raise issues that could have been raised during the original comment period. The only issues on which the Agency is soliciting comment relate to the information in the docket supporting this Notice, EPA–HQ–RCRA–2011–0392, or the potential revisions to the risk assessment specifically described in this Notice. Comments submitted on any issues other than those specifically identified in this Notice will be considered ''late comments'' on the proposed rule. EPA will not respond to such comments, and they will not be considered part of the rulemaking record.

III. Where can the information identified in this notice be found?

Most of the information that EPA is noticing today, including the specific comments, can be found in the docket supporting this Notice, EPA–HQ–RCRA–2011–0392. Otherwise, the information is available from websites at internet addresses provided in this notice. For example, laboratory CCR leachate reports, included in Maryland Department of the Environment Coal Combustion Byproducts Reporting Requirements which are being noticed below are available at: *http://www.mde.state.md.us/programs/Land/Solid Waste/CoalCombustionByproducts/Pages/Programs/LandPrograms/Solid_Waste/ccbs/index.aspx.* In addition, to further assist the reader, we are also providing, where appropriate, the docket number of the comment as it is identified in the docket supporting the 2010 proposed rule, EPA–HQ–RCRA–2009–0640. The docket number can be found directly following the comment in a parenthetical. For example, Southern Company provided an Electric Power Research Institute (EPRI) report titled ''Characterization of Field Leachates at Coal Combustion Product Management Sites,'' EPRI report 1012578 (attachment two of document No. EPA–HQ–RCRA–2009–0640–6300). With this additional information the reader can also use the proposed rule docket to access the noticed information.

Finally, most documents are available from the docket for viewing and downloading through *http://www.regulations.gov*; however, copyrighted documents are only available for viewing by visiting the docket for the proposed rule (EPA–HQ–RCRA–2009–0640) at regulations.gov.

IV. What new chemical constituent data are being noticed?

EPA is soliciting comment on chemical constituent data on coal combustion residuals (CCRs) provided by commenters, which include total concentrations, pore water, and leaching test results for various types of CCRs, i.e., bottom ash, fly ash, flue gas desulfurization (FGD) gypsum, FGD sludge, fly ash cenospheres, boiler slag, and combined waste streams. The following documents identify the new CCR constituent data on which EPA is seeking comment.

1. Southern Company provided an Electric Power Research Institute (EPRI) report titled ''Characterization of Field Leachates at Coal Combustion Product Management Sites,'' EPRI Report 1012578 (attachment two of document

[1] The cited risk assessment, ''Draft: Human and Ecological Risk Assessment of Coal Combustion Wastes,'' April 2010 (EPA–HQ–RCRA–2009–0640–0002), and RIA, ''Regulatory Impact Analysis for EPA's Proposed RCRA Regulation Of Coal Combustion Residues (CCR) Generated by the Electric Utility Industry, '' April 2010 (EPA–HQ–RCRA–2009–0640–0003) are available in the docket for the 2010 proposed rule.

[2] The Agency's *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency* contain EPA's policy and procedural guidance for ensuring and maximizing the quality of information that the Agency disseminates. They were developed in response to guidelines issued by the Office of Management and Budget (OMB) under Section 515(a) of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554; H.R. 5658). The EPA Information Quality Guidelines are available at: *http://epa.gov/quality/informationguidelines/documents/EPA_InfoQualityGuidelines.pdf.*

[3] Specific evaluation criteria are outlined in the Agency's *Data Quality Assessment: A Reviewer's Guide* (EPA/240/B–06/002, February 2006) and in the checklist provided at *http://www.epa.gov/quality/qs-docs/cklist-secondary.pdf*

[4] Available at *http://www.epa.gov/OSA/spc/pdfs/assess2.pdf.*

No. EPA–HQ–RCRA–2009–0640–6300). This report provides field leachate results for bottom ash, fly ash, and FGD solids in Table A–1 of Appendix A. The same report was provided by EPRI in their comments on the proposed rule (EPA–HQ–RCRA–2009–0640–7776 and attachment four of document No. EPA–HQ–RCRA–2009–0640–9765). The report is copyrighted and not available through regulations.gov. The report may be viewed by visiting the docket reading room or can be obtained at no charge from EPRI at *www.epri.com* by searching on the document number or title in the search bar.

2. The Alaska Department of Environmental Conservation (ADEC) provided a table of total metals, toxicity characteristic leaching procedure (TCLP), and synthetic precipitation leaching procedure (SPLP) results for a bottom ash and a fly ash sample from an electric utility, and from a non-utility. These data are provided in Appendix A of ADECs comments on the proposed rule (attachment one of document No. EPA–HQ–RCRA–2009–0640–6409).

3. The Michigan Department of Natural Resources and Environment (MI DNRE) provided a summary table of TCLP data, ''Leach Results from Evaluation of Ninety Coal Combustion Residuals Samples.'' These data are provided in Attachment 1 of MI DNRE's comments (attachment three of document No. EPA–HQ–RCRA–2009–0640–6815). MI DNRE has subsequently provided individual TCLP results for 102 CCR samples and 12 FGD gypsum samples, and two landfill leachate samples. These data are available in the docket supporting this Notice.

4. Sunflower Electric Power Corporation provided a table of SPLP leach test results for a fly ash sample, a bottom ash sample, and four composite sludge samples. The results are provided in a table on page 41 of the report ''Volume 2: Site Hydrogeologic Assessment, Waste Characterization, and Fate and Transport Modeling, Holcomb Common Facilities Industrial Landfill, July 27, 2007.'' (attachment three of document No. EPA–HQ–RCRA–2009–0640–6912).

5. The University of North Dakota Energy & Environmental Research Center, on behalf of the Coal Ash Resources Research Consortium, provided the following:

a. A report titled ''Evaluation of Leaching Potential of Solid Coal Combustion Wastes, Final Report'' (attachment two of document No. EPA–HQ–RCRA–2009–0640–6996) which includes tables in Appendix D of totals concentrations and leaching test procedure results for two fly ash samples, a fly ash sludge, a filter cake sludge sample, and a poz-o-tec (a mixture of fly ash, FGD sludge, and quicklime (calcium oxide)) sample.

b. A report titled ''Mercury and Air Toxic Element Impacts of Coal Combustion By-Product Disposal and Utilization'' (attachment two of document No. EPA–HQ–RCRA–2009–0640–6997) which includes tables in Appendix M of leaching test results for 58 fly ash, five FGD, and four FGD gypsum samples using various leaching methods, but not TCLP, and TCLP mercury results for 15 fly ash samples.

c. Appendix E of the report titled ''Demonstration of Coal Ash for Feedlot Surfaces'' (attachment five of document No. EPA–HQ–RCRA–2009–0640–6998) which includes tables of leaching test results for five fly ash and two bottom ash samples using 18-hr, 30-day, and 60-day leach methods, plus bulk and trace element data for five fly ash samples, two bottom ash samples, and one slag sample.

6. In their comments on the proposed rule, EPRI provided the following:

a. Tables of total metals and TCLP results summary statistics for 32 FGD gypsum and 11 mined gypsum samples (attachment one of document No. EPA–HQ–RCRA–2009–0640–9765, page 81). EPRI has since provided EPA with individual TCLP results for the gypsum samples. These data are available in the docket supporting this Notice.

b. A report titled ''Characterization of Field Leachates at Coal Combustion Product Management Sites; Arsenic, Selenium, Chromium, and Mercury Speciation,'' EPRI Report 1012578, (EPA–HQ–RCRA–2009–0640–7776 and attachment four of document No. EPA–HQ–RCRA–2009–0640–9765) which includes in Table A–1 of Appendix A, trace elements of field leachates from bottom ash, fly ash, and FGD sludge collected at 15 impoundments and 17 landfills. (This is the same report and data provided by the Southern Company described above.)

7. The Boiler Slag Consortium provided laboratory reports with total metals and TCLP results for boiler slag fines samples (attachment one of document No. EPA–HQ–RCRA–2009–0640–7787, attachment two of document No. EPA–HQ–RCRA–2009–0640–7787, and attachment three of document No. EPA–HQ–RCRA–2009–0640–7787).

8. Senator David Vitter provided laboratory reports with total metals and TCLP results for boiler slag fines samples (attachment two of document No. EPA–HQ–RCRA–2009–0640–6958, attachment three of document No. EPA–HQ–RCRA–2009–0640–6958, and attachment four of document No. EPA–HQ–RCRA–2009–0640–6958). These are the same data provided by the Boiler Slag Consortium (attachment one of document No. EPA–HQ–RCRA–2009–0640–7787 and attachment three of document No. EPA–HQ–RCRA–2009–0640–7787).

9. The Gypsum Association provided tables of total metals and TCLP results for FGD gypsum (attachment one of document No. EPA–HQ–RCRA–2009–0640–8227, pages 15 through 19 and Exhibit 2).

10. TCLP results for five fly ash cenosphere samples were provided by Sphere One, Inc. (attachment one of document No. EPA–HQ–RCRA–2009–0640–8245, pages 4 through 6).

11. Congresswoman Michele Bachmann provided laboratory reports with total metals and TCLP results for boiler slag fines samples (attachment three of document No. EPA–HQ–RCRA–2009–0640–8262 and attachment four of document No. EPA–HQ–RCRA–2009–0640–8262). These are the same data provided by the Boiler Slag Consortium (attachment one of document No. EPA–HQ–RCRA–2009–0640–7787 and attachment three of document No. EPA–HQ–RCRA–2009–0640–7787).

12. U.S. Minerals provided a copy of draft comments from Harsco Minerals which includes a table of TCLP results for 34 slag samples (attachment one of document No. EPA–HQ–RCRA–2009–0640–8271, pages 11 and 12). Twenty five of the 34 samples were also provided by Harsco Minerals in their comments dated November 19, 2010 (see number 14 below). Only 24 of the 34 samples are from electric utilities.

13. The American Coal Ash Association (ACAA) provided the following in their comments on the 2010 proposed rule (EPA–HQ–RCRA–2009–0640–10486):

a. A report titled ''Leaching of Inorganic Constituents from Coal Combustion By-Products under Field and Laboratory Conditions,'' EPRI, 1998 (TR–111773–V1) which includes tables of summary statistics for pore water concentrations from eight landfills and 12 surface impoundments for coal ash on page 3–2 and for FGD sludge on page 3–3, and tables of summary SPLP and TCLP results for CCRs from 10 surface impoundments on page 4–4 and 4–5. This report was provided by ACAA on a CD and is available for viewing by visiting the docket reading room. The report may also be obtained at no charge from EPRI at: *http://www.epri.com* by searching on the document number or title in the search bar.

b. A paper titled ''Leachability of Trace Metal Elements from Fly Ashes,

and from Concrete Incorporating Fly Ashes,'' which includes tables of leaching test results for fly ash and fly ash concrete on pages 21 and pages 23 through 25. This paper was provided by ACAA on a CD and is only available for viewing by visiting the docket reading room.

c. The paper titled ''Comparative Leaching of Midwestern Fly Ash and Cement,'' which includes tables of total metals concentrations and leaching test results for fly ash and cement on pages 30–6 through 30–14. This paper was provided by ACAA on a CD and is only available for viewing by visiting the docket reading room.

14. Harsco Minerals provided the following with their comments on the proposed rule (EPA–HQ–RCRA–2009–0640–10489):

a. A table of TCLP results for 25 boiler slag samples on page 13. One sample, source number 24, is from a non-utility.

b. A table of TCLP results for three boiler slag fines samples on page 14.

c. Laboratory analyses reports for the 25 boiler slag samples in (a) above (attachment seven of document No. EPA–HQ–RCRA–2009–0640–10489, Exhibit 6).

d. Laboratory reports of total metals and TCLP leaching tests for three boiler slag fines samples (attachment seven of document No. EPA–HQ–RCRA–2009–0640–10489, Exhibit 7). These are the same data provided by the Boiler Slag Consortium described in number 7 above.

e. Laboratory analyses reports of TCLP results for three pre-blast and three post-blast boiler slag blasting abrasives (attachment seven of document No. EPA–HQ–RCRA–2009–0640–10489, Exhibit 8).

15. Laboratory CCR leachate reports, included in Maryland Department of the Environment Coal Combustion Byproducts Reporting Requirements Annual Reports Received for 2008 through 2010: *http://www.mde.state.md.us/programs/Land/SolidWaste/CoalCombustionByproducts/Pages/Programs/LandPrograms/Solid_Waste/ccbs/index.aspx.* Reports can be found under the heading ''CCR Reporting Information'' at the bottom of the webpage. EPA is seeking comment specifically on leachate reports pertaining to Constellation Energy; Mirant Mid-Atlantic, LLC; AES Warrior Run, LLC; and Allegany Energy Supply Company.

16. EPA's Office of Research and Development (ORD), in coordination with Vanderbilt University (VU), has also developed CCR leaching data (Leaching Environmental Assessment Framework, or LEAF, data). Some of these data considered applicable to the 2010 Risk Assessment were already made available in reports placed in the proposed rule docket (EPA–HQ–RCRA–2009–0640–0314, 0315, and 0329); further data are being made available to the public for the duration of the comment period at: *http://vanderbilt.edu/leaching.* To obtain a free access key, click the ''License Application'' option under the ''LeachXS Lite'' tab. EPA is also providing further documentation of the data and the methodologies used at: *http://www.epa.gov/nrmrl/pubs/600r10170/600r10170.pdf.*

V. What new facility and waste management data are being noticed?

The Agency is considering whether to use the following additional information sources in support of the final rule.

1. U.S. Department of Energy/Energy Information Agency (DOE/EIA): ''2009: EIA–923 January—December Final, Nonutility Energy Balance and Annual Environmental Information Data.'' This database is available on-line at a U.S. Department of Energy/U.S. Energy Information Administration Web site at: *http://www.eia.doe.gov/cneaf/electricity/page/eia906_920.html* under the heading ''Downloads'' at the bottom of the webpage. This database identifies facility data that may be considered in the development of the final rule.

2. On October 21, 2010, EPA issued a NODA (75 FR 64974) seeking public comment on the responses to Information Collection Requests that EPA sent to electric utilities on their CCR surface impoundments, as well as reports and materials related to the site assessments EPA has conducted on a subset of these impoundments. Additional responses and site assessment materials have been posted to EPA's website since that time and this NODA addresses and solicits comment on this information, including:

a. The Information Request Responses to EPA's Information Request Letter to Electric Utilities available at: *http://www.epa.gov/epawaste/nonhaz/industrial/special/fossil/surveys/index.htm*

b. EPA's Coal Combustion Residuals Impoundment Assessment Reports available at: *http://www.epa.gov/epawaste/nonhaz/industrial/special/fossil/surveys2/index.htm*

VI. What reports regarding alleged damage cases from the management of CCRs are being noticed?

The Agency is noticing several reports received in comments to the 2010 proposed rule, relating to alleged CCR management damage cases:

1. A new report of alleged damage cases was released February 24, 2010, by the Environmental Integrity Project and Earthjustice titled ''Out of Control: Mounting Damages From Coal Ash Waste Sites,'' which presents 31 alleged CCR damage cases that were not included or were not recognized as damage cases in EPA's July 2007 report (EPA–HQ–RCRA–2006–0796–0015) titled ''Coal Combustion Waste Damage Case Assessments.'' The report is available from the docket to this Notice.

2. In late 2009, EPRI submitted to EPA two draft reports titled ''Evaluation of Coal Combustion Product Damage Cases: Volume 1: Data Summary and Conclusions'' (finalized in July 2010), and ''Evaluation of Coal Combustion Product Damage Cases: Volume 2: Case Summaries''(finalized in September 2010). In these reports EPRI claimed that the EPA was inconsistent in applying its own 'test of proof' criteria to determine which of the damage cases included in EPA's July 2007 report qualify as CCRs-related proven damage cases. These reports are available from the docket to the proposed rule (EPA–HQ–RCRA–2009–0640–0326, and EPA–HQ–RCRA–2009–0640–0327, respectively). These are copyrighted reports and are not available for viewing on-line. The 2010 final reports are also copyrighted and are only available for viewing by visiting the docket to this Notice. They are also available on-line from EPRI at: *http://my.epri.com/portal/server.pt?open=512&objID=413&&PageID=230509&mode=2&cached=true.*

3. A report released August 26, 2010, by the Environmental Integrity Project, Earthjustice, and the Sierra Club titled ''In Harm's Way: Lack Of Federal Coal Ash Regulations Endangers Americans And Their Environment,'' which presents 39 alleged CCR damage cases. The report is available from the docket to this Notice.

VII. What new analyses of state programs are being noticed?

1. EPA is noticing the comments on the 2010 proposed rule, submitted by Earthjustice, Environmental Integrity Project, Sierra Club, Natural Resources Defense Council, Southern Alliance for Clean Energy, Southern Environmental Law Center, and Physicians for Social Responsibility (attachment one of document No. EPA–HQ–RCRA–2009–0640–6315), addressing gaps in state government regulatory programs applicable to the management of CCRs (pgs. 17–63).

2. The Agency is also noticing comments addressing state programs

submitted by the Association of State and Territorial Solid Waste Management Officials (attachment one of document No. EPA–HQ–RCRA–2009–0640–3936 and EPA–HQ–RCRA–2009–0640–8787), the Environmental Council of the States (attachment one of document No. EPA–HQ–RCRA–2009–0640–4003 and EPA–HQ–RCRA–2009–0640–8854) and 36 states. All of the states' comments are available in the docket to the proposed rule.

VIII. What new materials on beneficial uses are being noticed?

The Agency received a significant amount of additional data and other factual information relating to the beneficial reuse of CCR, such as the use in concrete, bricks and wallboard, during the comment period. EPA also obtained additional data as a result of further research. EPA is requesting comment on whether this information should be considered in the development of the final rule. All of these documents are available from the docket to this Notice.

IX. What new information and potential modeling analyses to update and enhance the risk assessment are being noticed?

EPA is considering updating its risk assessment prepared in support of the 2010 proposed rule based upon public comments and additional information made available since the publication of the proposed rule. The 2010 Risk Assessment, ''Draft: Human and Ecological Risk Assessment of Coal Combustion Wastes,'' April 2010 (''2010 Risk Assessment'') is available in the docket to the proposed rule (EPA–HQ–RCRA–2009–0640–0002). As noted previously, EPA is requesting comment only for the narrow purposes described in Unit II—i.e., on the validity and propriety of using the information, data, and analyses associated with this notice. As also noted previously, although EPA is singling out the information and data specifically listed below and in the docket for further public comment, it should not be assumed that this information/data is the full sum of the information/data received in comments that will be considered or that will influence the Agency's decisions in this rulemaking.

1. EPA is considering updating its pore water data by adding pore water data submitted by public commenters (previously discussed in Section IV). EPA is also considering the use of alternative statistical analysis, such as the use of quartiles or bootstrapping, in place of site averages for pore water data in order to retain intra-site variability in these data while not biasing results from the sites with greater numbers of sampling points.

2. EPA is considering using the latitude and longitude data (obtained from additional information sources discussed in Section V) to estimate the distances from CCR waste management units to human and ecological receptors. EPA is considering updating its estimated distances to groundwater wells based on modeled population estimates discussed in the Agency's RIA for the proposed rule. Further documentation and the modeled population estimates based on synthesized population data sets are accessible at: *ftp://ftp.epa.gov/coal-combustion-residues/NODA-1*.

3. EPA is considering updating the estimated distances from CCR waste management units to the nearest surface water bodies, based on the new latitude and longitude data (obtained from additional information sources discussed in Section V).

4. EPA is considering modeling both landfills and surface impoundments throughout the operational life of the waste management unit and post-closure using the same modeling approach utilized in the 2010 Risk Assessment.

5. EPA is considering revisiting its screening assessment based on the new data and analyses above. EPA is also considering the use of the peer reviewed models, AERSCREEN and AERMOD, to evaluate fugitive dust (*http://www.epa.gov/ttn/scram/dispersion_prefrec.htm#aermod*). Depending on screening results, EPA may consider CCR fugitive dust and other above-ground exposure pathways from the open CCR waste management units for further modeling.

Dated: September 30, 2011.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 2011–26086 Filed 10–11–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[PS Docket No. 11–153; PS Docket No. 10–255; FCC 11–134]

Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks to accelerate the development and deployment of Next Generation 911 (NG911) technology that will enable the public to send emergency communications to 911 Public Safety Answering Points (PSAPs) via text, photos, videos, and data and enhance the information available to PSAPs and first responders for assessing and responding to emergencies. This Notice of Proposed Rulemaking seeks comment on a variety of issues related to the short-term and long-term transition to NG911.

DATES: Submit comments on or before December 12, 2011. Submit reply comments on or before January 10, 2012.

ADDRESSES: You may submit comments, identified by PS Docket No. 11–153 and/or PS Docket No. 10–255, by any of the following methods:

- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow instructions for submitting comments.
- *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** section of this document.

FOR FURTHER INFORMATION CONTACT: Patrick Donovan, Attorney Advisor, (202) 418–2413. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith Boley-Herman, (202) 418–0214, or send an e-mail to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in PS Docket No. 11–153, PS Docket No. 10–255, FCC 11–134, released on September 22, 2011. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554, or online at *http://transition.fcc.gov/pshs/services/911-services/.*

I. Introduction and Executive Summary

1. In the Notice of Proposed Rulemaking, we seek to accelerate the development and deployment of Next

Generation 911 (NG911) technology that will enable the public to send emergency communications to 911 Public Safety Answering Points (PSAPs) via text, photos, videos, and data and enhance the information available to PSAPs and first responders for assessing and responding to emergencies. Sending text messages, photos, and video clips has become commonplace for users of mobile devices on 21st century broadband networks, yet our legacy circuit-switched 911 system does not support these forms of communication. While continuing to ensure reliable voice-based 911 service will always be essential as we migrate to NG911, adding these non-voice capabilities to our 911 system will significantly improve emergency response, save lives, and reduce property damage. Incorporating text and other media into the 911 system will make it more accessible to the public, both for people with disabilities and for people in situations where placing a voice call to 911 could be difficult or dangerous.

2. In addition, these 21st century communications technologies will provide PSAPs with better information that can be synthesized with existing databases to enable emergency responders to assess and respond to emergencies more quickly and effectively. Not only will PSAPs be able to receive text messages, photos, and video clips from the public, but also NG911 can provide them with the tools they need to quickly process and analyze the incoming information. In addition, PSAPs and emergency responders will be able to combine information received from the public with other information sources (e.g., video feeds from traffic or security cameras, automated alarms or sensors in a neighborhood, building, or vehicle) to develop a detailed and data-rich assessment of the emergency in real time. This in turn will enable public safety officials to decide on the appropriate response more quickly, saving precious minutes and seconds that can be critical in many emergencies.

3. In this NPRM, we provide a procedural history, together with technical background, regarding three broad classes of text-capable communications, namely Short Message Service (SMS), IP-based messaging, and Real-Time Text (RTT), comparing their characteristics, strengths, and limitations in supporting emergency communications. This description relies largely on current industry standards, early prototypes, and the record in this proceeding.

4. We then examine potential short-term methods for sending text messages to 911. We do so because of the widespread availability and increasing use of text in communications systems and because many of the emerging IP-based mechanisms for delivering text also have the capability, with relatively minor technical adjustment, to support delivery of photos, videos, and other data as well. We seek comment on what role the Commission should play to facilitate—and, if necessary, accelerate—the implementation of text-to-911 capabilities by providers in the short term. We explore the full range of options for the FCC, including both non-regulatory and regulatory approaches, and seek to adopt the least burdensome approach that would achieve the desired result. We also recognize that we must carefully assess the costs and benefits of different regulatory options to determine the Commission's proper role.

5. We seek to strengthen the record to determine whether to encourage development of interim text-to-911 solutions and, if so, how to maximize their effectiveness and utility to the public and to PSAPs, while minimizing cost and the potential for negative PSAP operational impacts or consumer confusion. Specifically, we explore the potential for using SMS as an interim solution for text-based communication to 911, given the near-universal availability and consumer familiarity with SMS. The responses to our December 2010 Notice of Inquiry in this proceeding identify a number of possible limitations when using SMS for emergency communications, but some commenters also contended that these limitations could be surmounted by appropriate engineering approaches. We also examine other short-term options that would rely on software applications capable of delivering text over the existing IP-based infrastructure. We examine the potential costs and benefits of both SMS-based and software-based interim approaches as compared to developing more comprehensive text-to-911 solutions over the longer term that will provide more reliable real-time communication and can also support delivery of photos and video.

6. Next, we seek comment on whether 911 traffic should be prioritized to ensure that people in need of assistance have reliable access to emergency services, especially during times of serious emergencies such as large-scale natural and manmade disasters. The August 23, 2011 East Coast earthquake and Hurricane Irene have been recent reminders that concentrated demands on the capacity of commercial communications networks during and immediately after emergencies can hinder the ability of consumers to make voice calls, which in turn can jeopardize their ability to contact 911. We seek comment on how best to address this concern in both legacy networks and the emerging broadband networks that will support NG911, including options for prioritizing 911 traffic.

7. We then turn to long-term implementation of NG911, with particular focus on IP-based alternatives for delivering text, photos, videos, and other data to 911 that would leverage the increasing percentage of mobile devices that have the ability to access the Internet. We seek comment on the potential for developing downloadable smartphone applications that both consumers and IP-capable PSAPs could acquire to support capabilities for an early roll-out of text and mulitimedia functionality. We note that such applications could also provide early access to key NG911 capabilities for mobile callers, especially those with hearing and speech disabilities.

8. We also seek comment on the path towards integration and standardization of IP-based text-to-911 as commercial providers migrate to all-IP networks and as 911 authorities deploy Emergency Services IP networks (ESInets) that will enable PSAPs to receive the full range of IP-based traffic, including voice, text, photos, video, and data. In this all-IP environment, text-to-911 is one of several non-voice services that will be supported by ''native'' IP communications end-to-end solutions, such as the Internet Multimedia Subsystem (IMS). However, providers may have varying timetables for developing the capacity to deliver IMS communications to PSAPs. PSAP deployment of ESINets is also likely to be non-uniform. We seek comment on the necessary steps for providers and PSAPs to support integrated IMS-based communications and the time that this process is likely to take.

9. With over 6,800 PSAPs in the United States, spanning a wide range of sizes and resources, individual PSAPs are likely to have highly varying timetables for developing the technical and operational capability to handle incoming texts in the short term, as well as texts and other media in the longer-term implementation of NG911. While there are significant public safety benefits to enabling the public to send texts and other media to 911 in areas where PSAPs are capable of receiving and processing them, we seek to avoid imposing unnecessary costs on providers to implement NG911 in areas where PSAPs have not yet achieved

such capability. For this reason, we seek comment on whether PSAPs should demonstrate a threshold level of technical NG911 capability as a precondition to any obligation by providers to deliver text or other media to PSAPs and whether such demonstration should be at the state or regional level. We also seek comment on potential state or local regulatory barriers to NG911 deployment and whether states should demonstrate that they have adopted legal or regulatory measures to eliminate such barriers to facilitate NG911 deployment.

10. Given that text-to-911 and other NG911 capabilities will likely not be simultaneously deployed nationwide, consumers may be uncertain where non-voice communication with 911 is available. Even where text-to-911 or other NG911 applications are available, the specific capabilities and operational characteristics of these applications may vary. We therefore seek comment on how to best educate consumers about the availability and limitations of text-to-911 and other NG911 solutions, particularly during the transition from legacy 911 to full implementation of NG911, without imposing an undue burden on providers.

11. As noted above, adding text and other media capabilities to our 911 system promises to bring significant benefits for people with disabilities. In this regard, we seek comment on the relationship between this proceeding and our ongoing implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, which, among other things, sets goals for achieving equal access to emergency services for people with disabilities ''as a part of the migration to a national Internet protocol-enabled emergency network.'' We believe that the transition to NG911 and the implementation of the CVAA can be achieved through development of common text-to-911 and multimedia-to-911 solutions that serve both objectives. In this NPRM, therefore, we seek comment on the potential for coordinating the two proceedings to promote broader and more rapid NG911 deployment.

12. Throughout this NPRM, we seek comment to further strengthen our record on these important aspects of the evolution towards NG911 systems and capabilities. In particular, we seek detailed data that quantifies the benefits that text-to-911 and other NG911 applications will bring to the public and to emergency responders, while also quantifying the costs to providers, PSAPs, and consumers. We emphasize the importance of comments being detailed, specific, and supported by data where appropriate. We intend to confer particular weight on arguments and estimates that are supported by data or are otherwise well documented.

II. Background

13. In this section, we review the procedural history leading up to this NPRM. We also provide technical background information classifying the likely technical options for text-to-911, and we recap the record on those options that the Commission received in response to the Notice of Inquiry.

A. Procedural History

14. In December 2010, as recommended in the National Broadband Plan, the Commission released a Notice of Inquiry on NG911 (FCC 10–200, released Dec. 21, 2010), which initiated a comprehensive proceeding to address how NG911 can enable the public to obtain emergency assistance by means of advanced communications technologies beyond traditional voice-centric devices. The Notice of Inquiry sought comment on a number of issues related to the deployment of NG911 networks, including: (1) NG911 capabilities and applications; (2) NG911 network architecture; and (3) the proper roles of the FCC, other federal agencies, and state, tribal, and local governments.

15. In the last several years, there have been other important efforts to address the need for a transition to an NG911 network. In the New and Emerging Technologies 911 Improvement Act of 2008, Congress tasked the National E9–1–1 Implementation Coordination Office (ICO) with developing ''a national plan for migrating to a national [Internet Protocol] IP-enabled emergency network capable of receiving and responding to all citizen-activated emergency communications and improving information sharing among all emergency response entities.'' The Department of Commerce's National Telecommunications and Information Administration (NTIA) and the Department of Transportation's (DOT's) National Highway Traffic Safety Administration (NHTSA) jointly manage ICO and released its migration plan in September 2009.

16. In March 2010, the National Emergency Number Association (NENA) released a handbook to serve as a guide for public safety personnel and government officials responsible for ensuring that federal, state, and local 911 laws and regulations effectively enable the implementation of NG911 systems. Specifically, the NENA Handbook provides an overview of key policy, regulatory, and legislative issues that need to be considered to enable the transition to NG911. The NENA Handbook states that ''it is critical that state regulatory bodies and the FCC take timely and carefully scrutinized action to analyze and update existing 9–1–1, PSTN, and IP rules and regulations to ensure they optimize 9–1–1 governing authority choices for E9–1–1 and NG9–1–1 and foster competition by establishing a competitively neutral marketplace.''

17. 3GPP has also published a report on the use of Non-Voice Emergency Services (NOVES) that provides a general description of perceived needs. In addition, ATIS has created its own Interim Non-voice Emergency Services (INES) Incubator. The ATIS INES Incubator ''provides the industry with a 'fast-track' process for resolving technical and operating issues'' and serves as ''an alternative approach toward solutions development.''

18. On October 8, 2010, the President signed the CVAA into law. As directed by the CVAA, the Chairman established the Emergency Access Advisory Committee (EAAC) for the purpose of achieving equal access to emergency services by individuals with disabilities as part of our nation's migration to NG911. The EAAC is composed of state and local government representatives responsible for emergency management and emergency responder representatives, national organizations representing people with disabilities and senior citizens, communications equipment manufacturers, service providers, and subject matter experts. The CVAA directed the EAAC to conduct a national survey of people with disabilities and then to make recommendations on the most effective and efficient technologies and methods to enable NG911 access. The EAAC conducted its survey from March 16, 2011, to April 25, 2011, and received over 3,000 completed responses. On July 21, 2011, the EAAC submitted the report on the completed survey to the Commission. The EAAC will make its recommendations to the Commission in December 2011, which the Commission is then empowered to implement by regulation.

19. In addition, other federal agencies have initiated efforts to address access to 911 in an Internet-enabled environment for people with disabilities. On March 17, 2010, the United States Access Board proposed draft guidelines for real-time text functionality for adoption by federal agencies as part of its efforts to update guidelines on section 508 of the Rehabilitation Act. In a separate

proceeding, the Department of Justice is currently reviewing comments received in response to an Advanced Notice of Proposed Rulemaking (ANPRM) on NG911 access to emergency services by people with disabilities. Current DOJ regulations under the Americans with Disabilities Act (ADA) require direct and equal access to telephone emergency services for people with disabilities who use TTYs. In its ANPRM, DOJ notes that many individuals with disabilities are now relying on IP-based and digital wireless devices instead of TTYs as their primary mode of telecommunications ''and that 9–1–1 call-taking centers are shifting from existing traditional telephone emergency services to new IP-enabled NG 9–1–1 services.'' The ANPRM addresses two objectives: (1) To identify and remove accessibility barriers for people with disabilities and who attempt to use personal digital or telecommunications devices to directly interact with PSAPs in voice, sign language, or text; and (2) to enhance the ability of PSAPs to incorporate essential accessibility elements into their IP-based system in a coordinated and effective manner. Finally, in compliance with the NET 911 Act, the ICO's national plan for migrating to an IP-enabled emergency network explored various solutions for providing enhanced 911 access to people with disabilities.

20. In March 2011, the Communications Security, Reliability, and Interoperability Council's (CSRIC's) Working Group 4B (CSRIC 4B) released a report entitled ''Transition to Next Generation 9–1–1.'' CSRIC is a Federal Advisory Committee that was tasked with providing guidance and expertise on the nation's communications infrastructure and public safety communications. Notably, the CSRIC 4B Report highlighted that ''the FCC must establish clear rules for accomplishing the transition to NG9–1–1'' and that ''[i]f SMS has a role as an interim non-voice service used to contact a PSAP, how it is deployed * * * will need to be resolved by the FCC.''

21. On August 30, 2011, the Transportation Safety Advancement Group (TSAG) released a report summarizing information that experts in law enforcement, fire-rescue, emergency medical services (EMS), and transportation operations would like to receive as end users of NG911 systems. The report provides insight into the cultural, organizational, and operational environments of these organizations.

B. Technical Background

22. In the Notice of Inquiry, we distinguished between use of ''primary'' and ''secondary'' media types to communicate with PSAPs. In brief, primary media types are those that are used to initiate a call or communications session with the PSAP, while secondary media types are those that are used to provide additional information to the PSAP after the call or session has been established. In the current E911 system, voice and TTY-based text are the only primary media that are widely available, and secondary media, such as photos and video, are not available.

23. In addition, while we focus in this NPRM on enabling consumers to deliver text and other non-voice media to PSAPs, we note that the adoption of NG911 technology will also provide PSAPs with new tools to process and analyze this information. In the Notice of Inquiry, we cited the potential for NG911 to accommodate a full range of specialized devices and functionalities that would enable PSAPs to combine multiple streams of information in real time to fashion responses to particular emergency scenarios. Examples of such devices and functionalities include environmental sensors capable of detecting chemicals, highway cameras, security cameras, alarms, gunshot sensors, personal medical devices, and telematics in vehicles or on consumer devices. For example, in a traffic accident, NG911 would not only enable the PSAP to receive the 911 call for help from the caller seeking assistance, but also would enable it to correlate the call with 911 calls from others at or near the scene and combine the information with video from nearby traffic cameras to assess the impact on traffic and identify the first responders that could reach the scene the fastest. In addition, if any vehicles in the accident had automatic collision notification systems, the PSAP would receive additional information regarding the severity of the crash that could help determine the likely medical needs of accident victims and the appropriate emergency medical response. Similarly, in a 911 call scenario reporting a crime such as a robbery or assault, NG911 would enable the caller to send important visual information such as a photo of the suspect or a vehicle involved in the crime, and would enable first responders to correlate this information with other sources, such as nearby security cameras, gunshot sensors, or alarm systems, and to quickly access relevant databases that could help identify the suspect or the suspect's vehicle.

24. In this NPRM, we primarily focus on developing text-based mechanisms that would serve as new primary media types for contacting a PSAP, supplementing voice calling capability and also supplementing or replacing TTY-based text. We consider photos and video as secondary media that may be used to augment a voice or text call. We recognize that this to some degree oversimplifies the potential media combinations that NG911 will ultimately support, ranging from single-medium communications (i.e., voice-only or text-only) to multi-media ''calls'' that may encompass combinations of interactive and stored media, including interactive voice, message-based and real-time text, photos, and both stored (previously recorded) and live video. However, for purposes of this NPRM, we focus on text as a primary media type and photos and video as secondary media types because in early NG911 deployments, primary communication between a caller and a PSAP is most likely to be voice-only or text-only and the availability of secondary media may differ based on caller device capabilities, PSAP and ESInet capabilities, and PSAP operational choices.

25. Based on the comments we received in response to the Notice of Inquiry, we can distinguish between a number of technical options for providing text-based and, in some cases, visual information (photos, video) to the PSAP. We briefly summarize these approaches below. We note that these options are not exclusive (i.e., a mobile device may support more than one option, either as an interim measure, or over the longer term). For purposes of this NPRM, we use the term ''caller'' to refer to the originator of the 911 communication, whether based on a traditional voice call, TTY call, or text message. We also discuss (1) mechanisms for providing caller location, both for routing and dispatch; (2) the ability of a caller to know whether his or her text message has been received by the PSAP; and (3) the possibility of establishing a session that permits the caller to conduct a conversation with the call taker.

26. TTY. With a TTY, a person with a hearing or speech disability can use a special text telephone to directly contact the PSAP, where the call taker uses a similar device to receive and transmit text. TTYs have a keyboard and allow people to type their telephone conversations. This two-way typing communication can occur with the person with the disability and the PSAP

call taker reading each other's responses on a small LED or backlit LCD screen. The disabilities community considers TTY an antiquated technology with technical and functional limitations, including its slow speed and half duplex mode; the inability of TTY tones to travel well using IP audio compression, transmission, and packet loss repair techniques without introducing text errors; and its Baudot text encoding standard used in the United States that does not include all of the characters used in modern text communication. Consequently, it is difficult for users to communicate URLs or email addresses, for example.

27. Text-to-Voice TTY-based telecommunications relay service (TRS). A TRS system is a telephone service that allows persons with hearing or speech disabilities, or who are deaf-blind, to place and receive telephone calls. With traditional TRS, a person with a communications disability uses a TTY to make a call through a communications assistant (CA), who is located at a relay center. To make a relay call, a TTY user calls a TRS relay center and types the number of the person he or she wishes to call, including 911. The CA then makes the call to the receiving party and relays the call back and forth between the parties by speaking what a text user types and typing what a voice telephone user speaks.

28. SMS-based. In SMS-based systems, the caller uses a mobile phone to send a short text message to the destination, which is typically either another mobile phone or an Internet-connected receiver. SMS messages are usually limited to 160 characters, although many modern handsets support concatenated messages that exceed this limit. Almost all existing mobile phones support SMS, except that non-service initialized (NSI) devices currently do not permit a caller to send an SMS message. SMS messages do not contain any information about the caller's location and do not identify the cell tower that received the SMS message from the caller's handset. SMS messages are delivered through an SMS gateway that relays the messages when capacity is available. Thus, SMS messages could in some circumstances be delayed, or even occasionally lost, when there is network congestion. Senders of SMS messages also may not receive confirmation that their message was delivered. More importantly, the sender may not receive an error message if the message was not delivered. SMS also does not support two-way real-time conversation, although SMS messages have identifiers that can allow users to exchange messages in a conversation-like manner.

29. IP-based messaging. There are at least three IP-based messaging mechanisms. However, not all of the IP-based messaging mechanisms are based on Session Initiation Protocol (SIP), which can be offered as part of the Internet Protocol Multimedia Subsystem (IMS). We provide a brief description of the three IP-based messaging mechanisms below.

- SIP-based pager-mode. In this mode, the mobile or stationary device uses SIP MESSAGE method to send text or Multipurpose Internet Mail Extensions (MIME) attachments, including photos, to a SIP user agent. Due to the messaging method employed, this method is often referred to as pager-mode, in contrast to session mode, which uses Message Session Relay Protocol (MSRP). Pager-mode requires an end-to-end IP connection between the originator and the PSAP, and either the originator or the SIP proxy may insert caller location using the SIP Geolocation header field. SIP responses allow the originator to determine whether the message has been delivered to the recipient. The SIP Call-ID may be used to maintain a conversation.
- Message Session Relay Protocol (MSRP). MSRP establishes a session between the message sender and the receiver that allows the exchange of a series of related instant messages. Typically, MSRP sessions are set up via SIP, similar to an audio or video session. As with SIP pager-mode, MSRP exchanges complete instant messages; however, MSRP imposes less of a burden on the signaling infrastructure.
- Other IP-based message-based protocols. We note that there are other proprietary and standards-based Internet text messaging protocols, such as Extensible Messaging and Presence Protocol (XMPP). However, it appears unlikely that a PSAP would be able to support all Internet text messaging protocols; thus, we believe that proprietary protocols are likely to be converted to one of the options above or to XMPP.

30. Real-Time Text (RTT). In RTT, individually-typed characters or groups of characters are transmitted as separate media packets, using the same basic protocol as audio and video sessions. This means that with RTT, unlike SMS or IP-based messaging, the recipient sees each character or word in the message almost immediately after the sender types it. RTT sessions can be established along with audio and video sessions and typically use SIP for session signaling.

31. The table below compares some of the core technical characteristics of the options discussed above.

	TTY	SMS-based	IP-based messaging	Real-time text (RTT)
Delivery to PSAP	Voiceband modem	SIP MESSAGE	SIP MESSAGE or MSRP	RTP payload.
Text	Only upper case letters, numbers, limited punctuation.	160 characters of plain text (some may allow longer text).	Any amount of text	Any amount of text.
Photos, videos in same message?	No	No	Yes	No.
Real-time audio and video in same session?	No	No	Yes	Yes.
Real-time text	Yes	No	No	Yes.
Full-duplex conversation (both sides can send messages at the same time).	No	Limited	Yes	Yes.
Location information	Yes, like voice call	Maybe (cell tower; may require cellular system changes).	Yes	Yes, via SIP signaling.
End-to-end message reliability and delivery confirmation.	No	No (may provide some confirmation for delivery to SMSC).	Yes	Loss detection and redundancy.
Message delay	Minimal	Variable—seconds to minutes.	Almost always < 500 ms	Almost always < 100 ms.

	TTY	SMS-based	IP-based messaging	Real-time text (RTT)
Authentication and message integrity.	None	Limited (relies on caller ID)	Messages can be cryptographically signed.	SRTP.
Conversation (session)	Like voice call	Only based on caller ID	Yes	Yes.

32. We seek comment on whether our description of texting methods and their capabilities in the above discussion is accurate and complete. Are there additional technical options that are likely to be available in the next few years? Are there additional key characteristics that the Commission should consider in evaluating these alternative technologies?

III. Discussion

33. Based on our analysis of information submitted in response to the Notice of Inquiry, we find that additional information is needed on the following issues related to text-to-911 and multimedia NG911 applications, and we therefore seek comment on these issues. First, what role, if any, should the Commission play in facilitating the short-term deployment of text-to-911 using existing infrastructure? Second, what role, if any, should the Commission play in facilitating the long-term deployment of non-voice emergency messaging services, including IP-based messaging and RTT, as well as multimedia applications that support delivery of voice, text, photos, video, and other data? Third, as the transition to NG911 occurs, what efforts are needed to educate the public and minimize consumer confusion, and what role, if any, should the Commission play in such efforts? Underlying all three of these issues is the question of whether the benefits of any potential Commission action to consumers and to public safety will substantially outweigh the associated costs. While acknowledging the potential difficulty of quantifying benefits and burdens, we need to determine whether those benefits outweigh the costs that enabling text-to-911 and other NG911 services impose on providers and PSAPs. Fourth, we seek comment on how best to coordinate this proceeding with our implementation of the CVAA and the recommendations of the EAAC. Fifth and finally, we consider the Commission's legal authority to take the regulatory and non-regulatory actions discussed in this Notice based on the record that develops on the issues described herein.

A. Facilitating the Short-Term Deployment of Text-to-911

34. In the Notice of Inquiry, the Commission highlighted the popularity and ubiquity of text messaging and the increasing likelihood that consumers will expect to be able to text to 911 during an emergency. Indeed, consumers send billions of SMS messages per day and more than two-thirds of mobile phone users have used text messaging. At the same time, many consumers are acquiring more advanced mobile devices (e.g., 3G and 4G handsets) that enable them to send texts using ''over the top'' software applications that they install on their phones and computers. Hence, any discussion about possible short-term deployment of text-to-911 must consider the feasibility of both SMS and currently available software applications (or software applications that could be developed relatively quickly) as interim platforms for text-to-911 until providers deploy more advanced NG911 technologies based on SIP and RTT. In deciding what role, if any, the Commission should play in such an interim deployment, we seek to maximize the benefits to consumers while also considering the burden on providers. We therefore seek comment on the expected benefits of facilitating NG911 deployment, the results of any ongoing trials and standards activities involving SMS and software applications, and the relative merits of using various approaches to achieve those benefits. When evaluating submitted comments, we intend to place more weight on the estimated impacts that are supported by hard data or are otherwise well-documented.

1. Expected Benefits of Text-to-911 Availability

35. Although quantifying the benefits of short-term deployment of text-to-911 may be difficult, we need to determine whether such a deployment will significantly benefit consumers and public safety. On this issue, responses to the Notice of Inquiry were divided. Several commenters argue that PSAPs and service providers should support SMS-based text-to-911 on an interim basis. Conversely, a number of commenters highlight the disadvantages of using SMS for emergency communications and argue that supporting SMS as an interim approach would undermine and divert resources from efforts to develop more comprehensive long-term solutions. These commenters urge the Commission to support standards-setting bodies that are working to develop a uniform approach for the delivery of NOVES. No comments were received on application-based approaches to text-to-911. Accordingly, we seek further comment on the benefits of using SMS and software applications for emergency communications, particularly with respect to improving 911 accessibility for people with disabilities, meeting consumer expectations, providing PSAPS with valuable additional information that they can in turn share with first responders on the ground, and increasing reliability and resiliency of 911 networks.

36. Accessibility of 911. The ability to text to 911 in the short term could substantially improve accessibility to 911 services for people with disabilities. In recent years, people with hearing and speech disabilities have increasingly migrated away from specialized legacy devices such as TTYs and towards more widely available forms of text communications because of the ease of access, availability, and practicability of text-capable communications devices. This migration is most apparent in the declining use of telecommunications relay service (TRS) over the PSTN, where the average monthly usage for TTY-voice based relay service dropped 87% between 2000 and 2010. Moreover, as noted in the NOI, the ICO Plan found that ''[t]he biggest gap between the technologies used for daily communication and those that can access 9–1–1 services is that for the deaf and people with hearing or speech impairments.'' In the EAAC's survey, in which respondents were primarily drawn from people with disabilities, 48.1% of respondents stated that they would prefer to use text messaging to contact 911.

37. Developing text-to-911 capability in the short term could also provide benefits by making 911 accessible to consumers in the so-called ''silent call'' scenario (i.e., in situations where the caller needs to contact the PSAP silently or surreptitiously because placing a voice call could put the caller in danger). Commonly cited examples of

the silent call scenario include burglaries, home invasions, kidnappings, and hostage situations where a crime is in progress and the caller does not want to attract the perpetrator's attention.

38. Toward that end, we seek more information on the benefits and associated costs of facilitating short-term text-to-911 solutions that can quickly improve the accessibility of the 911 system. To what extent can such short-term solutions assist individuals with hearing or speech disabilities? How frequently do people in emergencies encounter a silent call scenario where inability to send a text message to 911 could compromise the caller's safety? Can SMS provide significant accessibility benefits in these situations even if it does not offer real-time connectivity or enable the caller to send photos or videos, unlike some longer-term solutions under development? How, if at all, will receipt of texts allow PSAPs to better communicate information about an emergency situation to first responders on the ground? What, if any, costs will PSAPs incur to implement short-term text-to-911 solutions? Are there capacity limits on PSAPs' ability to accept texts to 911? With respect to interim text-to-911 solutions based on software applications, these may only be available on some mobile devices and may require additional steps by the user, both to install the application and to send the 911 text message. Is this a worthwhile trade-off to allow for earlier access to such capabilities than might otherwise be available if we were to wait for device replacement and fully-integrated NG911 services?

39. Consumer expectations. Another potential benefit of implementing text-to-911 in the short term is that it could help meet rapidly changing consumer expectations regarding the desired capabilities of the 911 system. According to the Pew Center, more than 7 out of 10 cell phone users send or receive text messages. With the increased use of text messaging, consumers could expect that their use of SMS extends to 911. We seek comment on whether promoting or requiring short-term text-to-911 solutions accurately reflects current and evolving consumer expectations and the needs of PSAPs and first responders. Does the rapid growth in the popularity of SMS messaging generate consumer expectations that SMS will support 911 texting? We seek information regarding how many people have attempted to text to 911 during emergencies but failed. Have there been instances where the ability to send a text message to 911 could have made a significant difference in the ability of first responders to assist the caller or the speed of the response? We also seek information that quantifies the impact that incorrect consumer expectations about the ability to text to 911 may have on the health and safety of the public.

40. Improved information for PSAPs. As we have noted above, in addition to improving communications between consumers and PSAPs, NG911 has the potential to enhance the ability of PSAPs and first responders to assess and respond to emergencies in real-time based on the texts, photos, and videos that consumers send to them, combined with information gathered and correlated from other sources. In this regard, what benefits, if any, could the short-term deployment of text-to-911 (which would not include the capability to transmit photos or video) provide PSAPs and first responders? For example, could texts to 911 provide additional information to assess the nature and severity of an emergency, help apprehend criminal suspects, speed emergency response, reduce the need to dispatch multiple types of emergency response (e.g., sending police, fire, and emergency medical personnel to a scene because the nature of the emergency is undetermined), or make it easier to screen potentially fraudulent or malicious calls? How do such benefits compare to the cost of short-term deployment of text-to-911? Would short-term implementation of text-to-911 increase the volume of 911 traffic or the time and resources required for PSAPs to process information as compared to handling voice calls? If so, are PSAPs equipped to handle such increases? If not, what do PSAPs need to do to prepare and what resources do they require?

41. Improved reliability and resiliency. In large-scale disasters, circuit-switched landline and mobile networks may become overloaded, making it more difficult to place a 911 voice call. As landline and mobile networks migrate from circuit-switched to IP-based packet-switched technology, the risk of overload or congestion may dissipate, but in the interim, enabling SMS and IP-based text messages to 911 could be beneficial because text consumes far less bandwidth than voice and may use different spectrum resources or traffic channels. Thus, people in disaster areas may still be able to send text messages to 911 even if they cannot place a voice call. Similarly, with improved technology, PSAPs may be able to filter text messages by incident, so that they spend less time with voice callers who report the same incident. We seek comment on the prospective impact of text messaging on PSAP operations and emergency response during large-scale disasters, with particular emphasis on experiences of overload-induced 911 failures. For example, there have been news reports that cell phone service, including the ability to reach 911, was impaired immediately after the August 23, 2011 East Coast earthquake, while SMS and email did not experience service disruptions.

2. Ongoing Text-to-911 Trials

42. To date, there have been only a small number of SMS-to-911 trials in the United States, although a number of jurisdictions are reportedly considering trials or near-term implementations. In 2009, Intrado and i wireless, a T–Mobile affiliate, initiated an SMS-to-911 trial in Black Hawk County, Iowa. In this trial, only Black Hawk County residents who subscribed to i wireless were able to make use of the text-to-911 service. Text messages sent in the trial did not carry location information, so users were prompted to enter their zip codes before the text message was forwarded to the PSAP. Despite the limited nature of the trial, county representatives have credited text-to-911 with positive outcomes in several emergency situations. On the other hand, AT&T contends that publicity about the Black Hawk County trial resulted in confusion that ''spread throughout the country'' regarding where text-to-911 was available.

43. In August 2010, the Marion County, Florida, Sheriff's Office developed an in-house text message to 911 system. Named ''ADD IT NOW,'' the program enables the Sheriff's Office Communications Center to receive urgent text messages on a dedicated screen that uses a yellow indicator light to signal incoming texts. The Sheriff's Office has advertised the availability of the number and has encouraged local citizens to add the number to their phone directories. The Sheriff's Office reports that the system cost $1,000 to develop and costs approximately $50 per month to maintain. The system does not convey location information.

44. On August 3, 2011, the City of Durham, North Carolina, announced an SMS-to-911 trial in partnership with Intrado and Verizon Wireless. According to Durham, the trial is specifically designed for two types of emergency scenarios: emergency help requests from people with disabilities and from people not wanting someone to hear them make a 911 call. When receiving a text, the Durham PSAP will not be able to automatically determine

the caller's location. To ensure that consumers are aware of this limitation, the city is making efforts to educate the public that they must include location information when sending an SMS-to-911. Durham has scheduled the trial to conclude on January 31, 2012, and will restrict the trial to Verizon Wireless customers in areas served by the Durham PSAP.

45. In June 2011, Cassidian Communications announced the successful completion of a ''simulation'' SMS-to-911 trial in Harris County, Texas, involving the Greater Harris County backup PSAP. According to Cassidian, ''[t]he testing during the trial utilized automatic location identification (ALI) capabilities allowing for the call takers to identify the location of the caller * * * Many operational implementation and procedure related elements remain to be discussed and ultimately implemented * * * It is anticipated that the technology will be available to the deaf and hard of hearing population in the GHC 9–1–1 territory within a year [after June 20, 2011] and subsequently will be offered to the rest of the population.'' Unlike the Black Hawk County and Durham trials, this trial did not involve members of the public.

46. Several European countries, including Estonia, Iceland, Luxembourg, Sweden, and the United Kingdom offer emergency SMS services or are planning to offer such services in the near future. In all of these countries, the SMS message does not automatically include location information, which the sender of the SMS message is expected to provide manually. The Swedish SMS system, however, is capable of determining cell-tower location. In all of these countries, the SMS service is primarily directed towards people with disabilities and requires users to register in advance of using the service. Additionally, after the SMS PSAP receives and processes a text message, it forwards the necessary information to the appropriate voice PSAP. We seek comment on the above-described text-to-911 trials and on text-to-911 services offered in these countries. What are the advantages and disadvantages of the various approaches to text-to-911? What lessons could the United States draw from the international examples?

47. Standards. We seek comment on any standards-development activities by industry or standards-setting bodies that may play a role in the short-term deployment of text-to-911 services based on SMS or software applications. We also seek comment on whether there are any additional text-to-911 trials or standards efforts that have been conducted thus far or that are contemplated in the near future. We request that commenters provide the Commission with any relevant data that has been gathered from these trials and standards-setting efforts, including the number of individuals who sent text messages to 911 during the trials, whether PSAPs could locate those callers, and the effectiveness of texting as a means of communicating with PSAPs.

3. Approaches Based on SMS and Existing Infrastructure

48. In the Notice of Inquiry, the Commission sought comment on a number of issues related to SMS-to-911. The Notice of Inquiry recognized that SMS is not a synchronous messaging service and therefore does not provide a means for the sender to know whether and when his or her message has reached its destination. It also noted that because each SMS message is independent of its predecessors and successors, messages within the same logical conversation may not be routed to the same destination or in the proper sequence. Further, the Notice of Inquiry referenced concerns about whether the recipient of an SMS message could reliably and accurately determine the sender's geographic location.

49. Comments. Wireless providers and some industry standards bodies are generally opposed to adopting or requiring SMS-to-911 as an interim solution. Many wireless providers argue that SMS is unreliable and should not be used for emergency communications. AT&T contends that ''SMS suffers from significant limitations that make it both dangerous and infeasible to rely on for emergency communications,'' because there is no guarantee of delivery for SMS messages and no acknowledgment provided to the sender. AT&T characterizes SMS as ''a best-effort, store-and-forward service [making] it unreliable and prone to unacceptable delays for purposes of emergency communications.'' T-Mobile and Verizon similarly argue that SMS lacks important functionalities and reliability that are needed for a viable emergency communications service. Verizon argues that the interests of PSAPs, consumers, and service providers ''would be better served by focusing on incorporating RTT and more advanced messaging technologies into IP-based platforms and into the wireless industry's deployment of 4G LTE technology.'' ATIS notes that current SMS standards do not support automated routing to the PSAP or automated location information, which are critical to emergency communications. Further, ATIS argues that because of ''the higher probability of SMS-to-911 message failure, liability protection for SMS-to-911 services must be far stronger than that currently provided for voice calls.''

50. Public safety commenters express similar concerns about SMS-to-911. NENA states that ''[t]oday, SMS lacks many of the characteristics needed to support quality emergency communications.'' NENA therefore ''does not advocate the use of SMS as a means to access 9–1–1 systems.'' APCO notes that ''there are a number of Quality of Service concerns with the use of SMS to 911.'' Wichita-Wilbarger states that ''SMS messaging is distinctly unsuitable for communications with emergency services [because] SMS messaging does not allow for real-time communication [which] raises the possibility of miscommunication with the PSAP.''

51. However, some 911 technology and software providers support the use of SMS as an interim solution for emergency communications and contend that there are ways to overcome some of its technical limitations. TCS states that ''based on existing public expectations both from current SMS users and members of specialized communities, it is generally accepted that the introduction of SMS to 911 is inevitable.'' TCS also notes that ''SMS to 9–1–1 communication can be controlled so that a Dispatcher receives information that is timely, dependable, and adequate enough to make a professional dispatch decision.'' Moreover, TCS states that it has ''demonstrated in its laboratory and in limited field experiments that SMS emergency service can be provided reliably and in the near term.'' TSAG maintains that ''under certain emergency settings, SMS messaging represents an important (at times only) alternative to voice communications [and] public expectations suggest NG911 systems be configured to accept and manage SMS based emergency communications, notwithstanding the technical and operational 'challenges'.'' Intrado maintains that ''SMS is a viable, reliable, interim solution for situations in which those who are in emergencies are not in a position to place a voice call to 9–1–1.'' The ATIS INES Incubator is considering several interim solutions for text-to-911 and divides these solutions into two groups, ''consumer to PSAP'' and ''consumer to relay services to PSAP.'' Among the ''consumer to PSAP'' solutions that the ATIS INES Incubator is considering are: emergency voice call then SMS, emergency voice then web chat, instant messaging, RTT direct to PSAP, RTT converted to TTY,

TTY emulation, video ASL, and SMS direct to PSAP. Among the ''consumer to relay services to PSAP'' solutions that the ATIS INES Incubator is considering are: IP relay service, video relay service, national SMS relay, national RTT relay, and home PSAP relay.

52. L.R. Kimball (Kimball) ''supports the development of a SMS to 911 solution'' and believes that many of the limitations cited by other parties can be resolved by ''[s]electing a different point of interconnection between the SMS system and 911.'' According to Kimball, such limitations are the ''consequence of the selected point-of-interconnection (POI) between the SMS system and 911, namely, at the store-and-forward service,'' however, selecting a different POI ''may permit many of these problems to be resolved and, if implemented properly, should not seriously or significantly impact the operation of the existing SMS system.'' Specifically, Kimball argues that ''a store-and-forward function need not exist between the SMS originator and [a] PSAP, provided a suitable POI can be found ahead of the store-and-forward function.'' Further, according to Kimball, specific elements of the telephone industry standard Signaling System 7 (SS7) network can provide ''an effective and convenient POI for interconnecting SMS systems with a new 911-specific SMS service'' and many mobile telephone switches allow for the design of ''several possible mechanisms that can be used to separate SMS to 911 messages from normal SMS processing.'' Consequently, Kimball contends that ''with SMS to 911 messages separated from the SMS system, it becomes possible to implement a dedicated SMS to 911 [Signaling Control Point (SCP)] [that] can address most, or even all, of the technical objections to a SMS to 911 service and can do so without impacting the SMS store-and-forward functions that are in widespread use today.'' An SMS to 911 SCP can perform functions such as ''gateway and protocol conversion functions from SS7 to NG911, including signaling and media conversion''; ''assigning a 'session identifier,' so that successive SMS messages (from the same phone) reach the same dispatcher via the NG911 network''; ''providing acknowledgement or negative delivery text messages back to the originator of the emergency text message''; and ''querying the wireless carrier's position determining system in an attempt to locate the originator's location.''

53. Discussion. The record indicates that SMS-to-911 has a number of technical limitations that affect its ability to support reliable emergency communications. SMS is essentially a store-and-forward messaging service that is not designed to provide immediate or reliable message delivery; does not support two-way real-time communication; does not provide the sender's location information; and does not support the delivery of other media such as photos, video, and data. All of these factors appear to make SMS inappropriate as a long-term text-to-911 solution and warrant caution in encouraging it as a short-term solution. At the same time, SMS-to-911 offers certain significant potential benefits as an interim solution. It can be deployed relatively quickly, consumers have already embraced the technology, and the vast majority of wireless providers and mobile devices support SMS. Moreover, the trials in other countries that we described above indicate that SMS can supplement voice-based 911 services. In addition, some commenters have suggested that it is possible to overcome or mitigate some of the technical limitations of SMS at a reasonable cost to providers, PSAPs, and consumers.

54. Balancing these considerations, we believe that PSAPs, providers, and vendors should have the option to implement SMS-to-911 as a short-term alternative. We seek comment on this view and on whether the benefits of leveraging SMS-to-911 on an interim basis outweigh the limitations of SMS. We also encourage SMS-to-911 trials by interested parties to develop improved information about the strengths and limitations of this approach, and we request that participants in ongoing and future trials (existing and future) submit their trial data and findings in this proceeding.

55. We also seek comment on the feasibility of overcoming or mitigating SMS technical limitations at a reasonable cost to providers, PSAPs, and consumers. Specifically, we seek comment on Kimball's proposal regarding selecting a different point of interconnection between the SMS system and 911. How technically feasible is this solution, and on what percentage of mobile switching infrastructure could it work? Kimball notes that ''there is no business or regulatory driver to implement a SMS to 911 interconnection [and] implementation and maintenance would be an additional cost to providers and there is no process in place to recoup those expenditures.'' We seek comment on the costs of implementation of this proposal, including ongoing maintenance and operation costs. We also seek comment on any activities by standards-setting bodies that may play a role in the short-term deployment of SMS-based text-to-911 services. Intrado argues that any text-to-911 ''solution should use the digits 9–1–1.'' We seek comment on whether a national short code for SMS-to-911 should be designated by the Commission, a standards-setting body, or some other entity. If so, how should this short code be designated and implemented?

56. Further, one limitation that most commenters recognized is the inability of SMS to provide accurate location information for routing or PSAP dispatch purposes. To overcome this limitation, would it be technologically feasible for the recipient of an emergency SMS, such as the ALI database provider, to query for the location using the phone number provided, assuming that it can identify the originating provider? Have such techniques been tested experimentally? If this is feasible, could such a query work for all SMS messages or would it only be available for certain classes of messages (e.g., only for messages sent while the user is not roaming or for domestic customers)? Are there other limitations? If there are such limitations, is there data to quantify the fraction of SMS messages or users likely to be affected, extrapolating from non-emergency use of SMS? What costs would be associated with such a solution? How much time would separately checking the ALI database to determine the location of an individual texting to 911 add to response time?

4. Approaches Based on Software Applications

57. As noted above, many consumers are acquiring more advanced mobile devices (e.g., 3G and 4G handsets) that enable them to install applications on their phones, including applications to send text messages without using SMS or MMS, sometimes referred to as ''over the top.'' We seek comment on the feasibility of using general texting or 911-specific applications to support a transitional non-voice NG911 system that would allow consumers to send text and other non-voice media to PSAPs. Such a system would consist of two components: (1) One or more databases that describe where text-to-911 capabilities are available and how to reach the appropriate PSAP; and (2) one or more software applications for smartphone operating systems. Providers and third parties, including but not limited to systems vendors that currently provide services and equipment to PSAPs, could develop such applications. The application

would obtain location information, including cell tower identity, from smartphone operating systems and would rely on standard IP connectivity to deliver a message to the right destination based on a location database. The database would map approximate location data to a PSAP or ESInet IP address or indicate that text service is not available for that location.

58. This system architecture has several potential benefits, including the fact that it could be rolled out in a relatively short period of time and that it would not require any major provider network or mobile handset upgrades. We seek comment on the costs and timeframe for deploying such a system. How would such a system be structured to reduce the time to deployment, minimize the effort required by providers, and maximize the operational reliability of the system? We also seek comment on whether it would be possible for this system to support other media besides text, including voice, video, images, and data. Could the system be made compliant to existing and emerging standards? Would PSAPs need to have access to broadband IP connectivity or should the system allow for translation of text messages (e.g., to TTY-based messaging)? Would PSAPs need to install any additional software or hardware? If so, what specific costs would be associated with such installation? Is it possible for an application to automatically detect whether a PSAP is capable of receiving only text or also other advanced media types, such as images? How would an entity or entities be selected to build and maintain the national database(s) of where text-to-911 applications work and what costs are associated with creating and maintaining a database? Who should bear those costs? What entities would provide the smartphone application? Should there be a process whereby applications are certified in some way? If so, what entity should perform this certification?

59. Under this system, only users of smartphones would be able to install the applications that would enable them to send text messages to 911. How, if at all, should the Commission address this issue? Could the system outlined above be adapted to handle SMS messages after translation to a SIP-based message format? Are there prototypes or alternatives of application-based NG911 systems that the Commission should consider as models? Are there any activities by standards-setting bodies that may play a role in the short-term deployment of text-to-911 services based on software applications?

B. 911 Prioritization in Major Emergencies

60. A critical feature of public safety is the ability of persons in need of assistance to have reliable access to emergency services, especially during times of major disasters such as large-scale natural and man-made disasters. The August 23, 2011 East Coast earthquake and Hurricane Irene demonstrated that concentrated demands on the capacity of commercial communications networks during and immediately after emergencies can hinder the ability of consumers to make voice calls. This, in turn, could jeopardize consumers' ability to contact 911, potentially leaving 911 callers without the assistance they need. We seek comment on how best to address this concern in both legacy networks and the emerging broadband networks that will support NG911.

61. One way to enhance consumers' ability to contact 911 in the wake of a disaster is to prioritize 911 traffic over non-911 traffic. Accordingly, we seek comment on whether GSM and CDMA networks are able to support prioritization of 911 calls. If so, are wireless providers currently prioritizing 911 calls to their respective radio access networks (both for GSM and CDMA networks)? What are the costs of incorporating 911 prioritization technology, to the extent it exists, into these networks? What are the qualitative and quantitative benefits of doing so? Are 911 prioritization technologies for GSM or CDMA networks used outside of the United States today, and if so, where and what has been the experience with these technologies, including with respect to their reliability? If not, can anything be done to improve them to support 911 use? Are there similar concerns about network congestion inhibiting 911 calls on wireline networks? If so, do providers prioritize wireline 911 calls, or should they? What are the advantages and disadvantages of doing so? Would prioritizing 911 calls during and after a major emergency limit the ability of consumers to complete non-911 calls that serve a socially important purpose, such as calls to confirm the safety or whereabouts of family members?

62. Another way to improve consumers' ability to reach 911 in the wake of a disaster is to encourage users to limit their use of the network so that calls to 911 are more likely to go through. Could legacy service providers take preparatory or preventive measures to mitigate congestion and thereby increase the likelihood that consumers are able to contact 911 during major disasters? Are there best practices that providers or others could encourage consumers to follow to mitigate congestion after major disasters? Would the network protocols and systems used for Wireless Priority Services (WPS) be suitable for prioritizing 911 calls, and if so, would any adjustments be needed?

63. As discussed above, after the East Coast earthquake on August 23, 2011, many consumers were unable to make voice calls, but they could send text messages. To what degree would the deployment of text-to-911 capability improve the ability of consumers to reach 911 during a major disaster by reducing network congestion? What are the relative costs and benefits of short-term deployment of this capability through retrofitting of legacy networks versus developing text-to-911, as well as the priority mechanisms discussed above, as basic components of emerging and future broadband networks? We seek comment on these issues and ask commenters to address any other significant considerations with respect to industry standards and practices, including any evolving trends and industry initiatives addressing the avoidance or mitigation of 911 service disruptions during major disasters.

64. We also seek comment on the potential for prioritization of 911 traffic in existing and future mobile broadband networks. For example, Long Term Evolution (LTE) provides mechanisms for prioritizing traffic through capabilities such as Allocation Retention Priority (ARP), which assigns fifteen levels of priority. We seek comment on whether these capabilities and/or other LTE and IMS capabilities can support prioritization for 911 calls. We seek comment on the technical feasibility, potential benefits, and costs of doing so. Do wireless providers intend to prioritize 911 calls on LTE or IMS networks? Are they incorporating this technology into their commercial networks today? What costs are associated with incorporating such technology into LTE or IMS networks, and what are the qualitative and quantitative benefits of doing so? Would PSAPs need to make any changes to their facilities to ensure appropriate prioritization of 911 calls delivered over LTE or IMS? If so, what costs would be associated with such changes? What NG911 standards are being developed for LTE or IMS technologies and networks, if any, that would reduce the risk of network congestion? Should standards-setting bodies consider additional standards to address this matter? Should broadband networks be configured to support prioritization of

911 calls? If so, how can that be done cost effectively?

65. We note that in the Open Internet Order, the Commission specifically stated that nothing in our Open Internet rules ''supersedes any obligation or authorization a provider of broadband Internet access service may have to address the needs of emergency communications or law enforcement, public safety, or national security authorities, consistent with or as permitted by applicable law, or limits the provider's ability to do so.'' We believe that to the extent the 911 prioritization alternatives considered here would apply to broadband Internet access service providers, they fall within this provision. We seek comment on this view. In addition, in the Open Internet Order, we declined to adopt a requirement that network managers provide public safety users with advance changes in network management practices that could affect emergency services, but we ''encourage[d] broadband providers to be mindful of the potential impact on emergency services when implementing network management practices, and to coordinate major changes with providers of emergency services when appropriate.'' Would the same approach be appropriate in the context of 911 prioritization?

66. Are there any other legal issues involved in prioritizing 911 traffic? For example, to the extent a 911 call is carried by a provider subject to section 202(a), would prioritization of a 911 call be considered ''discrimination,'' and if so, would it be considered a reasonable form of discrimination? What other legal issues, if any, would need to be considered and addressed?

67. Further, with respect to legacy networks and emerging broadband networks, we seek comment on how service providers and public safety officials would manage and coordinate prioritization of 911 traffic in emergency situations. What role should service providers and public safety officials play in determining the need for and scope of prioritization in mobile wireless networks? Should 911 prioritization be implemented temporarily based on the specific conditions of the emergency, or should it be implemented on a permanent basis? If prioritization were temporary, who should determine when to initiate it and when to terminate it?

C. Facilitating the Long-Term Deployment of NG911 Text and Multimedia Applications

68. In deciding what role, if any, the Commission should play in the long-term deployment of NG911 text and multimedia alternatives, we seek to maximize the benefits to consumers from any action we would take while taking into consideration the costs of compliance for providers and PSAPs. We therefore seek comment on the expected benefits of facilitating that deployment, the results of any ongoing trials and on the activities of standards-setting bodies involving texting services and multimedia applications (including data, photos, and video), and the relative merits of using various technical approaches to achieve those benefits. As in our prior evaluation of short-term alternatives, when evaluating the record with respect to long-term alternatives, we intend to place significantly more weight on the estimated impacts that are supported by hard data or are otherwise well-documented.

1. Expected Benefits of Availability of NG911 Text and Multimedia Applications

69. Although quantifying the benefits of a long-term deployment of texting and multimedia applications for emergency communications may be difficult, we need to determine whether such deployment will significantly benefit consumers. Therefore, as in the case of short-term alternatives, we seek more information on the benefits of long-term NG911 applications, particularly with respect to improving 911 accessibility for people with disabilities, meeting consumer expectations, providing PSAPs with valuable additional information, and increasing reliability and resiliency.

70. Accessibility of 911. Long-term NG911 applications based on based on SIP and RTT also have the potential to provide substantially improved accessibility to 911 services for people with disabilities, as well as to provide an alternative means for non-disabled people to access 911 when voice access is unavailable or could pose risks to the caller, for example in a silent call scenario. This finding is supported by EAAC survey data showing that 48.1% of respondents drawn primarily from the disabilities community would prefer to use text messaging to contact 911. Further, as noted in the Notice of Inquiry, the ICO Plan found that ''[t]he biggest gap between the technologies used for daily communication and those that can access 9–1–1 services is that for the deaf and people with hearing or speech impairments.'' In addition, to the extent that long-term alternatives support not only text, but also video and multimedia applications, they could enhance accessibility for people with disabilities who rely on media other than text to communicate.

71. We therefore seek more information on the benefits and associated costs of facilitating advanced text-to-911 and multimedia services, such as those based on SIP and RTT, to improve the accessibility of the 911 system. How do these benefits and costs compare to the benefits and costs of the short-term solutions discussed earlier? To what extent can advanced text and multimedia services assist individuals with hearing or speech disabilities or those who are deaf-blind? What benefits are created by the ability of these services to offer real-time connectivity or to enable the caller to send photos, videos, or data? To what degree will improvements in accessibility associated with text and multimedia services be limited to people with advanced mobile devices? If so limited, what are the likely consequences for people with disabilities who may not be able to afford smartphones that provide such capabilities?

72. Consumer expectations. SIP-based text-to-911 capable of supporting RTT could help ensure that the 911 system meets consumer expectations regarding the ability to make multimedia transmissions to PSAPs in a next-generation environment. We therefore seek comment on whether promoting or requiring delivery of text and multimedia communications accurately reflects current and evolving consumer expectations and the needs of PSAPs and first responders. We seek information regarding how many people have attempted to send multimedia applications (including data, photos, or video) to 911 during emergencies but failed. Have there been instances where the ability to send multimedia applications to 911 could have made a significant difference in the ability of first responders to assist the caller or the speed of the response? We also seek information that quantifies the impact that incorrect consumer expectations about the ability to send multimedia applications to 911 may have on the health and safety of the public.

73. Improved information for PSAPs. Long-term NG911 alternatives founded on SIP-based standards will not only support text-to-911, but also will support multimedia sessions that combine voice, text, photo, and video capability. Such multimedia applications will provide PSAPs and first responders with valuable additional information to assess the nature and severity of an emergency and determine the appropriate response. PSAPs and first responders may use such additional information to speed

their response or determine the type of response required (e.g., whether to dispatch police, fire, or EMT units). For example, as noted above, in a traffic accident, NG911 would not only enable the PSAP to receive the 911 call for help from the caller seeking assistance, but also would enable it to correlate the call with 911 calls from others at or near the scene and combine the information with video from nearby traffic cameras to assess the impact on traffic and identify the first responders that could reach the scene the fastest. In addition, if any vehicles in the accident had automatic collision notification systems, the PSAP would receive additional information regarding the severity of the crash that could help determine the likely medical needs of accident victims and the appropriate emergency medical response. In some cases, enhanced information could lead to quicker apprehension of criminal suspects or could facilitate screening of potentially fraudulent or malicious 911 calls. For example, the PSAP could ask a caller to take a picture or video of the scene of an alleged incident to verify that the caller is indeed close to the scene. In the Technical Background section, we explained that NG911 technologies also include a number of multimedia applications, which are broader than just person-to-person text and messaging services. Are there any steps the FCC should take now to encourage further development of those technologies?

74. We seek comment on the benefits of providing additional information to PSAPs, particularly if supported by data, for example on the incidence of fraudulent calls, or descriptions of emergency incidents where multimedia information could have been helpful. We also seek comment on the benefits of supporting video communications for people with disabilities who have come to rely on this mode of communication on a daily basis, such as persons who use American Sign Language. Finally, we seek comment on whether PSAPs are equipped to handle an increased volume of data from multimedia applications. How will PSAPs process and sort through such information? What additional resources, if any, will they need to be able to do so?

75. Improved reliability and resiliency. IP-based messaging services could contribute to improved reliability and resiliency of emergency response networks because they generally consume less bandwidth than voice calls and may use different spectrum resources or traffic channels. This may enable people in disaster areas to send text messages to 911 even if they cannot place a voice call. Similarly, as 911 network technology migrates from circuit-switched to packet-switched networks with improved technology, PSAPs will have more tools to filter text messages by incident, so that they can spend less time with multiple callers reporting the same incident. For example, IP-based text and multimedia could be combined with other technologies such as device-to-device communication (e.g., automatic crash detection) to process information more efficiently. We seek comment on the impact of IP-based messaging solutions on PSAP operations and emergency response during large-scale disasters. How do the benefits and costs compare to the benefits and costs of short-term text-to-911 solutions discussed earlier?

2. Standards Development for NG911 Applications

76. Standards. We also seek comment on ongoing activities of standards-setting bodies regarding deployment of IP-based text and multimedia emergency services for next generation networks. In the Notice of Inquiry, the Commission noted that ''[w]hile the basic components of identification, location lookup, and call routing are present in all NG911 proposals, there have been at least three different proposed approaches for how to implement these elements in specific networks.'' The three proposals noted by the Commission were the ATIS 'Considerations for an Emergency Services Next Generation Network (ES–NGN)'; the NENA architecture based on Internet Engineering Task Force (IETF) protocols; 'NENA Functional and Interface Standards for Next Generation 9–1–1 Version 1.0 (i3)'; and the 3rd Generation Partnership Project architecture; 'IP Multimedia Subsystem (IMS) Emergency Sessions.

77. NENA has noted that NENA and 3GPP requirements must be aligned to make NG911 available. We seek comment on whether such alignment is necessary and, if so, how much time is needed to effectuate an alignment. What benefits would such alignment provide? The 3GPP architecture is compatible with NENA's i2 architecture. While NENA's i2 permits VoIP providers to send 911 voice calls and location information to PSAPs, 3GPP extends the i2 solution to include text and video. We seek comment on whether aligning 3GPP with NENA's i3 requirements would result in substantive changes to NENA specifications, 3GPP specifications, or both. What costs, if any, are associated with aligning NENA and 3GPP requirements? We also seek comment on whether it would be necessary to align these requirements and specifications with ATIS' proposals. Can protocol gateways be used to connect i3 systems to, for example, 3GPP IMS systems? What functionality would these gateways need to support? Do these gateways pose potential scaling or reliability problems? Are there any technical specifications or requirements needed to further the development of the more advanced devices and functionalities that are broader than just person-to-person text and messaging services?

78. NENA has also indicated that more recent versions of its NG911 technical specifications and its NG911 transition plan will be needed for the 3GPP/NENA alignment. As noted above, 3GPP has published a report on the use of NOVES that provides a general description of perceived needs. In addition, ATIS has created its INES Incubator. We seek comment on when these interim and final specifications for handling NOVES are likely to be published. Will there be alignment issues involving NOVES and INES? Are there additional specifications or requirements needed to implement long-term NG911 solutions for text and multimedia? Have any additional efforts to develop NG911 standards been conducted to implement these specifications, requirements, or solutions? We request that commenters provide the Commission with any relevant data that has been gathered from these efforts to develop NG911 standards.

3. Approaches Based On IP-Based Messaging or Real-Time Text

79. As noted above, there are at least three IP-based messaging mechanisms, including SIP-based pager-mode, MSRP, and XMPP. We also provided a description of RTT, which permits characters to be sent when typed. Further, we described ATIS' INES Incubator program and other next generation text-to-911 standards-setting initiatives.

80. Comments. Wireless providers generally argue that SMS-to-911 should not be part of the NG911 framework. Instead, providers maintain that industry should be given additional time to develop standards for IP-based emergency services, such as NOVES. According to T-Mobile ''[r]ather than expend resources trying to make SMS work for 911, stakeholders should instead focus on next-generation communications services that will provide better 911 access to all consumers.'' CTIA argues that ''[a] new messaging suite will provide functionality similar to and exceeding

current messaging services and is expected to be incorporated into a future release of the LTE standard.'' According to CTIA, NOVES is anticipated to be finalized by September 2012 as part of 3GPP Release 11. CTIA argues that ''industry and the Commission need to weigh the benefits of proposed interim solutions against the risk of delay to such long term solutions for which development efforts are entering the advanced stages.'' AT&T recommends that the Commission ''encourage work by industry groups such as NENA, ATIS, and 3GPP to develop standards for NOVES for next generation networks that include non-SMS text based messaging options.'' Verizon states that ''significant activities are under way to develop a uniform approach for the delivery of * * * NOVES * * * including the use of messaging for emergency services. RTT, which will be feasible for NG911 networks and consumer equipment, is still undergoing assessment but has been standardized by 3GPP as the optimal replacement for legacy TTY/TDD devices in 4G wireless communications networks [and] the Commission should support and monitor these efforts, and not be distracted by less effective interim measures.''

81. CSRIC 4B notes that ''a long term solution may be provided by * * * NOVES * * * a new service for which requirements are being developed in the NENA Next Generation Messaging Group and in the 3GPP SA1 group.'' According to CSRIC 4B, ''The NENA Next Generation Messaging Working Group is currently developing use cases and requirements for NOVES, and those requirements are expected to be aligned with those in the ATIS Wireless Technology and Systems Committee (WTSC) and 3GPP SA1, which will be, at some future point, standardizing NOVES. Further, according to CSRIC, ''When 3GPP SA1 completes the requirements for NOVES, other 3GPP groups will determine whether network architecture changes are needed and whether any new protocols (or changes to existing protocols) are needed to support NOVES.'' CSRIC 4B estimates that work on NOVES industry standards may be completed by March 2012.

82. Public safety commenters also have concerns about SMS-to-911 and generally support RTT as a text-to-911 solution. APCO notes that ''there are a number of Quality of Service concerns with the use of SMS to 911'' and that ''RTT has the potential benefit of allowing hearing-impaired or speech-impaired individuals to communicate directly, in real time, with an NG911 capable PSAP, rather than having to be routed through an intermediary service.'' NENA states that ''[d]ue to its more conversational flow, Real-Time Text * * * is a preferred method of communication for many text users, and particularly for individuals with disabilities.'' NENA also notes that ''standards-compliant RTT should be supported in all NG9–1–1 deployments.''

83. Discussion. We seek comment on the timeframe in which standards are likely to be completed for RTT or other IP-based messaging solutions, and how much additional time will be required for providers to implement these solutions in their networks. What are the advantages and disadvantages of RTT and other IP-based messaging solutions, and which solutions show the most potential for allowing individuals to communicate with 911? Should the Commission play a more active role in monitoring or facilitating the standards-setting process, or should it not act until next generation non-voice emergency messaging standards are closer to being finalized? Should the Commission coordinate a voluntary industry-wide timetable or establish a mandatory timetable for standardization, implementation, and roll-out to facilitate planning by manufacturers, software vendors, and PSAPs?

4. Approaches Based on Software Applications

84. In our discussion of short-term alternatives, we sought comment on developing ''over the top'' software applications that would enable consumers to send text messages and other non-voice media to PSAPs using IP networks. We specifically sought comment on the feasibility of developing a non-voice NG911 system in the short term that would consist of two components: (1) A database or databases that would identify where text-to-911 capabilities are available and how to reach the appropriate PSAP and/or text answering center; and (2) one or more software applications for smartphone operating systems. We noted that this system could be rolled out quickly and would not require any major provider network or mobile handset upgrades.

85. We seek comment on whether ''over the top'' software applications such as the one described above have long-term as well as short-term potential to support delivery of text and other media to 911. Are there additional software-based applications that we should consider as long-term options even if they are not viable in the short term? We seek comment on the costs and timeframes for deploying such applications. Could we use software-based applications to reduce the time to deployment, minimize the effort required by and costs for providers, and maximize the operational reliability of NG911?

86. We also seek comment on the potential for long-term software applications to support voice, text, video, and images, both separately and in combination. Could such applications be made compliant to existing and emerging standards? What level of broadband IP connectivity would PSAPs need to support multimedia applications, particularly bandwidth-intensive applications such as video? Would PSAPs need to install any additional software or hardware? If so, how much would such additional software or hardware cost? Would applications be capable of automatically detecting the capability of individual PSAPs to receive particular media? To what degree would PSAPs using software-based applications require access to regional or national databases? Who would build and maintain such databases? How much would such databases cost and who would bear that cost? What entities would provide the smartphone applications? Should such applications be certified, and if so, who should perform the certification?

D. The Commission's Role in Expediting Deployment of Text-to-911 and Other NG911 Applications

87. In this section, we seek comment on the role the Commission should play to expedite the development and widespread deployment of the short-term text-to-911 and long-term text and multimedia solutions discussed above.

1. Incentive-Based vs. Regulatory Approaches

88. In response to the Notice of Inquiry, wireless providers generally argue that the Commission should not adopt any text-related requirements at this time. Instead, providers maintain that the Commission should wait until standards, such as IMS and NOVES, are more fully adopted. For example, AT&T states ''the Commission should not specify which technologies should be used in the NG911 environment, but should allow standards to define these technologies.'' Sprint Nextel highlights that it ''supports efforts to deploy an NG911 service that will include both voice and text capabilities'' but that ''there are many technical considerations that must be resolved * * * through standards-setting organizations before NG911 implementation can move forward.'' On

the other hand, NENA argues that ''waiting until all or most PSAPs have NG9–1–1 capabilities and all access network providers support NG9–1–1 standards and then simultaneously enabling text support is an untenable model. Consumers expect to access 9–1–1 by text now, not many years from now. * * *. It would be best, in our opinion, for text to be enabled soon, nationwide, over a short deployment period. We believe that can be accomplished.''

89. We seek comment on whether there are any incentive-based approaches that the Commission could or should adopt to encourage the rapid development of text-to-911 solutions. Should the Commission develop best practices for deploying text-to-911 and other multimedia applications, for example through CSRIC? Alternatively, should the Commission adopt deadlines, timetables, or uniform network interface standard requirements? Do providers have an incentive to rapidly develop NG911 solutions if the Commission does not impose such measures? If so, what are those incentives? Are there any actions that the Commission could take to act as a catalyst or facilitator for early operational prototypes? Should the Commission defer additional regulatory action until standards are more universally adopted? If so, what specific set of standards would have to be completed to trigger such action? What degree of flexibility should the Commission afford to providers in their efforts to deploy NG911 solutions? Which mobile devices and networks should be subject to requirements? For example, should requirements apply only to devices capable of accessing the Internet or sold after a specific date established by the Commission?

2. PSAP-Based Triggers for Providers To Provide NG911 Solutions for Non-Voice Emergency Messaging to 911

90. In the NG911 environment, PSAPs will need certain equipment and operational procedures in place to receive text and other media types from wireless providers. In response to the Notice of Inquiry, many commenters argued that the Commission should not require wireless providers to make investments in their networks to provide NG911 solutions until PSAPs are able to receive text and other media. We seek comment on the degree to which PSAP readiness should be factored into Commission action relating to NG911 implementation. What are the advantages and disadvantages of waiting until PSAPs can receive text and other media?

91. The Commission's existing E911 rules require CMRS providers to make Phase I and Phase II service available ''only if the administrator of the designated Public Safety Answering Point has requested the services required * * * and is capable of receiving and utilizing the data elements associated with the service.'' We seek comment on whether a similar process would be appropriate in the NG911 context, such that PSAPs would have to request delivery of text or other media to 911 and demonstrate the capability to receive such traffic. If so, what specific showing should a PSAP be required to make to establish its ability to receive text and other media types? For example, NENA states that ''[a] transition to NG9–1–1 starts when an ESInet is deployed and one PSAP is ready to utilize NG9–1–1.'' Should ESINet deployment be a required element of the PSAP showing? Should the PSAP demonstrate that it supports IP-based message routing (e.g., by advertising its geographic coverage region via a national, state-wide or regional LoST server?

a. State or Regional Approaches

92. With over 6,800 PSAPs in the United States, spanning a wide range of sizes and resources, individual PSAPs are likely to have highly varying timetables for developing the technical and operational capability to handle text as well as other media. Therefore, while there is significant benefit to having providers provide text-to-911 to individual PSAPs that are capable of receiving it, implementing this approach at the individual PSAP level could impose inefficiencies and burdensome costs on providers. Our experience with deployment of E911 on a PSAP-by-PSAP basis is instructive in this regard, as it resulted in providers frequently implementing E911 capability in areas where PSAPs were not yet E911-capable. For this reason, we seek comment on whether we should assess PSAP NG911 readiness at the state or regional level rather than the individual PSAP level. What are the advantages and disadvantages of such an approach?

93. We envision that state and regional entities will play a significant role in the deployment of NG911. The ICO Plan states that a successful transition will depend on a high level of coordination, cooperation, and planning among the state, regional, and local 911 authorities. NENA notes that ''state and local public safety agencies and 9–1–1 authorities must begin to take a hard look at the cost savings that could be realized through regionalization of non-PSAP NG911 components such as ESInets.'' NENA also highlights that ''each state will need to coordinate the deployment of ESInets statewide'' and ''explicitly include appropriate tools and mechanisms to ensure that future upgrades can be deployed state-wide in a small number of years.'' NENA envisions that state transition plans would ''provide for seamless interoperability between legacy networks and NG9–1–1 networks.''

94. Sprint Nextel contends that ''[c]oordinated implementation * * * will be even more essential to NG911 deployment, since the NG911 system will be based on a system of [ESInets] deployed at the local state level.'' T-Mobile argues that ''the Commission should ensure that there is at least a substantial level of regional coordination with respect to the conversion to, and implementation of, NG911 systems.'' Absent such coordination, T-Mobile contends, interoperability benefits will be lost, and NG911 implementation costs for providers may be substantially higher if providers have to simultaneously support legacy 911 systems and upgraded NG911 systems in the same region.

95. We seek comment on steps the Commission could take to facilitate such a coordinated approach. Specifically, we seek comment on whether the Commission should require PSAPs to demonstrate a specified level of technical NG911 capability at the statewide or regional level as a precondition to providers being subject to any Commission requirement to deliver text or other media to PSAPs in the state or region. What are the advantages and disadvantages of such an approach? For example, should the Commission refrain from requiring wireless providers to support delivery of text or other media to 911 in a given state or region until the state or region meets certain conditions, such as the deployment of an ESInet? If we adopted a state or regional approach and the deployment of an ESInet served as the trigger, what would happen if not all PSAPs in the state or region were upgraded to link to the ESInet? Should the state or region be required to meet other technical conditions?

96. We also seek comment on any legal or regulatory barriers that may exist at the state or local level that could hinder the deployment of NG911. A number of commenters contend that outdated state regulations have hampered the deployment of NG911 networks. For example, NENA asserts that ''[m]any existing laws, regulations and tariffs make specific reference to

older technologies or system capabilities which may inadvertently inhibit the migration to NG9–1–1.'' According to NENA, examples include:

• Provisions that require specific technology components for E911 service delivery that are not necessarily the same for NG911.

• Regulations that ''assume the existence of legacy components,'' such as the selective router, which may impede the transition to ''NG9–1–1 deployments.'' For example, NENA refers to current Commission rules requiring ''the delivery of wireless and voice over IP (VoIP) 9–1–1 'calls' over the 'wireline E9–1–1 network.'''

• State regulations, laws, or tariffs that currently do not allow 911 authorities or new 911 SSPs to receive relevant routing, location, and other related 911 information in the possession of the incumbent SSPs at reasonable rates and terms.

• Existing 911 service arrangements and tariffs that inhibit new entrants from making similar competitive services available on a component-by-component basis, where technically and operationally feasible.

• In some states, liability protection for 911 service providers may be provided only through the tariff of a Local Exchange Carrier (LEC) rather than via statute. In such cases, if a LEC withdraws its tariff or NG911 services fall outside the scope of the tariff, providers of NG911 services, and possibly PSAPs as well, will not receive liability protection.

97. States are also concerned about outdated regulations that may hinder the deployment of NG911 networks. The Public Safety Communications Office (PSCO) of the California Technology Agency notes that it is ''currently exploring state and local barriers and will seek to remove them'' and ''recommend[s] that the FCC do the same at the federal level.'' The Texas 9–1–1 Agencies request that the Commission address interconnection disputes and the registration and certification of NG911 SSPs. The Ohio PUC supports ''a dual state-federal regulatory framework for NG911 in which the FCC establishes broad, national objectives, standards and benchmarks, but leaves coordinating the implementation and transition to the states.''

98. Providers and 911 SSPs are similarly concerned about regulatory obstacles that may hinder NG911 development. Dash asserts that ''requirements for CLECs to purchase 9–1–1 or CAMA trunks any time the CLEC seeks to deploy interconnection facilities * * *. imposes burdens on the PSAPs because [PSAPs] have to conduct interoperability testing on each trunk and otherwise be prepared to receive 9–1–1 calls from those trunks regardless of whether the CLEC is actually using them.'' In Dash's view, ''this discriminatory behavior'' results in CLECs being ''bound to the ILEC's outdated model.'' Dash argues that ''CLECs, VoIP providers and other competitive service providers should be permitted to use * * * new 9–1–1 solutions and not be required to purchase services that they would not absent regulatory or monopoly mandates.'' AT&T contends that ''[s]tate laws and regulations governing the types of devices and 'calls' allowed to access the NG911 network will also require modifications'' in the following areas: (1) Determining ''the eligible use of NG911 funds''; (2) ensuring that requirements do not mandate ''technology components for E911 service delivery that are incompatible with NG911 service''; and (3) ensuring that laws and regulations are ''functional, standards-based, and performance-based without reference to any specific proprietary technology, manufacturer, or service provider.'' Further, L.R. Kimball maintains that ''[r]evisions to or the elimination of older laws and tariffs would be necessary in order to require interconnections.'' Moreover, L.R. Kimball argues for ''overhaul'' of ''the 911 regulatory environments at both the federal and state level * * * to promote competition.'' L.R. Kimball also observes that ''[t]here are currently no regulations in place to drive carriers to implement a SMS to 911 interconnection.''

99. In light of these concerns, we seek comment on whether as a precondition to Commission action, states should be required to demonstrate that they have adopted appropriate or removed outmoded legal or regulatory measures to facilitate NG911 deployment, such as deregulation of legacy 911 interconnection arrangements and enactment of liability protection for NG911 providers and service providers. Would this approach incentivize states to eliminate outdated laws and regulations? Are there other steps that we should take to encourage the elimination or mitigation of state and local regulatory barriers to NG911?

100. We also seek comment on what statutory or regulatory changes, if any, would be necessary for the Commission, other federal agencies, states, tribes, or localities to facilitate and oversee the deployment of NG911 networks. Are there specific FCC regulations that the Commission should eliminate or modify to facilitate the deployment of NG911 networks? What specific actions can the Commission take that would incentivize states and localities to eliminate outdated regulations that hinder the deployment of NG911 networks?

b. Advanced Regional 911 Centers

101. AT&T contends that consumer confusion occurred during previous deployment of basic 911 and E911 service and is equally likely with respect to the deployment of NG911. AT&T describes the launch of basic 911 service as having been ''accompanied with significant consumer confusion regarding whether or not there was access to a particular service in a particular area.'' AT&T also contends that widespread publicity concerning the Black Hawk County, Iowa, text-to-911 trial caused confusion elsewhere in the country regarding the availability of text-to-911. AT&T warns that if ''the Commission fails to establish clear direction for a standardized design for non-voice emergency communications, the result will be a patchwork implementation of non-voice emergency capabilities and additional consumer confusion.''

102. NENA has noted the need for additional technical requirements to address this issue, stating that ''while all [NG911] PSAPs must handle all media, a legacy PSAP behind [an ESInet-to-legacy PSAP gateway] would only handle voice media and TTY. There is no mechanism by which a caller could discover what media the PSAP supports. This will be covered in a future edition of [the NENA i3 Solution].'' We invite comment on the amount of time that will be required for the issuance of such requirements, as well as their adequacy for avoiding caller confusion.

103. AT&T states that use of the aforementioned ''gateways to interwork [ESInets] with legacy PSAPs will only further complicate implementation of NG911.'' Instead, AT&T proposes building ''regional entities to handle non-voice emergency services media types when the local PSAP cannot.'' The regional centers would ''support NG911 capabilities so that every PSAP need not be updated before certain advanced services can be supported.'' According to AT&T, ''[n]ot only will this [approach] ensure interoperability, but it will also limit the capital outlay required to deliver NG911 services, thereby accelerating deployment.'' We seek comment on AT&T's proposal. In particular, we seek comment on the costs and practicability of AT&T's proposed regional PSAP approach relative to the upgrading of individual

PSAPs. Would the AT&T approach reduce the amount of capital outlay required as compared to upgrading individual PSAPs? Would it enable more rapid deployment of NG911? How long would it take to implement AT&T's approach? Are there benefits to co-locating a regional center with a PSAP that is already being upgraded to NG911? Are there benefits to co-locating a regional center with another location that already supports some NG911capabilities, such as a TRS or VRS center? We also seek comment on the specific protocol interfaces and functionality that should be in place at the advanced 911 centers before providers are required to provide text and other media types to these call centers. AT&T also states that the Commission should limit ''advanced functionality in NG911 systems until a baseline network'' of the regional centers exists. Should the Commission go so far as to limit advanced functionality in such circumstances or in any other circumstances?

E. Consumer Education and Disclosure Mechanisms

104. The Notice of Inquiry sought comment on how to educate and prepare consumers for disparate PSAP capabilities in an NG911 environment. Commenters generally agreed that NG911 applications such as text-to-911 will not be deployed uniformly and that a nationwide education effort will therefore be needed during the transition. Motorola warns that while ''the transition to NG911 is underway, misinformation and confusion about the deployment details are likely to spread'' and maintains that an ongoing ''comprehensive and multifaceted public education effort'' that is ''keyed to the actual deployment of new services'' will be key to helping civilians understand the capabilities and limitations of the NG911 system.'' NENA urges that ''left unchecked, this confusion could lead consumers to waste time texting 9–1–1 or leave unused other means of communications at their disposal, wasting precious seconds in an emergency.''

1. Expected Benefits

105. Even using the most optimistic assumptions about the deployment of NG911, consumers are unlikely to have access to text or other NG911 applications everywhere in the United States at the same time. Access to these applications will vary depending on the consumer's location, and even in areas where NG911 is deployed, specific applications may vary locally or regionally depending on the PSAP's policies for accepting text or multimedia messages. In addition, technical factors such as variations in the capabilities of different caller handsets may lead to non-uniform access. At the same time, as NG911 deployment occurs in certain communities or regions, consumers elsewhere are likely to learn through the media, social networking, and other sources that text, photos, and video to 911 are available in some places, which may lead consumers to be uncertain or confused about availability of these capabilities in the consumer's own community.

106. Given the significant risk of consumer uncertainty and confusion, there are clear benefits to be gained from providing the public with accurate and up-to-date information about the availability or non-availability of NG911 applications in their home communities and in other locations where they may travel. For example, if the public is not adequately informed about the availability or non-availability of text-to-911 in specific areas, consumers could put themselves at risk by attempting to send text messages to the local PSAP and being unaware that the text has not been received. In deciding how the Commission can most effectively minimize consumer confusion throughout the transition to NG911, we seek to maximize the benefits to consumers from any action we would take while taking into consideration the burden of compliance to providers. We therefore seek comment on the expected benefits and costs of implementing various approaches to consumer education and implementing disclosure mechanisms. We also ask whether there are any contractual issues that might deter consumers from texting or sending photos or video to 911. How many subscribers would face additional charges for sending texts, photos, or video to PSAPs from their mobile devices? Could such additional charges in some cases deter them from doing so? If so, should providers, the Commission, or others develop practices to address this situation?

2. Approaches for Education and Disclosure

107. Commenters agree that there is a significant need for a nationwide education effort while text-to-911 is being rolled out. We seek comment on the types of educational programs that should be created to abate and prevent consumer confusion as text-to-911 services are deployed in the short term. Are there lessons that we can draw from educational efforts that were conducted during the deployment of basic 911 or E911 service? Have other countries developed text-to-911 education programs? Can current 911 educational programs be adapted to help individuals understand text-to-911? Should educational programs differ depending upon the group that is being targeted, such as the disabilities community or non-English speakers? How should educational programs evolve as text-to-911 services become more prevalent? Would any of the educational approaches that the FCC used in the past, such as the campaign to inform purchasers of wireless microphones of the need to clear the 700 MHz band for public safety purposes, be useful here?

108. We also seek comment on the appropriate role for the Commission and for other government and private sector entities in any public education effort. Motorola notes that ''[e]ntities at the local, state, and federal levels all need to be thinking about how to disseminate accurate information to the public'' and suggests that ''beyond formal education efforts, providers of next generation communications services need to clearly communicate to their users any limitations with respect'' to 911 service access. Qualcomm suggests that federal agencies, including the FCC and DHS, in conjunction with state and local governments, take responsibility for consumer education. The State of California suggests that the Commission should take a role in education akin to its role in the digital television transition by creating a national public information campaign. More specifically, NENA suggests ''the FCC should collaborate with industry and media partners and public safety to educate consumers about the current and ongoing limitations of SMS for emergency communications.'' TSAG, however, comments that education ''begins with a nationally recognized institution, driving a baseline national program * * * supportive of state and local efforts'' but leadership ''should reside in states and [be] delivered through regional and local NG911 organizations and institutions.'' Wichita-Wilbarger believes the Commission should not ''require states to specifically designate an organization to be responsible for the statewide organizing, planning or implementing of NG9–1–1.'' We seek further comment on what entities should be involved in educational programs. What role should the Commission play? What role can other federal agencies, state and local entities, and those in the public and private sectors play? Where would the Commission or other federal agencies obtain funding for consumer education efforts? What are the advantages and

disadvantages of various approaches to consumer education? How can the Commission and other federal agencies support local agencies and the media as they work to educate their communities? What are the best methods of educating consumers about the availability or non-availability of NG911 applications in their communities? Should we require providers to disclose limitations on the availability of NG911 applications? If so, should we require such notice at the physical point-of-sale, online, in bill inserts, or elsewhere? Could providers leverage existing marketing and billing practices to provide notice to consumers on a cost-effective basis?

109. Aside from educational programs, could other resources be developed to help individuals learn about where text-to-911 services are and are not available? For instance, what is the feasibility of developing a consumer-focused map or website showing such availability, possibly building on the PSAP database that the Commission maintains or on other sources? Could local availability information be built into text-to-911 applications themselves, so that the application would automatically indicate whether text-to-911 is available at the caller's current location? What would the cost be of developing such resources initially and of updating them as the availability of text-to-911 expands to new areas? Could information be provided in bills sent to consumers and instructional materials included with new mobile devices to increase awareness?

110. Finally, despite educational programs and resources, some individuals will likely attempt to send text messages to 911 in locations where text-to-911 is not supported. AT&T notes that ''there is a chance that a failed non-voice emergency call could result in no immediate feedback.'' This could put consumers at risk if they were unaware that an emergency text did not go through or were uninformed about alternative means of reaching the PSAP. To mitigate such risk, we believe that in situations where a consumer attempts to text 911 in a location where text-to-911 is not available, the consumer should receive an automatic error message or similar disclosure that includes information on how to contact the PSAP (e.g., a message directing the consumer to dial a 911 voice call). We seek comment on this approach, including what methods are necessary to ensure that such disclosure is accessible to people with different types of disabilities. What currently happens when consumers attempt to send SMS or other text-based messages to 911? Do wireless providers send an error message in response? If so, what information does the error message convey? Is it technically feasible for all providers to provide such error messages to consumers? What would the cost be to implement this capability across all providers and regions? Should error messages contain certain standardized information? What role, if any, should the Commission play in developing best practices, model responses, or requirements for the provision of standardized error messages?

F. Overlap With CVAA and EAAC

111. In October 2010, Congress enacted the CVAA, which amends the Communications Act and imposes a variety of new obligations on service providers, equipment manufacturers, and the Commission that relate to providing access to communications services for people with disabilities. Section 106 of the CVAA requires the Commission to take certain steps ''[f]or the purpose of achieving equal access to emergency services by individuals with disabilities, as a part of the migration to a national Internet protocol-enabled emergency network.'' Specifically, Section 106 requires the Chairman, within 60 days after enactment of the Act, to establish the EAAC. Within one year of its establishment, the EAAC must: (1) Conduct a national survey of individuals with disabilities to determine the most effective and efficient technologies and methods by which to enable emergency access; and (2) submit to the Commission recommendations to implement such technologies and methods. Section 106 grants the Commission ''the authority to promulgate regulations to implement the recommendations proposed by the Advisory Committee, as well as any other regulations, technical standards, protocols, and procedures as are necessary to achieve reliable, interoperable communication that ensures access by individuals with disabilities to an Internet protocol-enabled emergency network, where achievable and technically feasible.''

112. As required by the CVAA, the Chairman established the EAAC in December 2010, 60 days after enactment of the statute. The EAAC is composed of state and local government representatives responsible for emergency management and emergency responder representatives, national organizations representing people with disabilities and senior citizens, communications equipment manufacturers, service providers, federal agency representatives responsible for implementation of the NG911 system, and subject matter experts. Section 106(c) of the CVAA specifically requires the EAAC to provide recommendations to the Commission:

(1) With respect to what actions are necessary as a part of the migration to a national Internet protocol-enabled network to achieve reliable, interoperable communication transmitted over such network that will ensure access to emergency services by individuals with disabilities;

(2) For protocols, technical capabilities, and technical requirements to ensure reliability and interoperability necessary to ensure access to emergency services by people with disabilities;

(3) For the establishment of technical standards for use by public safety answering points, designated default answering points, and local emergency authorities;

(4) For relevant technical standards and requirements for communication devices and equipment and technologies to enable the use of reliable emergency access;

(5) For procedures to be followed by IP-enabled network providers to ensure that such providers do not install features, functions, or capabilities that would conflict with technical standards;

(6) For deadlines by which providers of interconnected and non-interconnected VoIP services and manufacturers of equipment used for such services shall achieve the actions required in paragraphs (1) through (5), where achievable, and for the possible phase out of the use of current-generation TTY technology to the extent that this technology is replaced with more effective and efficient technologies and methods to enable access to emergency services by individuals with disabilities; and

(7) For the establishment of rules to update the Commission's rules with respect to 9–1–1 services and E–911 services (as defined in section 158(e)(4) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942(e)(4))), for users of telecommunications relay services as new technologies and methods for providing such relay services are adopted by providers of such relay services;

(8) That take into account what is technically and economically feasible. Since its establishment, the EAAC has met on a monthly basis and has conducted the required survey of people with disabilities, which was released in July 2011. In December 2011, one year after its establishment, the EAAC will

submit its recommendations to the Commission on the NG911 accessibility issues set forth above. The CVAA then empowers the Commission to implement the EAAC's recommendations by regulation, to the extent such recommendations are achievable and technically and economically feasible.

113. There is considerable overlap between the NG911 text and multimedia capabilities discussed in this Notice and the NG911 accessibility issues being considered by the EAAC in its implementation of the CVAA. As we have observed in our discussion of potential benefits earlier in this Notice, adding text and multimedia applications to the 911 system can provide significant benefits to both people with disabilities and non-disabled people. Moreover, we believe it is important to encourage to the fullest extent possible the development of common text-to-911 and multimedia-to-911 solutions that serve both the broad goals of NG911 and the NG911 accessibility goals of the CVAA. By focusing on developing common solutions rather than developing specialized technologies solely for use by people with disabilities, we are more likely to be able to spread the cost of such technology across all network users and providers and to generate economies of scale that lower such costs. We seek comment on this approach. Will the development of common text-to-911 and multimedia-to-911 solutions benefit both people with disabilities and non-disabled people and lead to greater cost efficiencies? Are there limitations to this approach, such as instances where people with disabilities may still require development of more specialized technology to meet their emergency accessibility needs?

114. In light of the overlapping issues, we also seek comment on the relationship between this proceeding and our implementation of the CVAA and the work of the EAAC. Should we incorporate the EAAC's recommendations into the record in this proceeding? Would coordinating or combining the two proceedings promote broader and more rapid NG911 deployment?

G. Legal Authority

115. Background. In the Notice of Inquiry, the Commission recognized that ''[s]tate, Tribal, and local governments are the primary administrators of the legacy 911 system and are responsible for establishing and designating PSAPs or appropriate default answering points, purchasing customer premises equipment, retaining and training PSAP personnel, and purchasing 911 network services.'' Nevertheless, the Commission noted that ''[c]ertain communications technologies * * * necessitated the adoption of a uniform national approach'' and sought comment on whether there should be some level of federal oversight for the transition to NG911. Further, the Commission sought comment ''on the extent of the FCC's jurisdiction to oversee the transition to NG911, since PSAPs, service providers, consumer device manufacturers, and software developers will all be involved.'' The Commission also invited comment on the role that other federal agencies, such as ICO, should play in the transition to NG911.

116. Comments. Several commenters encourage the Commission to implement a uniform national approach. Other commenters, however, assert that the Commission's authority over certain providers, such as broadband access providers, is still undetermined and will require further clarification or legislation. For instance, CTIA states that ''some of these providers of current and future application-based communications services are not FCC licensees and thus fall outside the FCC's regulatory jurisdiction entirely.'' CTIA argues that while the CVAA gives the Commission some regulatory power to enact the recommendations of the EAAC, ''it does not give the Commission plenary authority over electronic messaging and video conferencing services''and ''the limits of the Commission's authority under the [CVAA] are unclear.''

117. Discussion. Since 1996, the Commission has exercised authority under Title III of the Communications Act to require CMRS providers, as spectrum licensees, to implement basic 911 and E911 services. This authority includes—as a fundamental and pervasive element of the Commission's licensing authority—the power and obligation to condition its licensing actions on compliance with requirements that the Commission deems consistent with the public interest, convenience, and necessity. Existing E911 requirements for wireless service providers clearly further the public interest in ways directly connected to the Commission's mandate in section 151 to ''promot[e] safety of life and property through the use of wire and radio communication.'' Similarly, the options we consider in this proceeding to facilitate availability of text-to-911 and other NG911 capabilities to consumers would fall within our broad Title III authority over spectrum licensees as requirements that serve the public interest, convenience, and necessity by, for example ''promoting safety of life and property.'' Therefore, we believe that we have well-established legal authority under sections 151, 301, and 303(r) and other Title III provisions to take the regulatory and non-regulatory measures described herein that would apply to users of spectrum. We seek comment on this analysis.

118. We also believe that the CVAA confers authority with respect to implementation of text-to-911 and other NG911 features to the extent that such implementation serves the statutory goal of ''achieving equal access to emergency services for people with disabilities, as a part of the migration to a national Internet protocol-enabled emergency network.'' As noted in the previous section, the CVAA authorizes the Commission to promulgate regulations to ''ensure the accessibility, usability, and compatibility of advanced communications services and the equipment used for advanced communications services by individuals with disabilities'' and to do what is necessary to ''achieve reliable, interoperable communication that ensures access by individuals with disabilities to an Internet protocol-enabled emergency network, where achievable and technically feasible.'' The CVAA defines ''advanced communications services'' to include electronic messaging service, defined as a ''service that provides real-time or near real-time non-voice messages in text form between individuals over communications networks.'' The CVAA also includes in the definition of ''advanced communications services'' ''interconnected VoIP service'' and ''non-interconnected VoIP service.'' The CVAA's mandate to ensure ''the accessibility, usability, and compatibility'' of this broad category of advanced communications services provides generous authority to cover many of the actions we consider in this proceeding, including, for example, requiring 911 capabilities for text-based communications services. We seek comment on this reading of the CVAA and whether there are any limitations to the scope of this authority relevant to our proposals in this proceeding.

119. Furthermore, we believe that the Commission would also have the ancillary authority to regulate certain entities over which (or over whose actions at issue) we may not have express regulatory authority. Under section 4(i) of the Communications Act and the judicial precedent recognizing the Commission's ancillary authority,

the Commission is empowered to impose requirements when it lacks specifically enumerated authority, provided its actions fall within the agency's general grant of jurisdiction over ''interstate and foreign communication by wire or radio'' and the regulation is reasonably necessary to effectuate the Commission's responsibilities under the Act and rules promulgated pursuant to the Commission's express authority. Applying this principle to the NG911 context, it appears that the successful application of text-to-911 and other multimedia NG911 requirements to communications providers pursuant to the direct mandates of Title III or the CVAA may require that we impose certain requirements on broadband access providers, System Service Providers (SSPs), network operators, and other entities involved in the provision of broadband Internet access and other network services. For instance, a CMRS provider may be unable to provide text-to-911 without adjustments to the database management and call routing services currently provided by the SSP. In addition, a non-interconnected VoIP provider may need the cooperation of the operator of the broadband network over which the text to 911 travels to identify the user's location. In such instances, we would have ancillary authority to impose rules on entities that fall under our subject matter jurisdiction as necessary to ensure that Title III licensees, entities subject to our authority under the CVAA, and other entities subject to direct statutory authority can fulfill their new NG911 obligations. Similarly, we may also decide, pursuant to our direct, express mandate under the CVAA, that individuals with disabilities must have access to an IP-enabled emergency network that allows them to send text and other multimedia information to the PSAP, without further delay. In this case, we would also have ancillary authority to require action that has broader effects on the non-disabled community, should it be infeasible at this time, for technical or other reasons, for providers to tailor implementation of their CVAA obligations only to individuals with disabilities. We seek comment on this analysis. We also ask commenters to address other potentially relevant sources of authority.

120. A number of commenters note that liability protection will need to be expanded to include all entities that participate in the NG911 environment. The Commission recognizes that existing sources of liability protection will possibly need to be updated to accommodate the range of parties, services, and devices that will be involved in the provisioning of NG911 services. The primary basis for liability protection related to the provisioning of NG911 services stems from section 201 of the New and Emerging Technologies 911 Improvement Act (Net 911 Act). Under this section, a ''wireless carrier, IP-enabled voice service provider, or other emergency communications provider * * * shall have'' the same liability protection as a local exchange carrier under federal and state law. We seek comment on whether the NET 911 Act's extension of liability protection embraces the full range of technologies and service providers that will be involved in the provisioning of NG911 services. We also seek comment on whether the Commission has the authority to extend liability protection to entities involved in the provisioning of NG911 services or whether Congressional action is necessary.

IV. Procedural Matters

A. Ex Parte Presentations

121. The proceeding initiated by this Notice of Proposed Rulemaking shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

B. Comment Filing Procedures

- 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 in response to this Notice of Proposed Rulemaking 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 that 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.

C. Accessible Formats

123. 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).

D. Regulatory Flexibility Analysis

124. As required by the Regulatory Flexibility Act of 1980, see 5 U.S.C. 604, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth in the Appendix. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to this Notice of Proposed Rulemaking as set forth on the first page of this document and have a separate and distinct heading designating them as responses to the IRFA.

E. Paperwork Reduction Act Analysis

125. The Notice of Proposed Rulemaking contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by Paperwork Reduction Act. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

V. Ordering Clauses

126. *It is ordered,* pursuant to sections 1, 2, 4(i), 7, 201, 222, 251(e), 301, 302, 303, 307, 308, 309, 310, 319, and 332, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 157, 201, 222, 251(e), 301, 302, 303, 307, 308, 309, 310, 319, and 332; section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302; section 4 of the Wireless Communications and Public Safety Act of 1999, as amended by the New and Emerging Technologies 911 Improvement Act of 2008, 47 U.S.C. 615a; and sections 104 and 106 of the Twenty-First Century Communications and Video Accessibility Act of 2010, 47 U.S.C. 615c, 617, that this Notice of Proposed Rulemaking is hereby *adopted.*

127. *It is further ordered* that 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.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–26258 Filed 10–11–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Chapter X

[EP 712]

Reducing Regulatory Burden; Retrospective Review Under E.O. 13563

AGENCY: Surface Transportation Board.

ACTION: Request for information.

SUMMARY: In accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' and Executive Order 13579, ''Regulation and Independent Regulatory Agencies,'' the Surface Transportation Board is undertaking review of its existing regulations to evaluate their continued validity and determine whether they are crafted effectively to solve current problems facing shippers and railroads. As part of this review, the Board seeks public comments on whether any of its regulations may be outmoded, ineffective, insufficient, or excessively burdensome, and how to modify, streamline, expand, or repeal them, as appropriate.

DATES: Comments are due by January 10, 2012.

ADDRESSES: Comments may be submitted either via the Board's e-filing process or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-Filing link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, *Attn:* Docket No. EP 712, 395 E Street, SW., Washington, DC 20423–0001.

Copies of paper comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131; paper and electronic copies will be posted to the Board's Web site.

FOR FURTHER INFORMATION CONTACT: Christopher Oehrle at 202–245–0375. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On January 18, 2011, President Obama directed executive agencies to take steps to improve federal regulation and regulatory review. *See* Executive Order 13563, 76 FR 3,821–23 (January 31, 2011). In particular, the President directed executive agencies to conduct a retrospective analysis of existing regulations and develop a preliminary plan to review periodically significant regulations to determine if such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives. The order also called for public participation in this regulatory process.

Although Executive Order 13563 did not apply to independent agencies, the Board reported its ongoing efforts to conduct, on a voluntary basis, an analysis of its existing regulations. On May 18, 2011, the Board's Chairman sent a letter to the Administrator of the Office of Information and Regulatory Affairs that described the regulatory review the Board had already initiated and outlined the review the Board had planned for the next 2 years and beyond. The letter described two major initiatives to review significant areas of regulation that have not been comprehensively reviewed and amended over the last two decades: competition in the rail industry and environmental regulations. The Board listed several other initiatives to amend its regulations and procedures to make them more efficient and effective. *See, e.g.,* EP 707, *Demurrage Liability;* EP 706, *Reporting Requirement for Positive Train Control Expenses and Invs.;* EP 702, *Nat'l Trails System Act & R.R. Rights-of-Way;* EP 699, *Assessment of Mediation and Arbitration Procedures;* EP 684, *Solid Waste Rail Transfer Facilities.* The Board also stated that it was reviewing the Uniform Rail Costing System, which is the Board's general purpose costing methodology for the nation's largest railroads, and planning to update it. A copy of the letter is available on the Board's Web site at *http://www.stb.dot.gov/stb/docs/2011AgencyPreliminaryPlan%20—%20signed%20final%20051811.pdf.*

On July 11, 2011, President Obama requested that independent agencies comply with Executive Order 13563, to

the extent permissible by law. Specifically, independent agencies were asked to retrospectively analyze existing regulations and produce a plan to periodically reassess and streamline their existing regulations. *See* Executive Order 13579, 76 FR 41,587–88 (July 14, 2011). To facilitate this process, the Board institutes this proceeding and provides interested members of the public with an opportunity to comment and participate in the Board's retrospective review.

Consistent with the President's directive, the Board asks those filing comments to:

- Specifically identify which of the Board's existing regulations or reporting requirements are outmoded, ineffective, insufficient, or excessively burdensome, and explain why;
- Propose which regulations should be modified, streamlined, expanded, or repealed;
- Provide evidentiary support to help the Board analyze the costs and benefits (both quantitative and qualitative) of any proposed changes; and
- Suggest an appropriate timeframe for conducting the next retrospective review of the agency's regulations and reporting requirements.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Comments are due by January 10, 2012.

2. Notice of this decision will be published in the **Federal Register**.

3. This decision is effective on its date of service.

Decided: October 5, 2011.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–26309 Filed 10–11–11; 8:45 am]

BILLING CODE 4915–01–P

Notices

Federal Register

Vol. 76, No. 197

Wednesday, October 12, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0102]

Bayer CropScience LP; Determination of Nonregulated Status for Cotton Genetically Engineered for Insect Resistance and Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that a genetically engineered cotton developed by Bayer CropScience LP, designated as TwinLink™ cotton (events T304–40 and GHB119), which has been genetically engineered to be tolerant to the herbicide glufosinate and resistant to several lepidopteran pests, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Bayer CropScience LP in its petition for a determination of nonregulated status, our analysis of available scientific data, and comments received from the public in response to our previous notice announcing the availability of the petition for nonregulated status and its associated environmental assessment and plant pest risk assessment. This notice also announces the availability of our written determination and finding of no significant impact.

DATES: *Effective Date:* October 12, 2011.

ADDRESSES: You may read the documents referenced in this notice and the comments we received in our reading room. The reading room is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming. Those documents are also available on the Internet at *http://www.aphis.usda.gov/biotechnology/not_reg.html* and are posted with the previous notice and the comments we received on the *Regulations.gov* Web site at *http://www.regulations.gov/#!docketDetail;D=APHIS–2010–0102.*

FOR FURTHER INFORMATION CONTACT: Mr. Evan Chestnut, Policy Analyst, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737–1236; (301) 734–0942, *e-mail: evan.a.chestnut@aphis.usda.gov.* To obtain copies of the documents referenced in this notice, contact Ms. Cindy Eck at (301) 734–0667, *e-mail: cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS received a petition (APHIS Petition Number 08–340–01p) from Bayer CropScience LP (Bayer), seeking a determination of nonregulated status for TwinLink™ cotton (events T304–40 and GHB119), which has been genetically engineered to be tolerant to the herbicide glufosinate and resistant to several lepidopteran pests, stating that TwinLink™ cotton is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

In a notice[1] published in the **Federal Register** on June 28, 2011 (76 FR 37769–37770, Docket No. APHIS–2010–0102), APHIS announced the availability of the Bayer petition, a plant pest risk assessment (PPRA), and a draft environmental assessment (EA) for public comment. APHIS solicited comments on the petition, whether the subject cotton is likely to pose a plant pest risk, the draft EA, and the PPRA for 60 days ending on August 29, 2011.

APHIS received two comments during the comment period. The commenters expressed general opposition to genetically engineered crops but did not provide any specific comments regarding the petition, draft EA, or PPRA.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the determination of nonregulated status for Bayer's TwinLink™ cotton, an EA has been prepared. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on our EA and other pertinent scientific data, APHIS has reached a finding of no significant impact with regard to the preferred alternative identified in the EA.

Determination

Based on APHIS' analysis of field and laboratory data submitted by Bayer, references provided in the petition, peer-reviewed publications, information analyzed in the EA, the PPRA, and comments provided by the public, APHIS has determined that Bayer's TwinLink™ cotton is unlikely to pose a plant pest risk and therefore is no

[1] To view the notice, petition, draft EA, the PPRA, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0102.*

longer subject to our regulations governing the introduction of certain genetically engineered organisms.

Copies of the signed determination document, as well as copies of the petition, PPRA, EA, and finding of no significant impact are available as indicated in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections of this notice.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 5th day of October 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–26349 Filed 10–11–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0038]

Monsanto Co.; Determination of Nonregulated Status for Soybean Genetically Engineered for Insect Resistance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that a soybean line developed by the Monsanto Co., designated as event MON 87701, which has been genetically engineered for insect resistance, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by the Monsanto Company in its petition for a determination of nonregulated status, our analysis of available scientific data, and comments received from the public in response to our previous notice announcing the availability of the petition for nonregulated status and its associated environmental assessment and plant pest risk assessment. This notice also announces the availability of our written determination and finding of no significant impact.

DATES: *Effective Date:* October 12, 2011.

ADDRESSES: You may read the documents referenced in this notice and the comments we received in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming. Those documents are also available on the Internet at *http://www.aphis.usda.gov/biotechnology/not_reg.html* and are posted with the previous notice and the comments we received on the *Regulations.gov* Web site at *http://www.regulations.gov/#!docketDetail;D=APHIS–2011–0038.*

FOR FURTHER INFORMATION CONTACT: Mr. Evan Chestnut, Policy Analyst, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–0942, *e-mail: evan.a.chestnut@aphis.usda.gov.* To obtain copies of the documents referenced in this notice, contact Ms. Cindy Eck at (301) 734–0667, e-*mail: cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS received a petition (APHIS Petition Number 09–082–01p) from the Monsanto Company (Monsanto) of St. Louis, MO, seeking a determination of nonregulated status for soybean (*Glycine max*) designated as event MON 87701, which has been genetically engineered for insect resistance, stating that this soybean is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

In a notice[1] published in the **Federal Register** on June 28, 2011 (76 FR 37770–37771, Docket No. APHIS–2011–0038), APHIS announced the availability of the Monsanto petition, a plant pest risk assessment (PPRA), and a draft environmental assessment (EA) for public comment. APHIS solicited comments on the petition, whether the subject soybeans are likely to pose a plant pest risk, the draft EA, and the PPRA for 60 days ending on August 29, 2011.

APHIS received four comments during the comment period. Two commenters referenced a different soybean line. One commenter expressed general opposition to genetically engineered crops but did not provide any specific comments on the petition, draft EA, or PPRA. One commenter suggested that APHIS should analyze the impacts of MON 87701 on bees and groundwater. APHIS has addressed the issues raised by this commenter in an attachment to the finding of no significant impact, and impacts to non-target insects and impacts on water are both addressed in the EA.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the determination of nonregulated status for Monsanto's soybean event MON 87701, an EA has been prepared. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on our EA, the response to public comments, and other pertinent scientific data, APHIS has reached a finding of no significant impact with regard to the preferred alternative identified in the EA.

Determination

Based on APHIS' analysis of field and laboratory data submitted by Monsanto, references provided in the petition, peer-reviewed publications, information analyzed in the EA, the PPRA, comments provided by the public, and information provided in APHIS' response to those public comments, APHIS has determined that Monsanto's

[1] To view the notice, petition, draft EA, the PPRA, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0038.*

soybean event MON 87701 is unlikely to pose a plant pest risk and therefore is no longer subject to our regulations governing the introduction of certain genetically engineered organisms.

Copies of the signed determination document, as well as copies of the petition, PPRA, EA, finding of no significant impact, and response to comments are available as indicated in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections of this notice.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 5th day of October 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–26351 Filed 10–11–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2011–0022]

Codex Alimentarius Commission: Meeting of the Codex Committee on Nutrition and Foods for Special Dietary Uses

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), are sponsoring a public meeting on October 20, 2011. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions that will be discussed at the 33rd Session of the Codex Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU)of the Codex Alimentarius Commission (Codex), which will be held in Bad Soden am Taunus, Germany from November 14–18, 2011. In addition, two working groups will meet on November 12 from 9 a.m. to 5:30 p.m. to discuss the *Proposed Draft Revision of the Guidelines on Formulated Supplementary Foods for Older Infants and Young Children,* and the *Proposed Draft Revision of the Codex General Principles for the Addition of Essential Nutrients to Foods.*

The Under Secretary for Food Safety and the FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 33rd Session of the CCNFSDU and to address items on the agenda.

DATES: The public meeting is scheduled for October 20, 2011 from 1 p.m.–4 p.m.

ADDRESSES: The public meeting will be held in the Harvey Wiley Building, FDA, Center for Food Safety and Applied Nutrition, (CFSAN), 5100 Paint Branch Parkway, Room (1A–003) College Park, MD 20740. Parking is adjacent to this building and will be available at no charge to individuals who preregister by the date below (See Pre-Registration). In addition, the College Park metro station is across the street.

Documents related to the 33rd Session of the CCNFSDU will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.*

Barbara Schneeman, U.S. Delegate to the 33rd Session of the CCNFSDU, invites U.S. interested parties to submit their comments electronically to the following e-mail address: *CCNFSDU@fda.hhs.gov.*

Pre-Registration: To pre-register for this meeting, please send the following information to this e-mail address (*nancy.crane@fda.hhs.gov*) by October 13, 2011.

—Your name
—Organization
—Mailing Address
—Phone number
—E-mail address

Call-In Number

If you wish to participate in the public meeting for the 33rd Session of the CCNFSDU by conference call, please use call-in number and participant code listed below.

Call-in Number: 1–866–859–5767
Participant Code: 2225276

For Further Information About the 33rd Session of the CCNFSDU Contact: Nancy Crane, Senior Advisor to the U.S. CCNFSDU Delegate, Office of Nutrition, Labeling and Dietary Supplements, CFSAN (HFS–830), FDA, 5100 Paint Branch Parkway, College Park, MD 20740, *telephone:* (240) 402–1450, *fax:* (301) 436–2636, *e-mail: Nancy.Crane@fda.hhs.gov.*

For Further Information About the Public Meeting Contact: Paulo Almeida, U.S. Codex Office, 1400 Independence Avenue, SW., Room 4861, Washington, DC 20250, *telephone:* (202) 205–7760, *fax:* (202) 720–3157, *e-mail: Paulo.Almeida@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The CCNFSDU is responsible for:

(a) Studying specific nutritional problems assigned to it by Codex and advising Codex on general nutrition issues;

(b) Drafting general provisions as appropriate, concerning the nutritional aspects of all foods;

(c) Developing standards, guidelines, or related texts for foods for special dietary uses, in cooperation with other committees where necessary; and

(d) Considering, amending if necessary, and endorsing provisions on nutritional aspects proposed for inclusion in Codex standards, guidelines, and related texts.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 33rd Session of the CCNFSDU will be discussed during the public meeting:

- Matters Referred to the CCNFSDU by Codex and/or Other Codex Committees.
- Matters of Interest Arising from the FAO and WHO.
- Proposed Draft Additional or Revised Nutrient Reference Values (for Labeling Purposes in the Codex Guidelines on Nutrition Labeling at Step 4).
- Report from FAO and WHO on Nutrient Reference Values.
- Revised Draft of the General Principles for Establishing Nutrient Reference Values for labeling purposes for Nutrients Associated with Risk of Diet-Related Noncommunicable Diseases for the General Population at Step 4 (in light of comments at Step 3).
- Proposed Draft Nutrient Reference Values for Nutrients Associated with Risk of Diet-Related Noncommunicable Diseases.
- Proposed Draft Revision of the Codex General Principles for the Addition of Essential Nutrients to Foods at Step 4.
- Proposed Draft Revision of the Guidelines on Formulated Supplementary Foods for Older Infants and Young Children at Step 4.
- Proposed Draft Amendment of the Standard for Processed Cereal-Based

Foods for Infants and Young Children to Include a New Part B for Underweight Children at Step 4.

• Proposal to Review the Codex Standard for Follow-up Formula.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access copies of these documents (see **ADDRESSES**).

Public Meeting

At the public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Barbara Schneeman Ph.D., U.S. Delegate for the 33rd Session of the CCNFSDU at the following address: *CCNFSDU@fda.hhs.gov.*

Written comments should state that they relate to activities of the 33rd Session of the CCNFSDU.

USDA Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at

http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The Update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.*

Options range from recalls, export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on: October 5, 2011.

Karen Stuck,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2011–26282 Filed 10–11–11; 8:45 am]

BILLING CODE 3410–DM–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: National Institute of Standards and Technology (NIST).

Title: Project 25 Compliance Assessment Program Laboratory Application.

OMB Control Number: 0693–0053.

Form Number(s): None.

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

Burden Hours: 10.

Number of Respondents: 10.

Average Hours Per Response: 1.

Needs and Uses: The September 11, 2001 attacks and Hurricane Katrina made apparent the need for public safety radio systems to interoperate, regardless of who manufactured the equipment. In response, and per Congressional direction, Department of Homeland Security and NIST developed the Project 25 (P25) CAP to improve public safety confidence in purchasing land mobile radio (LMR) equipment built to P25 LMR standards, especially those P25 standards related to improving interoperability between different manufacturer's radio systems. A key part of the program involves NIST (Office of Law Enforcement Standards-OLES) experts assessing participating laboratories to determine that they have the requisite technical competence and resources needed to test P25 equipment. To perform these assessments, and continue the program, NIST needs to be able to collect essential information from laboratories interested in participating in the P25 CAP program.

Affected Public: Business or other for-profit organizations; not-for-profit institutions; Federal government; and state, local, or tribal government.

Frequency: Annually.

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, OMB Desk Officer, Jasmeet Seehra, FAX Number (202) 395–5167, or *Jasmeet_K._Seehra@omb.eop.gov*).

Dated: October 5, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–26273 Filed 10–11–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 62–2011]

Foreign-Trade Zone 78—Nashville, TN, Application for Subzone, Hemlock Semiconductor, L.L.C. (Polysilicon); Clarksville, TN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Metropolitan Government of Nashville and Davidson County, grantee of FTZ 78, requesting special-purpose subzone status for the polysilicon manufacturing facility of

Hemlock Semiconductor, L.L.C. (HSLLC), located in Clarksville, Tennessee. The application was submitted pursuant to the provisions of 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 October 5, 2011.

The HSLLC facility (800 employees, 1,831 acres, 10,000 metric tons capacity) is located at 1000 Solar Way, Clarksville, Tennessee. The facility will be used for the manufacturing and distribution of polysilicon, silicon tetrachloride, trichlorosilane, dichlorosilane, hydrogen chloride and direct process residue. Components and materials sourced from abroad (representing 5% of the value of the finished product) include: silicon metal, silicon tetrachloride, trichlorosilanes and dichlorosilanes (duty rate ranges from duty-free to 5.5%). HSLLC has indicated that they will accept a restriction prohibiting the admission of foreign status silicon metal subject to an antidumping or countervailing duty order into the proposed subzone.

FTZ procedures could exempt HSLLC from customs duty payments on the foreign components used in export production. The company anticipates that some 75 percent of the plant's shipments will be exported. On its domestic sales, HSC would be able to choose the duty rates during customs entry procedures that apply to finished products (duty rate ranges from duty-free to 6.5%) for the foreign inputs noted above. FTZ designation would further allow HSLLC to realize logistical benefits through the use of weekly customs entry procedures. Customs duties also could possibly be deferred or reduced on foreign status production equipment. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, Elizabeth Whiteman 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 12, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 27, 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 Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: October 5, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–26387 Filed 10–11–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 61–2011]

Foreign-Trade Zone 140—Flint, Michigan; Application for Subzone; Hemlock Semiconductor Corporation (Polysilicon); Hemlock, MI

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Flint, grantee of FTZ 140, requesting special-purpose subzone status for the polysilicon manufacturing facility of Hemlock Semiconductor Corporation (HSC), located in Hemlock, Michigan. The application was submitted pursuant to the provisions of 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 October 5, 2011.

The HSC facility (2,055 employees, 524 acres, 41,000 metric tons capacity) is located at 12334 Geddes Road, Hemlock, Michigan. The facility is used for the manufacturing and distribution of polysilicon, monosilane gas, silicon tetrachloride, trichlorosilane, dichlorosilane, hydrogen chloride and direct process residue. Components and materials sourced from abroad (representing 5% of the value of the finished product) include: silicon metal, silicon tetrachloride, trichlorosilanes and dichlorosilanes (duty rate ranges from duty-free to 5.5%). HSC has indicated that they will accept a restriction prohibiting the admission of foreign status silicon metal subject to an antidumping or countervailing duty order into the proposed subzone.

FTZ procedures could exempt HSC from customs duty payments on the foreign components used in export production. The company anticipates that some 75 percent of the plant's shipments will be exported. On its domestic sales, HSC would be able to choose the duty rates during customs entry procedures that apply to finished products (duty rate ranges from duty-free to 6.5%) for the foreign inputs noted above. FTZ designation would further allow HSC to realize logistical benefits through the use of weekly customs entry procedures. Customs duties also could possibly be deferred or reduced on foreign status production equipment. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, Elizabeth Whiteman 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 12, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 26, 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 Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: October 5, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–26392 Filed 10–11–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 60–2011]

Foreign-Trade Zone 140—Flint, Michigan; Application for Subzone; Dow Corning Corporation (Silicon-Based Products); Midland, MI

An application has been submitted to the Foreign-Trade Zones Board (the

Board) by the City of Flint, grantee of FTZ 140, requesting special-purpose subzone status for the silicon-based product manufacturing facility of Dow Corning Corporation (Dow Corning), located in Midland, Michigan. The application was submitted pursuant to the provisions of 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 October 5, 2011.

The Dow Corning facility (1,250 employees, 489 acres, 450,000 metric tons capacity) is located at 3901 S. Saginaw Road, Midland, Michigan. The facility is used for the manufacturing and distribution of silicon-based products including elastomers, resins, fluids, silanes, polymers, gums, sealants and emulsions. Components and materials sourced from abroad (representing 10% of the value of the finished product) include: isododecane, iso hexadecane, silicon metal, carbon dioxide liquid, magnesium sulfate, methallyl chloride, monochlorobenzene, trifluoromethane sulfonic, ethylene glycol, 2-ethyl-1,3-hexanediol, glycerine, biocide, ionol CP, allylglycol, allyl glycidyl ether, methyl ethyl ketone, diacetone alcohol, octanoic acid, undecylenic acid, monoplex dos, ethyl silicate, sparc base, dimethylethanolamine, vinyltriacetoxysilane, dimethyl me phosphonate, hexamethylcyclotrisilazane, lutensol, reactivated carbon, tonsil catalyst, kathon CG preservative, acticide, organosilane solution, silicone resin solution, silicone dispersion, carbopol, polycerin and KBM 802 (duty rate ranges from duty-free to 7%). The application indicates that any inputs that fall under HTSUS Heading 3204 will be admitted to the subzone in privileged foreign (PF) status (19 CFR 146.41). In addition, Dow Corning has indicated that they will accept a restriction prohibiting the admission of foreign status silicon metal subject to an antidumping or countervailing duty order into the proposed subzone.

FTZ procedures could exempt Dow Corning from customs duty payments on the foreign components used in export production. The company anticipates that some 20 percent of the plant's shipments will be exported. On its domestic sales, Dow Corning would be able to choose the duty rates during customs entry procedures that apply to finished silicon-based products (duty rate ranges from duty-free to 6.5%) for the foreign inputs noted above. FTZ designation would further allow Dow Corning to realize logistical benefits through the use of weekly customs entry procedures. Customs duties also could possibly be deferred or reduced on foreign status production equipment. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, Elizabeth Whiteman 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 12, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 26, 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 Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: October 5, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–26364 Filed 10–11–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1783]

Reorganization of Foreign-Trade Zone 59 Under Alternative Site Framework; Lincoln, NE

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) in December 2008 (74 FR 1170–1173, 01/12/2009; correction 74 FR 3987, 01/22/2009; 75 FR 71069–71070, 11/22/2010) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Lincoln Foreign-Trade Zone, Inc., grantee of FTZ 59, submitted an application to the Board (FTZ Docket 33–2011, filed 5/12/2011) for authority to reorganize under the ASF with a service area that includes Lancaster, Otoe and Seward Counties, Nebraska, within and adjacent to the Omaha Customs and Border Protection port of entry, and FTZ 59's existing Sites 1 and 2 would be categorized as magnet sites;

Whereas, notice inviting public comment was given in the **Federal Register** (76 FR 28952–28953, 5/19/2011) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to reorganize FTZ 59 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and to a five-year ASF sunset provision for magnet sites that would terminate authority for Site 1 if not activated by September 30, 2016.

Signed at Washington, DC, this 30th day of September 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST: _____

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–26373 Filed 10–11–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1787]

Reorganization of Foreign-Trade Zone 137 under Alternative Site Framework Washington Dulles International Airport, VA Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) in December 2008 (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09; 75 FR 71069–71070, 11/22/10) as an option for

the establishment or reorganization of general-purpose zones;

Whereas, the Washington Dulles Foreign Trade Zone Inc., grantee of Foreign-Trade Zone 137, submitted an application to the Board (FTZ Docket 19–2011, filed 03/14/11) for authority to reorganize under the ASF with a service area of Frederick, Clarke, Loudoun, Fairfax, Fauquier, Prince William and Arlington Counties and the City of Alexandria, Virginia, in and adjacent to the Washington Dulles International Airport Customs and Border Protection port of entry; the non-contiguous parcel of Site 4 would be renumbered as Site 7; FTZ 137's Sites 1–6 would be categorized as magnet sites; and, Site 7 would be categorized as a usage-driven site;

Whereas, notice inviting public comment was given in the **Federal Register** (76 FR 14900–14901, 03/18/11) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 137 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 2–6 if not activated by September 30, 2016, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Site 7 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by September 30, 2014.

Signed at Washington, DC, this 30th day of September 2011.

Ronald K. Lorentzen

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board,

ATTEST: Andrew McGilvray, Executive Secretary.

[FR Doc. 2011–26365 Filed 10–11–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1781]

Reorganization of Foreign-Trade Zone 170 (Expansion of Service Area) under Alternative Site Framework; Clark County, Indiana

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09; 75 FR 71069–71070, 11/22/10) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Ports of Indiana, grantee of Foreign-Trade Zone 170, submitted an application to the Board (FTZ Docket 37–2011, filed 5/23/2011) for authority to expand the service area of the zone to include Jefferson, Ripley, Dearborn, Brown, Ohio and Switzerland Counties, as described in the application, adjacent to the Louisville, Kentucky; Cincinnati, Ohio; and Indianapolis, Indiana Customs and Border Protection ports of entry;

Whereas, notice inviting public comment was given in the **Federal Register** (76 FR 30906–30907, 5/27/11) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 170 to expand the service area under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project.

Signed at Washington, DC, this *30th* day of *September* 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary, for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST: _____

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–26377 Filed 10–11–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1785]

Reorganization/Expansion of Foreign-Trade Zone 53 Under Alternative Site Framework; Tulsa, OK

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) in December 2008 (74 FR 1170, 01/12/2009; correction 74 FR 3987, 01/22/2009; 75 FR 71069–71070, 11/22/2010) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the City of Tulsa-Rogers County Port Authority, grantee of Foreign-Trade Zone 53, submitted an application to the Board (FTZ Docket 8–2011, filed 2/1/2011) for authority to reorganize and expand under the ASF with a service area of Rogers County, Oklahoma, within and adjacent to the Tulsa Customs and Border Protection port of entry, FTZ 53's existing Sites 1 through 5 would be categorized as magnet sites, and the grantee proposes two new magnet sites (Sites 6 and 7);

Whereas, notice inviting public comment was given in the **Federal Register** (76 FR 6600–6601, 2/7/2011) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize and expand FTZ 53 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 1 through 7 if not activated by September 30, 2016.

Signed at Washington, DC, this 30th day of September, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST: _____

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–26372 Filed 10–11–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1786]

Reorganization/Expansion of Foreign-Trade Zone 161 under Alternative Site Framework; Sedgwick County, KS

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) in December 2008 (74 FR 1170, 01/12/2009; correction 74 FR 3987, 01/22/2009; 75 FR 71069–71070, 11/22/2010) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Board of County Commissioners of Sedgwick County, grantee of Foreign-Trade Zone 161, submitted an application to the Board (FTZ Docket 34–2011, filed 5/17/2011) for authority to reorganize and expand under the ASF with a service area that includes Butler, Harvey, McPherson, Reno, Saline, Sedgwick and Sumner Counties, Kansas, within and adjacent to the Wichita Customs and Border Protection port of entry; FTZ 161's existing Site 1 would be modified by removing 119 acres and existing Site 1A would be renumbered as Site 2; Sites 1 and 2 would be categorized as magnet sites; and, the grantee proposes an initial usage-driven site (Site 3);

Whereas, notice inviting public comment was given in the **Federal Register** (76 FR 30099–30100, 5/24/2011) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize and expand FTZ 161 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, to a five-year ASF sunset provision for magnet sites that would terminate authority for Site 1 if not activated by September 30, 2016, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Site 3 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by September 30, 2014.

Signed at Washington, DC, this *30th* day of *September* 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST: _____

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–26366 Filed 10–11–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1782]

Reorganization/Expansion of Foreign-Trade Zone 225 under Alternative Site Framework, Springfield, MO

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) in December 2008 (74 FR 1170, 01/12/2009; correction 74 FR 3987, 01/22/2009; 75 FR 71069–71070, 11/22/2010) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the City of Springfield Airport Board, grantee of Foreign-Trade Zone 225, submitted an application to the Board (FTZ Docket 32–2011, filed 5/10/2011) for authority to reorganize and expand under the ASF with a service area of Barry, Barton, Cedar, Christian, Dade, Dallas, Douglas, Greene, Hickory, Howell (partial), Jasper, Laclede, Lawrence, McDonald, Newton, Ozark, Polk, Stone, Taney, Texas (partial), Vernon, Webster and Wright Counties, Missouri, within and adjacent to the Springfield Customs and Border Protection port of entry, FTZ 225's existing Site 1 would be categorized as a magnet site, and the grantee proposes an initial usage-driven site (Site 2);

Whereas, notice inviting public comment was given in the **Federal Register** (76 FR 28212, 5/16/2011) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize and expand FTZ 225 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Site 2 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by September 30, 2014.

Signed at Washington, DC this 30th day of September 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST: _____

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–26376 Filed 10–11–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA745

New England Fishery Management Council; Public Meeting; Correction

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council's (Council) VMS/Enforcement Committee and Advisory Panel will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Thursday, October 20, 2011 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Harborside Hotel, 250

Market Street, Portsmouth, NH 03801; *telephone:* (603) 431–2300; *fax:* (603) 433–5649.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: This notice corrects a previous notice that was published in the **Federal Register** on October 4, 2011 (76 FR 61345). The original notice announced the meeting was for the Groundfish Committee.

The items of discussion in the agenda are:

The Committee and Advisory Panel will review gear stowage regulations. There will be a request for comments on vessel and gear marking. There will be an open comment period for the fishing industry, concerning Compliance and Effectiveness of Regulations for New England Fishery Management Plans. The Committee and Panel will comment on draft NOAA Enforcement Priority Setting Process. Some of the actions that the Committee and Panel may be asked to review are: Scallop management measures (Framework 24 and Amendment 16); Herring Amendment 5 management measures—preliminary review; Hake (Whiting) incidental possession limits when Total Allowable Landings are reached; Skate species identification at sea and at the dock. They also plan to schedule meetings for next year. Other business may be discussed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: October 6, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–26324 Filed 10–11–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA756

Marine Mammals; File No. 15537

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to Institute for Marine Mammal Studies (IMMS), P.O. Box 207, Gulfport, MS 39502 (Dr. Moby Solangi, Responsible Party) to obtain stranded, releasable California sea lions (*Zalophus californianus*) from the National Marine Mammal Stranding Response Program for the purposes of public display.

ADDRESSES: The permit and related documents are available for review online at *http://www.nmfs.noaa.gov/pr/permits/review.htm* or upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Amy Sloan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On May 20, 2010, notice was published in the **Federal Register** (75 FR 28239) that a request for a permit to acquire releasable California sea lions for public display had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

This permit authorizes the acquisition of releasable stranded California sea lions (two males and six females) from west coast stranding facilities for public display purposes. The receiving facility, IMMS: (1) Is open to the public on a regularly scheduled basis with access that is not limited or restricted other than by charging for an admission fee; (2) offers an educational program that is consistent with professionally recognized standards of informal education in aquaria and zoos, including the Association of Zoos and Aquariums; and (3) holds an Exhibitor's License, number 65–C–0540, issued by the U.S. Department of Agriculture under the Animal Welfare Act (7 U.S.C. 2131–59). The permit is valid through October 5, 2016.

An environmental assessment (EA) was prepared analyzing the effects of the permitted activities on the human environment in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and made available for public comment on April 11, 2011 (76 FR 19976). Based on the analyses in the EA, NMFS determined that issuance of the permit would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI), signed on September 28, 2011.

Dated: October 5, 2011.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–26348 Filed 10–11–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) 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: United States Patent and Trademark Office (USPTO).

Title: Applications for Trademark Registration.

Form Number(s): PTO Forms 4.8, 4.9, 1478, and 1478(a).

Agency Approval Number: 0651–0009.

Type of Request: Extension of a currently approved collection.

Burden: 132,106 hours annually.

Number of Respondents: 380,289 responses per year, with 374,020 responses filed electronically.

Avg. Hours per Response: The USPTO estimates that it will take the public approximately 18 to 30 minutes (0.30 to 0.50 hours) to complete the applications in this collection, depending on the application. This includes the time to gather the necessary information, prepare the application, and submit the completed application to the USPTO.

Needs and Uses: This collection of information is required by the Trademark Act, 15 U.S.C. 1051 *et seq.* The rules implementing the Trademark Act are set forth in 37 CFR part 2. The Act and rules provide for the Federal registration of trademarks, service marks, collective trademarks and service marks, collective membership marks, and certification marks. Individuals and businesses who use their marks, or intend to use their marks, in commerce regulable by Congress, may file an application with the USPTO to register their marks. The USPTO uses the information in this collection to process the applications for the various marks and to determine whether the marks may be registered. This collection contains three paper forms and six electronic forms. The electronic forms are available through the Trademark Electronic Application System (TEAS). The information in this collection is available to the public.

Affected Public: Businesses or other for-profits; and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, e-mail: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *http://www.reginfo.gov.*

Paper copies can be obtained by:

• *E-mail: InformationCollection@uspto.gov.* Include ''0651–0009 copy request'' in the subject line of the message.

• *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before November 14, 2011 to Nicholas A. Fraser, OMB Desk Officer, via e-mail to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: October 6, 2011.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2011–26307 Filed 10–11–11; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2011–OS–0110]

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 14, 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 October 5, 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: October 6, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DHA 22

SYSTEM NAME:

Medical Situational Awareness in the Theater (MSAT).

SYSTEM LOCATION:

Office of the Assistant Secretary of Defense for Health Affairs, Force Health Protection & Readiness, Skyline 4, Suite 901, 5113 Leesburg Pike, Falls Church, VA 22041–3226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the uniformed services and DoD civilian employees (to include non-appropriated fund employees) who receive or have received medical or dental care at one or more DoD medical treatment facilities in an active theater of operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, age, date of birth, Social Security Number (SSN) and/or DoD Identification (DoD ID) number, marital status, phone number, address, race, pay grade, personnel code, mobilization status, unit identification, and unit phone number.

An individual's Trauma Number, Register Number, and patient encounter data pertaining to symptoms; International Classification of Diseases (ICD) diagnosis codes; clinical data elements and codes with respect to symptoms, medical history, physical examination, tests, diagnosis, and therapy, medications, and vital signs; and treatment facility locations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Chapter 55, Medical and Dental Care; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To provide information to medical commanders and their staff on

personnel readiness status before and during deployment and sustainment, patient tracking from initial point of care and en route to CONUS military treatment facilities, medical surveillance of illnesses, injury rates and trends for theater, syndromic, and chemical, biological, radiological, and nuclear surveillance of individuals for early warning alerts.

To provide information that, when combined with medical intelligence, patient tracking, geospatial mapping, logistics, personnel, and other information, supports a single identical display of relevant information shared by more than one command to facilitate collaborative planning and to assist all echelons in achieving situational awareness, and for assisting the Combatant Command and Joint Task Force Surgeon in assessing risks, mitigating operational vulnerabilities, and allocating scarce combat resources during the planning and conduct of operations.

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, as amended, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3).

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 apply to this system.

Note 1: 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 and 45 CFR Parts 160 and 164, Health and Human Services, General Administrative Requirements and Security & Privacy, respectively, 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, as amended, or mentioned in this system of records notice.

Note 2: Personal identity, diagnosis, prognosis or treatment information of any patient maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States is, except as per 42 U.S.C. 290dd–2, treated as confidential and disclosed only for the purposes and under the circumstances expressly authorized under 42 U.S.C. 290dd–2.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Individual's name, date of birth, Trauma Number, Register Number, SSN and/or DoD ID Number, or any combination of the above.

SAFEGUARDS:

Electronic media, data and/or electronic records are maintained in a controlled area. The computer system is accessible only to authorized personnel. Entry into these areas is restricted to those personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of locks, passwords which are changed periodically, and administrative procedures.

The system provides two-factor authentication including Common Access Cards (CAC) and user ID/passwords. Access to personal information is restricted to those who require the data in the performance of their official duties. All personnel whose official duties require access to the information are trained in the proper safeguarding and use of the information.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration approves retention and disposal schedule, records will be treated as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Product Manager, MSAT, Defense Health Information Management System, Skyline 4, Suite 700, 5113 Leesburg Pike, Falls Church, VA 22041–3226.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of record should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: TMA Privacy Officer, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

Requests should contain the individual's full name and SSN and/or DoD ID Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of record should address written inquiries to TRICARE Management Activity, Attention: Freedom of Information Act Requester Service Center, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

Requests should contain the individual's full name, SSN and/or DoD ID Number, the name and number of this system of records notice, 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 system manager.

RECORD SOURCE CATEGORIES:

Theater Medical Data Store, AHLTA—Theater, and Theater Medical Information Program Cache.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–26306 Filed 10–11–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 12, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 5, 2011.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Innovation and Improvement

Type of Review: Extension.

Title of Collection: Charter Schools Program Grant Awards Database.

OMB Control Number: 1855–0016.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: State, Local or Tribal Government.

Total Estimated Number of Annual Responses: 70.

Total Estimated Annual Burden Hours: 137.

Abstract: This request is for renewal of OMB approval to collect data necessary for the *Charter Schools Program (CSP) Grant Award Database.* The CSP is authorized under Title V, Part B, Subpart 1, Sections 5201 through 5211 of the Elementary and Secondary Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001. Under Title V, Part B, Section 5205 of the ESEA, the Secretary reserves CSP funds to carry out national activities to provide charter schools with information, to evaluate and study charter schools, and to provide other types of technical assistance. This data collection is coordinated with the ED*Facts* initiative to reduce respondent burden and fully utilize data submitted by States and available to the U.S. Department of Education (ED) through the Education Data Exchange Network (EDEN). Under the current data collection, ED collects CSP grant award information from grantees (State agencies and some schools) for a database of current CSP-funded charter schools and award amounts; ED merges performance information extracted from the EDEN database with the database of CSP-funded charter schools. Together, these data allow ED to monitor CSP grant performance and analyze data related to accountability for academic performance, financial integrity, and program effectiveness.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4731. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–26241 Filed 10–11–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students With Disabilities

AGENCY: U.S. Department of Education, Office of Special Education and Rehabilitative Services, Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities.

ACTION: Correction; Notice of an open meeting via Conference Call.

SUMMARY: On October 4, 2011, we published in the **Federal Register** (76 FR 61349) a notice setting forth the schedule and agenda of the meeting of the Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities, originally scheduled for October 24, 2011 from 11 a.m. to 5 p.m. Through this notice, we are correcting the date of the meeting. The meeting will be held on Monday, October 31, 2011 from 11 a.m. to 5 p.m.

DATES: October 31, 2011.

Time: 11 a.m.–5 p.m., Eastern Standard Time

ADDRESSES: The Commission will meet via conference call on October 31, 2011.

FOR FURTHER INFORMATION CONTACT: Elizabeth Shook, Program Specialist, Office of Special Education and Rehabilitative Services, United States Department of Education, 550 12th Street, SW., Washington, DC 20202; *telephone:* (202) 245–7642, *fax:* 202–245–7638.

Dated: October 6, 2011.

Alexa Posny,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 2011–26370 Filed 10–11–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years, an information collection request with the Office of Management and Budget (OMB). Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of 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 respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before December 12, 2011. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to Kathleen M. Binder, HG–6, Director, Office of Conflict Prevention and Resolution, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; or by fax at 202–287–1490 or by e-mail at *kathleen.binder@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Kathleen M. Binder at the address listed in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.:* 1910–5118; (2) *Information Collection Request Title:* ''Technology Partnerships Ombudsmen Reporting Requirements''; (3) *Type of Review:* Renewal; (4) *Purpose:* The information collected will be used to determine whether the Technology Partnerships Ombudsmen are properly helping to resolve complaints from outside organizations regarding laboratory policies and actions with respect to technology partnerships; (5) *Annual Estimated Number of Respondents:* 22; (6) *Annual Estimated Number of Total Responses:* 88; (7) *Annual Estimated Number of Burden Hours:* 50; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* 0.

Statutory Authority: Section 11 of the Technology Transfer Commercialization Act of 2000, Pub. L. 106–404, codified at 42 U.S.C. 7261c(c)(3)(C).

Issued in Washington, DC, on October 6, 2011.

Kathleen M. Binder,

Office of Conflict Prevention and Resolution, Office of Hearings and Appeals.

[FR Doc. 2011–26353 Filed 10–11–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Availability of the Bonneville Purchasing Instructions (BPI) and Bonneville Financial Assistance Instructions (BFAI)

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of document availability.

SUMMARY: Copies of the Bonneville Purchasing Instructions (BPI), which contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of its purchases of goods and services, including construction, are available in printed form or at the following Internet address: *http://www.bpa.gov/corporate/business/bpi.*

Copies of the Bonneville Financial Assistance Instructions (BFAI), which contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of financial assistance instruments (principally grants and cooperative agreements), are available in printed form or available at the following Internet address: *http://www.bpa.gov/corporate/business/bfai.*

ADDRESSES: Unbound copies of the BPI or BFAI may be obtained by sending a request to the Head of the Contracting Activity, Routing DGP–7, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621.

FOR FURTHER INFORMATION CONTACT: Head of Contracting Activity (503) 230–5498.

SUPPLEMENTARY INFORMATION: BPA was established in 1937 as a Federal Power Marketing Agency in the Pacific Northwest. BPA operations are financed from power revenues rather than annual appropriations. BPA's purchasing operations are conducted under 16 U.S.C. 832 et seq. and related statutes. Pursuant to these special authorities, the BPI is promulgated as a statement of purchasing policy and as a body of interpretative regulations governing the conduct of BPA purchasing activities. It is significantly different from the Federal Acquisition Regulation, and reflects BPA's private sector approach to purchasing the goods and services that it requires. BPA's financial assistance operations are conducted under 16 U.S.C. 839 *et seq.* and 16 U.S.C. 839 *et seq.* The BFAI express BPA's financial assistance policy. The BFAI also comprise BPA's rules governing implementation of the principles provided in the following Federal Regulations and/or OMB circulars:

2 CFR part 220 Cost Principles for Educational Institutions (CircularA–21);

2 CFR part 225 Cost Principles for State, Local and Indian Tribal Governments (Circular A–87);

Grants and Cooperative Agreements with State and Local Governments (Circular A–102);

Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations (Circular A–110);

2 CFR part 230 Cost Principles for Non-Profit Organizations (Circular A–122); and

Audits of States, Local Governments and Non-Profit Organizations (Circular A–133).

BPA's solicitations and contracts include notice of applicability and availability of the BPI and the BFAI, as appropriate, for the information of offerors on particular purchases or financial assistance transactions.

Issued in Portland, Oregon, on September 30, 2011.

Damian J. Kelly,

Manager, Purchasing/Property Governance.

[FR Doc. 2011–26358 Filed 10–11–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2144–000]

City of Seattle; Notice of Authorization for Continued Project Operation

On September 29, 2009, the City of Seattle, licensee for the Boundary Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Boundary Hydroelectric Project is located on the Pend Oreille River in Pend Oreille County, Washington.

The license for Project No. 2144 was issued for a period ending September 30, 2011. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2144 is issued to the City of Seattle for a period effective October 1, 2011 through September 30, 2012, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before September

30, 2012, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the City of Seattle is authorized to continue operation of the Boundary Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Dated: October 4, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–26233 Filed 10–11–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice Of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2898–003
Applicants: Utility Contract Funding II,LLC.
Description: Utility Contract Funding II,LLC. submits tariff filing per 35: MBR Tariff to be effective 9/23/2011.
Filed Date: 09/23/2011.
Accession Number: 20110923–5139.
Comment Date: 5 p.m. Eastern Time on Friday, October 14, 2011.

Docket Numbers: ER10–2899–003.
Applicants: South Eastern Electric Development Corp.
Description: South Eastern Electric Development Corp. submits tariff filing per 35: MBR Tariff to be effective 9/23/2011.
Filed Date: 09/23/2011.
Accession Number: 20110923–5138.
Comment Date: 5 p.m. Eastern Time on Friday, October 14, 2011.

Docket Numbers: ER10–2900–003.
Applicants: South Eastern Generating Corp.
Description: South Eastern Generating Corp. submits tariff filing per 35: MBR Tariff to be effective 9/23/2011.
Filed Date: 09/23/2011.
Accession Number: 20110923–5137.
Comment Date: 5 p.m. Eastern Time on Friday, October 14, 2011.

Docket Numbers: ER10–2906–003.
Applicants: Morgan Stanley Capital Group Inc.
Description: Morgan Stanley Capital Group Inc. submits tariff filing per 35: MBR Tariff to be effective 9/23/2011.
Filed Date: 09/23/2011.
Accession Number: 20110923–5126.
Comment Date: 5 p.m. Eastern Time on Friday, October 14, 2011.

Docket Numbers: ER10–2908–003.
Applicants: MS Solar Solutions Corp.
Description: MS Solar Solutions Corp. submits tariff filing per 35: MBR Tariff to be effective 9/23/2011.
Filed Date: 09/23/2011.
Accession Number: 20110923–5128.
Comment Date: 5 p.m. Eastern Time on Friday, October 14, 2011.

Docket Numbers: ER10–2909–003.
Applicants: Power Contract Financing II, Inc.
Description: Power Contract Financing II, Inc. submits tariff filing per 35: MBR Tariff to be effective 9/23/2011.
Filed Date: 09/23/2011.
Accession Number: 20110923–5134.
Comment Date: 5 p.m. Eastern Time on Friday, October 14, 2011.

Docket Numbers: ER10–2910–003.
Applicants: Power Contract Financing II,LLC.
Description: Power Contract Financing II, LLC. submits tariff filing per 35: MBR Tariff to be effective 9/23/2011.
Filed Date: 09/23/2011.
Accession Number: 20110923–5136
Comment Date: 5 p.m. Eastern Time on Friday, October 14, 2011.

Docket Numbers: ER10–2911–003
Applicants: Naniwa Energy LLC
Description: Naniwa Energy LLC submits tariff filing per 35: MBR Tariff to be effective 9/23/2011.
Filed Date: 09/23/2011.
Accession Number: 20110923–5129.
Comment Date: 5 p.m. Eastern Time on Friday, October 14, 2011.

Docket Numbers: ER11–4615–000.
Applicants: Snapping Shoals Electric Membership Cooperative.
Description: Snapping Shoals Electric Membership Cooperative submits notice of cancellation of FERC Electric Tariff, effective 8/8/05.
Filed Date: 09/22/2011.
Accession Number: 20110923–0201
Comment Date: 5 p.m. Eastern Time on Thursday, October 13, 2011.

Docket Numbers: ER11–4616–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits tariff filing per 35.13(a)(2)(iii: OATT Revised Attachment C to be effective 4/1/2011.
Filed Date: 09/23/2011.
Accession Number: 20110923–5070.
Comment Date: 5 p.m. Eastern Time on Friday, October 14, 2011.

Docket Numbers: ER11–4617–000
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection,LLC. submits tariff filing per 35.13(a)(2)(iii: PJM Queue # U2–073—Original Service Agreement No. 3058 to be effective 8/24/2011.
Filed Date: 09/23/2011.
Accession Number: 20110923–5085.
Comment Date: 5 p.m. Eastern Time on Friday, October 14, 2011.

Docket Numbers: ER11–4618–000.
Applicants: White Pine Electric Power.
Description: White Pine Electric Power submits tariff filing per 35.1: Market-Based Rate Tariff Baseline to be effective 9/23/2011.
Filed Date: 09/23/2011.
Accession Number: 20110923–5086
Comment Date: 5 p.m. Eastern Time on Friday, October 14, 2011.

Docket Numbers: ER11–4619–000.
Applicants: Florida Power & Light Company.
Description: Florida Power & Light Company submits tariff filing per 35.13(a)(2)(iii: FPL and Wauchula Original Service Agreement No. 299 to be effective 10/1/2011.
Filed Date: 09/23/2011.
Accession Number: 20110923–5088.
Comment Date: 5 p.m. Eastern Time on Friday, October 14, 2011.

Docket Numbers: ER11–4620–000.
Applicants: Idaho Power Company.
Description: Idaho Power Company's Notice of Cancellation of Service Agreements 153, 154, 155, and 159.
Filed Date: 09/22/2011.
Accession Number: 20110922–5137
Comment Date: 5 p.m. Eastern Time on Thursday, October 13, 2011.

Docket Numbers: ER11–4621–000.
Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.
Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: LGIA Among NYISO, NiMo, NYSEG and Nine Mile Point to be effective 9/8/2011.
Filed Date: 09/23/2011.
Accession Number: 20110923–5100.
Comment Date: 5 p.m. Eastern Time on Friday, October 14, 2011.

Docket Numbers: ER11–4622–000.
Applicants: NorthWestern Corporation.
Description: Report/Form of NorthWestern Corporation—Average System Cost Filing, FY 2012–13.
Filed Date: 09/23/2011.
Accession Number: 20110923–5109.
Comment Date: 5 p.m. Eastern Time on Friday, October 14, 2011.

Docket Numbers: ER11–4623–000.
Applicants: Black Oak Capital, LLC.
Description: Black Oak Capital, LLC submits tariff filing per 35.1: Black Oak

Capital, LLC MBR Re-File to be effective 9/23/2011.

Filed Date: 09/23/2011.

Accession Number: 20110923–5115.

Comment Date: 5 p.m. Eastern Time on Friday, October 14, 2011.

Docket Numbers: ER11–4624–000.

Applicants: Katmai Energy, LLC.

Description: Katmai Energy, LLC submits tariff filing per 35.1: Katmai Energy, LLC MBR Re-File to be effective 9/23/2011.

Filed Date: 09/23/2011.

Accession Number: 20110923–5116.

Comment Date: 5 p.m. Eastern Time on Friday, October 14, 2011.

Docket Numbers: ER11–4625–000.

Applicants: Colton Power LP.

Description: Colton Power LP. submits tariff filing per 35.1: Colton Power L.P. MBR Electronic Baseline Tariff to be effective 9/23/2011.

Filed Date: 09/23/2011.

Accession Number: 20110923–5117.

Comment Date: 5 p.m. Eastern Time on Friday, October 14, 2011.

Docket Numbers: ER11–4626–000.

Applicants: Mt. Poso Generation Company, LLC.

Description: Mt. Poso Generation Company, LLC submits tariff filing per 35.12: Application for Market-Based Rate Authority to be effective 9/23/2011.

Filed Date: 09/23/2011.

Accession Number: 20110923–5118.

Comment Date: 5 p.m. Eastern Time on Friday, October 14, 2011.

Docket Numbers: ER11–4627–000.

Applicants: Fairchild Energy, LLC.

Description: Fairchild Energy, LLC submits tariff filing per 35.1: FERC MBR Electric Tariff Filing to be effective 9/23/2011.

Filed Date: 09/23/2011.

Accession Number: 20110923–5124.

Comment Date: 5 p.m. Eastern Time on Friday, October 14, 2011.

Docket Numbers: ER11–4628–000.

Applicants: PJM Interconnection,LLC.

Description: PJM Interconnection,LLC. submits tariff filing per 35.13(a)(2)(iii: Revisions to the PJM Tariff, OA and RAA re Price Responsive Demand to be effective 12/15/2011.

Filed Date: 09/23/2011.

Accession Number: 20110923–5125.

Comment Date: 5 p.m. Eastern Time on Friday, October 14, 2011.

Docket Numbers: ER11–4629–000.

Applicants: Castlebridge Energy Group LLC.

Description: Castlebridge Energy Group LLC submits tariff filing per 35.1: Castlebridge Energy Group LLC MBR Re-File to be effective 9/23/2011.

Filed Date: 09/23/2011.

Accession Number: 20110923–5135.

Comment Date: 5 p.m. Eastern Time on Friday, October 14, 2011.

Docket Numbers: ER11–4630–000.

Applicants: PJM Interconnection,LLC.

Description: PJM Interconnection,LLC. submits tariff filing per 35.13(a)(2)(iii: Revisions to Section 7.2 of the PJM Operating Agreement to be effective 11/22/2011.

Filed Date: 09/23/2011.

Accession Number: 20110923–5140.

Comment Date: 5 p.m. Eastern Time on Friday, October 14, 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 26, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–26275 Filed 10–11–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice Of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–1–000.

Applicants: Blue Canyon Windpower VI LLC.

Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of Blue Canyon Windpower VI LLC.

Filed Date: 10/04/2011.

Accession Number: 20111004–5108.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 25, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER08–1439–004; EL09–32–004.

Applicants: New Brunswick Power Generation Corporation.

Description: New Brunswick Power Generation Corporation submits compliance filing, et al.

Filed Date: 09/29/2011.

Accession Number: 20110929–5230.

Comment Date: 5 p.m. Eastern Time on Thursday, October 20, 2011.

Docket Numbers: ER11–4013–001.

Applicants: PJM Interconnection, LLC., Commonwealth Edison Company.

Description: PJM Interconnection,LLC. submits tariff filing per: ComEd files clarification re Patzin's statements, to be effective N/A.

Filed Date: 10/04/2011.

Accession Number: 20111004–5012.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 25, 2011.

Docket Numbers: ER11–4475–001.

Applicants: Rockland Wind Farm LLC.

Description: Rockland Wind Farm LLC submits tariff filing per 35.17(b): Amendment to be effective 10/4/2011.

Filed Date: 10/04/2011.

Accession Number: 20111004–5128.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 25, 2011.

Docket Numbers: ER11–4478–001.

Applicants: White Creek Wind I, LLC.

Description: White Creek Wind I, LLC submits tariff filing per 35: White Creek Wind I, LLC MBR Tariff to be effective 9/8/2011.

Filed Date: 10/04/2011.

Accession Number: 20111004–5092.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 25, 2011.

Docket Numbers: ER11–4498–001.

Applicants: Smoky Hills Wind Farm, LLC.

Description: Smoky Hills Wind Farm, LLC submits tariff filing per 35: Smoky Hills Wind Farm, LLC MBR Tariff to be effective 9/12/2011.

Filed Date: 10/04/2011.

Accession Number: 20111004–5090.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 25, 2011.

Docket Numbers: ER11–4499–001.

Applicants: Smoky Hills Wind Project II, LLC.

Description: Smoky Hills Wind Project II, LLC submits tariff filing per 35: Smoky Hills Wind Project II, LLC MBR Tariff to be effective 9/12/2011.

Filed Date: 10/04/2011.

Accession Number: 20111004–5091.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 25, 2011.

Docket Numbers: ER11–4507–001.

Applicants: Canastota Windpower, LLC.

Description: Canastota Windpower, LLC submits tariff filing per 35: Canastota Windpower, LLC MBR Tariff to be effective 9/12/2011.
Filed Date: 10/04/2011.
Accession Number: 20111004–5089.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 25, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–4739–000.
Applicants: Aspire Capital Management, LLC.
Description: Aspire Capital Management, LLC submits notice of cancellation, et al.
Filed Date: 09/30/2011.
Accession Number: 20110930–0033.
Comment Date: 5 p.m. Eastern Time on Friday, October 21, 2011.

Docket Numbers: ER12–14–000.
Applicants: Oceanside Power LLC.
Description: Oceanside Power LLC submits tariff filing per 35: Amended Baseline Tariff Filing to be effective 9/8/2011.
Filed Date: 10/04/2011.
Accession Number: 20111004–5029.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 25, 2011.

Docket Numbers: ER12–16–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 1166R14 Oklahoma Municipal Power Authority NITSA NOA to be effective 9/1/2011.
Filed Date: 10/04/2011.
Accession Number: 20111004–5066.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 25, 2011.

Docket Numbers: ER12–17–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.15: Notice of Cancellation of Letter Agreement Coram Project to be effective 12/10/2010.
Filed Date: 10/04/2011.
Accession Number: 20111004–5079.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 25, 2011.

Docket Numbers: ER12–18–000.
Applicants: Wisconsin Public Service Corporation.
Description: Wisconsin Public Service Corporation submits tariff filing per 35.13(a)(2)(iii: Balancing Authority Area Operations Coordination Agreement to be effective 10/4/2011.
Filed Date: 10/04/2011.
Accession Number: 20111004–5082.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 25, 2011.

Docket Numbers: ER12–19–000.
Applicants: Upper Peninsula Power Company.
Description: Upper Peninsula Power Company submits tariff filing per 35.13(a)(2)(iii: BAAOCA between UPPCO and WEPCO to be effective 10/4/2011.
Filed Date: 10/04/2011.
Accession Number: 20111004–5084.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 25, 2011.

Docket Numbers: ER12–21–000.
Applicants: Agua Caliente Solar, LLC.
Description: Agua Caliente Solar, LLC submits tariff filing per 35.12: Application for Market-Based Rate Authority and Associated Waivers to be effective 12/5/2011.
Filed Date: 10/04/2011.
Accession Number: 20111004–5135.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 25, 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: October 4, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–26276 Filed 10–11–11; 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: RP12–1–000.
Applicants: Crossroads Pipeline Company.
Description: Crossroads Pipeline Company submits tariff filing per 154.204: Service Agreements—Non-Conforming Clean Up to be effective 11/3/2011.
Filed Date: 10/03/2011.
Accession Number: 20111003–5125.
Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2011.

Docket Numbers: RP12–2–000.
Applicants: Central Kentucky Transmission Company.
Description: Central Kentucky Transmission Company submits tariff filing per 154.204: Service Agreements—Non-Conforming Clean Up to be effective 11/3/2011.
Filed Date: 10/03/2011.
Accession Number: 20111003–5153.
Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2011.

Docket Numbers: RP12–4–000.
Applicants: Energy West Development, Inc.
Description: Energy West Development, Inc. submits tariff filing per 154.402: EWD ACA Amendment Filing to be effective 10/3/2011.
Filed Date: 10/03/2011.
Accession Number: 20111003–5226.
Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2011.

Docket Numbers: RP12–5–000.
Applicants: Hardy Storage Company, LLC.
Description: Hardy Storage Company, LLC submits tariff filing per 154.204: Service Agreements—Non-Conforming Clean Up to be effective 11/3/2011.
Filed Date: 10/03/2011.
Accession Number: 20111003–5233.
Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2011.

Docket Numbers: RP12–6–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Sequent 39121 Negotiated Rate Agreement to be effective 10/4/2011.
Filed Date: 10/04/2011.
Accession Number: 20111004–5010.
Comment Date: 5 p.m. Eastern Time on Monday, October 17, 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: October 4, 2011.

Nathaniel J. Davis, Sr.

Deputy Secretary.

[FR Doc. 2011–26284 Filed 10–11–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3812–001.

Applicants: LSP Energy Limited Partnership.

Description: Notification of Change in Status of LSP Energy Limited Partnership.

Filed Date: 10/03/2011.

Accession Number: 20111003–5244.

Comment Date: 5 p.m. Eastern Time on Monday, October 24, 2011.

Docket Numbers: ER12–11–000.

Applicants: Nevada Power Company.

Description: Nevada Power Company submits tariff filing per 35.12: Rate Schedule No. 123 Merchant Substation Maintenance Agreement to be effective 10/1/2011.

Filed Date: 10/03/2011.

Accession Number: 20111003–5216.

Comment Date: 5 p.m. Eastern Time on Monday, October 24, 2011.

Docket Numbers: ER12–12–000.

Applicants: Massie Power LLC.

Description: Massie Power LLC submits tariff filing per 35.1: Massie Power, LLC MBR to be effective 10/3/2011.

Filed Date: 10/03/2011.

Accession Number: 20111003–5232.

Comment Date: 5 p.m. Eastern Time on Monday, October 24, 2011.

Docket Numbers: ER12–13–000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits tariff filing per 35.13(a)(2)(iii: Engineering and Procurement Agreement—Rate Schedule 119 to be effective 10/4/2011.

Filed Date: 10/03/2011.

Accession Number: 20111003–5235.

Comment Date: 5 p.m. Eastern Time on Monday, October 24, 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: October 4, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–26277 Filed 10–11–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR12–1–000; Docket No. IS11–585–000]

Chevron Products Company v. SFPP, L.P. ; Notice of Complaint

Take notice that on October 5, 2011, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR

385.206 (2011), 18 CFR 343.2 (2011), section 343.2 of the Procedural Rules Applicable to Oil Pipeline Proceedings, section 13(1) of the Interstate Commerce Act (ICA), and 49 USC App. 13(1), Chevron Products Company (Complainants) filed a complaint against SFPP, L.P. (Respondent), challenging the lawfulness of the indexed increases in ceiling rates filed by the Respondent on September 20, 2011 in Docket No. IS11–585–000 and alleging that the Respondent will violate the ICA by applying the increased ceiling rates which are unjust and unreasonable for Respondent's jurisdictional interstate service.

The Complainant certifies that copies of the complaint were served on the contacts for SFPP, L.P. 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 26, 2011.

Dated: October 5, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–26299 Filed 10–11–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5730–018]

River Bounty, Inc.; Notice of Termination of Exemption By Implied Surrender and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Termination of exemption by implied surrender.

b. *Project No:* 5730–018.

c. *Date Initiated:* October 3, 2011.

d. *Exemptee:* River Bounty, Inc.

e. *Name of Project:* Oakland Hydroelectric Project.

f. *Location:* Susquehanna River in Susquehanna County, Pennsylvania.

g. *Filed Pursuant to:* 18 CFR 4.106.

h. *Applicant Contact:* Myron B. DeWitt, DeWitt & Cordner, P.O. Box 244, Susquehanna, PA 18847.

i. *FERC Contact:* Rebecca Martin, (202) 502–6012, *Rebecca.martin@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* November 4, 2011.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. Please include the project number (P–5730–018) on any comments or motions filed.

k. *Description of Existing Facilities:* The Oakland project consists of an 18-foot high by 655-foot long rock-filled timber crib structure with a concrete cap and a powerhouse containing three units. Currently, there is a 50- to 60-foot-wide breach in the dam. The project has not operated since 2000.

l. *Description of Proceeding:* Since 2000, the exemptee has not operated the Oakland Project because it lost its power sales contract. Since that time, the powerhouse, abutment wall, tailrace wall, and dam have fallen into disrepair, and no progress has been made to return the project to operational condition. Over the past 11 years, the Commission has directed the exemptee to either make repairs to the project to make it operational, or to file an application to surrender the project. Although the exemptee has responded to Commission requests by repeatedly providing plans and schedules to repair the project, no actual physical work has been done. During the summer of 2007, the dam developed a large hole, allowing most of the water to flow through this section. In April 2008, the breach expanded leaving a 50- to 60-foot-wide opening in the dam.

In April 2011, the Commission again requested a detailed plan and schedule to repair or surrender the project. On April 20, 2011, River Bounty filed a lease agreement transferring the exemption to Renew Hydro, LLC that was conditional on the project becoming operational. On August 18, 2011, the Commission notified the exemptee that it could not approve a conditional lease. Therefore on September 19, 2011, the Commission notified the exemptee that because it appears the exemptee is unable or unwilling to restore the project to operation, the Commission would begin implied surrender proceedings.

m. *Locations of the Documents:* Documents relating to this notice are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. These filings 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 (P–5730) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Responsive Documents:* Any filing must (1) Bear in all capital letters the title ''Comments'', ''Protest'', or ''Motion to Intervene'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the amendment application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: October 4, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–26232 Filed 10–11–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9477–8]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or e-mail at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB approvals

EPA ICR Number 1360.12; Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures; 40 CFR parts 280 and 281; was approved on 09/07/2011; OMB Number 2050–0068; expires on 09/30/2014; Approved with change.

EPA ICR Number 2028.06; NESHAP for Industrial, Commercial, and Institutional Boilers and Process Heaters; 40 CFR part 63, subparts A and DDDDD; was approved on 09/08/2011; OMB Number 2060–0551; expires on 09/30/2014; Approved with change.

EPA ICR Number 2253.02; NESHAP for Industrial, Commercial, and Institutional Boilers Area Sources; 40 CFR part 63, subparts A and JJJJJJ; was approved on 09/08/2011; OMB Number 2060–0668; expires on 09/30/2014; Approved with change.

EPA ICR Number 2399.01; Palos Verdes Shelf Seafood Consumption Survey (New); was approved on 09/08/2011; OMB Number 2009–0003; expires on 09/30/2014; Approved with change.

EPA ICR Number 1655.07; Regulation of Fuels and Fuel Additives: Detergent Gasoline; 40 CFR part 80, subpart G; was approved on 09/14/2011; OMB Number 2060–0275; expires on 09/30/2014; Approved without change.

EPA ICR Number 2392.02; Fuel Economy Labeling of Motor Vehicles (Final Rule); 40 CFR parts 85, 86, and 600; was approved on 09/14/2011; OMB Number 2060–0669; expires on 09/30/2014; Approved without change.

EPA ICR Number 0222.09; EPA's Light-Duty In-Use Vehicle Testing Program (Renewal); was approved on 09/29/2011; OMB Number 2060–0086; expires on 09/30/2014; Approved without change.

EPA ICR Number 1204.11; Submission of Unreasonable Adverse Effects Information Under FIFRA Section 6(a); 40 CFR part 159, subpart D; was approved on 09/30/2011; OMB Number 2070–0039; expires on 09/30/2014; Approved without change.

EPA ICR Number 2434.01; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (New); was approved on 09/28/2011; OMB Number 2010–0042; expires on 09/30/2014; Approved without change.

Withdrawn and Continue

EPA ICR Number 2336.02; Turbidity Monitoring Requirements for Construction Sites Regulated by the Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category (Final Rule); Withdrawn from OMB on 09/30/2011.

Dated: October 4, 2011.

John Moses,

Director, Collections Strategies Division.

[FR Doc. 2011–26239 Filed 10–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9478–3]

Notice of Tentative Approval and Opportunity for Public Comment and Public Hearing for Public Water System Supervision Program Revision for Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval and solicitation of requests for public hearing.

SUMMARY: Notice is hereby given that the State of Maryland is revising its approved Public Water System Supervision Program. Maryland has adopted drinking water regulations for the Long Term 2 Enhanced Surface Water Treatment Rule (LT2), the Lead and Copper Rule Short Term Revisions (LCRSTR), Unregulated Contaminant Monitoring Rule (UCMR) and the Ground Water Rule (GWR). The U.S. Environmental Protection Agency (EPA) has determined that the State rules (*i.e.,* LT2, LCRSTR, UCMR and the GWR) meet all minimum federal requirements, and that they are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve the State program revisions.

DATES: Comments or a request for a public hearing must be submitted by November 14, 2011. This determination shall become final and effective on November 14, 2011, if no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, and if no comments are received which cause EPA to modify its tentative approval.

ADDRESSES: Comments or a request for a public hearing must be submitted to the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Drinking Water Branch, Water Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029.
- Water Management Administration, Maryland Department of the Environment, 1800 Washington Boulevard, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Anthony Meadows, Drinking Water Branch (3WP21) at the Philadelphia address given above, or telephone (215) 814–5442 or fax (215) 814–2302.

SUMMARY: All interested parties are invited to submit written comments on this determination and may request a hearing. All comments will be considered and, if necessary, EPA will issue a response. Frivolous or insubstantial requests for a hearing will be denied by the Regional Administrator. If a substantial request for a public hearing is made by MONTH XX, 2011 November 16, 2011, a public hearing will be held. A request for public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Dated: September 29, 2011.

W. C. Early,

Acting Regional Administrator, Region 3.

[FR Doc. 2011–26326 Filed 10–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9476–8]

Notice of a Regional Waiver of Section 1605 (Buy American requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Nikishka Bay Utilities (the Utility), of Nikiski, AK

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Regional Administrator of EPA Region 10 is hereby granting a waiver from the Buy American requirements of ARRA Section 1605(a) under the authority of Section

1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the Utility for the purchase of a magnetic flow meter, manufactured in Mexico. This is a project specific waiver and only applies to the use of the specified products for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. The waiver applicant states that the project requires the magnetic flow meter installation on the main distribution line out of the water treatment plant. The Utility had an existing turbine meter which was currently in use; however, the existing turbine meter failed prior to completion of the project necessitating the Utility to acquire a new meter as a replacement. The Regional Administrator is making this determination based on the review and recommendations of the Drinking Water Unit. The Utility has provided sufficient documentation to support their request.

DATES: *Effective Date:* September 29, 2011.

FOR FURTHER INFORMATION CONTACT: Johnny Clark, DWSRF ARRA Program Management Analyst, Drinking Water Unit, Office of Water & Watersheds (OWW), (206) 553–0082, U.S. EPA Region 10 (OWW–136), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111–5, Buy American requirements, to the Utility for the purchase of a non-domestic manufactured magnetic flow meter. The Utility is replacing an existing turbine meter that failed prior to completion of the project. The construction of this project involves two phases. Phase 1 of this project includes upgrades near the pumping and distribution components of the Utility. Phase 2 of this project includes the design and construction of two 34,000 gallon storage pressure tanks with a metal building enclosure. In addition, the Utility will install high efficiency well pumps and a booster pump along with the installation of associated controls and construction of approximately 887 linear feet of 12″ HDPE water main.

During construction, the Utility had originally designed and planned to relocate an existing turbine meter which was currently installed on the system's main distribution line. The turbine meter relocation would measure total production flow down-stream of the water treatment system. During the course of construction, the turbine meter failed, necessitating a replacement of the meter. Although replacement of the existing meter seemed a likely course of action for the Utility, a new assessment determined that a new meter which could measure low and high flows would allow the Utility to account for the variations in flow rates, thereby making full use of the Utility's water usage monitoring capabilities. The existing turbine meter measured constant flows between 200 gpm and 400 gpm when the wells were in operation and thus low flow monitoring capabilities were not fully assessed and only total volume was measured. The Utility recognizes that measuring total volume is an important indicator for water usage; however, taking advantage of the ability for the Utility to monitor variations between low and high flows is also an important factor for consideration. The Utility decided that instead of replacing the failed turbine meter with an identical unit, a meter which could measure the low and high flow rates based on usage was a better option to improve their ability to capture data associated with low and high flow rates. In addition, while researching and conducting design analysis for the replacement meter, it became known to the Utility that fire flow requirements or other high flow events required the Utility to identify a meter capable of measuring flows over much wider ranges. Because the meter will be used in a fire pump application, a low head loss meter is also required. These requirements for measuring low and high flow rates and the need to identify a meter which met fire flow certification requirements resulted in the Utility identifying a system flow meter for their design specifications. The main specification requirements for the flow meter are as follows;

1. Four to 1,400 gpm flow range measuring,
2. No head loss across the meter,
3. Bi-directional pulse output,
4. 0.5 second sampling rate,
5. ± 55 accuracy,
6. IP68 rated, and
7. FM 1046 approved for fire service metering.

The Utility contacted several manufacturers to identify a flow meter which could meet the design specifications outlined for the project; however, none could provide one that is domestically manufactured.

The EPA has also evaluated the City's request to determine if its submission is considered late or if it could be considered timely, as per the OMB Guidance at 2 CFR 176.120. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as ''late'' if submitted after the contract date. However, the EPA could also determine that a request be evaluated as timely, though made after the date that the contract was signed, if the need for a waiver was not reasonably foreseeable. If the need for a waiver is reasonably foreseeable, then the EPA could still apply discretion in these late cases as per the OMB Guidance, which says ''the awarding official may deny the request.'' For those waiver requests that do not have a reasonably unforeseeable basis for lateness, but for which the waiver basis is valid and there is no apparent gain by the ARRA recipient or loss on behalf of the government, then the EPA will still consider granting a waiver.

In this case, there are no U.S. manufacturers that meet the Utility's requirement for system metering. The waiver request was submitted after contract signing because the existing turbine meter which was going to be relocated, failed during the relocation; therefore, the need for a new meter was reasonably unforeseeable. During the design and bid preparation process, the Utility had planned to use and relocate the existing turbine meter and therefore no waiver was required. After the existing meter failed and the Utility recognized that a new meter was required, the Utility did submit the appropriate waiver request after evaluating domestic manufactured products and found through their research and due diligence that no U.S. manufactured flow meters could meet the design requirements for the project. The EPA will consider the Utility's waiver request as a timely request since it was reasonably unforeseeable.

The April 28, 2009 EPA HQ Memorandum, Implementation of Buy American provisions of Public Law 111–5, the ''American Recovery and Reinvestment Act of 2009'', defines ''satisfactory quality'' as the quality of iron, steel or the relevant manufactured good as specified in the project plans and design. The Utility has provided information to the EPA representing there are no domestically manufactured magnetic flow meters meeting the project specifications. EPA's contractor reviewed the information and claims provided by the Utility and determined that the project specifications are supported by the evidence and that none of the magnetic meters reviewed

could meet all of the project specifications.

Furthermore, the purpose of the ARRA provisions was to stimulate economic recovery by funding current infrastructure construction, not to delay projects that are already shovel ready by requiring entities, like the Utility, to revise their design and potentially choose a more costly and less effective project. The implementation of ARRA Buy American requirements on such projects eligible for DWSRF assistance would result in unreasonable delay and thus displace the ''shovel ready'' status for this project. To further delay construction is in direct conflict with the most fundamental economic purposes of ARRA, to create or retain jobs.

The Drinking Water Unit has reviewed this waiver request and has determined that the supporting documentation provided by the Utility is sufficient to meet the following criteria listed under Section 1605(b) and in the April 28, 2009, Implementation of Buy American provisions of Public Law 111–5, the ''American Recovery and Reinvestment Act of 2009'' Memorandum: Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The basis for this project waiver is the authorization provided in Section 1605(b)(2), due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet the Utility's design specifications.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual assistance recipients. Having established both a proper basis to specify the particular good required for this project, and, that this manufactured good was not available from a manufacturer in the United States, the Utility is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of a magnetic flow meter, manufactured in Mexico, for the distribution system improvement project specified in the Utility's waiver request of July 27, 2011. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

Authority: Public Law 111–5, section 1605.

Dated: September 29, 2011.

Dennis J. McLerran,

Regional Administrator, EPA, Region 10.

[FR Doc. 2011–26330 Filed 10–11–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0004; FRL–8891–7]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any previously registered pesticide products. Pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before November 14, 2011.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number listed at the end of each registration application summary by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2011–0004. 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: The Regulatory Action Leader listed at the end of each registration application summary. The mailing address for each contact person is: Biopesticides and Pollution Prevention Division, 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 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. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any previously registered pesticide products. Pursuant to the provisions of section 3(c)(4) of FIFRA, EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

1. *File symbol:* 69592–EI. *Applicant:* Agraquest, Inc., 1540 Drew Avenue, Davis, CA 95618. *Product name:* Serenade Soil DPZ. *Product type:* Fungicide. *Active ingredient: Bacillus subtilis strain* QST 713 variant soil at 1.57%. *Proposed classification/Use:* None/agricultural/commercial, seed treatment, residential. (Michael Glikes; (703) 305–6231; *glikes.michael@epa.gov;* EPA–HQ–2011–0774)

2. *File symbol:* 73049–UIN. *Applicant:* Valent BioSciences Corporation, 870 Technology Way, Libertyville, IL 60048. *Product name:* VBC–60236 Biological Insecticide Dry Flowable. *Product type:* Insecticide. *Active ingredient: Bacillus thuringiensis* subsp. *kurstaki* strain VBTS 2546 fermentation solids, spores, and insecticidal toxins at 67%. *Proposed classification/Use:* None/end use product. (Ann Sibold; (703) 305–6502; *sibold.ann@epa.gov;* EPA–HQ–2011–0769)

3. *File symbol:* 73049–UIR. *Applicant:* Valent BioSciences Corporation, 870 Technology Way, Libertyville, IL 60048. *Product name:* Foray 2 WG Biological Insecticide. *Product type:* Insecticide. *Active ingredient: Bacillus thuringiensis* subsp. *kurstaki* strain VBTS 2546 fermentation solids, spores, and insecticidal toxins at 67%. *Proposed classification/Use:* None/end use product. (Ann Sibold; (703) 305–6502; *sibold.ann@epa.gov;* EPA–HQ–2011–0769)

4. *File symbol:* 73049–UTI. *Applicant:* Valent BioSciences Corporation, 870 Technology Way, Libertyville, IL 60048. *Product name:* VBC–60219 Biological Insecticide Slurry. *Product type:* Insecticide. *Active ingredient: Bacillus thuringiensis* subsp. *kurstaki* strain VBTS 2546 at 16%. *Proposed classification/Use:* None/manufacturing use. (Ann Sibold; (703) 305–6502; *sibold.ann@epa.gov;* EPA–HQ–2011–0769)

5. *File symbol:* 73049–UTO. *Applicant:* Valent BioSciences Corporation, 870 Technology Way, Libertyville, IL 60048. *Product name:* VBC–60225 Biological Insecticide Technical Powder. *Product type:* Insecticide. *Active ingredient: Bacillus thuringiensis* subsp. *kurstaki* strain VBTS 2546 at 98%. *Proposed classification/Use:* None/Manufacturing Use. (Ann Sibold; (703) 305–6502; *sibold.ann@epa.gov;* EPA–HQ–2011–0769)

List of Subjects

Environmental protection, Pesticides and pest.

Dated: October 3, 2011.

Keith A Matthews,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2011–26332 Filed 10–11–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

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. An agency 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 control number. 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 comments should be submitted on or before November 14, 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 contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via fax 202–395–5167, or via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via e-mail *PRA@fcc.gov* <mailto:*PRA@fcc.gov*> and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1116.

Title: Submarine Cable Reporting.

Form Nos.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 53 respondents; 53 responses.

Estimated Time per Response: 20—100 hours.

Frequency of Response: On occasion and annual reporting requirements.

Obligation to Respond: Voluntary.

Total Annual Burden: 10,070 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: Information provided pursuant to this request will be viewed as presumptively confidential upon submission because the information would reflect reports on weaknesses in or damage to national communications infrastructure, and the release of this sensitive information to the public could potentially facilitate terrorist targeting of critical infrastructure and key resources. The submissions also may contain internal confidential information that constitutes trade secrets and commercial/financial information that the respondent does not routinely make public and public release of the submitted information could cause competitive harm by revealing information about the types and deployment of cable equipment and the traffic that flows across the system.

Needs and Uses: The Commission is requesting that current submarine cable landing licensees voluntarily provide information regarding the system status and service restoration activities for the submarine cable systems and cable landing stations and information about the physical location, assets, and restoration plans for the submarine cable systems. This information is needed in order to support Federal government national security and emergency preparedness communications programs, for the purpose of providing situational awareness of submarine cable system performance as well as a greater understanding of potential physical threats to the submarine cable systems. The Commission has been working with the Assistant Director for National Security and Emergency Preparedness, at the Office of Science and Technology Policy (OSTP) on this collection on behalf of other Executive Branch agencies, at the direction of the President.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–26312 Filed 10–11–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 11–1599]

Emergency Access Advisory Committee; Announcement of Date of Next Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the date of the Emergency Access Advisory Committee's (Committee or EAAC) next meeting. The October meeting will continue deliberations to develop recommendations to the Commission as required in the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA).

DATES: The Committee's next meeting will take place on Friday, October 14, 2011, 10:30 a.m. to 4:30 p.m. (EST), at the headquarters of the Federal Communications Commission (FCC).

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

FOR FURTHER INFORMATION CONTACT: Cheryl King, Consumer and Governmental Affairs Bureau, 202–418–2284 (voice) or 202–418–0416 (TTY), *e-mail: Cheryl.King@fcc.gov* and/or Patrick Donovan, Public Safety and Homeland Security Bureau, 202–418–2413, *e-mail: Patrick.Donovan@fcc.gov.*

SUPPLEMENTARY INFORMATION: On December 7, 2010, in document DA 10–2318, Chairman Julius Genachowski announced the establishment and appointment of members and Co-Chairpersons, of the EAAC, an advisory committee required by the CVAA, Public Law 111–260, which directs that an advisory committee be established for the purpose of achieving equal access to emergency services by individuals with disabilities as part of our nation's migration to a national Internet protocol-enabled emergency network, also known as the next generation 9–1–1 system (NG9–1–1). The purpose of the EAAC is to determine the most effective and efficient technologies and methods by which to enable access to NG9–1–1 emergency services by individuals with disabilities. In order to fulfill this mission, the CVAA directs that within one year after the EAAC's members are appointed, the Committee shall conduct a national survey, with the input of groups represented by the Committee's membership, after which the Committee shall develop and submit to the Commission recommendations to

implement such technologies and methods.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

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 and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Federal Communications Commission.

Karen Peltz Strauss,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2011–26259 Filed 10–11–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 9 a.m. (Eastern Time) October 17, 2011.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

STATUS: Open to the Public.

Matters To Be Considered

1. Approval of the minutes of the September 16, 2011 Board Member Meeting.
2. Recognition of Outstanding Service by Chairman Saul and Board Member Sanchez.
3. Thrift Savings Plan Activity Report by the Executive Director.
   a. Monthly Participant Activity Report.
   b. Quarterly Investment Performance Review.
   c. Legislative Report.
4. Mid-Year Financial Audit Report.
5. Quarterly Vendor Financial Report.

Contact Person for More Information

Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: October 7, 2011.

Amanda Haas,

Executive Assistant, Federal Retirement Thrift Investment Board.

[FR Doc. 2011–26510 Filed 10–7–11; 4:15 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Office of the Assistant Secretary for Planning and Evaluation (ASPE).

ACTION: 30-Day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, The Office of the Assistant Secretary for Planning and Evaluation (ASPE) has submitted a Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et. seq.*).

DATES: Comments must be submitted November 14, 2011.

ADDRESSES: Written comments may be submitted to the OS Paperwork Clearance Officer at *Sherette.Funncoleman@hhs.gov*

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact *Sherette.Funncoleman@hhs.gov* or call the Reports Clearance Office on (202) 690–6162.

SUPPLEMENTARY INFORMATION:

Title: Comparative Effectiveness Research Inventory.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Agency received no comments in response to the 60-day notice published in the **Federal Register** of December 22, 2010 (75 FR 80542).

Below we provide ASPE's projected average estimates for the next three years:

Current Actions: New collection of information.

Type of Review: Generic.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of activities: [Agency Estimate] [1]

Annual responses: [Agency Estimate] 500.

[1] The 60-day notice included the following estimate of the aggregate burden hours for this generic clearance federal-wide:

Average Expected Annual Number of activities: 25,000.

Average number of Respondents per Activity: 200.

Annual responses: 5,000,000.

Frequency of Response: Once per request.

Average minutes per response: 30.

Burden hours: 2,500,000.

Frequency of Response: 1.
Average minutes per response: 15.
Burden hours: 125.

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.

Keith Tucker,

Paperwork Reduction Act Clearance Officer, Office of the Secretary.

[FR Doc. 2011–26319 Filed 10–11–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier CMS–10379]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Center for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR 1320.13. This is necessary to ensure compliance with an initiative of the Administration. We cannot reasonably comply with the normal clearance procedures in that public harm is reasonably likely to result if normal clearance procedures are followed as stated in 5 CFR 1320.13(a)(2)(i). The approval of this data collection process is essential to ensuring that consumers enrolled in individual and small group association products receive the consumer protections provided under Section 1003 of the Affordable Care Act. In absence of this change, a significant number of individual and small group rate increases for the 2012 plan year would not be subject to the review and public disclosure requirements of the rate review program and, instead, would be subject to rate increases that are largely unregulated.

1. *Type of Information Collection Request:* Revision of a currently approved; *Title of Information Collection:* Rate Increase Disclosure and Review Reporting Requirements (45 CFR Part 154). *Use:* Under the Section 1003 of the Affordable Care Act (Section 2794 of the Public Health Service Act), The Secretary, in conjunction with the States, is required to establish a process for the annual review, beginning with the 2010 plan year, of unreasonable increases in premiums for health insurance coverage. Section 2794 directs the Secretary to ensure the public disclosure of information of unreasonable rate increases and justification for those increases.

On December 23, 2010, CMS published a proposed rate review regulation in the **Federal Register** for public comment (Rate Increase Disclosure and Review Rule, 75 FR 81004). CMS revised the proposed rule based on the public comments and published the final rate review regulation in the **Federal Register** on May 19, 2011. The final rule defines the unreasonable rate review process and issuer reporting and disclosure requirements (Rate Increase Disclosure and Review Rule, 76 FR 29964). The regulation establishes the following reporting requirements:

- *The Preliminary Justification:* This data collection is required of all health insurance issuers for all rate increases that exceed the ''subject to review''' reporting threshold as defined in the rule. This information will be posted on an HHS Web site.
- *Rate Review Final Determination:* This data collection requires States with effective rate review programs and CMS to report their review findings and unreasonable rate increase determinations on all rate increases that are subject to review. This information will be posted on an HHS Web site.
- *The Final Justification for An Unreasonable Rate Increase:* This data collection is required of health insurance issuers that elect to implement a rate increase that is determined to be unreasonable based on State or CMS review. This information will be posted on the Health Insurance Issuer's Web site and on a CMS Web site.

1. Preliminary Justification

The Preliminary Justification consists of three parts, Part I: Rate Increase Summary, Part II: Written Explanation of the Rate Increase, and Part III: Rate Filing Documentation. Issuers must complete Parts I and II for all rate increases that exceed the reporting threshold as defined in the rule. As described in the preamble of the rule, this information would be collected to provide consumers with basic information on all rate increases that are subject to review under the rate review program.

Under the rule, ''subject to review'' rate increases would be reviewed by either States or CMS, depending on whether a State has an effective rate review program. Issuers would only be required to submit Part III of the Preliminary Justification when CMS is conducting the review of a rate increase that is ''subject to review.'' Accordingly, Part III requires health insurance issuers to provide detailed rate data that would be used for the purposes of conducting thorough actuarial reviews and for making determinations about whether rate increases are unreasonable.

This Notice contains the following information about the Preliminary Justification:

- Preliminary Justification Issuer Instructions: health insurance issuer instructions for completing all three parts of the Preliminary Justification.
- Part I Worksheet: a standardized Excel worksheet that must be used to complete Part I of the Preliminary Justification.
- Sample internet display of the Rate Review Consumer Disclosure: Information provided in the Preliminary Justification would be posted on an HHS Web site. This sample display shows how the information contained in the Part I Worksheet would be displayed to consumers.

2. Rate Review Final Determination

Under the rule, States and CMS would have to provide a Rate Review Final Determination at the close of their review of all ''subject to review'' rate increases. The Rate Review Final

Determination must provide the State's or CMS' determination on whether a rate increases is 'unreasonable'. Section 154.301(a)(3) of the rule provides a list of actuarial review elements that must be taken into account as part of the rate review process. The Final Determination must provide a brief statement explaining how the review of elements set forth in § 154.301(a)(3) caused the State or CMS to arrive at its determination that the rate is unreasonable.

The Rate Review Final Determination will be entered into a data entry text box in the Rate Review Data Collection System. CMS is estimating that this statement would be approximately a paragraph in length. There is no specific form or set of instructions associated with this reporting requirement, apart from the reporting requirements provided in the rule. The information provided in the Rate Review Final Determination will be posted as part of the rate review consumer disclosure information on an HHS Web site.

3. Final Justification for An Unreasonable Rate Increase

The rule states that if a health insurance issuer implements a rate increase determined by CMS or a State to be unreasonable, the health insurance issuer must provide a Final Justification for an Unreasonable Rate Increase. In the Final Justification, issuers would have to provide a short statement about why they are electing to implement an unreasonable rate increase. This statement would be entered into a data entry text box in the Rate Review Data Collection System and would not need to be more than a paragraph or two in length. There is no form or instructions associated with this statement apart from the requirements provided in the regulation.

The Final Justification Statement will be posted on an HHS Web site in the same location as the Preliminary Justification and Rate Review Final Determination. Additionally, health insurance issuers implementing rate increases that were determined to be unreasonable, must post all of this information—the Preliminary Justification, the Rate Review Final Determination, and the Final Justification Statement on their Web sites for a period of 3 years.

In addition to the aforementioned requirements, we have revised the information collection request as a result of an amendment to the regulation discussed in the final rule that published September 6, 2011 (76 FR 54969). The amendment to the rate review final rule updated the applicability of the rate review requirements to include products that would be considered part of the individual or small group market had they not been sold through associations, including those that are consider to be large group products under State law or have been otherwise excluded from State's existing definitions for individual and small group products. This change will result in an increase in the total number of rate increases that are subject to the rate review reporting requirements. The amendment did not propose any changes to the information that issuers must submit for each rate increase. Thus, burden associated with each rate increase submission remains unchanged from the final rate review rule. *Form Number:* CMS–10379; (OCN: 0938–1141) *Frequency:* Annually; *Affected Public:* Private Sector and States; *Number of Respondents:* 452; *Number of Responses:* 1,201; *Total Annual Hours:* 15,213. (For policy questions regarding this collection, contact Sally McCarty at (301) 492–4489. For all other issues call 410–786–1326.)

CMS is requesting OMB review and approval of this collection by *October 31, 2011,* with a 180-day approval period. Written comments and recommendations will be considered from the public if received by the individuals designated below by October 21, 2011.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.gov/PaperworkReductionActof1995/PRAL/list.asp* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be received via one of the following methods by October 21, 2011.

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, *Attention:* Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

3. *By E-mail to OMB.* OMB, Office of Information and Regulatory Affairs, *Attention:* CMS Desk Officer, *E-mail: OIRA_submission@omb.eop.gov.*

Dated: October 6, 2011.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–26344 Filed 10–7–11; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0694]

Guidance for Industry on Warnings and Precautions, Contraindications, and Boxed Warning Sections of Labeling for Human Prescription Drug and Biological Products—Content and Format; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Warnings and Precautions, Contraindications, and Boxed Warning Sections of Labeling for Human Prescription Drug and Biological Products—Content and Format.'' This guidance is intended to assist applicants and reviewers in drafting the ''Warnings and Precautions, Contraindications, and Boxed Warning'' sections of labeling for human prescription drug and biological products. The recommendations in this guidance will help ensure that the labeling is clear, useful, informative, and to the extent possible, consistent in content and format.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Cheryl Grandinetti, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 3244, Silver Spring, MD 20993–0002, 301–796–3516; or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Warnings and Precautions, Contraindications, and Boxed Warning Sections of Labeling for Human Prescription Drug and Biological Products—Content and Format.'' The guidance provides recommendations on how to determine which adverse reactions are significant enough to warrant inclusion in the ''Warnings And Precautions'' section; how to decide what situations warrant a ''Contraindication''; and when to include a ''Boxed Warning.'' The guidance also provides recommendations on how to organize each section and what information to include when describing warnings and precautions, in situations when the use of the product is contraindicated, and in a boxed warning.

This guidance is one of a series of guidances FDA is developing, or has developed, to assist applicants and reviewers with the content and format of certain sections of the labeling for human prescription drug and biological products. In the **Federal Register** of January 24, 2006 (71 FR 3999), FDA issued final guidances on the content and format of the ''Adverse Reactions'' and ''Clinical Studies'' sections of labeling. In the **Federal Register** of October 19, 2009 (74 FR 53507), FDA issued a final guidance on determining established pharmacologic class for use in the highlights of prescribing information. In the **Federal Register** of March 23, 2010 (75 FR 13766), FDA issued a final guidance on the content and format of the ''Dosage and Administration'' section of labeling and in the **Federal Register** of March 3, 2009 (74 FR 9250), FDA issued a draft guidance on the content and format of the ''Clinical Pharmacology'' section of labeling. The new labeling requirements (final rule, January 24, 2006, 71 FR 3922) and these guidances are intended to make information in prescription drug labeling easier for health care practitioners to access, read, and use.

On January 18, 2006, FDA issued a draft of this guidance on the ''Warnings and Precautions, Contraindications, and Boxed Warning'' sections of the labeling to obtain public comment (71 FR 3998). FDA received a number of comments, most of which focused on clarifications and further illustrations of issues discussed in individual sections and subsections of the guidance. FDA reviewed all received comments carefully during the finalization of the guidance. Other than clarifying edits, no changes of significance were made to the final version of the guidance.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on the content and format of the ''Warnings and Precautions, Contraindications, and Boxed Warning'' sections of labeling for human prescription drug and biological products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 201.57 and 201.56 have been approved under OMB control number 0910–0572.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm* or *http://www.regulations.gov.*

Dated: October 6, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–26297 Filed 10–11–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0212]

Guidance for Industry on Incorporation of Physical-Chemical Identifiers Into Solid Oral Dosage Form Drug Products for Anticounterfeiting; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Incorporation of Physical-Chemical Identifiers Into Solid Oral Dosage Form Drug Products for Anticounterfeiting.'' This guidance provides recommendations on design considerations for incorporating physical-chemical identifiers (PCIDs) into solid oral dosage forms (SODFs), supporting documentation to be submitted in new drug applications (NDAs) or abbreviated new drug applications (ANDAs) to address the proposed incorporation of PCIDs in SODFs, supporting documentation to be submitted in postapproval submissions to report or request approval to incorporate PCIDs into SODFs, and procedures for reporting or requesting approval to incorporate PCIDs into SODFs as a postapproval change.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY**

INFORMATION section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: John L. Smith, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 21, rm. 2619, Silver Spring, MD 20993, 301–796–1757.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Incorporation of Physical-Chemical Identifiers Into Solid Oral Dosage Form Drug Products for Anticounterfeiting.'' For the purpose of this guidance, a PCID is a substance or combination of substances possessing a unique physical or chemical property that unequivocally identifies a drug product or dosage form as authentic and distinguishes it from counterfeits. To thwart drug product counterfeiting, pharmaceutical manufacturers have been investigating technologies that may make drug products more difficult to duplicate, including the incorporation of PCIDs into SODFs. One approach that manufacturers appear to be considering involves adding a trace amount of one or more inactive ingredients to an existing section of the dosage form (in the guidance, section is the term used for a discrete, contained solid or a layer in a solid oral dosage form). Any section can be described by its composition, the functional characteristics that distinguish it from other sections in that dosage form, and its position relative to other sections that may be present (*e.g.,* coatings, capsule shells, encapsulated particles, a layer in a bilayer tablet, and compressed powders). A unique physical-chemical characteristic of that ingredient makes it possible to detect and authenticate legitimate dosage forms, and to identify counterfeits. Examples of substances that may be incorporated into SODFs as PCIDs include inks, pigments, flavors, and molecular taggants. Such PCIDs may allow product authentication by their presence alone or may be used to code the product identity into or onto the SODF.

This guidance provides recommendations to pharmaceutical manufacturers on the following topics: (1) Design considerations for PCIDs into SODFs, (2) supporting documentation to be submitted in NDAs or ANDAs to address the proposed incorporation of PCIDs in SODFs, (3) supporting documentation to be submitted in postapproval submissions to report or request approval to incorporate PCIDs into SODFs, and (4) procedures for reporting or requesting approval to incorporate PCIDs into SODFs as a postapproval change. Although not addressed in this guidance, FDA is considering whether to address the incorporation of a PCID into a drug's packaging or labeling in a future guidance.

In the **Federal Register** of July 14, 2009 (74 FR 34021), FDA announced the availability of a draft guidance for industry entitled ''Draft Guidance for Industry on Incorporation of Physical-Chemical Identifiers Into Solid Oral Dosage Form Drug Products for Anticounterfeiting.'' The notice gave interested persons an opportunity to comment by October 13, 2009. We have carefully considered the comments we received and, where appropriate, have made corrections, added information, or clarified the information in the guidance in response to the comments.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on the use of PCIDs in SODF drug products to prevent counterfeiting. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The documentation in premarketing regulatory submissions recommended for applicants incorporating PCIDs into SODFs would be covered under 21 CFR 314.50 and 314.94, and the documentation in postapproval regulatory submissions would be covered under 21 CFR 314.70. This information collection has been approved under OMB control number 0910–0001. The recommendations for labeling would be covered under 21 CFR 201.57. This information collection has been approved under OMB control number 0910–0572.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: October 6, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–26296 Filed 10–11–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0400]

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2011–0014]

Approaches To Reducing Sodium Consumption; Public Meeting

AGENCY: Food and Drug Administration, HHS; Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA), the Centers for Disease Control and Prevention (CDC), the Food Safety and Inspection Service (FSIS), the Agricultural Research Service (ARS) and the Center for Nutrition Policy and Promotion (CNPP) are announcing a public meeting entitled ''Approaches to Reducing Sodium Consumption.'' FDA and FSIS recently published a **Federal Register** notice that announced the establishment of dockets to obtain comments, data, and evidence relevant to the dietary intake of sodium as well as current and emerging approaches designed to promote sodium reduction. The purpose of the public meeting is to provide interested persons an opportunity to

discuss the topics raised in the earlier notice.

DATES: Submit either electronic or written comments, data, and evidence to either FDA's Division of Dockets Management or FSIS's Docket Clerk by November 29, 2011. See also ''How To Participate in the Meeting'' in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: See Table 1 of this document for meeting location and other information regarding registration for this meeting.

FOR FURTHER INFORMATION CONTACT:

FDA: Patricia M. Kuntze, Office of External Affairs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5322, Silver Spring, MD 20993, 301–796–8641, *Patricia.Kuntze@fda.hhs.gov.*

FSIS: Rosalyn Murphy-Jenkins, Director, Labeling and Program Delivery Division, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, USDA, FSIS, OPPD, LPDD Stop Code 3784, Patriots Plaza III, 8–161A, 1400 Independence Ave., SW., Washington, DC 20250–3700.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 15, 2011 (76 FR 57050), FDA and FSIS announced the establishment of dockets to obtain comments, data, and evidence that will inform future Agency activities regarding the reduction of dietary intake of sodium. FDA, CDC, FSIS, ARS, and CNPP are announcing a public meeting entitled ''Approaches to Reducing Sodium Consumption'' to discuss the topics raised in section II of that notice. Interested persons may also wish to review the FDA's Sodium Reduction Web page located at *http://www.fda.gov/Food/FoodIngredientsPackaging/ucm253316.htm.*

Reducing sodium consumption is also part of the Department of Health and Human Services' (the Department's) recently-launched Million Hearts initiative (*http://millionhearts.hhs.gov/*). The Department, working with several key initial partners, is aiming to prevent one million heart attacks and strokes over the next 5 years. Among other significant public health goals, the campaign stresses the need to identify opportunities for sodium reduction.

II. Purpose and Format of the Meeting

If you wish to attend and/or present at the meeting scheduled for November 10, 2011, please register at *http://events.SignUp4.net/FDA_Sodium_Reduction* by November 3, 2011. FDA, CDC, FSIS, ARS, and CNPP are holding the public meeting on sodium reduction in foods to inform possible future actions by the Agencies. In general, the meeting format will include introductory presentations by FDA, USDA, and CDC, but listening to interested persons is the primary purpose of this meeting. In order to meet this goal, FDA, CDC, FSIS, ARS and CNPP will provide multiple opportunities for individuals to express their opinions through oral presentations at the meeting, participation in break-out sessions on the issues discussed at the meeting, and submission of electronic or written comments, data, and evidence to FDA's Division of Dockets Management and/or FSIS's Docket Clerk by November 29, 2011. The break-out session topics will be available prior to the meeting on FDA's Sodium Reduction Web page at *http://www.fda.gov/Food/FoodIngredientsPackaging/ucm253316.htm.* The plenary sessions and some of the breakout sessions will be Web cast; see section III of this document, ''How to Participate in the Meeting.'' In order to provide Web cast participants with information before and after the meeting, we request attendees provide their name, their affiliation, and e-mail address when pre-registering for the Web cast at *http://events.SignUp4.net/FDA_Sodium_Reduction.*

III. How To Participate in the Meeting

Interested persons will have an opportunity to provide oral comments, time permitting. Due to limited space and time, FDA, CDC, FSIS, ARS, and CNPP encourage all persons who wish to attend the meeting onsite or via Web cast to register in advance at *http://events.SignUp4.net/FDA_Sodium_Reduction.* There is no fee to register for the public meeting, and registration will be on a first-come, first-served basis. Early registration is recommended because seating is limited. Onsite registration will be accepted, as space permits, after all preregistered attendees are seated. Table 1 of this document provides information on participating in the meeting and on submitting comments to the docket.

Those requesting an opportunity to make an oral presentation during the time allotted for public comment at the meeting, are asked to submit their request by November 3, 2011, and to provide the specific topic or issue to be addressed and the approximate desired length of their presentation. Depending on the number of requests for such oral presentations, there may be a need to limit the number and length (*e.g.,* 3 minutes each) of the oral presentations. If time permits, individuals or organizations that did not register in advance may be granted the opportunity for such an oral presentation. FDA, CDC, FSIS, ARS, and CNPP would like to maximize the number of individuals who make a presentation at the meeting and will do our best to accommodate all persons who wish to make a presentation or express their opinions at the meeting. We are especially interested in hearing about sodium reduction related research results or research efforts underway. FDA, CDC, FSIS, ARS, and CNPP anticipate that there will be several opportunities for interested persons to speak in break-out sessions. A Web cast will be available for interested persons who are not onsite. Interested persons will also have an opportunity to submit electronic or written comments to the docket following the meeting, but no later than November 29, 2011.

FDA, CDC, FSIS, ARS, and CNPP encourage persons and groups who have similar interests to consolidate their information for presentation through a single representative. After reviewing the presentation requests, FDA will notify each participant before the meeting of the amount of time available, the approximate time their presentation is scheduled to begin, and the presentation format.

TABLE 1—INFORMATION ON PARTICIPATION IN THE MEETING AND ON SUBMITTING COMMENTS

	Date	Electronic address	Address (non electronic)	Other information
Date of Public Meeting.	November 10, 2011, from 9 a.m. to 5:30 p.m. EST.	Individuals who wish to participate in person are asked to pre-register at *http://events.SignUp4.net/FDA_Sodium_Reduction.*	FDA White Oak Campus, The Great Room, Bldg. 31, Rm. 1503, 10903 New Hampshire Ave., Silver Spring, MD 20993.	Registration begins at 7:30 a.m.

TABLE 1—INFORMATION ON PARTICIPATION IN THE MEETING AND ON SUBMITTING COMMENTS—Continued

	Date	Electronic address	Address (non electronic)	Other information
Web cast	November 10, 2011, from 9 a.m. to 5:30 p.m. EST).	Individuals who wish to view the Web cast of this meeting are requested to pre-register at *http://events.SignUp4.net/FDA_Sodium_Reduction.* It is recommended that Web cast attendees test their Internet connection to confirm access to the Web cast prior to the meeting. To test this connection, visit *http://fda.yorkcast.com/webcast/Catalog/catalogs/default.aspx* and click on "CDRH Television Tutorial and Firewall Test.".	FDA encourages the use of electronic registration, if possible.	The Web cast will provide closed captioning.
Advance Registration	Register by November 3, 2011.	*http://events.SignUp4.net/FDA_Sodium_Reduction.*	FDA encourages the use of electronic registration, if possible.	Registration to attend the meeting will also be accepted onsite on the day of the meeting, as space permits. Registration information may be posted without change to *http://www.regulations.gov,* including any personal information provided.
Request special accommodations due to disability.	Register by November 3, 2011.		Patricia M. Kuntze, 301–796–8641,e-mail: *Patricia.Kuntze@fda.hhs.gov.*	
Make a request for oral presentation.	Register by November 3, 2011.	*http://events.SignUp4.net/FDA_Sodium_Reduction.*		Requests made on the day of the meeting to make an oral presentation may be granted as time permits. Information on requests to make an oral presentation may be posted without change to *http://www.regulations.gov,* including any personal information provided.
Provide a brief description of the oral presentation and any written material for the presentation.	By November 3, 2011.	*http://events.SignUp4.net/FDA_Sodium_Reduction.*		Written material associated with an oral presentation should be submitted in Microsoft PowerPoint, Microsoft Word, or Adobe Portable Document Format (PDF) and may be posted without change to *http://www.regulations.gov,* including any personal information provided.

TABLE 1—INFORMATION ON PARTICIPATION IN THE MEETING AND ON SUBMITTING COMMENTS—Continued

	Date	Electronic address	Address (non electronic)	Other information
Submit electronic or written comments.	Submit comments by November 29, 2011.	Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.	*FDA:* FAX: 301–827–6870. Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. *FSIS:* Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, George Washington Carver Center, 5601 Sunnyside Ave., Mailstop 547, Beltsville, MD 20705–5464.	All comments must include the Agency name and the docket number (see table 2 of this document for a list of Agencies and corresponding docket numbers). All received comments may be posted without change to *http://www.regulations.gov,* including any personal information provided. FDA and FSIS encourage the submission of electronic comments by using the Federal eRulemaking Portal. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

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IV. Comments

FDA: Regardless of attendance at the public meeting, interested persons may submit to FDA's Division of Dockets Management (see Addresses in table 1 of this document) either electronic or written comments for consideration at or after the meeting, in addition to, or in place of, a request for an opportunity to make an oral presentation. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

FSIS: Regardless of attendance at the public meeting, interested persons may submit to FSIS's Docket Clerk (see Addresses in table 1 of this document) either electronic or written comments regarding this document. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

Because two docket numbers are associated with this document, please include with your comments the docket number that corresponds with the appropriate Agency. Comments submitted for inclusion in both dockets should be separately submitted to each identified docket number to ensure consideration by both Agencies.

V. Transcripts

Please be advised that as soon as a transcript is available, it will be posted on FDA's Sodium Reduction Web page at *http://www.fda.gov/Food/FoodIngredientsPackaging/ucm253316.htm.* It may also be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

Dated: October 6, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy, Food and Drug Administration.

Dated: October 4, 2011.

Alfred V. Almanza,

Administrator, Food Safety and Inspection Service.

[FR Doc. 2011–26371 Filed 10–11–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Data and Data Needs To Advance Risk Assessment for Emerging Infectious Diseases Relevant to Blood and Blood Products; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled: ''Data and Data Needs to Advance Risk Assessment for Emerging Infectious Diseases Relevant to Blood and Blood Products.'' The purpose of the public workshop is to discuss data and data sources currently used by FDA, possible new sources of data, and development of new studies and information through collaboration with stakeholders. The public workshop will include presentations and panel discussions with experts from stakeholders, academia, regulated industry, and government.

Date and Time: The public workshop will be held on November 29, 2011, from 8:30 a.m. to 5 p.m.

Location: The public workshop will be held at the Gaithersburg Hilton, 620 Perry Pkwy., Gaithersburg, MD 20877, 301–977–8900.

Contact Person: Lou Gallagher, Center for Biologics Evaluation and Research (HFM–210), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448,

301–827–5988, *e-mail: lou.gallagher@fda.hhs.gov.*

Registration: Mail, fax, or e-mail your registration information (including name, title, firm name, address, telephone and fax numbers) to Lou Gallagher (*see Contact Person*) by November 10, 2011. There is no registration fee for the public workshop. Early registration is recommended because seating is limited. Registration on the day of the public workshop will be provided on a space available basis beginning at 8 a.m.

If you need special accommodations due to a disability, please contact Lou Gallagher (*see Contact Person*) at least 7 days in advance.

SUPPLEMENTARY INFORMATION: Quantitative risk assessments (QRAs) are an important tool for evaluating the risks associated with new emerging infectious diseases (EIDs) that are relevant to blood and blood products and the benefits of mitigation options. QRAs make it possible for decisionmakers to develop policy for blood and blood product safety and availability using sound science and the best data and information available.

Rapid data collection, information sharing, and analyses estimating the magnitude and probability of risk can be expedited by proactively building and maintaining critical relationships both within the Center for Biologics Evaluation and Research (CBER) and with external stakeholders. In this public workshop, CBER is seeking access to accurate, reliable data on factors such as disease prevalence, incubation periods, behavioral risks associated with disease transmission, potential donor exposure risks, and susceptibility to EIDs, product handling, usage, and other factors.

Lack of data and information is a major challenge FDA faces when there is a new EID. The public workshop will: (1) Provide a forum for discussion of data used in conducting quantitative risk assessments for EIDs, (2) address approaches to facilitate the timely access to data required to evaluate public health measures designed to reduce the potential risk associated with EIDs that are relevant to blood and blood products, and (3) provide a forum for discussion of the development of new data sources and enhanced access to already existing data sources.

Transcripts: Please be advised that as soon as possible after a transcript of the public workshop is available, it will be accessible on the Internet at: *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/TranscriptsMinutes/default.htm.* Transcripts of the public workshop may also be requested in writing from the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857.

Dated: October 6, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–26295 Filed 10–11–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: 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.

Human Phospho-Serine134 Glucocorticoid Receptor Polyclonal Antibody: Useful for the Characterization of Glucocorticoid Signaling Processes, e.g., in Cancer and Inflammation

Description of Technology: The glucocorticoid receptor (GR) functions as a hormone-dependent transcription factor that is involved in the maintenance of basal and stress-related homeostasis. Serine 134 is a newly discovered phosphorylation target on the human glucocorticoid receptor that becomes phosphorylated during stress-activating conditions such as ultraviolet irradiation, nutrient starvation, and oxidative stress. The inventors have developed a rabbit polyclonal antibody that specifically recognizes the Ser 134 phosphorylated form of the human glucocorticoid receptor. This antibody may be particularly useful for a variety of basic research applications, such as the characterization and study of glucocorticoid signaling in cancer, inflammation, and other diseases.

The antibody is available as crude antisera and has been epitope purified; it has cross reactivity with human, rat, and mouse tissues.

Potential Commercial Applications: Western analysis, immunoprecipitation, and immunofluorescence studies.

Inventors: Amy Beckley and John Cidlowski (NIEHS).

Related Publication: Molecular and Cellular Biology, *In Press.*

Intellectual Property: HHS Reference No. E–182–2011/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: This technology is available as a research tool under a Biological Materials License.

Licensing Contact: Tara Kirby Ph.D.; 301–435–4426; *tarak@nih.gov.*

Collaborative Research Opportunity: The NIEHS, Molecular Endocrine Group, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Human Phospho-Serine134 Glucocorticoid Receptor Polyclonal Antibody. Please contact Elizabeth M. Denholm at *denholme@niehs.nih.gov* for more information.

Infectious Hepatitis E Virus Genotype 3 Recombinants—Prospective Vaccine Candidates and Vector System

Description of Technology: Infection by Hepatitis E virus (HEV) is a relevant health issue in a number of developing countries and it is also an emerging food-borne disease of industrialized countries. Genotype 1 and 2 infections are found exclusively in humans while genotype 3 and 4 viruses have been found not only in humans, but also swine, deer, mongoose, cattle, and rabbits. In particular, genotype 3 and 4 viruses are ubiquitously found in swine and undercooked pork is thought to be one of the sources of infection for cases of human infections in industrialized countries.

This technology is a recombinant, infectious genotype 3 HEV that has been adapted to grow in cell culture and can potentially be used to develop vaccines against HEV or as a vector system to insert exogenous sequences into HEV. The virus (strain Kernow-C1, genotype 3) originated from a chronically infected

human subject and was adapted to grow in human hepatoma cells. The adapted virus is unique in that it contains an insertion of a portion of a human ribosomal protein in Open Reading Frame 1 of the virus. Desired exogenous sequences could potentially be placed in lieu of the insert without inactivating the virus, making the subject technology a prospective HEV vector platform.

Potential Commercial Applications:

• Vaccine—An infectious, recombinant HEV genotype 3 cDNA clone that could potentially be developed into a vaccine candidate.

• HEV Vector Platform— Desired exogenous sequences can be inserted into the viral genome without inactivating the virus.

Competitive Advantages:

• Most of the HEV vaccines under development are subunit based while the subject technology could potentially be developed into a live, attenuated virus based vaccine.

• Ability to insert exogenous sequences into the viral genome without inactivating the virus makes this subject technology a potential HEV based vector platform.

Development Stage:

• Early-stage

• Pre-clinical

• In vitro data available

Inventors: Suzanne U. Emerson, Priyanka Shukla, Hanh T. Nguyen, and Robert H. Purcell (NIAID).

Publication: Shukla P, *et al.* Cross-species infections of cultured cells by hepatitis E virus and discovery of an infectious virus-host recombinant. Proc Natl Acad Sci U S A. 2011 Feb 8;108(6):2438–2443. [PMID 21262830].

Intellectual Property: HHS Reference No. E–074–2011/0—U.S. Provisional Patent Application No. 61/431,377 filed 10 Jan 2011.

Licensing Contact: Kevin W. Chang, PhD; 301–435–5018; *changke@mail.nih.gov.*

Collaborative Research Opportunities: The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize hepatitis E virus vaccines. For collaboration opportunities, please contact Wade Green, PhD at 301–827–0258 or *williamswa@niaid.nih.gov.*

Diagnostic H5N1 Avian Influenza Virus Peptides

Description of Technology: The recent spread of highly pathogenic H5N1 avian influenza viruses among poultry and transmission of these viruses to humans raises concerns of a potential influenza pandemic. There is a need to track the spread of these viruses both in the animal and human populations to avert or reduce the impact of any potential influenza pandemic as well as to know the actual number (accurate surveillance) of people infected with H5N1, including individuals with subclinical H5N1 infection.

The subject technology is a specific combination of H5N1 peptides useful for assays to detect antibodies generated against a wide range of different H5N1 strains. The combination of peptides was able to specifically detect anti-H5N1 antibodies from serum samples of H5N1 survivors at early and later times post infection while excluding antibodies generated in individuals infected with other strains of influenza virus. Also, the peptides did not react with sera from individuals vaccinated with H5N1 vaccine, in contrast to the strain-specific detection of anti-H5N1 antibodies in sera from infected individuals. Immunoassays using the H5N1 peptide combination provide highly specific, sensitive and reproducible methods for diagnosing H5N1 infection in humans and animals.

Potential Commercial Applications: Diagnostics for influenza virus specific antibodies in humans and animals.

Competitive Advantages: High specificity, sensitivity, and reproducibility.

Development Stage: Data obtained from clinical samples can be provided upon request.

Inventors: Hana Golding and Surender Khurana (FDA).

Intellectual Property: HHS Reference No. E–093–2010/0—PCT Application No. PCT/US2011/032555 filed 14 Apr 2011.

Related Technology: HHS Reference No. E–236–2007/3—U.S. Patent Application No. 12/664,052 filed 10 Dec 2008.

Licensing Contact: Kevin W. Chang, PhD; 301–435–5018; *changke@mail.nih.gov.*

Dated: October 4, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–26338 Filed 10–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center On Minority and Health Disparities 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 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 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 Center on Minority Health and Health Disparities Special Emphasis Panel; NIMHD Health Disparities Research (R01).

Date: November 7–8, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washington Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Maryline Laude-Sharp, PhD, Scientific Review Officer, National Institute on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., MSC. 5465, Suite 800, Bethesda, MD 20892, (301) 451–9536, *mlaudesharp@mail.nih.gov.*

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel; NIMHD Support for Conference and Scientific meetings (R13) 2012.

Date: November 14, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maryline Laude-Sharp, PhD, Scientific Review Officer, National Institute on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., MSC. 5465, Suite 800, Bethesda, MD 20892, (301) 451–9536, *mlaudesharp@mail.nih.gov.*

Dated: October 5, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26360 Filed 10–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Worker Safety Training.

Date: November 9, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Keystone, 530 Davis Drive, 1001 Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Sally Eckert-Tilotta, PhD, Scientific Review Administrator, Nat. Institute of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1446, *eckertt1@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Development to Independence Review Meeting.

Date: November 10, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Raleigh-Durham Airport at RTP, 4810 Page Creek Lane Ballroom,Durham, NC 27703.

Contact Person: Linda K Bass, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Career Training in Environmental Health.

Date: November 10, 2011.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Raleigh-Durham Airport at RTP, 4810 Page Creek Lane, Durham, NC 27703.

Contact Person: Leroy Worth, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, 919/541–0670, *worth@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Conferences on Environmental Diseases.

Date: November 15, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Keystone, 530 Davis Drive, 3118 Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Teresa Nesbitt, PhD, DVM, Chief, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–7571, *nesbittt@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 4, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26359 Filed 10–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HIV Vaccine Research and Design (HIVRAD) Program.

Date: November 3–4, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Hotel—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Jay Bruce Sundstrom, Ph.D, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC–7616, Room 3119, Bethesda, MD 20892–7616, 301–496–7042, *sundstromj@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

Date: November 16, 2011.

Time: 10 a.m. to 2 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: Gary S. Madonna, PhD Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 6700B Rockledge Drive, Bethesda, MD 20892, 301–496–3528, *gm12w@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: October 5, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26357 Filed 10–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR–10–018: Accelerating the Pace of Drug Abuse Research Using Existing Epidemiology, Prevention, and Treatment Research Data.
*Date:*November 1–2, 2011
Time: 10 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Valerie Durrant, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 827–6390, *durrantv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: National Computational Resource Center Review.
Date: November 2–4, 2011.
Time: 6 p.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: SpringHill Suites Denver Aurora/Fitzsimons, 13400 East Colfax Avenue, Aurora, CO 80011.
Contact Person: Mark Caprara, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7844, Bethesda, MD 20892, 301–435–1042, *capraramg@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Risk, Health and Healthcare.
Date: November 3–4, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Rex, 562 Sutter Street, San Francisco, CA 94102.
Contact Person: Karin F Helmers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, 301–254–9975, *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Brain Diseases—Development, Brain Tumors, Neurodegeneration, and Multiple Sclerosis.
Date: November 3–4, 2011.
Time: 10 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Samuel C. Edwards, PhD, Chief, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biomedical Sensing, Measurement and Instrumentation.
Date: November 7, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Guo Feng Xu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–237–9870, *xuguofen@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular Devices.
Date: November 7, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: John Firrell, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, 301–435–2598, *firrellj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Orthopedic and Skeletal Biology.
Date: November 7, 2011.
Time: 8 .am. to 6 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: Baljit S Moonga, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7806, Bethesda, MD 20892, 301–435–1777, *moongabs@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Asthma, Allergic Inflammation.
Date: November 7, 2011.
Time: 12 p.m .to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Everett E Sinnett, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1016, *sinnett@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 4, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26356 Filed 10–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Biological Chemistry, Biophysics, and Drug Discovery.
Date: November 3–4, 2011.
Time: 7:30 a.m. to 12 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: Dennis Hlasta, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6185, MSC, Bethesda, MD 20892, 301–435–1047, *dennis.hlasta@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Shared Instrumentation: Confocal Microscopes.
Date: November 3–4, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Noni Byrnes, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130, MSC 7840, Bethesda, MD 20892, (301)-435–1023, *byrnesn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Healthcare Delivery and Methodologies.
Date: November 3–4, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Lorien Hotel, 1600 King Street, Alexandria, VA 22314.
Contact Person: Delia Olufokunbi Sam, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0684, *olufokunbisamd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Cardiovascular Sciences.
Date: November 3–4, 2011.
Time: 8 a.m. to 5 p.m
Agenda: To review and evaluate grant applications.
Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.
Contact Person: Lawrence E Boerboom, PhD, Chief, CVRS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–8367, *boerboom@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Molecular Cellular and Developmental Neuroscience.
Date: November 3, 2011.
Time: 11 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Washington, DC Downtown, 999 Ninth Street, NW., Washington, DC 20001.
Contact Person: Paek-Gyu Lee, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4201, MSC 7812, Bethesda, MD 20892, (301) 613–2064, *leepg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowship: Cell Biology and Development.
Date: November 3, 2011.
Time: 11 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Inese Z Beitins, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7808, Bethesda, MD 20892, 301–435–1034, *beitinsi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Arrhythmogenic remodeling, Ca signaling and SAN Automaticity.
Date: November 3, 2011.
Time: 2 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Olga A. Tjurmina, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301) 451–1375, *ot3d@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR 10–146: Social Network Analysis and Health.
Date: November 4, 2011.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Courtyard Marriott, Tyson Corner, 1960–A Chain Bridge Road, McLean, VA 22102.
Contact Person: Martha M Faraday, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, 301–435–3575, *faradaym@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Motor Function, Speech and Rehabilitation.
Date: November 4, 2011.
Time: 8 a.m .to 8 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Weijia Ni, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 237–9918, *niw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Non HIV Anti-Infective Therapeutics.
Date: November 4, 2011.
Time: 8 a.m. to 9 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Regis Hotel, 923 16th Street, NW., Washington, DC 20006.
Contact Person: Kenneth Izumi, PhD, Scientific Review Officer, IDM IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge, Rm 3204, MSC 7808, Bethesda, MD 20892, 301–496–6980, *izumikm@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 5, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26355 Filed 10–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel, Genes and Longevity in Humans.
Date: October 28, 2011.
Time: 1 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Elaine Lewis, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 5, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26327 Filed 10–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Liver Cell Membrane Proteins.
Date: November 16, 2011.
Time: 2 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *ls38z@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 5, 2011 .

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26339 Filed 10–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurologic Disorders and Development.

Date: November 3, 2011.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Suzan Nadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Biobehavioral and Behavioral Processes across the Lifespan.

Date: November 7, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Mandarin Oriental, 1330 Maryland Avenue, SW., Washington, DC 20024.

Contact Person: Mark Lindner, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, 301–435–0913, *mark.lindner@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Cancer Development and Therapeutics.

Date: November 7–8, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lilia Topol, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–451–0131, *ltopol@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Cancer Diagnostics and Treatments (CDT), November 7–8, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Zhang-Zhi Hu, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6186, MSC 7804, Bethesda, MD 20892, (301) 594–2414, *huzhuang@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Biochemistry, Biophysics, and Drug Discovery.

Date: November 7–8, 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: Sergei Ruvinov, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Skeletal Muscle.

Date: November 8–9, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Richard Ingraham, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7814, Bethesda, MD 20892, 301–496–8551, *ingrahamrh@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Oral, Dental and Craniofacial Sciences.

Date: November 8–9, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Yi-Hsin Liu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–435–1781, *liuyh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Neurotechnology and Neurogenetics.

Date: November 8, 2011.

Time: 11a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joseph G Rudolph, PhD, Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301–408–9098, *josephru@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–10–235: Climate Change and Health.

Date: November 8, 2011.

Time: 12:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Grand, 2350 M Street, NW., Washington, DC 20037.

Contact Person: Heidi B Friedman, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–379–5632, *hfriedman@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 5, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26337 Filed 10–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Overflow: Cancer Therapeutics.
Date: October 17, 2011.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.
Contact Person: Careen K Tang-Toth, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–3504, *tothct@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–11–216: Early Phase Clinical Trials in Imaging and Image-Guided Interventions.
Date: November 1, 2011.
Time: 1 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: David L Williams, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *williamsdl2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Translational Research in Diabetes, Obesity and Endocrinology.
Date: November 2, 2011.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Nancy Sheard, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–E, MSC 7892, Bethesda, MD 20892, 301–408–9901, *sheardn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Synthetic and Biological Chemistry.
Date: November 2, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.
Contact Person: Kathryn M. Koeller, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040N, MSC 7806, Bethesda, MD 20892, 301–408–9333, *koellerk@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Synthetic and Biological Chemistry A Study Section.
Date: November 2, 2011.
Time: 8 a.m. to 7 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.
Contact Person: Mike Radtke, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728, *radtkem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Drug Discovery for the Nervous System II.
Date: November 2, 2011.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Geoffrey G Schofield, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Visual Systems.
Date: November 3–4, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Morrison-Clark Inn, 1015 L Street, NW., Washington, DC 20001.
Contact Person: Joseph G Rudolph, PhD, Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301–408–9098, *josephru@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bone Biology, Periodontal Disease and Tissue Engineering.
Date: November 3, 2011.
Time: 4:30 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Priscilla B Chen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787, *chenp@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 3, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26222 Filed 10–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, HEV Ancillary Study.
Date: November 17, 2011,
Time: 2 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications,
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: D. G. Patel, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@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: October 4, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26215 Filed 10–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Secreted Frizzled Related Protein-1 (sFRP–1) and derivatives thereof and their Use In Therapeutic Applications

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in the patents and patent applications belonging to the patent families having HHS Reference Numbers E–160–1997/0,/1,/2 and/3; E–014–2000/0; and E–060–2000/0, and/1. Specific details regarding the individual patents or patent applications which belong to these patent families are set forth in the table below:

Patent application number	Country	Filing date or international filing date	Status	Publication or patent number
60/050,417	US	5/29/1997	Abandoned	N/A
60/050,495	US	6/23/1997	Abandoned	N/A
09/087,031	US	5/29/1998	Issued	6,479,255
10/138,434	US	5/3/2002	Issued	7,183,377
PCT/US98/10974	PCT	5/29/1998	Expired	WO 98/54325
09/546,043	US	4/10/2000	Issued	6,600,018
10/425,586	US	4/28/2003	Issued	7,223,853
11/748,872	US	5/15/2007	Issued	7,947,651
13/031,060	US	2/18/2011	Pending	N/A
60/260,908	US	1/10/2001	Abandoned	N/A
PCT/US02/00869	PCT	1/10/2002	Expired	WO 02/055547
10/466,136	US	7/10/2003	Issued	7,488,710
12/019,567	US	1/24/2008	Pending	20080145884 A1
2002241859	AU	1/10/2002	Issued	2002241859
2,434,672	CA	1/10/2002	Pending	2,434,672
02 707454.1	EP	1/10/2002	Pending	1387854 A2
2002–556615	JP	1/10/2002	Issued	4029041
2007–120533	JP	1/10/2002	Issued	4248583
2008–169716	JP	1/10/2002	Issued	4248600

to Achelois BioSciences, Inc., a Delaware corporation having a place of business in Lexington, Massachusetts. The patent rights in these inventions have been assigned to the United States of America. In addition, the all of the rights associated with applications 09/546,043; 10/425,586; 11/748,872 and 13/031,060 are exclusively licensed to HHS by the co-owner the University of Massachusetts.

The prospective exclusive license territory may be ''worldwide'', and the field of use may be limited to ''use of sFRP–1 and derivatives thereof in the treatment of human disease.''

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before November 14, 2011 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Susan S. Rucker, JD, CLP, Senior Advisor for Intellectual Property Transactions, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; *Telephone:* (301) 435–4478; *Facsimile:* (301) 402–0220; *E-mail: ruckersu@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The technology encompassed by the patents and/or patent applications (IP) to be included in this exclusive license relates to a protein designated *s*ecreted *F*rizzled *R*elated *P*rotein-1 (sFRP–1). sFRP–1, also known as SARP–2 (Secreted Apoptosis Related Protein-2). The IP covers various sFRP–1 compositions and uses thereof.

sFRP–1 is associated with Wnt signaling which has been implicated in a number of different processes including fibrosis (see, Hwang, I *et al.* Arch Pharm Res 32(12): 1653–62 (2009)) and bone remodeling (see, Hausler KD *et al* J Bone Miner Res 19(11) 1873–81 (Nov 2004). In addition, hypermethylation of the sFRP–1 promoter region, which leads to a loss of function and decreased sFRP–1 protein expression, has been linked to a number of cancers, including gastric cancer, esophageal adenocarcinoma, bladder cancer and head and neck squamous cell carcinoma (HNSCC).

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective exclusive license may be granted unless within thirty (30) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 4, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–26343 Filed 10–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: The Development of Human Anti-Mesothelin Monoclonal Antibodies for the Treatment of Human Cancers

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in U.S. Patent Application 61/040,005 entitled ''Human Monoclonal Antibodies Specific for Mesothelin'' [HHS Ref. E–079–2008/0–US–01], PCT Application PCT/US2009/038228 entitled ''Human Monoclonal Antibody Against Mesothelin'' [HHS Ref. E–079–2008/0–PCT–02], Australian patent application AU 2009228361 entitled ''Human Monoclonal Antibody Against Mesothelin'' [HHS Ref. E–079–2008/0–AU–03], Canadian patent application CA 2718321 entitled ''Human Anti-Mesothelin Monoclonal Antibodies'' [HHS Ref. E–079–2008/0–CA–04], European patent application EP 09726082.2 entitled ''Human Monoclonal Antibody Against Mesothelin'' [HHS Ref. E–079–2008/0–EP–05], U.S. patent application 12/934,060 entitled ''Human Anti-Mesothelin Monoclonal Antibodies '' [HHS Ref. E–079–2008/0–US–06], and all related continuing and foreign patents/patent applications for the technology family, to Sanomab, Ltd. The patent rights in these inventions have been assigned to and/or exclusively licensed to the Government of the United States of America.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to:

The use of the monoclonal antibody m912 (SM–101) as an antibody therapy for the treatment of pancreatic cancer, ovarian cancer, lung cancer, mesothelioma, and stomach/gastric cancer. The Licensed Field of Use explicitly excludes the use of the antibody in the form of an immunoconjugate, including, but not limited to, immunotoxins.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before November 14, 2011 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: David A. Lambertson, Ph.D., Senior Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; *Telephone:* (301) 435–4632; *Facsimile:* (301) 402–0220; *E-mail: lambertsond@od.nih.gov.*

SUPPLEMENTARY INFORMATION: This invention concerns a monoclonal antibody and methods of using the antibody for the treatment of mesothelin-expressing cancers, including mesothelioma, lung cancer, stomach/gastric cancer, ovarian cancer and pancreatic cancer. The specific antibody covered by this technology is designated m912 (SM–101), which is a fully human monoclonal antibody against mesothelin.

Mesothelin is a cell surface antigen that is preferentially expressed on certain types of cancer cells. The m912 antibody can selectively bind to these cancer cells and induce cell death while leaving healthy, essential cells unharmed. This can result in an effective therapeutic strategy with fewer side effects due to less non-specific killing of cells.The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective exclusive license may be granted unless the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7 within thirty (30) days from the date of this published notice.

Complete applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 4, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development & Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–26342 Filed 10–11–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4031–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–4031–DR), dated September 13, 2011, and related determinations.

DATES: *Effective Date:* September 13, 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 13, 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 the Remnants of Tropical Storm Lee beginning on September 7, 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 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, 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:

Broome, Chenango, Delaware, Otsego, and Tioga Counties for Individual Assistance.

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.

Dated: October 5, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–26325 Filed 10–11–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4034–DR; Docket ID FEMA–2011–0001]

Maryland; 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 Maryland (FEMA–4034–DR), dated September 16, 2011, and related determinations.

DATES: *Effective Date:* September 16, 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 16, 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 Maryland resulting from Hurricane Irene during the period of August 24 to September 5, 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 Maryland.

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, Regis Leo Phelan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Maryland have been designated as adversely affected by this major disaster:

Calvert, Caroline, Cecil, Charles, Dorchester, Harford, Kent, Queen Anne's, Somerset, St. Mary's, Talbot, Wicomico, and Worcester Counties for Public Assistance.

All counties and the independent city of Baltimore within the State of Maryland 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.

Dated: October 5, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–26323 Filed 10–11–11; 8:45 am]

BILLING CODE 9111– 23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4032–DR; Docket ID FEMA–2011–0001]

Maine; 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 Maine (FEMA–4032–DR), dated September 13, 2011, and related determinations.

DATES: *Effective Date:* September 13, 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 13, 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 Maine 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 Maine.

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, Albert Lewis, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Maine have been designated as adversely affected by this major disaster:

Franklin, Oxford, and York Counties for Public Assistance.

All counties within the State of Maine 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.)

Dated: October 5, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–26322 Filed 10–11–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4024–DR; Docket ID FEMA–2011–0001]

Virginia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–4024–DR), dated September 3, 2011, and related determinations.

DATES: *Effective Date:* September 28, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 3, 2011.

The counties of Amelia, Brunswick, Greensville, Hanover, Lunenburg, Northampton, Nottoway, and Powhatan and the independent city of Alexandria for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: October 5, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–26321 Filed 10–11–11; 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; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–4029–DR), dated September 9, 2011, and related determinations.

DATES: *Effective Date:* September 28, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 9, 2011.

Anderson, Caldwell, Fayette, Henderson, Hill, and Rusk Counties for Individual Assistance. Colorado, Leon, and Walker Counties for Public Assistance, including direct Federal assistance (already designated 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.

Dated: October 5, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–26320 Filed 10–11–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4031–DR; Docket ID FEMA–2011–0001]

New York; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–4031–DR),

dated September 13, 2011, and related determinations.

DATES: *Effective Date:* September 28, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 13, 2011.

Chemung County for Public Assistance (already designated for Individual Assistance).

Orange County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–26318 Filed 10–11–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4017–DR; Docket ID FEMA–2011–0001]

Puerto Rico; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–4017–DR), dated August 27, 2011, and related determinations.

DATES: *Effective Date:* September 28, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 27, 2011.

Peñuelas Municipality for Public Assistance.

Loíza and San Juan Municipalities for Public Assistance (already designated for Individual Assistance.)

Adjuntas, Ciales, and Guaynabo Municipalities for Individual Assistance (already designated for Public Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–26316 Filed 10–11–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N–470, Revision of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form N–470, Application to Preserve Residence for Naturalization.

The Department of Homeland Security, U.S. Citizenship and Immigration Services will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until December 12, 2011.

This information collection was previously published as an extension of a currently approved information collection in the **Federal Register** on August 12, 2011, at 76 FR 50237, for a 60-day public comment period. Subsequently, USCIS decided to conduct a comprehensive revision of Form N–470 instead of extending the current edition. USCIS invites members of the public who commented on the 60-day extension to submit their comments on the revised form.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997, or via e-mail at *USCISFRComment@dhs.gov.* When submitting comments by e-mail please add the OMB Control Number 1615–0056 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(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 agencies 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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application to Preserve Residence for Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–470, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households.* The information collected on Form N–470 will be used to determine whether an alien who intends to be absent from the United States for a period of one year or more is eligible to preserve residence for naturalization purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 525 responses at 36 minutes (.6 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 315 annual burden hours.

If you need a copy of the information collection instrument, please visit: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: October 6, 2011.

Sunday A. Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–26362 Filed 10–11–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: (No Agency Form Number), E-Verify Program, Revision of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: E-Verify Program.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published as an extension in the **Federal Register** on August 1, 2011, at 76 FR 45843, allowing for a 60-day public comment period. USCIS received comments on the 60-day notice. A discussion of the comments and USCIS' response is discussed in item 8 of the supporting statement that can be viewed at: *http://www.regulations.gov.*

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 14, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, N.W., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov.* When submitting comments by e-mail, please make sure to add OMB Control Number 1615–0092 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning the revision of this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* E-Verify Program.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number; File Number OMB–18. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for profit. E-Verify allows employers to electronically verify the employment eligibility status of newly hired employees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 125,015 completing the E-Verify web interface at 17 responses at .86 hours (52 minutes) per response; 521,134 employers registering to participate in the program at 2.26 hours (2 hours and 15 minutes) per response; 3,333 requiring ID/IQ modification at 2 hours per response; 4,094,955 initial queries at .12 hours (7 minutes) per response; 195,329 secondary queries at 1.94 hours (1 hour 56 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the*

collection: 3,882,482 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp.*

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, telephone number 202–272–8377.

Dated: October 6, 2011.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–26361 Filed 10–11–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form G–28, Revision of an Approved Information Collection; Comment Request

ACTION: 60–Day Notice of Information Collection Under Review: Form G–28, Notice of Entry of Appearance as Attorney or Accredited Representative.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until December 12, 2011.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *USCISFRComment@dhs.gov.* When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0105 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning the revision of this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of an existing information collection.

(2) *Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Accredited Representative.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–28. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The data collected on Form G–28 is used by DHS to determine eligibility of the individual to appear as a representative.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,479,000 responses at 20 minutes (.333) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 825,507 annual burden hours. If you need a copy of this information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: October 6, 20111.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–26363 Filed 10–11–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2011–N194; 20124–1113–0000–F5]

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications; request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered or threatened species. The Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activities. The Act and the National Environmental Policy Act also require that we invite public comment before issuing these permits.

DATES: To ensure consideration, written comments must be received on or before November 14, 2011.

ADDRESSES: Marty Tuegel, Section 10 Coordinator, by U.S. mail at Division of Endangered Species, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM at (505) 248–6920. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Endangered Species Division, P.O. Box 1306, Albuquerque, NM 87103; (505) 248–6920.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

The Act (16 U.S.C. 1531 *et seq.*) prohibits activities with endangered and threatened species unless a Federal

permit allows such activities. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, the Act provides for permits, and requires that we invite public comment before issuing these permits. A permit granted by us under section 10(a)(1)(A) of the Act authorizes applicants to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of survival or propagation, or interstate commerce. Our regulations regarding implementation of section 10(a)(1)(A) permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, and Federal agencies, and the public to comment on the following applications. Please refer to the appropriate permit number (*e.g.,* Permit No. TE–123456) when requesting application documents and when submitting comments.

Documents and other information the applicants have submitted with these applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit TE–48847A

Applicant: Texas A & M University, Galveston, Texas.

Applicant requests a new permit for husbandry and holding of Kemp's ridley (*Lepidochelys kempii*), hawksbill (*Eretmochelys imbricata*), green (*Chelonia mydas*), and loggerhead (*Caretta caretta*) sea turtles within the Sea Life Center, Galveston, Texas.

Permit TE–42739A

Applicant: Sea Life, Tempe, Arizona.

Applicant requests a new permit for husbandry and holding of green (Chelonia mydas) sea turtles within the Sea Life Center, Arizona.

Permit TE–46978A

Applicant: U.S. Department of Agriculture, North Central Plant Introduction Station, Ames, Iowa.

Applicant requests a new permit for research and recovery purposes to collect, propagate, and distribute for reintroduction seeds from *Helianthus paradoxus* (Pecos sunflower) from plants in Texas.

Permit TE–829761

Applicant: Bureau of Land Management, Las Cruces, New Mexico.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys for the following species within New Mexico:

- Southwestern willow flycatcher (*Empidonax traillii extimus*).
- Northern aplomado falcon (*Falco femeralis septentrionalis).*
- Lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*).
- Mexican long-nosed bat (*Leptonycteris nivalis*).

Permit TE–52420A

Applicant: Pima County, Tucson, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for the following species within Pima County, Arizona:

- Southwestern willow flycatcher (*Empidonax traillii extimus*).
- Northern aplomado falcon (*Falco femeralis septentrionalis).*
- Lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*).
- Jaguar (*Panthera onca*), ocelot (*Leopardus pardalis*).
- Interior least tern (*Sterna antillarum athalassos*).
- California least tern (*Sterna antillarum browni*).
- Gila chub (*Gila intermedia*).
- Gila topminnow (*Poeciliopsis occidentalis occidentalis*).

Permit TE–53840A

Applicant: David Griffin, Las Cruces, New Mexico.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) within New Mexico and Texas and northern aplomado falcon (*Falco femeralis septentrionalis)* within New Mexico, Arizona, and Texas.

Permit TE–168688

Applicant: Sarah Itz, Austin, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for golden-cheeked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapilla*) within Texas.

National Environmental Policy Act (NEPA)

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

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.

Authority We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*)

Dated: October 3, 2011.

Joy E. Nicholopoulos,

Regional Director, Southwest Region.

[FR Doc. 2011–26279 Filed 10–11–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT921000–11–L13200000–EL0000–P; MTM 97988]

Notice of Competitive Coal Lease Sale, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the coal reserves in the lands described below in Musselshell County, Montana, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended.

DATES: The lease sale will be held at 11 a.m. on November 16, 2011. Sealed bids must be submitted on or before 10 a.m. November 16, 2011.

ADDRESSES: The lease sale will be held in the 920 Conference Room of the Bureau of Land Management (BLM) Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Greg Fesko by telephone at 406–896–5080 or by e-mail at *gfesko@blm.gov;* or

Connie Schaff by telephone at 406–896–5060 or by e-mail at *cschaff@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This sale is being held in response to a lease by application (LBA) filed by Signal Peak Energy LLC. The Federal coal resource to be offered consists of all reserves recoverable by underground mining methods in the following described lands:

Principal Meridian, Montana

T. 6 N., R. 27 E.,
Sec. 4, lot 1, S½;NE¼;, SE¼;NW¼;, S½;
Sec. 8, NE¼;, NE¼NW¼, S½NW¼, S½;
Sec. 10, W½NE¼, SE¼NE¼, NW¼, S½;
Sec. 14, SW¼NE¼, NW¼, S½; and
Sec. 22, W½, SE¼.

Containing 2,679.86 acres, more or less, in Musselshell County, Montana.

The tract (LBA MTM 97988) contains an estimated 35.5 million tons of recoverable coal reserves. The tract's coal reserves average 12.4 feet in thickness, 9,735 BTU per pound in heating value, 9.64 percent ash, and 0.87 percent sulfur content. The coal reserves to be offered are based on mining the Mammoth coal seam described in the proposed action in the Environmental Assessment and consists of all reserves recoverable by underground mining methods. The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets or exceeds the BLM's estimate of the fair market value of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale.

Sealed bids clearly marked ''Sealed Bid for MTM 97988 Coal Sale—Not to be opened before 11 a.m. on November 16, 2011'' must be submitted to the Cashier, BLM Montana State Office, at the address given above.

Prior to lease issuance, the high bidder, if other than the applicant, must pay to the BLM the cost recovery fees in the amount of $132,739 in addition to all processing costs the BLM incurs after the date of this sale notice (43 CFR 3473.2). The bids should be sent by certified mail, return-receipt requested, or be hand delivered. The cashier will issue a receipt for each hand-delivered bid. Bids received after 10 a.m. on November 16, 2011, will not be considered. If identical high bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed-bids must be submitted within 15 minutes following the sale official's announcement at the sale that identical high bids have been received. A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof, and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods and 8.0 percent of the value of coal mined by underground methods. Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are included in the Detailed Statement of Lease Sale. Copies of the statement and the proposed coal lease are available at the Montana State Office. Case file MTM 97988 is also available for public inspection at the Montana State Office.

Phillip C. Perlewitz,
Chief, Branch of Solid Minerals.

[FR Doc. 2011–26328 Filed 10–11–11; 8:45 am]
BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT030000–L17110000–PH0000–24–1A]

Notice of Grand Staircase-Escalante National Monument Advisory Committee Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the Department of the Interior, Bureau of Land Management (BLM), Grand Staircase-Escalante National Monument Advisory Committee (GSENMAC) will meet as indicated below.

DATES: The GSENMAC will meet Tuesday, November 15, 2011, (11 a.m.–6 p.m.) and Wednesday, November 16, 2011, (8 a.m.–1 p.m.) in Kanab, Utah.

ADDRESSES: The Committee will meet at GSENM Headquarters, 190 East Center Street, Kanab, Utah.

FOR FURTHER INFORMATION CONTACT: Larry Crutchfield, Public Affairs Officer, Grand Staircase-Escalante National Monument, Bureau of Land Management, 190 East Center Street, Kanab, Utah, 84741; phone (435) 644–4310.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven 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 15-member GSENMAC was appointed by the Secretary of Interior on August 2, 2011, pursuant to the Monument Management Plan, the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA). As specified in the Monument Management Plan, the GSENMAC will have these primary tasks: (1) Review evaluation reports produced by the Management Science Team and make recommendations on protocols and projects to meet overall objectives; (2) Review appropriate research proposals and make recommendations on project necessity and validity; (3) Make recommendations regarding allocation of research funds through review of research and project proposals as well as needs identified through the evaluation process above; and, (4) Could be consulted on issues such as protocols for specific projects.

Agenda topics to be discussed by the GSENMAC include operating procedures, establishing meeting guides, Charter, roles and responsibilities, Federal Advisory Committee Act, election of officers, Federal travel regulations, forming of subcommittees, facilitation needs, and future meeting dates.

The entire meeting is open to the public. Members of the public are welcome to address the GSENMAC at 5 p.m., local time on November 15, 2011. Depending on the number of persons wishing to speak, a time limit could be established. Interested persons may make oral statements to the GSENMAC during this time or written statements may be submitted for the GSENMAC's consideration. Written statements can be sent to: Grand Staircase-Escalante National Monument, Attn: Larry Crutchfield, 190 E. Center Street, Kanab, UT 84741. Information to be distributed to the GSENMAC is requested 10 days prior to the start of the GSENMAC meeting.

All meetings are open to the public; however, transportation, lodging, and

meals are the responsibility of the participating public.

Dated: October 4, 2011.

Shelley J. Smith,

Acting State Director.

[FR Doc. 2011–26278 Filed 10–11–11; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

AGENCY: National Indian Gaming Commission.

ACTION: Notice of no action.

SUMMARY: On November 18, 2010, the National Indian Gaming Commission (NIGC) issued a Notice of Inquiry and Notice of Consultation advising the public that the NIGC was conducting a comprehensive review of its regulations and requesting public comment on the process for conducting the regulatory review. On April 4, 2011, after holding eight consultations and reviewing all comments, NIGC published a Notice of Regulatory Review Schedule setting out a consultation schedule and process for review. Based on the above review, the Commission notifies the public that it does not intend to take action at this time on certain other regulations identified in the Notice of Regulatory Review Schedule.

FOR FURTHER INFORMATION CONTACT: National Indian Gaming Commission, 1441 L Street NW., Suite 9100 Washington, DC 20005. *Telephone:* 202–632–7009; *e-mail: reg.review@nigc.gov.*

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* authorizes the NIGC to promulgate such regulations and guidelines as it deems appropriate to implement certain provisions of the Act. 25 U.S.C. 2706(b)(10). On November 12, 2010, the Commission issued a Notice of Inquiry (NOI) requesting comment on which of its regulations were most in need of revision, in what order the Commission should review its regulations, and the process NIGC should utilize to make revisions. The NOI was published in the Federal Register on November 18, 2010. 75 FR 70680. The Commission's regulatory review process established a tribal consultation schedule of 33 meetings over 11 months with a description of the regulation groups to be covered at each consultation.

I. Management Contracts—Collateral Agreements

The NOI asked whether the Commission should consider promulgating a regulation requiring the review and approval of collateral agreements to a management contract. A majority of the comments submitted in response to the NOI stated that IGRA already allows for the review of collateral agreements to a management contract. After reviewing the comments received in response to the NOI, the Commission announced its intent to narrow its inquiry and only review the issue of approval of collateral agreements to a management contract.

Public comments received during both the NOI and NRRA consultation and comment period have varied widely. Those comments supporting both the NIGC's review and approval of collateral agreements stated that the review and approval of collateral agreements would greatly reduce the risks to both Tribes and would-be management contractors, thus reducing overreaching by third parties; and that it is the NIGC's trust responsibility to the review and approval of collateral agreements in order to ensure that collateral agreements do not violate the sole proprietary interest provisions of IGRA.

Public comments opposed to the required approval of collateral agreements state that collateral agreements are outside the scope of NIGC authority and requiring their submission and approval would allow the NIGC to second-guess tribal business decisions. Similar comments opposed NIGC review of non-management business relationships of the Tribe; and that requiring the submission and approval of collateral agreements would expand NIGC authority beyond what is authorized by the IGRA. Public commentators also stated that requiring the approval of collateral agreements could affect the development of business relationships and discourage private investment in Indian country. These commentators recommended the NIGC only review and approve those collateral agreements that contain management provisions separate from those in the related management contract. Public commentators also expressed their concern over the length of time it currently takes for the NIGC to review and approve a management contract and that the required approval of collateral agreements would further increase that time. Finally, one commenter noted the sensitive, proprietary information contained in collateral agreements and suggested the NIGC review collateral agreements only at the gaming facility.

The Commission reviewed the comments received and has decided to not promulgate a regulation requiring NIGC approval of collateral agreements to management contracts at this time. IGRA provides for approval of management agreements. 25 U.S.C. 2705(a)(4). IGRA does not require approval of agreements collateral to management contracts unless those agreements also provide for management. The Commission's decision today does not prevent tribes from submitting any agreement, collateral or not, for NIGC review to determine whether the agreement provides for management. As a matter of practice, the NIGC regularly reviews a variety of agreements to determine if the agreements in fact provide for management. To be clear, the Commission's decision today does not alter in any way, the NIGC's continued practice of reviewing agreements for management. The Commission notes that any contract that provides for management that has not been approved by the Chairwoman is void. 25 CFR 533.7. Further, managing without an approved contract is a substantial violation of IGRA that can result in an enforcement action and closure order. 25 CFR 573.6(a)(7).

II. Definitions—Net Revenues—management fee

The NOI asked whether the Commission should consider whether the definition of net revenues for the purposes of calculating the management fees should be defined to be consistent with the General Accepted Accounting Principles (GAAP). Many comments stated that if this definition was amended, it would still need to remain consistent with the statutory definition of net revenues contained in IGRA, 25 U.S.C. 2703(9). Other comments stated that it should be defined consistent with industry standards such as GAAP. One comment noted that a clearer definition would have resolved a dispute with their state over the definition of net win and net revenue. Another comment stated that the 2008 regulatory change to the definition of net revenue does not comply with IGRA and needs to be revised to ensure it is consistent with the statutory definition.

The Commission has reviewed the comments received during both the NOI and NRRA comment and consultation periods and has decided not to issue a rule at this time amending the definition of net revenues set forth at 25 CFR 502.16. The Commission agrees that changing the definition to be consistent

with GAAP could result in a definition that is inconsistent with the statutory definition contained in 25 U.S.C. 2703(9).

Dated: October 3, 2011, Washington, DC.

Tracie L. Stevens,

Chairwoman.

Steffani A. Cochran,

Vice-Chairwoman.

Daniel J. Little,

Associate Commissioner.

[FR Doc. 2011–25932 Filed 10–11–11; 8:45 am]

BILLING CODE 7565–01–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–11–028]

Government In the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 19, 2011 at 10 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, *Telephone:* (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. No. 731–TA–696 (Third Review)(Pure Magnesium from China). The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before October 31, 2011.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: October 7, 2011.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2011–26507 Filed 10–7–11; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States of America* v. *Brent Nicholson and Mary K. Nicholson,* Case No. C01–809RBL, was lodged with the United States District Court for the Western District of Washington on September 28, 2011.

This proposed Consent Decree concerns a complaint filed by the United States against Brent Nicholson and Mary K. Nicholson, pursuant to Section 309 of the Clean Water Act, 33 U.S.C. 1319, to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendants to pay a civil penalty and perform mitigation. The Consent Decree also provides for a shore defense structure to remain in place under certain conditions, including that the Defendants enter into a separate agreement with the Lummi Nation.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Brian C. Kipnis, Assistant United States Attorney, 5200 United States Courthouse, 700 Stewart Street, Seattle, Washington, 98101–1271, and refer to *United States of America* v. *Brent Nicholson and Mary K. Nicholson,* Case No. C01–809RBL.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Western District of Washington, 5200 United States Courthouse, 700 Stewart Street, Seattle, Washington, 98101–1271. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/Consent_Decrees.html.*

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 2011–26313 Filed 10–11–11; 8:45 am]

BILLING CODE 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 24, 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 24, 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 29th day of September 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[15 TAA petitions instituted between 9/19/11 and 9/23/11]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
80445	Masco Builder Cabinet Group ()	Waverly, OH	09/19/11	09/13/11
80446	Gildan (Workers)	Conover, NC	09/19/11	09/19/11
80447	Dell Computer Corporation (State/One-Stop)	Round Rock, TX	09/20/11	09/20/11

APPENDIX—Continued

[15 TAA petitions instituted between 9/19/11 and 9/23/11]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
80448	Hampton Lumber Mills-Washington, Inc. Randle Division (Company).	Randle, WA	09/20/11	09/14/11
80449	Marfred Industries (Workers)	Hayward, CA	09/20/11	09/19/11
80450	Cadent Inc. (Company)	Carlstadt, NJ	09/20/11	09/19/11
80451	Dillan Chenille, Inc. (Company)	Martinsville, VA	09/20/11	09/19/11
80452	Tri-County Truss (Union)	Burlington, WA	09/21/11	09/15/11
80453	Pharmax LLC (State/One-Stop)	Redmond, WA	09/21/11	09/20/11
80454	TMI Forest Products Inc. (Company)	Morton, WA	09/21/11	09/20/11
80455	LA Darling (Union)	Corning, AR	09/21/11	09/19/11
80456	Woodinville Lumber, Inc. (Union)	Woodinville, WA	09/21/11	09/15/11
80457	Northpoint Precision Inc. (Company)	Manistee, MI	09/22/11	09/21/11
80458	TeleTech Corp. (State/One-Stop)	Las Vegas, NV	09/23/11	09/19/11
80459	Roseburg Forest Products (Company)	Missoula, MT	09/23/11	09/21/11

[FR Doc. 2011–26244 Filed 10–11–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0190]

Shipyard Employment Standards; 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 requirements contained in the Shipyard Employment Standards (29 CFR 1915.112(a)(1), 29 CFR 1915.112(b)(1)(i), 29 CFR 1915.112(c)(1)(i), 29 CFR 1915.113(b)(1) and 29 CFR 1915.172(d)). The purpose of the collection of information (paperwork) provisions of the Standards is to reduce workers' risks of death or serious injury by ensuring that equipment has been tested and is in safe operating condition.

DATES: Comments must be submitted (postmarked, sent, or received) by December 12, 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–2011–0190, 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–2011–0190) 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).

Manila rope and manila-rope slings (paragraph 1915.112(a)(1)(i))—The employer must ensure that manila rope and manila-rope slings have permanently affixed and legible identification markings as prescribed by the manufacturer that indicate the recommended safe working load for the

type(s) of hitch(es) used, the angle upon which it is based, and the number of legs if more than one.

Wire rope and wire-rope slings (paragraph 1915.112(b)(1)(i))—The employer must ensure that wire rope and wire-rope slings have permanently affixed and legible identification markings as prescribed by the manufacturer that indicate the recommended safe working load for the type(s) of hitch(es) used, the angle upon which it is based, and the number of legs if more than one.

Chain and chain slings (paragraph 1915.112(c)(1)(i))—The employer must ensure that chain and chain slings have permanently affixed and legible identification markings as prescribed by the manufacturer that indicate the recommended safe working load for the type(s) of hitch(es) used, the angle upon which it is based, and the number of legs if more than one.

Shackles (paragraph 1915.113(a)(1))—The employer must ensure that shackles have permanently affixed and legible identification markings as prescribed by the manufacturer that indicate the recommended safe working load.

Test Records for Hooks (paragraph 1915.113(b)(1))—This paragraph requires that the manufacturer's recommendations be followed in determining the safe working loads of the various sizes and types of hooks. If the manufacturer's recommendations are not available, the hook must be tested to twice the intended safe working load before it is initially put into use. The employer must maintain and keep readily available a certification record which includes the date of such test, the signature of the person who performed the test, and the identifier for the hook which was tested.

The records are used to assure that equipment has been properly tested. The records also provide the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

Examination and Test Records for Unfired Pressure Vessels (paragraph 1915.172(d))—This paragraph requires that portable, unfired pressure vessels not built to the requirements of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section VIII, Rules for Construction of Unfired Pressure Vessels, 1963 be examined *quarterly* by a competent person and subjected to a *yearly* hydrostatic pressure test. A certification record of such examinations and tests shall be maintained.

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 proposing to increase the existing burden hour estimate for the collection of information requirements specified by the Standards from 3,137 hours to 3,163 hours, a total increase of 26 hours. As a result of the Standards Improvement Project Phase III (SIP–III) Final Rule, the Agency identified new requirements for employers to have permanently affixed labels attached to slings and shackles as prescribed by the manufacturer's recommendations. The Agency will summarize any comments submitted in response to this notice and will include this summary in its request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Shipyard Employment Standards (29 CFR part 1915).

OMB Number: 1218–0220.

Affected Public: Business or other for-profits; Not-for-profit organizations; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 635.

Frequency of Response: On occasion.

Average Time per Response: Varies from 2 minutes (.03 hour) to maintain a certification record to 35 minutes (.58 hour) to obtain certain information from a manufacturer.

Estimated Total Burden Hours: 3,163.

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–2011–0190). 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 October 5, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–26308 Filed 10–11–11; 8:45 am]

BILLING CODE 4510–26–P

MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

Sunshine Act Meetings

TIME AND DATE: 1 p.m. to 3 p.m., Thursday, October 27, 2011.

PLACE: The offices of the Morris K. Udall and Stewart L. Udall Foundation, 130 South Scott Avenue, Tucson, AZ 85701.

STATUS: This meeting will be open to the public, unless it is necessary for the Board to consider items in executive session.

MATTERS TO BE CONSIDERED: (1) Program reports; (2) report from the Management Committee; (3) report from the Udall Center for Studies in Public Policy; (4) report on the Native Nations Institute; and (5) other business as needed.

PORTIONS OPEN TO THE PUBLIC: All sessions with the exception of the session listed below.

PORTIONS CLOSED TO THE PUBLIC: Executive session.

FOR FURTHER INFORMATION CONTACT: Ellen K. Wheeler, Executive Director, 130 South Scott Avenue, Tucson, AZ 85701, (520) 901–8500.

Dated: October 3, 2011.

Ellen K. Wheeler,

Executive Director, Morris K. Udall and Stewart L. Udall Foundation, and Federal Register Liaison Officer.

[FR Doc. 2011–26098 Filed 10–11–11; 8:45 am]

BILLING CODE 6820–FN–M

NATIONAL SCIENCE FOUNDATION

U.S. Antarctic Program Blue Ribbon Panel Review; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: U.S. Antarctic Program Blue Ribbon Panel Review (76826).

Date/Time: November 3, 2011, 8 a.m. to 5 p.m.

November 4, 2011, 8 a.m. to 3 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1295, Arlington, VA 22230.

Type of Meeting: Open.

For Further Information Contact: Sue LaFratta, Office of Polar Programs (OPP). National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8030.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: The Panel will conduct an independent review of the current U.S. Antarctic Program to ensure the nation is pursuing the best twenty-year trajectory for conducting science and diplomacy in Antarctica—one that is environmentally sound, safe, innovative, affordable, sustainable, and consistent with the Antarctic Treaty.

Agenda: First meeting of the Panel to present the Panel with an overview of opportunities and challenges for Antarctic research and research support; discussion of the National Research Council's report on ''Future Science Opportunities in Antarctica and the Southern Ocean''; planning for additional meetings.

Dated: November 6, 2011.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2011–26281 Filed 10–11–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Plant License Renewal; Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on October 19, 2011, Room T–2B3, 11545 Rockville Pike, Rockville, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, October 19, 2011—8:30 a.m. Thru 12 p.m.

The Subcommittee will review the license renewal application for the Columbia Generating Station and the draft Safety Evaluation Report (SER) with open items. The Subcommittee will hear presentations by and hold discussions with Energy Northwest, the NRC staff, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Kent Howard (Telephone 301–415–2989 or *E-mail: Kent.Howard@nrc.gov* five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (240–888–9835) to be escorted to the meeting room.

Dated: October 3, 2011.

Yoira Diaz-Sanabria,

Technical Assistant, Reactor Safety Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–26243 Filed 10–11–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission, [NRC–2011–0006].

DATES: Weeks of October 10, 17, 24, 31, November 7, 14, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of October 10, 2011—Tentative

Tuesday, October 11, 2011

9 a.m. Briefing on the Japan Near Term Task Force Report—Prioritization of Recommendations (Public Meeting) (Contact: Rob Taylor, 301–415–3172)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, October 12, 2011

8:55 a.m. Affirmation Session (Public Meeting) (Tentative)

a. Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Applicant's Notice of Appeal, Brief in Support of Appeal, of LBP–10–15 (Aug. 16, 2010); NRC Staff's Petition for Interlocutory Review of Atomic Safety and Licensing Board Decision (LBP–10–15) Admitting an Out of Scope Safety Contention and Improperly Recasting an Environmental Contention (Aug. 19, 2010); Certified Question and Referred Ruling in LBP–10–15 (Aug. 4, 2010) (Tentative)

b. Shieldalloy Metallurgical Corporation Site (NRC–NJ Section 274 Agreement) –Commission Decision on Remand from Court of Appeals (Tentative)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

9 a.m. Mandatory Hearing—South Carolina Electric & Gas Company and South Carolina Public Service Authority (Also Referred to As Santee Cooper); Combined Licenses for Virgil C. Summer Nuclear Station, Units 2 and 3 (Public Meeting) (Contact: Rochelle Bavol, 301–415–1651)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Thursday, October 13, 2011

9 a.m. Continued from Previous Day—Mandatory Hearing—South Carolina Electric & Gas Company and South Carolina Public Service Authority (Also Referred to As Santee Cooper); Combined Licenses for Virgil C. Summer Nuclear Station, Units 2 and 3 (Public Meeting) (Contact: Rochelle Bavol, 301–415–1651)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of October 17, 2011—Tentative

Tuesday, October 18, 2011

9 a.m. Briefing on Browns Ferry Unit 1 (Public Meeting) (Contact: Eugene Guthrie, 404–997–4662)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Thursday, October 20, 2011

1:30 p.m. NRC All Employees Meeting (Public Meeting) Marriott Bethesda North Hotel 5701 Marinelli Road, Rockville, MD 20852

Friday, October 21, 2011

9 a.m. Briefing on North Anna (Public Meeting) (Contact: Meena Khanna, 301–415–2150)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of October 24, 2011—Tentative

There are no meetings scheduled for the week of October 24, 2011.

Week of October 31, 2011—Tentative

Tuesday, November 1, 2011

9 a.m. Briefing on the Fuel Cycle Oversight Program (Public Meeting) (Contact: Margie Kotzalas, 301–492–3550)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of November 7, 2011—Tentative

There are no meetings scheduled for the week of November 7, 2011.

Week of November 14, 2011—Tentative

There are no meetings scheduled for the week of November 14, 2011.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by e-mail at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: October 6, 2011.

Rochelle Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2011–26461 Filed 10–7–11; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0217]

Policy Regarding Submittal of Amendments for Processing of Equivalent Feed at Licensed Uranium Recovery Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory issue summary; extension of comment period and correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice appearing in the **Federal Register** on September 30, 2011 (76 FR 60941), that requested public comment on a regulatory issue summary to inform addresses of the NRC's policy regarding receipt and processing, without a license amendment, of equivalent feed at an NRC and Agreement State-licensed uranium recovery site. This action is necessary to correct several Accession Numbers, correct associated titles referring to documents in the NRC's Agencywide Documents Access and Management System (ADAMS) and in the NRC Library, and update the date voluntary responses should be submitted to the NRC. Due to these errors, the NRC is extending the comment period from October 31, 2011, to November 14, 2011.

FOR FURTHER INFORMATION CONTACT: Cindy Bladey, Chief, Rules, Announcements and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; *telephone:* 301–492–3667 or *e-mail: Cindy.Bladey@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 60942 of **Federal Register** document 2011–25243, published September 30, 2011 (76 FR 60941), in the second column, under the section titled Intent, first paragraph, ''ADAMS Accession No. MLXXXXXXXX'' is corrected to read ''ADAMS Accession No. ML003773008.'' Also, on the same page, from the bottom of the second column to the top of the third column, under the section titled **BACKGROUND**, ''In SECY–99–01'' is corrected to read ''In SECY–99–012.'' In the same sentence, ''(ADAMS Accession No. MLXXXXXXXX)'' is corrected to read ''available at *http://www.nrc.gov/*

reading-rm/doc-collections/commission/secys/1999/.''

On page 60943 of the same document, at the bottom of the first column, under the section titled Summary of Issue, ''(see Page A2 of SECY–99–011, [INSERT TITLE AND ADAMS ML])'' is corrected to read ''(see Page A2 of SECY–99–011, ''Draft Rulemaking Plan: Domestic Licensing of Uranium and Thorium Recovery Facilities—Proposed New 10 CFR Part 41,'' available at *http://www.nrc.gov/reading-rm/doc-collections/commission/secys/1999/).*'' Also, on the same page and in the same paragraph, ''(see SECY–09–012, [INSERT TITLE AND ADAMS ML])'' is corrected to read ''(see SECY–09–012, ''Use of Uranium Mill Tailings Impoundments for the Disposal of Waste Other than 11e.(2) Byproduct Material and Reviews of Applications to Process Material Other than Natural Uranium Ores,'' *available at http://www.nrc.gov/reading-rm/doc-collections/commission/secys/1999/).*''

On page 60944 of the same document, at the bottom of the first column, under the section titled Voluntary Response, ''October, 31, 2011'' is corrected to read November 14, 2011.''

Dated at Rockville, Maryland, this 5th day of October, 2011.

For the Nuclear Regulatory Commission.

Cindy Bladey,

Chief, Rules, Announcements and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2011–26234 Filed 10–11–11; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–102; Order No. 895]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Lakeville, Connecticut 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 17, 2011; *deadline for notices to intervene:* October 31, 2011, 4:30 p.m., eastern time. *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 30, 2011, the Commission received a petition for review of the Postal Service's determination to close the Lakeville post office in Lakeville, Connecticut. The petition for review was filed by Charlene LaVoie on behalf of Etienne Delessert and Rita Marshall (Petitioners) and is postmarked September 28, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–102 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than November 4, 2011.

Issue apparently raised. Petitioners contend 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 17, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is October 17, 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 website, *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 Petitioners 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 31, 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 17, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 17, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Cassandra L. Hicks 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 30, 2011	Filing of Appeal.
October 17, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 17, 2011	Deadline for the Postal Service to file any responsive pleading.
October 31, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 4, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 25, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 12, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 19, 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 26, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–26334 Filed 10–11–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–103; Order No. 896]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Evansdale, Iowa 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 17, 2011; *deadline for notices to intervene:* October 31, 2011, 4:30 p.m., eastern time. *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 30, 2011, the Commission received a petition for review of the Postal Service's determination to close the Evansdale post office in Evansdale, Iowa. The petition for review was filed by Chad Deutsch, Mayor of the City of Evansdale (Petitioner) and is postmarked September 20, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–103 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 November 4, 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 17, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is October 17, 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 31, 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 17, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 17, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Patricia A. Gallagher 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 30, 2011	Filing of Appeal.
October 17, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 17, 2011	Deadline for the Postal Service to file any responsive pleading.
October 31, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 4, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 25, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 12, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 19, 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 18, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–26335 Filed 10–11–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Roundtable on Conflict Minerals on Tuesday, October 18, 2011, commencing at 12:30 p.m.

This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The Roundtable will take place in the Auditorium of the Commission's headquarters at 100 F Street, NE., Washington, DC. The Roundtable will be open to the public, with seating made available on a first-come, first-served basis. Doors will open at 12 p.m. Visitors will be subject to security checks.

The agenda for the meeting includes panel discussions addressing the Commission's required rulemaking under Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which relates to reporting requirements regarding conflict minerals originating in the Democratic Republic of the Congo and adjoining countries.

For further information, please contact the Office of the Secretary at (202) 551–5400.

October 7, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26514 Filed 10–7–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Roundtable on Execution, Clearance and Settlement of Microcap Securities on Monday, October 17, 2011, commencing at 1 p.m.

This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The Roundtable will take place in the Multi-Purpose Room of the Commission's headquarters at 100 F Street, NE., Washington DC. The Roundtable will be open to the public with seating on a first-come, first-served basis. Doors will open at 12:30 p.m. Visitors will be subject to security checks.

The Roundtable will consist of a series of three panels. Panelists will consider a range of microcap securities topics, such as the current issues facing small cap issuers in the clearance and settlement process, potential regulatory changes impacting the Over-The-Counter markets, and Anti-Money laundering concerns specific to microcap issuers.

For further information, please contact the Office of the Secretary at (202) 551–5400.

October 7, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26513 Filed 10–7–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, October 12, 2011 at 10 a.m., in the Auditorium, Room L–002.

The subject matters of the Open Meeting will be:

Item 1: The Commission will consider whether to propose a new rule under Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, that would generally prohibit any banking entity from engaging in proprietary trading or from acquiring or retaining an ownership interest in, sponsoring, or having certain relationships with a hedge fund or private equity fund subject to certain exemptions.

Item 2: The Commission will consider whether to propose new rules under Section 764(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act to provide for the registration of security-based swap dealers and major security-based swap participants.

Commissioner Walter, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: October 6, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26435 Filed 10–7–11; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, October 13, 2011 at 3:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, October 13, 2011 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Adjudicatory matters; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

October 6, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26386 Filed 10–7–11; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65488; File No. SR–NASDAQ–2011–132]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Fee Pilot Program for NASDAQ Last Sale

October 5, 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, The NASDAQ Stock Market LLC (''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing to extend for three months the fee pilot pursuant to which NASDAQ distributes the NASDAQ Last Sale (''NLS'') market data products. NLS allows data distributors to have access to real-time market data for a capped fee, enabling those distributors to provide free access to the data to millions of individual investors via the internet and television. Specifically, NASDAQ offers the ''NASDAQ Last Sale for NASDAQ'' and ''NASDAQ Last Sale for NYSE/Amex'' data feeds containing last sale activity in US equities within the NASDAQ Market Center and reported to the jointly-operated FINRA/NASDAQ Trade Reporting Facility (''FINRA/NASDAQ TRF''), which is jointly operated by NASDAQ and the Financial Industry Regulatory Authority (''FINRA''). The purpose of this proposal is to extend the existing pilot program for three months, from October 1, 2011 through December 31, 2011.

This pilot program supports the aspiration of Regulation NMS to increase the availability of proprietary data by allowing market forces to determine the amount of proprietary market data information that is made available to the public and at what price. During the pilot period, the program has vastly increased the availability of NASDAQ proprietary market data to individual investors. Based upon data from NLS distributors, NASDAQ believes that since its launch in July 2008, the NLS data has been viewed by over 50,000,000 investors on Web sites operated by Google, Interactive Data, and Dow Jones, among others.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

7039. NASDAQ Last Sale Data Feeds

(a) For a three month pilot period commencing on [July] *October* 1, 2011, NASDAQ shall offer two proprietary data feeds containing real-time last sale information for trades executed on NASDAQ or reported to the NASDAQ/FINRA Trade Reporting Facility.

(1)–(2) No change.

(b)–(c) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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

Prior to the launch of NLS, public investors that wished to view market data to monitor their portfolios generally had two choices: (1) Pay for real-time market data or (2) use free data that is 15 to 20 minutes delayed. To increase consumer choice, NASDAQ proposed a pilot to offer access to real-time market data to data distributors for a capped fee, enabling those distributors to disseminate the data at no cost to millions of internet users and television viewers. NASDAQ now proposes a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

three-month extension of that pilot program, subject to the same fee structure as is applicable today.[3]

NLS consists of two separate ''Level 1'' products containing last sale activity within the NASDAQ market and reported to the jointly-operated FINRA/NASDAQ TRF. First, the ''NASDAQ Last Sale for NASDAQ'' data product is a real-time data feed that provides real-time last sale information including execution price, volume, and time for executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. Second, the ''NASDAQ Last Sale for NYSE/Amex'' data product provides real-time last sale information including execution price, volume, and time for NYSE- and NYSE Amex-securities executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. By contrast, the securities information processors (''SIPs'') that provide ''core'' data consolidate last sale information from all exchanges and trade reporting facilities (''TRFs''). Thus, NLS replicates a subset of the information provided by the SIPs.

NASDAQ established two different pricing models, one for clients that are able to maintain username/password entitlement systems and/or quote counting mechanisms to account for usage, and a second for those that are not. Firms with the ability to maintain username/password entitlement systems and/or quote counting mechanisms are eligible for a specified fee schedule for the NASDAQ Last Sale for NASDAQ Product and a separate fee schedule for the NASDAQ Last Sale for NYSE/Amex Product. Firms that are unable to maintain username/password entitlement systems and/or quote counting mechanisms also have multiple options for purchasing the NASDAQ Last Sale data. These firms choose between a ''Unique Visitor'' model for internet delivery or a ''Household'' model for television delivery. Unique Visitor and Household populations must be reported monthly and must be validated by a third-party vendor or ratings agency approved by NASDAQ at NASDAQ's sole discretion. In addition, to reflect the growing confluence between these media outlets, NASDAQ offered a reduction in fees when a single distributor distributes NASDAQ Last Sale Data Products via multiple distribution mechanisms.

Second, NASDAQ established a cap on the monthly fee, currently set at $50,000 per month for all NASDAQ Last Sale products. The fee cap enables NASDAQ to compete effectively against other exchanges that also offer last sale data for purchase or at no charge.

As with the distribution of other NASDAQ proprietary products, all distributors of the NASDAQ Last Sale for NASDAQ and/or NASDAQ Last Sale for NYSE/Amex products pay a single $1,500/month NASDAQ Last Sale Distributor Fee in addition to any applicable usage fees. The $1,500 monthly fee applies to all distributors and does not vary based on whether the distributor distributes the data internally or externally or distributes the data via both the internet and television.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data. In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers (''BDs'') increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

NASDAQ believes that its NASDAQ Last Sale market data products are precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[6]

By removing unnecessary regulatory restrictions on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to BDs at all, it follows that the price at which such data is sold should be set by the market as well.

The recent decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoaliton* v. *SEC* [sic], 615 F.3d 525 (DC Cir. 2010), upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' *NetCoaltion* [sic], at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' ''[7]

The Court in *NetCoalition,* while upholding the Commission's conclusion that competitive forces may be relied upon to establish the fairness of prices, nevertheless concluded that the record *in that case* did not adequately support the Commission's conclusions as to the competitive nature of the market for NYSEArca's data product at issue in that case. As explained below in NASDAQ's Statement on Burden on Competition, however, NASDAQ believes that there is substantial evidence of competition in the marketplace for data that was not in the record in the *NetCoalition* case, and that the Commission is entitled to rely upon such evidence in concluding that the fees established in this filing are the product of competition, and therefore in accordance with the relevant statutory standards.[8] Moreover, NASDAQ further

[3] NASDAQ previously stated that it would file a proposed rule change to make the NLS pilot fees permanent. NASDAQ has also informed Commission staff that it is consulting with FINRA to develop a proposed rule change by FINRA to allow inclusion of FINRA/NASDAQ TRF data in NLS on a permanent basis. Based on the progress of these discussions, NASDAQ expects that it and FINRA will both submit filings to make NLS permanent prior to the expiration of the three-month pilot period.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[7] *NetCoaliton* [sic], at 535.

[8] It should also be noted that Section 916 of Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'') has amended paragraph (A) of Section 19(b)(3) of the Act, 15

Continued

notes that the product at issue in this filing—a NASDAQ last sale data product that replicates a subset of the information available through ''core'' data products whose fees have been reviewed and approved by the SEC—is quite different from the NYSEArca depth-of-book data product at issue in *NetCoalition.* Accordingly, any findings of the court with respect to that product may not be relevant to the product at issue in this filing.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. NASDAQ's ability to price its Last Sale Data Products is constrained by (1) competition between exchanges and other trading platforms that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and market-specific data and free delayed consolidated data; and (3) the inherent contestability of the market for proprietary last sale data.

The market for proprietary last sale data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, the operation of the exchange is characterized by high fixed costs and low marginal costs. This cost structure is common in content and content distribution industries such as software, where developing new software typically requires a large initial investment (and continuing large investments to ''upgrade'' the software), but once the software is developed, the incremental cost of providing that software to an additional user is typically small, or even zero (*e.g.,* if the software can be downloaded over the internet after being purchase).[9] In NASDAQ's case, it is costly to build and maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing order are *the* source of the information that is distributed) and are each subject to significant scale economies. In such cases, marginal cost pricing is not feasible because if all sales were priced at the margin, NASDAQ would be unable to defray its platform costs of providing the joint products.

An exchange's BD customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A BD will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the BD chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the BD will choose not to buy it. Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two reasons. First, the product will contain less information, because executions of the BD's trading activity will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the BD is directing orders will become correspondingly more valuable.

Similarly, in the case of products such as NLS that are distributed through market data vendors, the vendors provide price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail BDs, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully. Moreover, NASDAQ believes that products such as NLS can enhance order flow to NASDAQ by providing more widespread distribution of information about transactions in real time, thereby encouraging wider participation in the market by investors with access to the internet or television. Conversely, the value of such products to distributors and investors decreases if order flow falls, because the products contain less content.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably

U.S.C. 78s(b)(3) to make it clear that all exchange fees, including fees for market data, may be filed by exchanges on an immediately effective basis. Although this change in the law does not alter the Commission's authority to evaluate and ultimately disapprove exchange rules if it concludes that they are not consistent with the Act, it unambiguously reflects a conclusion that market data fee changes do not require prior Commission review before taking effect, and that a formal proceeding with regard to a particular fee change is required only if the Commission determines that it is necessary or appropriate to suspend the fee and institute such a proceeding.

[9] *See* William J. Baumol and Daniel G. Swanson, ''*The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power,*'' *Antitrust Law Journal,* Vol. 70, No. 3 (2003).

underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. NASDAQ pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an ''excessive'' price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including thirteen SRO markets, as well as internalizing BDs and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSE Amex, NYSEArca, BATS, and Direct Edge.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple BDs' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in a core data product, an SRO proprietary product, and/or a non-SRO proprietary product, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace. Indeed, in the case of NLS, the data provided through that product appears both in (i) real-time core data products offered by the SIPs for a fee, and (ii) free SIP data products with a 15-minute time delay, and finds a close substitute in last-sale products of competing venues.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. Today, BATS and Direct Edge provide data at no charge in order to attract order flow, and use market data revenue rebates from the resulting executions to maintain low execution charges for their users. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While BDs have previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg and Thomson Reuters.

Moreover, consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated data is widely available in real-time at $1 per month for non-professional users. Second, consolidated data is also available *at no cost* with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as last sale data) that is simply a subset of the consolidated data. The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products.

The competitive nature of the market for products such as NLS is borne out by the performance of the market. In May 2008, the internet portal Yahoo! began offering its Web site viewers real-time last sale data (as well as best quote data) provided by BATS Trading. In response, in June 2008, NASDAQ launched NLS, which was initially subject to an ''enterprise cap'' of $100,000 for customers receiving only one of the NLS products, and $150,000 for customers receiving both products. The majority of NASDAQ's sales were at the capped level. In early 2009, BATS expanded its offering of free data to include depth-of-book data. Also in early 2009, NYSEArca announced the launch of a competitive last sale product

with an enterprise price of $30,000 per month. In response, NASDAQ combined the enterprise cap for the NLS products and reduced the cap to $50,000 (*i.e.,* a reduction of $100,000 per month). Although each of these products offers only a specific subset of data available from the SIPs, NASDAQ believes that the products are viewed as substitutes for each other and for core last-sale data, rather than as products that must be obtained in tandem. For example, while the internet portal Yahoo! continues to disseminate only the BATS last sale product, Google disseminates only NASDAQ's product.

In this environment, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition* at 24. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. If a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data. Similarly, increases in the cost of NLS would impair the willingness of distributors to take a product for which there are numerous alternatives, impacting NLS data revenues, the value of NLS as a tool for attracting order flow, and ultimately, the volume of orders routed to NASDAQ and the value of its other data products.

In establishing the price for the NASDAQ Last Sale Products, NASDAQ considered the competitiveness of the market for last sale data and all of the implications of that competition. NASDAQ believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish a fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to NLS, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources ensures that NASDAQ cannot set unreasonable fees, or fees that are unreasonably discriminatory, without losing business to these alternatives. Accordingly, NASDAQ believes that the acceptance of the NLS product in the marketplace demonstrates the consistency of these fees with applicable statutory standards.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Three comment letters were filed regarding the proposed rule change as originally published for comment NASDAQ responded to these comments in a letter dated December 13, 2007. Both the comment letters and NASDAQ's response are available on the SEC Web site at *http://www.sec.gov/comments/sr-nasdaq-2006–060/nasdaq2006060.shtml.* In addition, in response to prior filings to extend the NLS pilot,[10] the Securities Industry and Financial Markets Association (''SIFMA'') and NetCoalition filed comment letters contending that the SEC should suspend and institute disapproval proceedings with respect to the filing.[11] The letters incorrectly assert that the *NetCoalition* case stands for the proposition that the Commission must review cost data to substantiate a determination that competitive forces constrain the price of market data. In fact, the court held the opposite:

> The petitioners believe that the SEC's market-based approach is prohibited under the Exchange Act because the Congress intended ''fair and reasonable'' to be determined using a cost-based approach. The SEC counters that, because it has statutorily-granted flexibility in evaluating market data fees, its market-based approach is fully consistent with the Exchange Act. We agree with the SEC.[12]

SIFMA and NetCoalition further contend the prior filing lacked evidence supporting a conclusion that the market for NLS is competitive, asserting that arguments about competition for order flow and substitutability were rejected in *NetCoalition.* While the court did determine that the record before it was not sufficient to allow it to endorse those theories on the facts of that case, the court did not itself make any conclusive findings about the actual presence or absence of competition or the accuracy of these theories: rather, it simply made a finding about the state of the SEC's record. Moreover, analysis about competition in the market for depth-of-book data is only tangentially relevant to the market for last sale data. As discussed above and in the prior filing, perfect and partial substitutes for NLS exist in the form of real-time core market data, free delayed core market data, and the last sale products of competing venues, additional competitive entry is possible, and evidence of competition is readily apparent in the pricing behavior of the venues offering last sale products and the consumption patterns of their customers. Thus, although NASDAQ believes that the competitive nature of the market for all market data, including depth-of-book data, will ultimately be established, SIFMA and NetCoalition's letters not only mischaracterize the *NetCoalition* decision, they also fail to address the characteristics of the product at issue and the evidence already presented.

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)(ii) of the Act.[13] 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

[10] Securities Exchange Act Release No. 64856 (July 12, 2011), 76 FR 41845 (July 15, 2011) (SR–NASDAQ–2011–092); Securities Exchange Act Release No. 64188 (April 5, 2011), 76 FR 20054 (April 11, 2011) (SR–NASDAQ–2011–044).

[11] The most recent comment letter is captioned with a reference to SR–NASDAQ–2011–092, but then states that it is commenting on a proposal to amend fees for NASDAQ Basic, an entirely different data product.

[12] *NetCoalition,* 615 F3d. at 534. While the court noted that cost data could sometimes be relevant in determining the reasonableness of fees, it acknowledged that submission of cost data may be inappropriate where there are ''difficulties in calculating the direct costs * * * of market data,'' *Id.* at 539. That is the case here, due to the fact that the fixed costs of market data production are inseparable from the fixed costs of providing a trading platform, and the marginal costs of market data production are minimal or even zero. Because the costs of providing execution services and market data are not unique to either of the provided services, there is no meaningful way to allocate these costs among the two ''joint products''—and any attempt to do so would result in inherently arbitrary cost allocations.

The court explicitly acknowledged that the ''joint product'' theory set forth by NASDAQ's economic experts in *NetCoalition* (and also described in this filing) could explain the competitive dynamic of the market and explain why consideration of cost data would be unavailing. The court found, however, that the Commission could not rely on the theory because it was not in the Commission's record. *Id.* at 541 n.16. For the purpose of providing a complete explanation of the theory, NASDAQ is further submitting as Exhibit 3 to this filing a study that was submitted to the Commission in SR–NASDAQ–2011–10. *See* Statement of Janusz Ordover and Gustavo Bamberger at 2–17 (December 29, 2010).

[13] 15 U.S.C. 78s(b)(3)(a)(ii) [sic].

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–NASDAQ–2011–132 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–NASDAQ–2011–132. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–132 and should be submitted on or before November 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26270 Filed 10–11–11; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65489; File No. SR–CME–2011–08]

Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment To Add One Additional Series of Credit Default Index Swaps Available for Clearing

October 5, 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 26, 2011, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, and an amendment thereto on the same day,[3] which items have been prepared primarily by CME. CME filed the proposed rule change pursuant to Section 19(b)(3)(A)[4] of the Act and Rule 19b–4(f)(4)(i)[5] thereunder.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is below. Italicized text indicates additions; bracketed text indicates deletions.

* * * * *

Chicago Mercantile Exchange Inc. Rulebook

Rule 100—80203—No Change.

* * * * *

CME Chapter 802 Rules: Appendix 1

Appendix 1

CDX Indices

CDX Index	Series	Termination dat. (scheduled termination)
CDX North American Investment Grade (CDX.NA.IG)	9	20 Dec 2012. 20 Dec 2014. 20 Dec 2017.
CDX North American Investment Grade (CDX.NA.IG)	10	20 Jun 2013. 20 Jun 2015. 20 Jun 2018.
CDX North American Investment Grade (CDX.NA.IG)	11	20 Dec 2011. 20 Dec 2013. 20 Dec 2015. 20 Dec 2018.
CDX North American Investment Grade (CDX.NA.IG)	12	20 Jun 2012. 20 Jun 2014. 20 Jun 2016. 20 Jun 2019.
CDX North American Investment Grade (CDX.NA.IG)	13	20 Dec 2012. 20 Dec 2014. 20 Dec 2016.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The amendment was technical in nature.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(4)(i).

CDX Index	Series	Termination dat. (scheduled termination)
CDX North American Investment Grade (CDX.NA.IG)	14	20 Dec 2019. 20 Jun 2013. 20 Jun 2015. 20 Jun 2017. 20 Jun 2020.
CDX North American Investment Grade (CDX.NA.IG)	15	20 Dec 2013. 20 Dec 2015. 20 Dec 2017. 20 Dec 2020.
CDX North American Investment Grade (CDX.NA.IG)	16	20 Jun 2014. 20 Jun 2016. 20 Jun 2018. 20 Jun 2021.
CDX North American Investment Grade (CDX.NA.IG)	17	20 Dec 2014. 20 Dec 2016. 20 Dec 2018. 20 Dec 2021.

* * * * *

Rule 80301—End—No change

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose 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. CME 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 Purpose of, and Statutory Basis for, the Proposed Rule Change

CME offers clearing services for certain credit default swap index products. Currently, CME offers clearing of the Markit CDX North American Investment Grade Index Series 10, 11, 12, 13, 14, 15, 16 and 17. The proposed rule changes that are the subject of this filing are intended to expand CME's Markit Investment Grade Index product offering by incorporating one additional series for the existing products. More specifically, the proposed rule changes would add the Markit CDX North American Investment Grade Index Series 9 (with 5, 7 and 10 year maturities).

In addition, the filing would amend certain typographical errors in CME Chapter 802 Rules: Appendix 1. The products are currently listed as ''CDX North America Investment Grade'' and the changes would correctly list them as ''CDX North American Investment Grade''.

The proposed rule changes that are the subject of this filing will become immediately effective.[6] CME notes that it has also certified the proposed rule changes that are the subject of this filing to its primary regulator, the Commodity Futures Trading Commission (''CFTC''). The text of the CME proposed rule amendments is in Section I of this notice, with additions italicized and deletions in brackets.

The proposed CME rule amendments merely incorporate one additional series to CME's existing offering of broad-based Markit Investment Grade index credit default swaps. As such, the proposed amendments simply effect changes to an existing service of a registered clearing agency that (1) Do not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (2) do not significantly affect the respective rights or obligations of the clearing agency or persons using its clearing agency services. Therefore, the proposed rule change is therefore properly filed under Section 19(b)(3)(A) and Rule 19b–4(f)(4)(i) thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

[6] The Commission notes that the rule change became effective upon filing with the Commission.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change was filed pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(4)(i) of Rule 19b–4 and became effective on filing. At any time within sixty days of the filing of such rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

- Electronic comments may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–CME–2011–08 on the subject line.
- Paper comments should be sent 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–CME–2011–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CME. 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–CME–2011–08 and should be submitted on or before November 2, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26271 Filed 10–11–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

China-Biotics, Inc.; Order of Suspension of Trading

October 7, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China-Biotics, Inc. (''China-Biotics'') because it has been delinquent in its required periodic reports since February 2011. China-Biotics is traded on the OTC Link under the ticker symbol CHBT.PK.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT, October 7, 2011 through 11:59 p.m. EDT, on October 20, 2011.

[7] 17 CFR 200.30–3(a)(12).

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26454 Filed 10–7–11; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 7644]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Dead Sea Scrolls: Life and Faith in Biblical Times''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''The Dead Sea Scrolls: Life and Faith in Biblical Times'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Discovery Times Square, New York, NY, from on or about October 27, 2011, until on or about April 15, 2012; The Franklin Institute, Philadelphia, PA, from on or about May 12, 2012, until on or about October 7, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: October 5, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–26397 Filed 10–11–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7641]

Bureau of Educational and Cultural Affairs Request for Grant Proposals; Global Undergraduate Exchange Program in Serbia and Montenegro

NOTICE: Amendment to original Request for Grant Proposals.

SUMMARY: The United States Department of State, Bureau of Educational and Cultural Affairs, announces revisions to the original Request for Grant Proposals (RFGP) announced in the **Federal Register** on September 29, 2011 (Volume 76, Number 189):

(1) Deadline for proposals has been moved from Thursday, November 24, 2011 to Friday, November 25, 2011, due to the fact that November 24, 2011 is a Federal holiday. All other terms and conditions of the original announcement remain the same.

(2) The Agency Contact responsible for this program has been updated to reflect Michaela S. Iovine, Ph.D., Office of Academic Exchange Programs, ECA/A/E/EUR, U.S. Department of State, 2200 C Street, NW., Washington, DC 20037, (202)–632–3256, *e-mail: IovineMS@state.gov.*

SUPPLEMENTARY INFORMATION: Interested organizations should contact Michaela Iovine, U.S. Department of State, Office of Academic Exchange Programs, Europe Branch (ECA/A/E/EUR), (202) 632–3256 prior to the amended deadline of November 25, 2011.

Dated: October 3, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2011–26379 Filed 10–11–11; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environmental Impact Statement: Igor Sikorsky Memorial Airport, Stratford, Connecticut

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability.

SUMMARY: The FAA is issuing this notice to advise the public that a Record of Decision (ROD), resulting from an Environmental Impact Statement (EIS) Re-evaluation has been prepared for Sikorsky Memorial Airport in Stratford, Connecticut.

FOR FURTHER INFORMATION CONTACT: Richard Doucette, Environmental

Program Manager, Federal Aviation Administration New England, 12 New England Executive Park, Burlington, MA 01803. Telephone (781) 238–7613.

SUPPLEMENTARY INFORMATION: The FAA is making available a ROD regarding Runway Safety Areas at Sikorsky Memorial Airport in Stratford, Connecticut. The ROD documents the final Agency decisions regarding the proposed projects as described and analyzed in the EIS Re-evaluation. The ROD is available for review during normal business hours at the following locations: FAA New England Region, Airports Division, 16 New England Executive Park, Burlington, MA. Telephone (781) 238–7613 and at Sikorsky Memorial Airport, 1000 Great Meadow Road Terminal Building, Stratford, Connecticut 06497.

Issued on: September 28, 2011.

Bryon H. Rakoff,

Acting Manager, Airports Division.

[FR Doc. 2011–26267 Filed 10–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2011–44]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petitions or their final disposition.

DATES: Comments on these petitions must identify the petition docket number involved and must be received on or before November 1, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2011–1039 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tyneka L. Thomas, 202–267–7626, or Ralen Gao, 202–267–3168, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 5, 2011.

Dennis Pratte,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2011–1039.

Petitioner: PHI, Inc.

Section of 14 CFR Affected: § 91.9(a).

Description of Relief Sought:

PHI, Inc. (PHI), requests an exemption from 91.9(a) to allow PHI to operate S–92A helicopters in accordance with Performance Class 2 with limited exposure to engine failure during takeoff and landing while carrying up to 19 passengers.

[FR Doc. 2011–26329 Filed 10–11–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement, Tappan Zee Hudson River Crossing Project (Rockland and Westchester Counties, NY)

AGENCY: Federal Highway Administration (FHWA), United States Department of Transportation (USDOT).

ACTION: Notice of Intent.

SUMMARY: The FHWA, as lead agency, is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the proposed infrastructure improvements for the Tappan Zee Hudson River crossing in Rockland and Westchester Counties, New York.

The purpose of this revised NOI is to:

- Advise the public of FHWA serving lead agency;
- Provide information on the proposed project, purpose and need for the project, and alternatives to be considered;
- Invite participation in the EIS process, including comments on the scope of the EIS proposed in this notice; and
- Announce the date, times and locations of upcoming public briefings.

DATES: Public Scoping Briefings will be held from 4 p.m. to 9 p.m. on the following dates at the following locations:

- Westchester County Public Scoping Briefing: October 25, 2011; 4 p.m. to 9 p.m.; Doubletree Hotel Tarrytown, 455 South Broadway, Tarrytown, New York 10591.
- Rockland County Public Scoping Briefing: October 27, 2011; 4 p.m. to 9 p.m.; Palisades Center Adler Room, 1000 Palisades Center Drive, West Nyack, New York 10994.

Written comments on the scope of the EIS can be submitted by 5 p.m. on November 15, 2011.

ADDRESSES: Written comments on the scope of the EIS can be submitted to Michael P. Anderson, Project Director, New York State Department of Transportation, 4 Burnett Boulevard, Poughkeepsie, New York 12603

FOR FURTHER INFORMATION CONTACT: Michael P. Anderson, Project Director, New York State Department of Transportation, 4 Burnett Boulevard, Poughkeepsie, New York 12603, *Telephone:* (914) 358–0600; or Jonathan D. McDade, New York Division Administrator, Federal Highway Administration, Leo W. O'Brien Federal Building, 7th Floor, Room 719, Clinton Avenue and North Pearl Street, Albany,

New York 12207, *Telephone:* (518) 431–4127.

SUPPLEMENTARY INFORMATION: The Environmental Impact Statement (EIS) will examine alternatives to improve the transportation infrastructure of the Tappan Zee Hudson River crossing.

1. Description of the Project Area

The Tappan Zee Bridge spans the Hudson River between South Nyack, Rockland County, New York and Tarrytown, Westchester County, New York.

The bridge is 3 miles long and is part of the United States Interstate Highway System, carrying a concurrent Interstate 87 and Interstate 287 designation.

Interstate 87 is a north-south primary route of the Interstate Highway System and links New York City and Montreal via Albany. Between New York City and Albany, Interstate 87 is part of the New York State Thruway, which is owned and operated by the New York State Thruway Authority. Interstate 287 is an auxiliary route of the Interstate Highway System and is a circumferential highway around New York City, beginning at the New Jersey Turnpike (Interstate 95) in Edison, New Jersey and ending at Interstate 95 in Port Chester, New York. Interstate 287 provides access between suburban communities and connects to the region's primary routes (Interstates 78, 80, 87, and 95) of the interstate highway system.

The Tappan Zee Bridge is the only crossing of the Hudson River for the 33-mile stretch between the George Washington Bridge (Interstate 95) to its south and the Bear Mountain Bridge (U.S. Routes 6 and 202) to its north. In addition to being an important through route for interstate traffic, the Tappan Zee Bridge is an important commuter corridor as it connects the rapidly growing communities of Rockland and Orange Counties, New York with employment centers in Westchester County.

2. Purpose and Need

The purpose of the project is to maintain a vital link in the regional and national transportation network by providing an improved Hudson River crossing between Rockland and Westchester Counties, New York. The project is intended to address the need to correct substandard structural, operational, mobility, safety, and security features of the existing Tappan Zee Hudson River crossing. Of particular concern to be examined is the structural integrity of the existing Tappan Zee Bridge and its ability to efficiently and cost-effectively provide for the region's long term infrastructure needs.

When opened to traffic in 1955, the Tappan Zee Bridge carried approximately 18,000 vehicles per day. Today, the bridge carries approximately 138,000 vehicles per day. During the past 20 years, traffic volumes have grown more than 70 percent on the Tappan Zee Bridge. Volumes are highest during the morning eastbound commute and the evening westbound commute, but the bridge is prone to severe congestion during non-commuter periods as well. To meet peak demand, the bridge operates with a reversible lane (i.e., 4 lanes eastbound and 3 lanes westbound in the morning peak period and 3 lanes eastbound and 4 lanes westbound in the evening peak period).

The Tappan Zee Bridge has average accident rates that are four times greater than for the whole 570-mile New York State Thruway system. It has non-standard highway safety features with lanes that are narrow (11 feet, 8 inches), no shoulders, and a narrow, barrier median. The Tappan Zee Bridge often operates at or near capacity and has no disabled vehicle lane or emergency access lane; thus, a breakdown or accident results in substantial traffic backups and delays.

The structural integrity and design of the bridge is also a serious concern. While the bridge's current condition is safe for the public, several deficiencies need to be addressed. The bridge is located in a moderate seismic zone and was not designed to current seismic standards. As the bridge continues to age, its maintenance has increased in frequency, severity, and cost. With repairs becoming increasingly more difficult and extensive, the ongoing maintenance of the bridge will be harder to undertake without major disruption to traffic operations.

As a result of these conditions, the EIS will evaluate alternatives that address the following project goals:

- Ensure the long-term vitality of this Hudson River Crossing;
- Improve transportation operations and safety on the crossing; and
- Maximize the use of the public investment in this Hudson River Crossing.

3. Alternatives

Since 2003, FHWA has considered multiple alternatives to maintain this river crossing between Westchester and Rockland Counties. Through rigorous technical and public review processes, FHWA has carefully considered the benefits and detriments of various design options. The list of alternatives and evaluations conducted to date will be presented for consideration during scoping. The EIS will consider all reasonable alternatives that meet the project purpose and need and are considered prudent options by the project sponsors, agencies, and the public during the scoping process.

4. Probable Effects

The EIS will consider in detail the potential environmental effects of the alternatives under consideration based on the current scoping efforts. The Draft EIS (DEIS) and Final EIS (FEIS) will summarize the results of coordination with federal, state, and local agencies and the public at large; present the appropriate federal, state, and local regulations and policies; inventory and compile previous studies pertinent to the project; describe the methodology used to assess impacts; identify and describe the affected environment; analyze and document the construction-related (short-term) and operational (long-term) environmental consequences (direct, indirect, and cumulative) of the project alternatives; and identify opportunities and measures that mitigate any identified adverse impacts. The specific scope of analysis and study areas used to undertake the analysis in the EIS will be established during the public and agency scoping process.

5. Scoping

In fall 2011, two public scoping briefings will be held, one in Westchester County and one in Rockland County, to solicit public comments on the scope of the EIS. Each meeting will run from 4 p.m. to 9 p.m. and consist of an informal open house and a formal presentation. The formal presentation will take place twice during each meeting, once at 5 p.m. and again at 7 p.m. After each presentation, the public will be provided the opportunity to comment on the scope of the EIS. Those wishing to speak must register by 5:30 p.m. or 7:30 p.m., respectively. A court reporter will be on hand to transcribe the formal presentation and public comments. The public scoping briefings will be held at the following locations, dates, and times:

- Westchester County Public Scoping Briefing: October 25, 2011; 4 p.m. to 9 p.m.; Doubletree Hotel Tarrytown, 455 South Broadway, Tarrytown, New York 10591.
- Rockland County Public Scoping Briefing: October 27, 2011; 4 p.m. to 9 p.m.; Palisades Center Adler Room, 1000 Palisades Center Drive, West Nyack, New York 10994.

The meetings will be accessible to persons with disabilities. If special services, such as an interpreter or sign language services, are needed, please contact Mr. Michael P. Anderson, New York State Department of Transportation.

Written comments on the scope of the EIS can be sent to Michael P. Anderson, Project Director, New York State Department of Transportation, 4 Burnett Boulevard, Poughkeepsie, New York 12603.

Comments on the scope of the EIS can be submitted by 5 p.m. on November 15, 2011.

6. FHWA Procedures

The EIS is being prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500 to 1508) and FHWA environmental impact regulations (23 CFR Part 771) and the FHWA statewide planning/metropolitan planning regulations (23 CFR Part 450) and Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU) of 2005. This EIS will also comply with requirements of the Section 106 of the National Historic Preservation Act of 1966, as amended, Section 4(f) of the U.S. Department of Transportation Act of 1966, the 1990 Clean Air Act Amendments, the Rivers and Harbors Act of 1899, the Coastal Zone Management Act of 1972, Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority and Low-Income Populations), Executive Order 11990 (Protection of Wetlands), and other applicable federal laws, rules, and regulations.

This EIS will also satisfy environmental review requirements of the New York State Environmental Quality Review Act (SEQRA; 6 NYCRR Part 617). Consistent with 6 NYCRR Part 617.15, this NOI eliminates the need for a positive declaration under SEQRA.

Regulations implementing NEPA as well as provisions of SAFETEA–LU call for enhanced agency and public involvement in the EIS process. An invitation to all Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project will be extended. In the event that an agency or tribe is not invited and would like to participate, please contract Michael P. Anderson at the contact information listed above. A Coordination Plan will be developed summarizing how the public and agencies will be engaged in the process. The plan will be posted to the project Web site (*http://www.tzbsite.com*). The public coordination and outreach efforts will include public meetings, open houses, a project Web site, stakeholder advisory and work groups, and public hearings.

The project sponsor may identify a locally preferred alternative in the DEIS when made available for public and agency comments. Public hearings on the DEIS will be held in Rockland and Westchester Counties. On the basis of the DEIS and the public and agency comments received, the Project Sponsor will identify the locally preferred alternative in the FEIS. The FEIS will serve as the basis for federal and state environmental findings and determinations needed to conclude the environmental review process.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on October 12, 2011.

Jonathan D. McDade,

New York Division Administrator, Federal Highway Administration.

[FR Doc. 2011–26280 Filed 10–11–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No FMCSA–2011–0097]

Pilot Project on NAFTA Trucking Provisions; Commercial Driver's License Memorandum of Understanding with the Government of Mexico

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice.

SUMMARY: Since entering into a Memorandum of Understanding (MOU) with Mexico on November 21, 1991, on the equivalency of a Mexican Licencia Federal de Conductor (LF) and a commercial driver's license (CDL) issued in the United States, the U.S. motor carrier safety regulations have recognized the LF as equivalent to a CDL. As the Federal Motor Carrier Safety Administration (FMCSA) explained in its **Federal Register** notice of April 13, 2011 (the April Notice), proposing the requirements for the United States-Mexico cross border long-haul trucking pilot program, the Secretary of Transportation will accept only three areas of Mexican regulation as being equivalent to U.S. regulations. One of those areas is the reciprocal recognition of the LF and the CDL.

In the Agency's July 8, 2011, **Federal Register** notice (the July Notice), however, FMCSA recognized concerns about the on-going acceptance of the existing CDL MOU and committed to site visits at Mexican driver training, testing, and licensing locations prior to beginning the pilot program to review Mexico's on-going compliance with the terms of the current MOU. The Agency agreed to post reports of these visits on the FMCSA pilot program Web site at *http:/www.fmcsa.dot.gov/intl-programs/trucking/Trucking-Program.aspx.* The Agency also added copies of the 1991 MOU regarding CDL reciprocity to the docket for the pilot program.

This notice is provided to summarize the results of the site visits and make interested parties aware that the report has been posted on the pilot program Web site and added to the docket for this pilot program.

ADDRESSES: You may search background documents or comments to the docket for this notice, identified by docket number FMCSA–2011–0097, by visiting the:

- *eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for reviewing documents and comments. Regulations.gov is available electronically 24 hours each day, 365 days a year; or
- *DOT Docket Room:* Room W12–140 on the ground floor of the DOT Headquarters Building at 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act System of Records Notice for the DOT Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Marcelo Perez, FMCSA, North American Borders Division, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Telephone (512) 916–5440 Ext. 228; e-mail *marcelo.perez@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

In FMCSA's April Notice (76 FR 20807) proposing the requirements for the United States-Mexico cross border long-haul trucking pilot program, the Agency explained that the Secretary of Transportation will accept only three areas of Mexican regulations as being equivalent to U.S. regulations. One of these areas is the set of regulations governing the licensing requirements for the operation of commercial motor vehicles (CMVs). The United States' acceptance of a Mexican LF for CMV operations in the United States dates back to November 21, 1991, when the Federal Highway Administrator, who oversaw CMVs at the time, determined that the Mexican LF is equivalent to a CDL issued by a State in the United States, revised the Federal motor carrier safety regulations to recognize the Mexican LF, and entered into an MOU with Mexico that memorialized the equivalency findings. In its April Notice, FMCSA explained that the Agency is in the process of updating this MOU.

As part of this process, on February 17, 2011, representatives from FMCSA, the Commercial Vehicle Safety Alliance and the American Association of Motor Vehicle Administrators visited a Mexican driver license facility, medical qualification facility, and test and inspection location. During these site visits, FMCSA and its partner organizations observed Mexico to have rigorous requirements for knowledge and skills testing that are similar to those in the United States. In addition, Mexico requires that all new commercial drivers undergo training prior to testing and requires additional retraining each time the license is renewed.

In addition, in the Agency's July Notice (76 FR 40420), FMCSA recognized concerns about the on-going acceptance of the existing CDL MOU. It committed to additional site visits to Mexican driver training, testing, and licensing locations prior to beginning the pilot program to review Mexico's on-going compliance with the terms of the current MOU. The Agency agreed to post reports of these visits on the FMCSA pilot program Web site at *http://www.fmcsa.dot.gov/intl-programs/trucking/Trucking-Program.aspx.* The Agency also added the 1991 MOU regarding CDL reciprocity to the docket for the pilot program.

The MOU Testing Requirements

The MOU requires that before obtaining an LF, a driver must pass a knowledge test. The areas covered in that test must be comparable to those in 49 CFR part 383. In addition, the test must have at least 80 questions and a driver must have a minimum score of 80 percent to pass. The tests must be administered separately for each LF class. The MOU also requires that before obtaining an LF, a driver must pass a skills test that is comparable to that in 49 CFR part 383. The skills test must be given in a CMV that is representative of the LF class of license sought. Lastly, the skills test must be conducted in on-street or a combination of on/off street conditions.

During the review process, FMCSA learned that until April 21, 2010, commercial driver's license testing was conducted by both the Government of Mexico's Secretaria de Comunicaciones y Transportes (SCT) and private Mexican training centers. Since April 21, 2010, however, a driver must take his/her test at a private training center rather than directly from SCT. As a result, while some Mexican drivers have LFs based on testing from SCT, others have LFs based on testing by private training centers.

SCT Testing

FMCSA reviewed the database of questions SCT used in its tests and confirmed that it covered the required subject matter. FMCSA also confirmed the number of questions on the SCT test, that SCT imposed the required passing rate of 80 percent, that SCT conducted skills tests in representative vehicles, and that a portion of SCT skills test included a demonstration of skills on the highway. Therefore, FMCSA is confident that SCT-issued tests are in compliance with the CDL MOU.

Training Center Testing

Per SCT, there are 204 SCT-certified training schools for first issuance LFs in Mexico. Similar to the United States, some of the certified training schools are public and others are training centers run by trucking companies. Representatives from FMCSA visited nine training centers in Mexico in Nuevo Laredo, Tuiltitlan, Veracruz, Guadaljara, Tijuana (two schools), Monterrey, Tlaxcala and Mexico City. FMCSA selected these cities based on the number of international LFs issued and renewed in these locations, the number of cargo drivers trained in the cities, the number of training centers they cover, the number of LFs from the cities that are verified in the United States via the Commercial Driver's License Information System check, and their general populations. Other factors considered in selecting specific locations included the number of main trade corridors linking each location, their geographical position, and proximity to the U.S. border. The Tlaxcala training center was selected to represent training centers outside of large urban areas in Mexico.

Prior to the visits, FMCSA requested from SCT a list of drivers who were trained at the centers between July 2010 and June 2011. The drivers selected were first time LF applicants for an LF Class B international license. The list included close to 30,000 drivers. The review team randomly selected and reviewed driver files at each of the training centers and the SCT field offices to determine compliance with the requirements of the MOU. The review team visited each training center to document whether drivers trained and tested there had to pass a knowledge and skills test as prescribed in the MOU. The review team also visited the SCT Field Office corresponding to each of the training centers. The reviewers confirmed that drivers were licensed to operate the same class of vehicles on which they were trained.

Based on its review of the nine schools, FMCSA determined that while the schools were close to full compliance with the terms of the MOU, there are improvements needed in the schools' testing to ensure consistent compliance. Specifically, FMCSA discovered two schools that had passing scores below the required 80 percent threshold; one school with 71 questions on its exam; and several schools that missed one or two of the required 20 subject matter areas. The report detailing the site visits is available at the Agency's Web site for the pilot program at *http://www.fmcsa.dot.gov/intl-programs/trucking/Trucking-Program.aspx.* In addition, the report has been added to the docket for the pilot program.

FMCSA shared the results of the report with SCT. SCT has committed to sending out information to all of the testing centers, reminding them of the MOU requirements and to requiring corrective action from the testing centers visited. In addition, in six months, FMCSA will be revisiting the training centers reviewed in the report as well as additional sites to confirm compliance with the MOU.

FMCSA does not believe that the findings described above compel any modifications to the pilot program's driver qualification standards established in the MOU. To implement the program in a manner that will ensure compliance with those standards and the safety of drivers seeking to participate in the pilot program, the

Agency will approve only those drivers who were tested by SCT. If a driver's original test was conducted by a private training center rather than by SCT, the driver will be required to be retested by SCT before he/she may be approved for the pilot program. SCT has agreed to conduct such testing for the pilot program participant drivers.

Issued on: October 6, 2011.

Anne S. Ferro,

Administrator.

[FR Doc. 2011–26442 Filed 10–7–11; 11:15 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

Environmental Impact Statement, Tappan Zee Bridge/I–287 Corridor Project (Rockland and Westchester Counties, New York)

AGENCY: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), United States Department of Transportation (USDOT).

ACTION: Rescinded Notice of Intent.

SUMMARY: The FHWA and FTA are issuing this rescinded notice to advise the public that the FHWA and FTA will not be preparing an Environmental Impact Statement (EIS) for the proposed Tappan Zee Bridge/I–287 Corridor project involving approximately 30 miles of Interstate 287 between Hillburn/Suffern, Rockland County, New York and Port Chester, Westchester County, New York including the Tappan Zee Bridge over the Hudson River. The Tappan Zee Bridge/I–287 Corridor project considered alternatives for highway, bridge, and transit improvements along the 30-mile Interstate 287 corridor. A Notice of Intent (NOI) to prepare an Alternatives Analysis (AA) and EIS was published in the **Federal Register** on December 23, 2002. A Revised NOI to prepare a tiered EIS was published in the **Federal Register** on February 14, 2008.

FOR FURTHER INFORMATION CONTACT: Michael P. Anderson, Project Director, New York State Department of Transportation, 4 Burnett Boulevard, Poughkeepsie, New York 12603, *Telephone:* 518–810–9864; Jonathan McDade, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 7th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, *Telephone:* (518) 431–4127; or Anthony Carr, Region II Acting Administrator, Federal Transit Administration, One Bowling Green, Room 429, New York, New York 10004, *Telephone:* (1212) 668–2170.

SUPPLEMENTARY INFORMATION: On December 23, 2002, the FHWA and FTA, in cooperation with the New York State Thruway Authority (NYSTA) and Metro-North Commuter Railroad, a subsidiary of the Metropolitan Transportation Authority (MTA/MNR) issued an Notice of Intent (NOI) to prepare an Alternatives Analysis (AA) and Environmental Impact Statement (EIS) for the I–287 Corridor in Rockland and Westchester Counties, New York. The AA explored a number of options to rehabilitate or replace the Tappan Zee Bridge over the Hudson River and to provide new transit service between Rockland and Westchester Counties with continuing service to New York City.

In February 2008, FHWA and FTA issued a revised NOI to advise the public of lead agency roles; outline how the provisions of SAFETEA–LU 6002 would be met; update interested parties regarding the approach to prepare and EIS; provide updated information on the proposed project, purpose and need; and range of alternatives; and re-invite participation in project scoping and announce the dates and announce the dates and times for public scoping meetings. The revised NOI announced that a Tiered EIS would be prepared to assess alternatives developed and advanced for further study. The Tiered EIS would include a Tier 1 transit analysis of general alignment and mode choice while simultaneously assessing site specific impacts, cost, and mitigation measures in a Tier 2 EIS for bridge and highway elements of the project. The February 14, 2008 NOI also identified the New York State Department of Transportation (NYSDOT) as another sponsoring agency for the NEPA review and the State project manager.

Because of the current economic realities which severely limit financing capability, FHWA, NYSTA, and NYSDOT propose to terminate the Tappan Zee Bridge/I–287 Corridor Tiered EIS and advance a project that will address the needs of the Tappan Zee Hudson River crossing alone. Transit improvements will not be considered.

The new project will be as analyzed in a new EIS that considers alternatives for the Hudson River crossing between Rockland and Westchester Counties, New York. Prior completed studies will be used to inform the new EIS process and all reasonable alternatives under consideration for the project would not preclude cross-Hudson commuter rail and bus rapid transit services in the future.

FHWA and FTA will terminate efforts to secure a Tier 1 Record of Decision on the transit improvements, and would advance the corridor and transit improvements through appropriate planning and environmental studies in the future as circumstances and finances dictate. Any such future action will be progressed under a separate environmental review, in accordance with all applicable laws and regulations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 26, 2011.

Jonathan D. McDade,

New York Division Administrator, Federal Highway Administration.

Anthony Carr,

Region II Acting Administrator, Federal Transit Administration.

[FR Doc. 2011–26489 Filed 10–11–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Delays in Processing of Special Permits Applications

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, (202) 366–4535.

Key to "Reason for Delay"

1. Awaiting additional information from applicant.

2. Extensive public comment under review.

3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.

4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

N—New application.

M—Modification request.

R—Renewal Request.

P—Party To Exemption Request.

Dated: Issued in Washington, DC, on October 3, 2011.

Donald Burger,

Chief, General Approvals and Permits.

MODIFICATION TO SPECIAL PERMITS

Application No.	Applicant	Reason for delay	Estimated date of completion
14167–M	Trinityrail, Dallas, TX	4	10–31–2011
14741–M	Weatherford International, Fort Worth, TX	4	10–31–2011
8826–M	Phoenix Air Group, Inc., Cartersville, GA	4	10–31–2011
8815–M	Florex Explosives, Inc., Crystal River, FL	4	10–31–2011
12561–M	Rhodia, Inc., Cranbury, NJ	4	10–31–2011
14763–M	Weatherford International, Fort Worth, TX	4	10–31–2011
14909–M	Lake Clark Air, Inc., Port Alsworth, AK	4	10–31–2011
14860–M	Alaska Airlines, Seattle, WA	4	10–31–2011
10656–M	Conference of Radiation Control Program Directors, Inc., Frankfort, KY	4	11–30–2011
11406–M	Conference of Radiation Control Program Directors, Inc., Frankfort, KY	4	11–30–2011
12629–M	TEA Technologies, Inc., Amarillo, TX	4	11–30–2011
10898–M	Hydac Corporation, Bethlehem, PA	3	11–30–2011
11670–M	Schlumberger Oilfield UK Plc Dyce, Aberdeen Scotland, Ab	3	11–30–2011
14193–M	Honeywell International, Inc., Morristown, NJ	4	11–30–2011
13336–M	Renaissance Industries, Inc., Sharpsville Operations M–1102, Sharpsville, PA	4	10–31–2011
8723–M	Maine Drilling & Blasting, Auburn, NH	4	11–30–2011
12929–M	Matheson Tr-Gas, Inc., Basking Ridge, NJ	4	11–30–2011
14584–M	WavesinSolids LLC, State College, PA	4	11–30–2011
7765–M	Carleton Technologies, Inc., Orchard Park, NY	4	11–30–2011
13199–M	Carrier Corporation, Houston, TX	4	11–30–2011
9758–M	Coleman Company, Inc., The, Wichita, KS	4	11–30–2011
14921–M	ERA Helicopters LLC, Lake Charles, LA	4	11–30–2011
13736–M	ConocoPhillips, Anchorage, AK	4	10–31–2011
New Special Permit Applications			
14813–N	Organ Recovery Systems, Des Plaines, IL	4	10–31–2011
14872–N	Arkema, Inc., King of Prussia, PA	4	11–30–2011
14929–N	Alaska Island Air, Inc., Togiak, AK	4	11–30–2011
14951–N	Lincoln Composites, Lincoln, NE	4	10–31–2011
14972–N	Air Products and Chemicals, Allentown, PA	4	10–31–2011
15053–N	Department of Defense, Scott Air Force Base, IL	4	11–30–2011
15080–N	Alaska Airlines, Seattle, WA	1	11–30–2011
15199–N	Polskie Linie Lotnicze, LOT S.A. dba LOT Polish Airlines	4	10–31–2011
15229–N	Linde Gas North America LLC, NEW PROVIDENCE, NJ	4	11–30–2011
15233–N	ExpressJet Airlines, Inc., Houston, TX	4	11–30–2011
15243–N	Katmai Air, LLC, Anchorage, AK	4	11–30–2011
15257–N	GFS Chemicals, Columbus, OH	4	11–30–2011
15258–N	Air Products and Chemicals, Inc., Tamaqua, PA	4	11–30–2011
15263–N	Alaska Central Express, Anchorage, AK	4	11–30–2011
15274–N	Coastal Helicopters, Juneau, AK	4	11–30–2011
15317–N	The Dow Chemical Company, PHILADELPHIA, PA		
15322–N	Digital Wave Corporation, Englewood, CO	4	11–30–2011
15334–N	Floating Pipeline Company Incorporated, Halifax, Nova Scotia	4	11–30–2011
15338–N	Middle Fork Aviation, Challis, ID	4	10–31–2011
14839–N	Matheson Tr-Gas, Inc., Basking Ridge, NJ	3	11–30–2011
Party to Special Permits Application			
9623–P	Austin Star Detonator Company (ASD), Brownsville, TX	4	11–30–2011
10880–P	Austin Star Detonator Company (ASD), Brownsville, TX	4	11–30–2011
10880–P	Southwest Energy LLC, Tucson, AZ	4	11–30–2011
7887–P	WES & T LLC, Tulsa, OK	4	11–30–2011
7887–P	GEM of Rancho Cordova, LLC dba PSC Environmental Services, Cordova, CA	4	11–30–2011
8445–P	GEM of Rancho Cordova, LLC dba PSC Environmental Services, Cordova, CA	4	11–30–2011
11984–P	GEM of Rancho Cordova, LLC dba PSC Environmental Services, Cordova, CA	4	11–30–2011
13548–P	American Battery Corporation, Escondido, CA	4	11–30–2011
13548–P	Art's Electric Inc., Longview, WA	4	11–30–2011
12134–P	Riceland Foods, Inc., Stuttgart, AR	4	11–30–2011
7887–P	Cesaroni Technology Inc., Sarasota, FL	4	11–30–2011

MODIFICATION TO SPECIAL PERMITS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
10048–P	Chemical Analytics, Inc., Romulus, MI	4	11–30–2011
8723–P	Maxam US, LLC, Salt Lake City, UT	4	11–30–2011
12412–P	C.E.O. Performance Chemicals, Gulf Coast LLC DBA: ChemStation Texas, Houston, TX.	4	11–30–2011
11055–P	Stericycle Specialty Waste Solutions Inc., Blaine, MN	4	11–30–2011
8196–P	International Equipment Leasing, AVENEL, NJ	4	11–30–2011
12412–P	ChemStation of Kansas City, Grain Valley, MO	4	11–30–2011
12905–P	Gumderson, LLC, Portland, OR	4	11–30–2011
8723–P	SLT Express Way Inc., Glendale, AZ	4	11–30–2011
7616–P	Iowa Northern Railway, GREENE, IA	4	11–30–2011
7887–P	Barmes HazMat, Inc., Pacoima, CA	4	11–30–2011
10880–P	WESCO, Midvale, UT	4	11–30–2011
7887–P	PSC Industrial Outsourcing, LP dba Philip West Industrial Services, Long Beach, CA	4	11–30–2011
8445–P	PSC Industrial Outsourcing, LP dba Philip West Industrial Services, Long Beach, CA	4	11–30–2011
7887–P	21st Century Environmental Management of California, LP, Santa Clara, CA	4	12–31–2011
8445–P	Burlington Environmental, LLC, Tacoma, WA	4	11–30–2011
11984–P	Burlington Environmental, LLC, Tacoma, WA	4	11–30–2011
8445–P	Rho Chem, LLC, Inglewood, CA	4	11–30–2011
11296–P	Waste Management National Services, Inc., Oak Park, IL	4	11–30–2011
14173–P	Union Carbide Corporation, Hahnville, LA	4	11–30–2011
10457–P	Thatcher Company of Nevada, Henderson, NV	4	11–30–2011
Renewal Special Permits Applications			
12858–R	The Dow Chemical Company, Philadelphia, PA	4	11–30–2011
6691–R	Industrial Gas Distributors, (Show Cause Letter), Billings, MT	4	11–30–2011
12744–R	AFL Network Services, Inc., Duncan, SC	4	11–30–2011
10457–R	Thatcher Transportation, Inc., Salt Lake City, UT	4	11–30–2011
8445–R	Northland Environmental, LLC, Providence, RI	4	11–30–2011
8445–R	21st Century Environmental Management, LLC of RI, Providence, RI	4	11–30–2011
8757–R	Milton Roy Company, Ivyland, PA	4	11–30–2011
6805–R	Air Liquide America LP, Houston, TX	4	11–30–2011
8445–R	Chemical Pollution Control of FL, LLC, Deerfield Beach, FL	4	11–30–2011
6691–R	Linde Gas Puerto Rico Inc, NEW PROVIDENCE, NJ	4	11–30–2011
6691–R	Linde Gas North America LLC, NEW PROVIDENCE, NJ	4	11–30–2011
11984–R	21st Century Environmental Management, LLC of RI, Providence, RI	4	11–30–2011
11984–R	Northland Environmental, LLC, (Northland), Providence, RI	4	11–30–2011
11984–R	Chemical Pollution Control of FL, LLC, Deerfield Beach, FL	4	11–30–2011
12095–R	Lyondell Basell Industeries (former Grantee Lyondell Chemical), Houston, TX	4	11–30–2011
10650–R	Loveland Products, Inc., Billings, MT	4	11–30–2011
10880–R	Hilltop Energy, Inc., Mineral City, OH	4	11–30–2011
15073–R	Utility Aviation, Inc., Loveland, CO	4	11–30–2011
5022–R	U.S. Department of Defense, Scott AFB, IL	4	11–30–2011
5022–R	Aerojet Corporation, Culpeper, VA	4	11–30–2011
5022–R	ATK Launch Systems Inc., Brigham City, UT	4	11–30–2011
10458–R	Chemtrade Logistics Inc., Toronto, ON	4	11–30–2011
11432–R	Baker Hughes Oilfield Operations, Inc (DBA Baker Atlas), Houston, TX	4	11–30–2011
5022–R	ATK ABL, Rocket Center, WV	4	11–30–2011
8995–R	BASF Corporation, Florham Park, NJ	4	11–30–2011
12014–R	Trane Company, The, Charlotte, NC	4	11–30–2011
12325–R	Air Liquide America L.P., Houston, TX	4	11–30–2011
12412–R	FMC Corporation, Philadelphia, PA	4	11–30–2011
8445–R	Philip Reclamation Services, Houston, LLC Houston, TX	4	11–30–2011
8995–R	Flexible Products Company of Marietta, GA a wholly owned subsidiary of The Dow Chemical Company, Philadelphia, PA.	4	11–30–2011
10880–R	Dyno Nobel, Inc., Salt Lake City, UT	4	11–30–2011
11043–R	Republic Environmental Systems, Pa. LLC, Hatfield, PA	4	11–30–2011
11043–R	A & D Environmental Services (SC), LLC, Lexington, SC	4	11–30–2011
11373–R	A & D Environmental Services (SC), LLC, Lexington, SC	4	11–30–2011
11984–R	Allworth, LLC, Birmingham, AL	4	11–30–2011
11984–R	Republic Environmental Systems (Pennsylvania) LLC, Hatfield, PA	4	11–30–2011
13020–R	Bristol Bay Contractors, Inc., King Salmon, AK	4	11–30–2011
13192–R	A & D Environmental Services (SC), LLC, Lexington, SC	4	11–30–2011
14193–R	Honeywell International, Inc., Morristown, NJ	4	11–30–2011
7887–R	Burlington Environmental, LLC, Tacoma, WA	4	11–30–2011
8445–R	Advanced Waste Carriers, Inc., West Allis, WI	4	11–30–2011
9275–R	Tommy Bahama Group, Inc., dba TBG, Inc., Auburn, WA	4	11–30–2011
11215–R	Orbital Sciences Corporation, Mojave, CA	4	11–30–2011
14823–R	FedEx Ground Package System, Inc., Moon Township, PA	4	11–30–2011
2709–R	Aerojet Corporation, Culpeper, VA	4	11–30–2011

MODIFICATION TO SPECIAL PERMITS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
11966–R	FMC Corporation, Philadelphia, PA	4	11–30–2011
12325–R	Kraton Polymers, U.S. LLC, Belpre, OH	4	11–30–2011
8915–R	Air Liquide America Specialty Gases LLC, Plumsteadville, PA	4	11–30–2011
7887–R	PSC Recovery Systems, LLC, Dallas, TX	4	11–30–2011
8445–R	PSC Recovery Systems, LLC, Dallas, TX	4	11–30–2011
11984–R	PSC Recovery Systems, LLC, Dallas, TX	4	11–30–2011
3004–R	Air Liquide America Specialty Gases LLC, Plumsteadville, PA	4	11–30–2011
8156–R	Air Liquide America Specialty Gases LLC, Plumsteadville, PA	4	11–30–2011
6805–R	Air Liquide America Specialty Gases LLC, Plumsteadville, PA	4	11–30–2011
8723–R	Western Explosive Systems Company, DBA WESCO, Midvale, UT	4	11–30–2011
14175–R	Dressel Welding Supply, Inc., Lancaster, PA	4	11–30–2011
8156–R	Airgas, Inc., Cheyenne, WY	4	11–30–2011
14828–R	Croman Corporation, White City, OR	4	11–30–2011
6670–R	Linde Gas North America LLC, Murray Hill, NJ	4	11–30–2011
8915–R	Linde Gas North America LLC, Murray Hill, NJ	4	11–30–2011
11759–R	3M, Saint Paul, MN	4	11–30–2011
5022–R	Custom Analytical Engineering Systems, Inc., Flintstone, MD	4	11–30–2011
8445–R	Effective Environmental, Inc., Mesquite, TX	4	11–30–2011
14175–R	Dale Oxygen, Inc., Johnstown, PA	4	11–30–2011
7887–R	Philip Reclamation Services, Houston, LLC, Houston, TX	4	11–30–2011
10043–R	Texas Instruments Incorporated (“IT”), Dallas, TX	4	11–30–2011
10880–R	Austin Powder Company, Cleveland, OH	4	11–30–2011
12858–R	Union Carbide, North Seadrift, TX	4	11–30–2011
4850–R	Honeywell International, Inc., Morristown, NJ	4	11–30–2011
11227–R	Baker Hughes Oilfield Operations, Inc., dba Baker Atlas (Former Grantee: Baker Hughes), Houston, TX.	4	11–30–2011
9166–R	Hawk Leasing, Corp., Ardmore, OK	4	11–30–2011
11110–R	United Parcel Services Company, Louisville, KY	4	11–30–2011
4850–R	Halliburton Energy Services, Inc., Duncan, OK	4	11–30–2011
6691–R	nexAir, LLC, Memphis, TN	4	11–30–2011
14755–R	Tanner Industries Inc., SOUTHAMPTON, PA	4	11–30–2011
3004–R	Air Liquide America L.P., Houston, TX	4	11–30–2011
3004–R	Praxair Inc., Danbury, CT	4	11–30–2011
3004–R	Praxair Distribution, Inc., Danbury, CT	4	11–30–2011
4850–R	Department of Defense, Scott AFB, IL	4	11–30–2011
7972–R	E.I. Du Pont de Nemours & Company, WILMINGTON, DE	4	11–30–2011
8445–R	Precision Industrial Maintenance, Inc., Schenectady, NY	4	11–30–2011
12283–R	Federal Aviation Administration, Alaskan Region (FAA), Anchorage, AK	4	11–30–2011
10672–R	Burlington Packaging, Inc., Brooklyn, NY	4	11–30–2011
8445–R	Heritage Transport, LLC, Indianapolis, IN	4	11–30–2011
9623–R	Alaska Pacific Powder Company, Anchorage, AK	4	11–30–2011
14791–R	Heliqwest International Inc., Montrose, CO	4	11–30–2011
10985–R	Domtar A.W. Corp., Ashdown, AR	4	11–30–2011
11073–R	E.I. du Pont de Nemours & Company, Wilmington, DE	4	11–30–2011
8445–R	AET Environmental, Inc., DENVER, CO	4	11–30–2011
970–R	Voltaix, Inc., North Branch, NJ	4	11–30–2011
12335–R	Baker Hughes Oilfield Operations, Inc., dba Baker Atlas Division, Houston, TX	4	11–30–2011
6691–R	ABCO Welding & Industrial Supply, Inc. (Show Cause Letter), Waterford, CT	4	11–30–2011
10048–R	Maine LabPack, South Portland, ME	4	11–30–2011
7887–R	Stericycle Specialty Waste Solutions Inc., Blaine, MN	4	11–30–2011
8445–R	Stericycle Specialty Waste Solutions Inc., Blaine, MN	4	11–30–2011
7954–R	Matheson Tri Gas, Inc., Basking Ridge, NJ	4	11–30–2011
8445–R	SET Environmental, Inc., Wheeling, IL	4	11–30–2011
8445–R	Clean Harbors Environmental Services, Inc., Norwell, MA	4	11–30–2011
9623–R	Austin Powder Company, Cleveland, OH	4	11–30–2011
13161–R	Honeywell International Inc., Morristown, NJ	4	11–30–2011
4850–R	Accurate Energetic Systems, LLC, MC EWEN, TN	4	11–30–2011
11043–R	AET Environmental, Inc., DENVER, CO	4	11–30–2011
12095–R	Clean Harbors Environmental Services, Inc. Norwell, MA	4	11–30–2011
6691–R	Matheson Tr-Gas, Inc., 9 (Show Cause Letters), Basking Ridge, NJ	4	11–30–2011
7594–R	Bromine Compounds, Ltd., Beer Sheva, UT	4	11–30–2011
9623–R	Buckley Powder Company, Englewood, CO	4	11–30–2011
11348–R	BASF Corporation, Florham Park, NJ	4	11–30–2011
7887–R	Photo Waste Recycling Co., Inc., San Raafel, CA	4	11–30–2011
7887–R	Chemical Pollution Control of FL, LLC, Deerfield Beach, FL	4	11–30–2011
7887–R	Northland Environmental, LLC, Providence, RI	4	11–30–2011
12283–R	AT&T Alascom, Anchorage, AK	4	11–30–2011
7887–R	21st Century Environmental Management, LLC of RI, Providence, RI	4	11–30–2011
11296–R	Environmental Waste Services, Inc., Elbum, IL	4	11–30–2011
11296–R	Bay West, Inc., St. Paul, MN	4	11–30–2011

MODIFICATION TO SPECIAL PERMITS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
13078–R	E.I. duPont de Nemours & Co., Wilmington, DE	4	11–30–2011
8156–R	Gas Dynamics, a division of the Argus Group. Inc., Chesterfield, MI	4	11–30–2011
7887–R	Chemical Pollution Control, LLC of New York, Bay Shore, NY	4	11–30–2011
8445–R	Chemical Analytics, Inc., Romulus, MI	4	11–30–2011
6805–R	Praxair Distribution Southeast, LLC, Tequesta, FL	4	11–30–2011
6691–R	Praxair Distribution Southeast, LLC, Tequesta, FL	4	11–30–2011
12412–R	American Development Corporation, Fayetteville, TN	4	11–30–2011
970–R	BASF Corporation, Florham, NJ	4	11–30–2011
7073–R	Afton Chemical Corporation, Richmond, VA	4	11–30–2011
7073–R	Ethyl Corporation, Richmond, VA	4	11–30–2011
8445–R	University of Vermont, Burlington, VT	4	11–30–2011
12905–R	Texana Tank Car & Mfg., Ltd., Nash, TX	4	11–30–2011
7616–R	B&H Rail Corporation (BH), The, Lakeville, NY	4	11–30–2011
11984–R	American Eagle Airlines, Inc., DFW Airport, TX	4	11–30–2011
7954–R	Solvay Fluorides, LLC, Houston, TX	4	11–30–2011
7954–R	Solvay Fluor Korea Co., Ltd., Uliju-Kun, Ulsan Korea	4	11–30–2011
10880–R	Buckley Powder Company, Englewood, CO	4	11–30–2011
970–R	U.S. Department of Defense, Scott AFB, IL	4	11–30–2011
12443–R	Thatcher Company of Nevada, Henderson, NV	4	11–30–2011
8445–R	Environmental Products & Services, Inc., Syracuse, NY	4	11–30–2011
14482–R	Classic Helicopters Limited, L.C., Woods Cross, UT	4	11–30–2011
11318–R	W.R. Grace Grace-Conn, Columbia, MD	4	11–30–2011
11759–R	E.I. duPont de Neumours & Company, Inc., Wilmington, DE	4	11–30–2011
14550–R	Air Liquide Electronics Materials, F–71106 Chalon-sur-Saone Cedex	4	11–30–2011
6691–R	Praxair, Inc., Danbury, CT	4	11–30–2011
12905–R	American Railcar Leasing, St. Charles, MO	4	11–30–2011
12905–R	Union Tank Car Company, Alexandria, VA	4	11–30–2011
8445–R	Thunderbird Trucking, LLC, East Chicago, IL	4	11–30–2011
11749–R	Occidental Chemical Corporation, Dallas, TX	4	11–30–2011
12905–R	American Railcar Industries, St. Charles, MO	4	11–30–2011
12905–R	GATX Rail Corporation, Chicago, IL	4	11–30–2011
12905–R	G. E. Capital Rail Services, Chicago, IL	4	11–30–2011
12905–R	Procor Limited, Oakville, ON	4	11–30–2011
12905–R	Trinity Industries, Inc., Dallas, TX	4	11–30–2011
11406–R	Conference of Radiation Control Program Directors, Inc., Frankfort, KY	4	11–30–2011
8723–R	Nelson Brothers Mining Services, LLC, Birmingham, AL	4	11–30–2011
7891–R	Aldrich Chemical Company Inc., Milwaukee, WI	4	11–30–2011
11749–R	Union Tank Car Company, East Chicago, IN	4	11–30–2011
6293–R	Dyno Nobel, Inc., Salt Lake City, UT	4	11–30–2011
10656–R	Conference of Radiation Control Program Directors, Inc., Frankfort, KY	4	11–30–2011
7835–R	Air Products & Chemicals, Inc., Allentown, PA	4	11–30–2011
14385–R	Union Pacific Railroad Company, Omaha, NE	4	11–30–2011
11502–R	Fed/Ex Express, Memphis, TN	4	11–30–2011
8697–R	TEMSCO Helicopters, Inc., Ketchikan, AK	4	11–30–2011
7887–R	Quest Aerospace, Inc., Pagosa Springs, CO	4	11–30–2011
7835–R	Robbie D. Wood Inc., Dolomite, AL	4	11–30–2011
12283–R	Interstate Battery of Alaska, Anchorage, AK	4	11–30–2011
11502–R	UPS, Inc., Atlanta, GA	4	11–30–2011
4884–R	Airgas, Inc., Cheyenne, WY	4	11–30–2011
9157–R	Matheson Tri-Gas, Basking Ridge, NJ	4	11–30–2011
7835–R	Airgas, Inc., Cheyenne, WY	4	11–30–2011
12726–R	FedEx Express Corporation, Memphis, TN	4	11–30–2011
6971–R	Chem Service, Inc., West Chester, PA	4	11–30–2011
11660–R	Olsen Tuckpointing Company, Barrington, IL	4	11–30–2011
7835–R	Air Liquide America L.P., Houston, TX	4	11–30–2011
9778–R	Baker Atlas, Houston, TX	4	11–30–2011
11984–R	Heritage Transport, LLC, Indianapolis, IN	4	11–30–2011
10709–R	Nalco Company, Naperville, IL	4	11–30–2011
7835–R	General Air Service & Supply, Denver, CO	4	11–30–2011
14691–R	FedEx Express, Memphis, TN	4	11–30–2011
5112–R	U.S. Department of Defense, SCOTT AIR FORCE BASE, IL	4	11–30–2011
7887–R	EQ Industrial Services, Inc., Ypsilanti, MI	4	11–30–2011
2709–R	U.S. Dept. of Defense (MSDDC), Scott AFB, IL	4	11–30–2011
10709–R	Schlumberger Technologies Corporation, Sugar Land, TX	4	11–30–2011
11055–R	Disposal Consultant Services, Inc., Piscataway, NJ	4	11–30–2011
11984–R	American Airlines, Inc., Tulsa, OK	4	11–30–2011
2787–R	Raytheon Company, Andover, MA	4	11–30–2011
7887–R	Republic Environmental Systems, (Pennsylvania), LLC, Hatfield, PA	4	11–30–2011
4850–R	Owen Oil Tools LP, Godley, TX	4	11–30–2011
11043–R	A & D Environmental Services, Inc., Archdale, NC	4	11–30–2011

MODIFICATION TO SPECIAL PERMITS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
9929–R	Alliant Techsystems Inc. Propulsion & Controls (Former Grantee ATK Elkton), Elkton, MD.	4	11–30–2011
11903–R	Comptank Corporation, Bothwell, ON	4	11–30–2011
14741–R	Weatherford International, Fort Worth, TX	4	11–30–2011
4850–R	Schlumberger Technology Corporation, Sugar Land, TX	4	11–30–2011
8307–R	Sandia National Laboratories, Albuquerque, NM	4	11–30–2011
3004–R	Air Products & Chemicals, Inc., Allentown, PA	4	11–30–2011
6443–R	Marsulex Sulfides, Fort Saskatchewan, AB	4	11–30–2011
8915–R	Praxair, Inc., Danbury, CT	4	11–30–2011
9623–R	Orica USA Inc., Watkins, CO	4	11–30–2011
10045–R	FedEx Express, Memphis, TN	4	11–30–2011
11227–R	Schlumberger Well Services, a Division of Schlumberger Technology Corporation, Sugar Land, TX.	4	11–30–2011
4850–R	Ensign-Bickford Aerospace & Defense Company, Simsbury, CT	4	11–30–2011

[FR Doc. 2011–25915 Filed 10–11–11; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Senior Executive Service; Financial Management Service Performance Review Board (PRB)

AGENCY: Financial Management Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the appointment of members to the Financial Management Service (FMS) Performance Review Board (PRB).

DATES: This notice is effective on October 12, 2011.

FOR FURTHER INFORMATION CONTACT: Wanda J. Rogers, Deputy Commissioner, Financial Management Service, 401 14th Street SW., Washington, DC; (202) 874–7000.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c)(4), this notice is given of the appointment of individuals to serve as members of the FMS PRB. This Board reviews the performance appraisals of career senior executives below the Assistant Commissioner level and makes recommendations regarding ratings, bonuses, and other personnel actions. Four voting members constitute a quorum. The names and titles of the FMS PRB members are as follows:

Primary Members

Wanda J. Rogers, Deputy Commissioner.
Kristine S. Conrath, Assistant Commissioner, Federal Finance.
Jeffrey Schramek, Assistant Commissioner, Debt Management Services.
Alfred J. Kopec, Acting Assistant Commissioner, Information Resources and Business Architecture.
Sheryl R. Morrow, Assistant Commissioner, Payment Management.
David Rebich, Assistant Commissioner, Govermentwide Accounting.
Charles R. Simpson, Acting Assistant Commissioner, Management and CFO.

Dated: October 3,2011.

Wanda J. Rogers,

Deputy Commissioner, Financial Management Service.

[FR Doc. 2011–25929 Filed 10–11–11; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of Additional Individual Pursuant to Executive Order 13413

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one individual whose property and interests in property are blocked pursuant to Executive Order 13413 of October 27, 2006, ''Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of Congo.''

DATES: The designation by the Director of OFAC of the individual identified in this notice, pursuant to Executive Order 13413, is effective October 5, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave., NW. (Treasury Annex), 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.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On October 27, 2006, the President signed Executive Order 13413 (the ''Order'' or ''E.O. 13413'') pursuant to, inter alia, the International Emergency Economic Powers Act (50 U.S.C. 1701 *et. seq.*), section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c), and section 301 of title 3, United States Code. In the Order, the President found that the situation in the Democratic Republic of the Congo constitutes and unusual and extraordinary threat to the foreign policy of the United States and imposed sanctions to address that threat. The President identified seven individuals in the Annex to the Order as subject to these economic sanctions.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, of the persons listed by the President in the Annex to the Order, and those persons determined by the Secretary of the Treasury, after consultation with the Secretary of State, to meet any of the criteria set forth in subparagraphs (a)(ii)(A)—(a)(ii)(G) of Section 1.

On October 5, 2011, the Director of OFAC, after consultation with the Department of State, designated, pursuant to one or more of the criteria set forth in Section 1 of the Order, the individual listed below, whose property

and interests in property therefore are blocked pursuant to E.O. 13413.

The listing of the blocked individual appears as follows:

1. MUKULU, Jamil (a.k.a. JUNJU, Abdullah; a.k.a. KYAGULANYI, Alilabaki; a.k.a. MUHAMMAD, Hussein; a.k.a. LUUMU, Nicolas; a.k.a. ALIRABAKI, Steven; a.k.a. KYAGULANYI, David; a.k.a. TALENGELANIMIRO, Musezi; a.k.a. TUTU, Mzee; a.k.a. TALENGELANIMIRO), DOB 1965; Alt. DOB 01 Jan 1964; POB Kayunga, Uganda; Alt. POB Ntoke Village, Ntenjeru Sub County, Kayunga District, Uganda; nationality Uganda; Head of the Allied Democratic Forces; Commander, Allied Democratic Forces; (Individual) [DRCONGO]

Dated: October 5, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–26368 Filed 10–11–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Three Specially Designated Nationals 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 removing the names of three individuals from the list of Specially Designated Nationals and Blocked Persons whose property and interests in property have been 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 removal of the three individuals from the list of Specially Designated Nationals and Blocked Persons whose property and interests in property have been blocked pursuant to Executive Order 13224 is effective as of Tuesday, October 4, 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, imposing economic sanctions on persons who commit, threaten to commit, or support acts of terrorism. The President identified in the Annex to the Order various individuals and entities as subject to the economic sanctions. The Order authorizes the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and (pursuant to Executive Order 13284) the Secretary of the Department of Homeland Security, to designate additional persons or entities determined to meet certain criteria set forth in Executive Order 13224.

The Department of the Treasury's Office of Foreign Assets Control has determined that the three individuals listed below no longer meet the criteria for designation under the Order and are appropriate for removal from the list of Specially Designated Nationals and Blocked Persons.

The following individuals are removed from the list of Specially Designated Nationals and Blocked Persons:

Individuals:

1. AL-ZARQAWI, Abu Mus'Ab (a.k.a. AL-KHALAYLAH, Ahmad Fadil Nazzal; a.k.a. KHALAILAH, Ahmed Fadeel; a.k.a. KHALAYLEH, Fedel Nazzel; a.k.a. '' 'ABD AL-KARIM''; a.k.a. ''ABU AL-MU'TAZ''; a.k.a. ''AL-HABIB''; a.k.a. ''AL-MUHAJIR''; a.k.a. ''GHARIB''; a.k.a. ''MOUHANAD''; a.k.a. ''MOUHANNAD''; a.k.a. ''MUHANNAD''; a.k.a. ''RASHID''); DOB 20 Oct 1966; POB Zarqa, Jordan; citizen Jordan; National ID No. 9661031030 (Jordan); Passport Z264968 (Jordan) (individual) [SDGT]

2. MOUMOU, Mohamed (a.k.a. MUMU, Mohamed; a.k.a. '' 'ABDALLAH, Abu''; a.k.a. ''ABDERRAHMAN, Abou''; a.k.a. ''AMINA, Abu''; a.k.a. ''SHRAYDA, Abu''), Storvretsvagen 92, 7 TR. C/O Drioua, 142 31 Skogas, Sweden; Dobelnsgatan 97, 7TR C/O Lamrabet, 113 52 Stockholm, Sweden; Jungfruns Gata 413; Postal Address Box: 3027, 13603 Haninge, Sweden; London, United Kingdom; Trodheimsgatan 6, 164 32 Kista, Sweden; DOB 30 Jul 1965; alt. DOB 30 Sep 1965; POB Fez, Morocco; citizen Morocco; alt. citizen Sweden; Passport 9817619 (Sweden) expires 14 Dec 2009 (individual) [SDGT]

3. YANDARBIEV, Zelimkhan Ahmedovich Abdul Muslimovich, Derzhavina Street 281–59, Grozny, Chechen Republic, Russia; DOB 12 Sep 1952; POB Vydriba Eastern Kazakhstan; citizen Russia; Passport 43 No. 1600453 (Russia) (individual) [SDGT]

The removal of the three individuals' names from the list of Specially Designated Nationals and Blocked Persons is effective as of Tuesday, October 4, 2011. All property and interests in property of the three individuals that are in or hereafter come within the United States or the possession or control of United States persons are now unblocked.

Dated: October 4, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–26260 Filed 10–11–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0722]

Proposed Information Collection (Health Surveillance for a New Generation of U.S. Veterans); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to plan and provide better health care for Operation Iraqi Freedom and Operation Enduring Freedom veterans.

DATES: Written comments and recommendations on the proposed collection of information should be

received on or before December 12, 2011.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Cynthia Harvey Pryor, Veterans Health Administration (10P7BFP), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or *e-mail: cynthia.harvey-pryor@va.gov*. Please refer to ''2900–0722'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor (202) 461–5870 or fax (202) 273–9387.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L.104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Health Surveillance for a New Generation of U.S. Veterans Survey.

OMB Control Number: 2900–0722.

Type of Review: Extension of a currently approved collection.

Abstract: The Health Surveillance for a New Generation of U.S. Veterans survey will be used to collect data from Operation Iraqi Freedom and Operation Enduring Freedom veterans regarding their current health status and concerns, exposures of concern in the theater, health care preferences, and health behaviors and attitudes, and to gain knowledge on veterans who have not used VA health care since returning from the current conflict. The data collected will help VA to plan and provide better health care to Operation Iraqi Freedom and Operation Enduring Freedom veterans, as well as understanding the long-term consequences of military deployment.

Affected Public: Individuals or households.

Estimated Annual Burden: 24,858 hours.

Estimated Average Burden Per Respondent: 39 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 38,300.

Dated: October 6, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–26285 Filed 10–11–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0620]

Proposed Information Collection (Payment and Reimbursement for Emergency Services for Non Service-Connected Conditions in Non-VA Facilities); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a claimant's eligibility for reimbursement or payment for emergency medical treatment at a non-VA facility.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 12, 2011.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Cynthia Harvey-Pryor, Veterans Health Administration (10P7BFP), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0620'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor (202) 461–5870 or FAX (202) 273–9387.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Payment and Reimbursement for Emergency Services for Non Service-Connected Conditions in Non-VA Facilities, 38 U.S.C. 1725.

OMB Control Number: 2900–0620.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans enrolled in VA's health-care system are personally liable for emergency treatment rendered at non-VA health facilities. Veterans or their representative, and the health care provider of the emergency treatment furnished to the veteran must submit a claim in writing or complete a Health Insurance Claim Form CMS 1500 or Medical Uniform Institutional Provider Bill Form UB–04 to request payment or reimbursement for such treatment. VA uses the data collected to determine the claimant's eligibility for payment or reimbursement.

Affected Public: Business or other for-profit.

Estimated Total Annual Burden: 82,690 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 330,759.

Dated: October 6, 2011.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–26286 Filed 10–11–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0034]

Proposed Information Collection (Trainee Request for Leave) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to evaluate a trainee's request for leave from Vocational Rehabilitation and Employment Program training.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 12, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0034'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS)

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Trainee Request for Leave—Chapter 31, Title 38, U. S. C., VA Form 28–1905h.

OMB Control Number: 2900–0034.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 28–1905h to request leave from their Vocational Rehabilitation and Employment Program training. The trainer or authorized school official must verify that the absence will or will not interfere with claimant's progress in the program. Claimants will continue to receive subsistence allowance and other program services during the leave period as if he or she were attending training. Disapproval of the request may result in loss of subsistence allowance for the leave period.

Affected Public: Individuals or households.

Estimated Annual Burden: 7,500 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–26287 Filed 10–11–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0132]

Proposed Information Collection (Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a veteran's eligibility for specially adapted housing or special home adaptation grant.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 12, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0132'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant, VA Form 26–4555.

OMB Control Number: 2900–0132.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans with service-connected disability complete VA Form 26–4555 to apply for assistance in acquiring specially adapted housing or the special home adaptation grant. VA will use the data collected to determine the veteran's eligibility.

Affected Public: Individuals or households.

Estimated Annual Burden: 693 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 4,158.

Dated: October 6, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–26288 Filed 10–11–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0719]

Proposed Information Collection (Prevalence and Clinical course of Depression Among patients with Heart Failure); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to identify the patterns of depression in heart failure patients.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 12, 2011.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*; or to Cynthia Harvey Pryor, Veterans Health Administration (10P7BFP), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or *e-mail: cynthia.harvey-pryor@va.gov*. Please refer to ''2900–0719'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor (202) 461–5870 or fax (202) 273–9387.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Prevalence and Clinical Course of Depression Among Patients with Heart Failure, VA HSR&D, Nursing Research Initiative No. 05–209–3, VA Form 10–21085a–e(NR).

OMB Control Number: 2900–2900–0719.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected will be used to evaluate the prevalence of clinical depression and depressive symptoms among Veterans with heart failure during periods of hospitalization and outpatient care, and to understand the temporal relationship between clinical depression, alterations in physical functioning, and the levels of circulating biochemical markers in Veterans heart failure patients.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,362.

a. *VA Form 10–21085a(NR)*—18 hours.

b. *VA Form 10–21085b(NR)*—109 hours.

c. *VA Form 10–21085c(NR)*—872 hours.

d. *VA Form 10–21085d(NR)*—218 hours.

e. *VA Form 10–21085e(NR)*—145 hours.

Estimated Average Burden per Respondent:

a. *VA Form 10–21085a(NR)*—5 minutes.

b. *VA Form 10–21085b(NR)*—5 minutes.

c. *VA Form 10–21085c(NR)*—40 minutes.

d. VA Form 10–21085d(NR)—10 minutes.

e. *VA Form 10–21085e(NR)*—10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,014.

a. VA Form 10–21085a(NR)—218.

b. VA Form 10–21085b(NR)—1,308.

c. *VA Form 10–21085c(NR)*—1,308.

d. *VA Form 10–21085d(NR)*—1,308.

e. *VA Form 10–21085e(NR)*—872.

Dated: October 6, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–26289 Filed 10–11–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0630]

Proposed Information Collection (Regulation on Application for Fisher Houses and Other Temporary Lodging and VHA Fisher House Application); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs

ACTION: Notice

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a claimant's eligibility for temporary lodging while undergoing extensive treatment or procedures.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 12, 2011.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov;*

or to Cynthia Harvey Pryor, Veterans Health Administration (10P7BFP), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *cynthia.harvey-pryor@va.gov.* Please refer to ''2900–0630'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor (202) 461–5870 or FAX (202) 273–9387.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Regulation on Application for Fisher Houses and Other Temporary Lodging and VHA Fisher House Application, VA Forms 10–0408 and 10–0408a.

OMB Control Number: 2900–0630.

Type of Review: Extension of a currently approved collection.

Abstract: VA provides temporary lodging to veterans receiving VA medical care or Compensation and Pension examinations and to family members or other persons accompanying the veteran. Application for temporary lodging may be by letter, telephone, e-mail, facsimile or in person at the VA healthcare facility of jurisdiction. VA Forms 10–0408 and 10–0408a can be used to collect data during the application process to determine the claimant's eligibility for temporary lodging. Temporary lodging services are provided on a first come, first served basis.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 83,333 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Semi-annually.

Estimated Number of Respondents: 250,000.

Estimated Total Annual Responses: 500,000.

Dated: October 6, 2011.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–26290 Filed 10–11–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0519]

Proposed Information Collection (Locality Pay System for Nurses and Other Health Care Personnel) Activity; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine locality pay rates for nurses at VA facilities.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 12, 2011.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Cynthia Harvey Pryor, Veterans Health Administration (10P7BFP), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or *e-mail cynthia.harvey-pryor@va.gov.* Please refer to ''2900–0519'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor (202) 461–5870 or fax (202) 273–9387.

FOR FURTHER INFORMATION CONTACT: Mary Stout (202) 461–5867 or fax (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Locality Pay System for Nurses and Other Health Care Personnel, VA Form 10–0132.

OMB Control Number: 2900–0519.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–0132 is used to collect data from the Bureau of Labor Statistics or other third party industry surveys to determine locality pay system for certain health care personnel. VA medical facility Directors will use the data collected to determine the appropriate pay scale for registered nurses, nurse anesthetists, and other health care personnel.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 263 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 351.

Dated: October 6, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–26291 Filed 10–11–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

VA National Academic Affiliations Council; Notice of Establishment

As required by Section 9(a)(2) of the Federal Advisory Committee Act, the Department of Veterans Affairs hereby gives notice of the establishment of the Department of Veterans Affairs (VA) National Academic Affiliations Council. The Secretary of Veterans Affairs has determined that establishing the Council is both necessary and in the public interest.

The Council will advise the Secretary and the Under Secretary for Health on matters affecting partnerships between VA and its academic affiliates. The Council will provide a forum for discussion and will benefit both VA and the academic community.

Council members will be appointed by the Secretary and will be drawn from all sectors of the academic health professions community including deans, distinguished faculty, health care administrators and leaders of professional associations and organizations.

Any member of the public seeking additional information should contact Dr. Gloria Holland, Special Assistant for Policy and Planning, Veterans Health Administration (14), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, or e-mail at *Gloria.Holland@va.gov*; or phone at (202) 461–9584.

Dated: October 5, 2011.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2011–26196 Filed 10–11–11; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 76 Wednesday,

No. 197 October 12, 2011

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Cumberland Darter, Rush Darter, Yellowcheek Darter, Chucky Madtom, and Laurel Dace; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2011–0074; MO 92210–0–0009 B4]

RIN 1018–AX76

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Cumberland Darter, Rush Darter, Yellowcheek Darter, Chucky Madtom, and Laurel Dace

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose critical habitat for the Cumberland darter (*Etheostoma susanae*), rush darter (*Etheostoma phytophilum*), yellowcheek darter (*Etheostoma moorei*), chucky madtom (*Noturus crypticus*), and laurel dace (*Chrosomus saylori*) under the Endangered Species Act of 1973, as amended (Act). Approximately 85 river kilometers (rkm) (53 river miles (rmi)) are being proposed for designation of critical habitat for the Cumberland darter in McCreary and Whitley Counties, Kentucky, and Campbell and Scott Counties, Tennessee; 42 rkm (27 rmi) and 19 hectares (ha) (22 acres (ac)) are being proposed for designation of critical habitat for the rush darter in Etowah, Jefferson, and Winston Counties, Alabama; 157 rkm (98 rmi) are being proposed for designation of critical habitat for the yellowcheek darter in Cleburne, Searcy, Stone, and Van Buren Counties, Arkansas; 32 rkm (20 rmi) are being proposed for designation of critical habitat for the chucky madtom in Greene County, Tennessee; and 42 rkm (26 rmi) are being proposed for designation of critical habitat for the laurel dace in Bledsoe, Rhea, and Sequatchie Counties, Tennessee.

DATES: We will accept comments received or postmarked on or before December 12, 2011. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by November 28, 2011.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket no. FWS–R4–ES–2011–0074.

(2) *U.S. mail or hand-delivery:* Public Comments Processing, *Attn:* FWS–R4–ES–2011–0074; 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 the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: For information regarding the Cumberland darter, contact Lee Andrews, Field Supervisor, U.S. Fish and Wildlife Service, Kentucky Ecological Services Field Office, J.C. Watts Federal Building, 330 W. Broadway, Room 265, Frankfort, KY 40601; telephone 502–695–0468; facsimile 502–695–1024. For information regarding the rush darter, contact Stephen Ricks, Field Supervisor, U.S. Fish and Wildlife Service, Mississippi Ecological Services Field Office, 6578 Dogwood View Parkway, Suite A, Jackson, MS 39213; telephone 601–965–4900; facsimile 601–965–4340 or Bill Pearson, Field Supervisor, U.S. Fish and Wildlife Service, Alabama Ecological Services Field Office, 1208–B Main Street, Daphne, AL 36526; telephone 251–441–5181; fax 251–441–6222. For information regarding the yellowcheek darter, contact Jim Boggs, Field Supervisor, U.S. Fish and Wildlife Service, Arkansas Ecological Services Field Office, 110 South Amity Road, Suite 300, Conway, AR 72032; telephone 501–513–4470; facsimile 501–513–4480. For information regarding the chucky madtom or laurel dace, contact Mary Jennings, Field Supervisor, U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office, 446 Neal Street, Cookeville, TN 38501; telephone 931–525–4973; facsimile 931–528–7075. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and effective as possible. Therefore, we request comments or information from government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*) including whether there are threats to any of the five species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of each species' habitat;

(b) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of any of the five species, should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change, and

(d) What areas not occupied at the time of listing are essential for the conservation of any of the five species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on any of the five species or their proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(6) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(7) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we withhold personal information such as your street address, phone number, or e-mail address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office, Cookeville, Tennessee (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule. For more information on the Cumberland darter (*Etheostoma susanae*), rush darter (*Etheostoma phytophilum*), yellowcheek darter (*Etheostoma moorei*), chucky madtom (*Noturus crypticus*), and laurel dace (*Chrosomus saylori*), refer to the final listing rule published in the **Federal Register** on August 9, 2011 (76 FR 48722). See also the discussion of habitat in the Physical and Biological Features section below.

Cumberland Darter

The Cumberland darter (*Etheostoma susanae*) is a narrowly endemic fish species, occurring in sparse, fragmented, and isolated populations in the upper Cumberland River system of Kentucky and Tennessee. The species inhabits pools or shallow runs of low to moderate gradient sections of streams with stable sand, silt, or sand-covered bedrock substrates (O'Bara 1988, pp. 10–11; O'Bara 1991, p. 10; Thomas 2007, p. 4). Thomas (2007, p. 4) did not encounter the species in high-gradient sections of streams or areas dominated by cobble or boulder substrates. Thomas (2007, p. 4) reported that streams inhabited by Cumberland darters were second to fourth order, with widths ranging from 4 to 9 meters (m) (11 to 30 feet (ft)) and depths ranging from 20 to 76 centimeters (cm) (8 to 30 inches (in)).

The Cumberland darter's current distribution is limited to 13 streams in McCreary and Whitley Counties, Kentucky, and Campbell and Scott Counties, Tennessee (Thomas 2007, pp. 11–12). Occurrences from these streams are thought to form six population clusters (Bunches Creek, Indian Creek, Marsh Creek, Jellico Creek, Wolf Creek, and Youngs Creek), which are geographically separated from one another by an average distance of 30.5 stream km (19 stream mi) (O'Bara 1988, p. 12; O'Bara 1991, p. 10; Thomas 2007, p. 3).

The primary threat to the Cumberland darter is physical habitat destruction or modification resulting from a variety of human-induced impacts such as siltation, disturbance of riparian corridors, and changes in channel morphology (Waters 1995, pp. 2–3; Skelton 1997, pp. 17, 19; Thomas 2007, p. 5). The most significant of these impacts is siltation (excess sediments suspended or deposited in a stream) caused by excessive releases of sediment from activities such as resource extraction (*e.g.,* coal mining, silviculture, natural gas development), agriculture, road construction, and urban development (Waters 1995, pp. 2–3; Skelton 1997, pp. 17, 19; KDOW 2006, pp. 178–185; Thomas 2007, p. 5).

Rush Darter

The rush darter (*Etheostoma phytophilum*) is a narrowly endemic, rare, and difficult to collect fish species in north-central Alabama. The rush darter occurs in sparse, fragmented, and isolated populations. The species is currently known from tributaries and associated spring systems of the Turkey Creek (Jefferson County), Clear Creek (Winston County), and Little Cove Creek watersheds (Etowah County). Most of these tributaries contain sites with intact physical characteristics such as riffles, runs, pools, transition zones, and emergent vegetation. Rush darters prefer springs and spring-fed reaches of relatively low-gradient, small streams (Bart and Taylor 1999, p. 32; Johnston and Kleiner 2001, pp. 3–4; Stiles and Blanchard 2001, pp. 1–4; Bart 2002, p. 1; Fluker *et al.* 2007, p. 1; Stiles and Mills 2008, pp. 1–4). Rush darters are also found in wetland pools and in some ephemeral tributaries of the aforementioned watersheds (Stiles and Mills 2008, pp. 2–3). This species also relies heavily on aquatic vegetation (Fluker *et al.* 2007, p. 1), including both small clumps and dense stands, and root masses of emergent vegetation along stream margins. These habitats tend to be shallow, clear, and cool, with moderate current and substrates composed of a combination of sand with silt, muck, gravel, or bedrock.

The species is found in both urban and industrial zoned areas (Jefferson County) and rural settings (Winston and Etowah Counties). Within these areas, the rush darters' habitat has been degraded by alteration of stream banks and bottoms; channelization; inadequate storm water management; inappropriate placement of culverts, pipes, and bridges; road maintenance; and haphazard silvicultural and agricultural practices. The persistence of a constant flow of clean groundwater from various springs has somewhat offset the destruction of the species' habitat, water quality, and water quantity; however, the species' status still appears to be declining.

Yellowcheek Darter

The yellowcheek darter (*Etheostoma moorei*) is endemic to the Devil's, Middle, South, and Archey forks of the Little Red River in Cleburne, Searcy, Stone, and Van Buren Counties in Arkansas (Robison and Buchanan 1988, p. 429). These streams are located primarily within the Boston Mountains subdivision of the Ozark Plateau. In 1962, the construction of a dam on the Little Red River to create Greers Ferry Reservoir impounded much of the range of this species, including the lower reaches of Devil's Fork, Middle Fork, South Fork, and portions of the main stem Little Red River, thus extirpating the species from these reaches. Cold tailwater releases below the dam preclude the yellowcheek darter from inhabiting the main stem Little Red River. The yellowcheek darter inhabits high-gradient headwater tributaries with clear water; permanent flow; moderate to strong riffles; and gravel, cobble, and boulder substrates (Robison and Buchanan 1988, p. 429). Prey items consumed by yellowcheek darters include blackfly larvae, stoneflies, and mayflies.

Robison and Harp (1981, p. 5) estimated the range of the yellowcheek darter in the South Fork to extend from 2.9 km (1.8 mi) north northeast of Scotland, Arkansas, to U.S. Highway 65 in Clinton, Arkansas. The Middle Fork population was estimated to extend from just upstream of U.S. Highway 65 near Leslie, Arkansas, to 4.8 km (3.0 mi) west of Shirley, Arkansas. The Archey Fork population extended from its confluence with South Castleberry Creek to immediately downstream of U.S. Highway 65 in Clinton, Arkansas. The Devil's Fork population extended from 4.8 km (3.0 mi) north of Prim, Arkansas, to 6.1 km (3.8 mi) east southeast of Woodrow, Arkansas.

The yellowcheek darter is threatened primarily by factors associated with the present destruction, modification, or curtailment of its habitat or range. Threats include sedimentation and nutrient enrichment from impoundment, water diversion, gravel mining, channelization or channel instability, and natural gas development.

Chucky Madtom

The chucky madtom (*Noturus crypticus*) is a rare catfish found in Greene County, Tennessee. Specimens collected in Little Chucky Creek have been found in stream runs with slow to moderate current over pea gravel,

cobble, or slab-rock boulder substrates (Burr and Eisenhour 1994, p. 2). These habitats are sparse in Little Chucky Creek, and the stream affords little loose, rocky cover suitable for madtoms (Shute *et al.* 1997, p. 8). It is notable that intact riparian buffers are present in the locations where chucky madtoms have been found (Shute *et al.* 1997, p. 9).

Little is known about chucky madtom lifehistory and behavior; however, this information is available for other similar members of the *Noturus* group. Dinkins and Shute (1996, p. 50) found smoky madtoms (*N. baileyi*) underneath slab-rock boulders in swift to moderate current during May to early November. Habitat use shifted to shallow pools over the course of a 1-week period, coinciding with a drop in water temperature to 7 or 8 °C (45 to 46 °F), and persisted from early November to May. Eisenhour *et al.* (1996, p. 43) collected saddled madtoms (*N. fasciatus*) in gravel, cobble, and slab-rock boulders in riffle habitats with depths ranging from 0.1 to 0.3 m (0.3 to 1.0 ft). Based on their limited number of observations, Eisenhour *et al.* (1996, p. 43) hypothesized that saddled madtoms occupy riffles and runs in the daylight hours and then move to pools at night and during crepuscular hours (dawn and dusk) to feed.

The current range of the chucky madtom is restricted to an approximate 3-km (1.8-mi) reach of Little Chucky Creek in Greene County, Tennessee. Degradation from sedimentation, physical habitat disturbance, and contaminants threaten the habitat and water quality on which the chucky madtom depends. Sedimentation could negatively affect the chucky madtom by reducing growth rates, disease tolerance, and gill function; reducing spawning habitat, reproductive success, and egg, larval, and juvenile development; reducing food availability through reductions in prey; and reducing foraging efficiency. Contaminants associated with agriculture (*e.g.,* fertilizers, pesticides, herbicides, and animal waste) can cause degradation of water quality and habitats through instream oxygen deficiencies, excess nutrification, and excessive algal growths.

Laurel Dace

The laurel dace (*Chrosomus saylori*) is endemic to seven streams on the Walden Ridge portion of the Cumberland Plateau (Bledsoe, Rhea, and Sequatchie Counties, Tennessee), where drainages generally meander eastward before dropping abruptly down the plateau escarpment and draining into the Tennessee River. Laurel dace are known historically from seven streams in three disjunct systems: Soddy Creek; three streams that are part of the Sale Creek system (the Horn and Laurel branch tributaries to Rock Creek, and the Cupp Creek tributary to Roaring Creek); and three streams that are part of the Piney River system (Youngs, Moccasin, and Bumbee Creeks). In 1991, and in four other surveys (two in 1995, one in 1996, and one in 2004), laurel dace were not collected in Laurel Branch, leading Skelton to the conclusion that laurel dace had been extirpated from the stream (Skelton 1997, p. 13; Skelton 2001, p. 126; Skelton 2009, pers. comm.).

The current distribution of laurel dace encompasses six of seven historical streams; the species is considered extirpated from Laurel Branch (see above). In these six streams, the species is known to occupy reaches ranging in length from 0.3 to 8.0 km (0.2 to 5 mi). Laurel dace have been most often collected from pools or slow runs from undercut banks or beneath slab-rock boulders, typically in first or second order, clear, cool (maximum temperature 26 °C or 78.8 °F) streams. Substrates in laurel dace streams typically consist of a mixture of cobble, rubble, and boulders and the streams tend to have a dense riparian zone consisting largely of mountain laurel (Skelton 2001, pp. 125–126).

The primary threat to laurel dace throughout its range is excessive siltation resulting from agriculture and extensive silviculture, especially those involving inadequate riparian buffers in harvest areas and the failure to use best management practices (BMPs) during road construction. Severe degradation from sedimentation, physical habitat disturbance, and contaminants threaten the habitat and water quality on which the laurel dace depends. Sedimentation negatively affects the laurel dace by reducing growth rates, disease tolerance, and gill function; reducing spawning habitat, reproductive success, and egg, larvae, and juvenile development; reducing food availability through reductions in prey; and reducing foraging efficiency.

Previous Federal Action

The Cumberland darter, rush darter, yellowcheek darter, chucky madtom, and laurel dace were listed as endangered under the Act on August 9, 2011 (76 FR 48722). In the June 24, 2010 proposed listing rule (75 FR 36035) for the five species we determined that designation of critical habitat was prudent for all five species. However, we found that critical habitat was not determinable at the time and set forth the steps we would undertake to obtain the information necessary to develop a proposed designation of critical habitat. We were unable to include a proposal to designate critical habitat with the final listing rule of the five species (76 FR 48722) due to an internal publishing requirement that proposed and final rules be separately published in the **Federal Register**. For the full history of previous federal actions regarding these five species, please refer to the final listing rule (76 FR 48722).

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features.

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the 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 under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require

implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time it was listed must contain the physical and 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 and biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat), focusing on the principal biological or physical constituent elements (primary constituent elements) within an area that are essential to the conservation of the species (such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type). Primary constituent elements are the elements of physical and biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life history processes, are essential to the conservation of the species.

Under the Act, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species. When the best available scientific data do not demonstrate that the conservation needs of the species require such additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species. An area currently occupied by the species but that was not occupied at the time of listing may, however, be essential to the conservation of the species and may be included in the critical habitat designation.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we determine 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 articles in peer-reviewed journals, conservation plans developed by States and Counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. Climate change will be a particular challenge for biodiversity because the interaction of additional stressors associated with climate change and current stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah *et al.* 2005, p. 4). Current climate change predictions for terrestrial areas in the Northern Hemisphere indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1–3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; Intergovernmental Panel on Climate Change (IPCC) 2007, p. 1181). Climate change may lead to increased frequency and duration of severe storms and droughts (McLaughlin *et al.* 2002, p. 6074; Golladay *et al.* 2004, p. 504; Cook *et al.* 2004, p. 1015).

The information currently available on the effects of global climate change and increasing temperatures does not make sufficiently precise estimates of the location and magnitude of the effects. Nor are we currently aware of any climate change information specific to the habitat of the Cumberland darter, rush darter, yellowcheek darter, chucky madtom, or laurel dace that would indicate what areas may become important to the species in the future. Therefore, we are unable to determine what additional areas, if any, may be appropriate to include in the final critical habitat for these species to address the effects of climate change.

We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for 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 insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act 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. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical and Biological Features

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical and 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 distribution of a species.

We derive the specific physical and biological features required for the Cumberland darter, rush darter, yellowcheek darter, chucky madtom, and laurel dace from studies of these species' habitats, ecology, and life history as described below. Additional information can be found in the final listing rule published in the **Federal Register** on August 9, 2011 (76 FR 48722). To identify the physical and biological features essential to the conservation of the these species, we have relied on current conditions at locations where the species survive, the limited information available on these species and their close relatives, as well as factors associated with the decline of other fishes that occupy similar habitats in the Southeast. We have determined that these five species require the following physical and biological features:

Space for Individual and Population Growth and for Normal Behavior

Cumberland Darter

Little is known about the specific space requirements of the Cumberland darter; however, the species is typically found in low to moderate gradient, second- to fourth-order, geomorphically stable streams, where it occupies shallow pools or runs with gentle current over sand or sand-covered bedrock substrates with patches of gravel or debris (O'Bara 1991, p. 10; Thomas 2007, p. 4). Geomorphically stable streams transport sediment while maintaining their horizontal and vertical dimensions (width to depth ratio and cross-sectional area), pattern (sinuosity), and longitudinal profile (riffles, runs, and pools), thereby conserving the physical characteristics of the stream, including bottom features such as riffles, runs, and pools and the transition zones between these features. The protection and maintenance of these habitat features accommodate spawning, rearing, growth, migration, and other normal behaviors of the Cumberland darter.

Limited information exists with regard to upstream or downstream movements of Cumberland darters; however, Winn (1958a, pp. 163–164) reported considerable pre-spawn movements for its closest relative, the Johnny darter. In Beer Creek, Monroe County, Michigan, Johnny darters migrated several miles between temporary stream habitats and permanent pools in downstream reaches. Recent capture data for tagged individuals in Cogur Fork, McCreary County, Kentucky, demonstrate that Cumberland darters may make similar movements (Thomas 2010, pers. comm.). Individuals tagged and released by the Kentucky Department of Fish and Wildlife Resources (KDFWR) and Conservation Fisheries, Inc. (CFI) traveled distances ranging from 0.4 to 0.7 km (0.2 to 0.4 mi) between their release date of September 22, 2010, and their recapture date of November 9, 2010 (period of 48 days) (Thomas 2010, pers. comm.). Over longer periods, it is likely that Cumberland darters can utilize stream reaches longer than 0.7 km (0.4 mi).

The current range of the Cumberland darter has been reduced to 13 streams (15 occurrences) due to destruction and fragmentation of habitat. Fragmentation of the species' habitat has subjected these small populations to genetic isolation, reduced space for rearing and reproduction, reduced adaptive capabilities, and an increased likelihood of local extinctions (Burkhead *et al.* 1997, pp. 397–399; Hallerman 2003, pp. 363–364). Genetic variation and diversity within a species are essential for recovery, adaptation to environmental change, and long-term viability (capability to live, reproduce, and develop) (Noss and Cooperrider 1994, pp. 282–297; Harris 1984, pp. 93–107; Fluker *et al.* 2007, p. 2). The long-term viability of a species is founded on the conservation of numerous local populations throughout its geographic range (Harris 1984, pp. 93–104). Connectivity of these habitats is essential in preventing further fragmentation and isolation of Cumberland darter populations and promoting species movement and genetic flow between populations.

Therefore, based on the information above, we identify shallow pools and runs and associated stream segments of geomorphically stable, second- to fourth-order streams to be a physical or biological feature for the Cumberland darter. The connectivity of these habitats is essential in accommodating feeding, breeding, growth, and other normal behaviors of the Cumberland darter and in promoting gene flow within the species.

Rush Darter

Little is known about the specific space requirements of the rush darter in the Turkey Creek, Little Cove Creek, and Clear Creek systems (Boschung and Mayden 2004, p. 551); however, in general, darters depend on space within geomorphically stable streams with varying water quantities and flow. Specifically, rush darters appear to prefer springs and spring-fed reaches of relatively low-gradient, small streams (Bart and Taylor 1999, p. 32; Johnston and Kleiner 2001, pp. 3–4; Stiles and Blanchard 2001, pp. 1–4; Bart 2002, p. 1; Fluker *et al.* 2007, p. 1; Stiles and Mills 2008, pp. 1–4) and wetland pools (Stiles and Mills 2008, pp. 2–3). This species also relies heavily on aquatic vegetation (Fluker *et al.* 2007, p. 1) including: root masses of emergent vegetation along the margins of spring-fed streams in very shallow, clear, cool, and flowing water; and both small clumps and dense stands of bur reed (*Sparganium* sp.), coontail (*Ceratophyllum* sp.), watercress (*Nasturtium officinale*), and rush (*Juncus* sp.). The rush darter inhabits streams with substrates of silt, sand, sand and silt, muck and sand or some gravel with sand, and bedrock.

Geomorphically stable streams transport sediment while maintaining their horizontal and vertical dimensions (width to depth ratio and cross-sectional area), pattern (sinuosity), and longitudinal profile (riffles, runs, and pools), thereby conserving the physical characteristics of the stream, including bottom features such as riffles, runs, and pools and the transition zones between these features that contain some silt, sand, and finer substrates. The riffles, runs, and pools not only provide space for the rush darter, but also provide space for emergent vegetation in shallow water along the margins of the small streams and springs for cover, and shelter necessary for breeding, reproduction, and growth of offspring.

The current range of the rush darter within the entire Turkey Creek, Clear Creek, and Little Cove Creek watersheds is reduced to localized sites due to fragmentation, separation, and destruction of rush darter habitats and populations. There are dispersal barriers (pipes and culverts for road crossings; channelized stream segments; and emergent aquatic plant control, which eliminates cover habitat for the species) that may contribute to the separation and isolation of rush darter populations and affect water quality. Fragmentation

of the species' habitat has isolated populations and reduced available spaces for rearing and reproduction, thereby reducing adaptive capability and increasing the likelihood of local extinctions (Burkhead *et al.* 1997, pp. 397–399; Hallerman 2003, pp. 363–364). Genetic variation and diversity within a species are essential for recovery, adaptation to environmental changes, and long-term viability (capability to live, reproduce, and develop) (Harris 1984, pp. 93–107; Noss and Cooperrider 1994, pp. 282–297; Fluker *et al.* 2007, p. 2). Long-term viability is founded on numerous interbreeding, local populations throughout the range (Harris 1984, pp. 93–107). Continuity of water flow between suitable habitats is essential in preventing further fragmentation of the species' habitat and populations, conserving the essential emergent vegetation in shallow water on the margins of small streams and springs, and promoting genetic flow throughout the populations. Continuity of habitat will maintain spawning, foraging, and resting sites, and allow for gene flow throughout the population. Connectivity of habitats, as a whole, also permits improvement in water quality and water quantity by allowing unobstructed water flow throughout the connected habitats.

Therefore, based on the information above, we identify springs and spring-fed reaches of relatively low-gradient, geomorphically stable streams with emergent vegetation to be a physical or biological feature for the rush darter. The connectivity of these habitats is essential in accommodating feeding, breeding, growth, and other normal behaviors of the rush darter and in promoting gene flow within the species.

Yellowcheek Darter

The yellowcheek darter is typically found in clear, high-gradient, second- to fifth-order, geomorphically stable streams, maintaining permanent year-round flows (Robison and Buchanan 1988, p. 429). The species occupies riffles with moderate to fast current over gravel, cobble, and boulder substrates (Robison and Buchanan 1988, p. 429). Geomorphically stable streams transport sediment while maintaining their horizontal and vertical dimensions (width to depth ratio and cross-sectional area), pattern (sinuosity), and longitudinal profile (riffles, runs, and pools), thereby conserving the physical characteristics of the stream, including bottom features such as riffles, runs, and pools and the transition zones between these features. The protection and maintenance of these habitat features accommodate spawning, rearing, growth, migration, and other normal behaviors of the yellowcheek darter.

In 1962, the construction of Little Red River Dam to create Greers Ferry Reservoir impounded much of the range of the yellowcheek darter, including the lower reaches of Devil's Fork, Middle Fork, South Fork, and portions of the main stem Little Red River, thus extirpating the species from these reaches. The yellowcheek darter was also extirpated from the Little Red River downstream of Greers Ferry Reservoir due to cold tailwater releases. The lake flooded optimal habitat for the species, and caused genetic isolation of populations (McDaniel 1984, p. 1), with only the South and Archey forks of the Little Red River maintaining a non-inundated confluence.

As stated earlier, of the four streams supporting the yellowcheek darter, only the South and Archey forks maintain a non-inundated confluence. Instream habitat at the confluence of the two streams is suboptimal due to previous channelization, but restoration could provide an opportunity for vital population interactions between streams to maintain genetic diversity. Fragmentation of the species' habitat has subjected these small populations to genetic isolation, reduced space for rearing and reproduction, reduced adaptive capabilities, and an increased likelihood of local extinctions (Burkhead *et al.* 1997, pp. 397–399; Hallerman 2003, pp. 363–364). Genetic variation and diversity within a species are essential for recovery, adaptation to environmental change, and long-term viability (capability to live, reproduce, and develop) (Harris 1984, pp. 93–107; Noss and Cooperrider 1994, pp. 282–297; Fluker *et al.* 2007, p. 2). The long-term viability of a species is founded on the conservation of numerous local populations throughout its geographic range (Harris 1984, pp. 93–104). Connectivity of these habitats is essential to prevent further fragmentation and isolation of yellowcheek darter populations and to promote species movement and genetic flow between populations.

Therefore, based on the information above, we identify riffles of geomorphically stable, second- to fifth-order streams to be a physical or biological feature for the yellowcheek darter. The connectivity of these habitats is essential to accommodate feeding, breeding, growth, and other normal behaviors of the yellowcheek darter and to promote gene flow within the species.

Chucky Madtom

Little is known about the specific space requirements of the chucky madtom; however, all of the specimens collected in Little Chucky Creek have been found in shallow pool and run habitats with slow to moderate current over pea gravel, cobble, or slab-rock boulder substrates (Burr and Eisenhour 1994, p. 2). Geomorphically stable streams transport sediment while maintaining their horizontal and vertical dimensions (width to depth ratio and cross-sectional area), pattern (sinuosity), and longitudinal profile (riffles, runs, and pools), thereby conserving the physical characteristics of the stream, including bottom features, such as riffles, runs, and pools and the transition zones between these features. The protection and maintenance of these habitat features accommodate spawning, rearing, growth, migration, and other normal behaviors of the chucky madtom.

The current range of the chucky madtom has been reduced to only one stream due to fragmentation and destruction of habitat. Habitat fragmentation has subjected the small population to genetic isolation, reduced space for rearing and reproduction, reduced adaptive capabilities, and increased the likelihood of extinction (Burkhead *et al.* 1997, pp. 397–399; Hallerman 2003, pp. 363–364). Genetic variation and diversity within a species are essential for recovery, adaptation to environmental change, and long-term viability (capability to live, reproduce, and develop) (Harris 1984, pp. 93–107; Noss and Cooperrider 1994, pp. 282–297; Fluker *et al.* 2007, p. 2). The long-term viability of a species is founded on the conservation of numerous local populations throughout its geographic range (Harris 1984, pp. 93–104). Connecting instream habitats is essential in preserving the genetic viability of the chucky madtom in Little Chucky Creek.

Therefore, based on the information above, we identify shallow pools and runs of geomorphically stable streams to be a physical or biological feature for the chucky madtom. The connectivity of these habitats is essential to accommodate feeding, breeding, growth, and other normal behaviors of the chucky madtom and to promote gene flow within the species.

Laurel Dace

Little is known about the specific space requirements of the laurel dace; however, the species is typically found in low to moderate gradient, first- to second-order, geomorphically stable

streams. The laurel dace occupies pools or slow runs beneath undercut banks or slab-rock boulders in clear, cool (maximum temperature 26 °C (78.8 °F)) streams. Substrates in streams where laurel dace are found typically consist of a mixture of cobble, rubble, and boulders and the streams tend to have a dense riparian zone consisting largely of mountain laurel (Skelton 2001, pp. 125–126).

Geomorphically stable streams transport sediment while maintaining their horizontal and vertical dimensions (width to depth ratio and cross-sectional area), pattern (sinuosity), and longitudinal profile (riffles, runs, and pools), thereby conserving the physical characteristics of the stream, including bottom features such as riffles, runs, and pools and the transition zones between these features. The protection and maintenance of these habitat features accommodate spawning, rearing, growth, migration, and other normal behaviors of the laurel dace.

Strange and Skelton (2005, p. 8) assessed the genetic structure within populations of laurel dace and, based on distribution of genetic diversity among populations, they recognized two genetically distinct management units: (1) The southern populations in Sale and Soddy creeks, and (2) the northern population in the Piney River system.

The current range of the laurel dace has been reduced to short reaches (approximately 0.3 to 8 km (0.2 to 5 mi) in length) of six streams due to fragmentation and destruction of habitat. Fragmentation of the species' habitat has subjected these small populations to genetic isolation, reduced space for rearing and reproduction, reduced adaptive capabilities, and an increased likelihood of local extinctions (Burkhead *et al.* 1997, pp. 397–399; Hallerman 2003, pp. 363–364). Genetic variation and diversity within a species are essential for recovery, adaptation to environmental change, and long-term viability (capability to live, reproduce, and develop) (Harris 1984, pp. 93–107; Noss and Cooperrider 1994, pp. 282–297; Fluker *et al.* 2007, p. 2). The long-term viability of a species is founded on the conservation of numerous local populations throughout its geographic range (Harris 1984, pp. 93–104). Connectivity of these habitats is essential in preventing further fragmentation and isolation of laurel dace populations.

Therefore, based on the information above, we identify shallow pools and runs and associated stream segments of geomorphically stable, first- to second-order streams with riparian vegetation to be a physical or biological feature for the laurel dace. The connectivity of these habitats is essential in accommodating feeding, breeding, growth, and other normal behaviors of the laurel dace and in promoting gene flow within the species.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Cumberland Darter

Feeding habits of the Cumberland darter are unknown but are likely similar to that of its sister species, the Johnny darter (*E. nigrum* Rafinesque). Johnny darters are diurnal sight feeders, with prey items consisting of midge larvae, mayfly nymphs, caddisfly larvae, and microcrustaceans (Kuehne and Barbour 1983, p. 104; Etnier and Starnes 1993, p. 511). Similar to other darters, juvenile Cumberland darters likely feed on planktonic organisms or other small invertebrates.

Like most other darters, the Cumberland darter depends on perennial stream flows that create suitable habitat conditions needed for successful completion of its life cycle. An ample supply of flowing water provides a means of transporting nutrients and food items, moderating water temperatures and dissolved oxygen levels, removing fine sediments that could damage spawning or foraging habitats, and diluting nonpoint source pollutants. Water withdrawals do not represent a significant threat to the species, but the species is faced with occasional low-flow conditions that occur during periods of drought. One such event occurred in the summer and fall of 2007 when recorded streamflows in the upper Cumberland River basin of Kentucky and Tennessee (USGS Station Number 03404000) were among the lowest monthly values of the last 67 years (Cinotto 2008, pers. comm.).

Water quality is also important to the persistence of the Cumberland darter. The species requires relatively clean, cool, flowing water to successfully complete its life cycle, but specific water quality requirements (such as temperature, dissolved oxygen, pH, and conductivity) that define suitable habitat conditions for the Cumberland darter have not been determined. In general, optimal water quality conditions for fishes and other aquatic organisms are characterized by moderate stream temperatures, acceptable dissolved oxygen concentrations, and the lack of harmful levels of pollutants, such as inorganic contaminants like iron, manganese, selenium, and cadmium; organic contaminants such as human and animal waste products; pesticides and herbicides; nitrogen, potassium, and phosphorus fertilizers; and petroleum distillates.

Sediment is the most common pollutant within the upper Cumberland River system (KDOW 1996, pp. 50–53, 71–75; 2002, pp. 39–40; 2006, pp. 178–185), and the primary sources of sediment include resource extraction (*e.g.,* coal mining, silviculture, natural gas development), agriculture, road construction, and urban development (Waters 1995, pp. 2–3; Skelton 1997, pp. 17, 19; KDOW 2006, pp. 178–185; Thomas 2007, p. 5). Siltation (excess sediments suspended or deposited in a stream) has been shown to abrade and suffocate bottom-dwelling organisms; reduce aquatic insect diversity and abundance; impair fish feeding behavior by altering prey base and reducing visibility of prey; impair reproduction due to burial of nests; and, ultimately, negatively impact fish growth, survival, and reproduction (Waters 1995, pp. 5–7, 55–62; Knight and Welch 2001, pp. 134–136). O'Bara (1991, p. 11) reported that Cumberland darter habitats are very susceptible to siltation because of the habitat's low to moderate gradient, low velocity, and shallow depth. O'Bara (1991, p. 11) concluded that siltation was the major limiting factor for the species' continued existence and its ability to colonize new stream systems.

Cumberland darters are threatened by water quality degradation caused by a variety of nonpoint source pollutants. Coal mining represents a major source of nonpoint source pollutants (O'Bara 1991, p. 11; Thomas 2007, p. 5), because it has the potential to contribute high concentrations of dissolved metals and other solids that lower stream pH or lead to elevated levels of stream conductivity (Pond 2004, pp. 6–7, 38–41; Mattingly *et al.* 2005, p. 59). These impacts have been shown to negatively affect fish species, including listed species, in the Clear Fork system of the Cumberland basin (Weaver 1997, pp. 29; Hartowicz 2008, pers. comm.). The direct effect of elevated stream conductivity on fishes, including the Cumberland darter, is poorly understood, but some species, such as blackside dace (*Chrosomus cumberlandensis*), have shown declines in abundance over time as conductivity increased in streams affected by mining (Hartowicz 2008, pers. comm.). Other nonpoint source pollutants that affect the Cumberland darter include domestic sewage (through septic tank leakage or straight pipe discharges); agricultural pollutants such as fertilizers, pesticides, herbicides, and animal waste; and other

chemicals associated with oil and gas development. Nonpoint source pollutants can cause excess nutrification (increased levels of nitrogen and phosphorus), excessive algal growth, instream oxygen deficiencies, increased acidity and conductivity, and other changes in water chemistry that can negatively impact aquatic species (KDOW 1996, pp. 48–50; 2006, pp. 70–73).

Therefore, based on the information above, we identify aquatic macroinvertebrate prey items; permanent surface flows, as measured during average rainfall years; and adequate water quality with substrates that are relatively silt-free to be physical or biological features for the Cumberland darter. Relatively silt-free is defined for the purpose of this rule as silt or fine sand within interstitial spaces of substrates in amounts low enough to have minimal impact to the species.

Rush Darter

Feeding habits of the rush darter are unknown but are likely similar to that of its sister species, the goldstripe darter (*Etheostoma parvipinnis*). The goldstripe darter is a benthic (bottom) insectivore and is known to consume midge larvae, mayfly nymphs, blackfly larvae, beetles, and microcrustaceans (Mettee *et al.* 1996, p. 655). Variations in instream flows maintain the stream bottom substrates, providing oxygen and other attributes to various invertebrate life stages. Sedimentation has been shown to wear away and suffocate periphyton (organisms that live attached to objects underwater) and disrupt aquatic insect communities (Waters 1995, pp. 53–86; Knight and Welch 2001, pp. 132–135). In addition, nutrification promotes heavy algal growth that covers and eliminates the clean rock or gravel habitats necessary for rush darter feeding. Thus, a decrease in water quality and instream flow would correspondingly cause a decline in the major food species for the rush darter.

Much of the cool, clean water provided to the Turkey Creek system (Beaver Creek, Unnamed Tributary to Beaver Creek, Tapawingo or Penny Springs and the Highway 79 site; Jefferson County) and Cove Spring run of Little Cove Creek (Etowah County) comes from consistent and steady groundwater sources (springs and seeps). Clear, flowing water provides a means for transporting nutrients and food items, moderating water temperatures and dissolved oxygen levels, and diluting nonpoint and point source pollution. Without clean water sources, water quality and water quantity would be considerably lower and would significantly impair the normal life stages and behavior of the rush darter.

Favorable water quantity for the rush darter includes moderate water velocity in riffles and no flow or low flow in pools (Stiles and Mills 2008, pp. 1–4), a continuous daily discharge that allows for longitudinal connectivity within the species' habitat (Instream Flow Council 2004, p. 117), and discharge from both surface water runoff and groundwater sources (springs and seepages). Along with the continuous daily discharge, both minimum and flushing flows are necessary to remove fine sediments and dilute other pollutants (Moffett and Moser 1978, pp. 20–21; Gilbert *et al.,* eds. 1994, pp. 505–522; Instream Flow Council 2004, pp.103–104; Drennen 2009, pers. obs.). At some sites, water depth ranges from 3.0 to 50 cm (0.1 to 1.6 ft). Groundwater provides a constant source of flows to dilute pollutants and maintain water quality for the persistence of the rush darter.

Factors that can potentially alter water quality include: droughts and periods of low seasonal flow, precipitation events, nonpoint source runoff, human activities within the watershed, random spills, unregulated stormwater discharge events (Instream Flow Council 2004, pp. 29–50), and water extraction. Instream pooling may also affect water quality by reducing water flow, altering temperatures, concentrating pollutants (Blanco and Mayden 1999, pp. 5–6, 36), and retarding aquatic and emergent vegetation growth.

Fishes require acceptable levels of dissolved oxygen. Generally, among fishes, the young life forms require more dissolved oxygen and are the most sensitive. The amount of dissolved oxygen that is present in the water (the saturation level) depends upon water temperature. As water temperature increases, the saturated dissolved oxygen level decreases. The more oxygen there is in the water, the greater the assimilative capacity (ability to consume organic wastes with minimal impact) of that water; lower water flows have a reduced assimilative capacity (Pitt 2000, pp. 6–7). Low-flow conditions affect the chemical environment occupied by fishes; extended low-flow conditions coupled with higher pollutant levels could likely result in behavioral changes within all life stages, which could be particularly detrimental to early life stages (*e.g.,* embryo, larvae, and juvenile).

Optimal water quality lacks harmful levels of pollutants, such as inorganic contaminants like copper, arsenic, mercury, and cadmium; organic contaminants such as human and animal waste products; endocrine-disrupting chemicals; pesticides; nitrogen, potassium, and phosphorous fertilizers; and petroleum distillates (Alabama Department of Environmental Management (ADEM) 1996, pp. 13–15). Sediment is the most abundant pollutant produced in the Mobile River Basin (ADEM 1996, pp. 13–15). Siltation (excess sediments suspended or deposited in a stream) contributes to turbidity of the water and has been shown to reduce photosynthesis in aquatic plants, suffocate aquatic insects, smother fish eggs, clog fish gills, and may fill in essential interstitial spaces (spaces between stream substrates) used by aquatic organisms for spawning and foraging; therefore, excessive siltation negatively impacts fish growth, physiology, behavior, reproduction, and survival. Nutrification (excessive nutrients present, such as nitrogen and phosphorous) promotes heavy algal growth that covers and eliminates clean rock or gravel habitats and aquatic and emergent vegetation, necessary for rush darter feeding and spawning. Generally, early life stages of fishes are less tolerant of environmental contamination than adults or juveniles (Little *et al.* 1993, p. 67). Appropriate water quality and quantity are necessary to dilute impacts from stormwater and other non-natural effluents. Harmful levels of pollutants impair critical behavior processes in fishes, as reflected in population-level responses (reduced population size, biomass, year class success, *etc.*). However, excessive water quantity in the form of substantial stormwater runoff may destabilize and move bottom and bankside substrates and increase instream sedimentation.

Essential water quality attributes for darters and other fish species in fast to medium water flow streams include the following: dissolved oxygen levels greater than 6 parts per million (ppm), temperatures between 7 and 26.7 °C (45 and 80 °F) with spring egg incubation temperatures from 12.2 to 18.3 °C (54 to 65 °F), a specific conductance (ability of water to conduct an electric current, based on dissolved solids in the water) of less than approximately 225 micro Siemens per cm at 26.7 °C (80 °F), and low concentrations of free or suspended solids (organic and inorganic sediments) less than 10 Nephelometric Turbidity Units (NTU; units used to measure sediment discharge) and 15 milligrams/Liter (mg/L) Total Suspended Solids (TSS; measured as mg/L of sediment in water) (Teels *et al.* 1975, pp. 8–9;

Ultschet *et al.* 1978, pp. 99–101; Ingersoll *et al.* 1984, pp. 131–138; Kundell and Rasmussen 1995, pp. 211–212; Henley *et al.* 2000, pp. 125–139; Meyer and Sutherland 2005, pp. 43–64).

Therefore, based on the information above, we identify cool, clean, flowing water; shallow depths; moderate water velocity in riffles and low flow in pools; aquatic macroinvertebrate prey items; and adequate water quality to be physical or biological features for the rush darter.

Yellowcheek Darter

Adult and juvenile yellowcheek darters' prey items include blackfly larvae, stonefly larvae, mayfly nymphs, and caddisfly larvae among other stream insects (McDaniel 1984, p. 56). McDaniel (1984, p. 37) noted a strong selectivity by yellowcheek darters for fly larvae year round, while other prey taxa were consumed proportionally depending on seasonal availability. Larval stages of yellowcheek darters have not been studied in the field but are assumed to feed on planktonic organisms based on laboratory rearing efforts and known larval fish dietary habits.

Drought conditions and low water levels have been identified as contributing factors in the decline of the yellowcheek darter (Wine *et al.* 2000, p. 11). Expanding natural gas development activities that began in the upper Little Red River watershed in 2005 require large quantities of water and pose a threat to the continued existence of the yellowcheek darter (75 FR 36045, June 24, 2010). Water diversion from the Middle and South forks has increased in recent years due to large-scale extraction of natural gas in the Fayetteville Shale (which encompasses nearly all of the upper Little Red River drainage). Natural gas development is imminent in the Archey and Devil's forks as well and is predicted to affect numerous tributaries in all four watersheds. Because the yellowcheek darter requires permanent flows with moderate to strong current (Robison and Buchanan 1988, p. 429), seasonal fluctuations in stream flows exacerbated by water diversion for natural gas, agricultural, municipal or other land uses represent a serious threat to the species.

In addition to water quantity, water quality is also important to the persistence of the yellowcheek darter. Although the Middle Fork is designated as an Extraordinary Resource Water, it is listed as impaired along a 33.5-km (20.8-mi) reach due to fecal coliform bacteria contamination according to the Arkansas Department of Environmental Quality (ADEQ) List of Impaired Waterbodies. This same report listed a 3.2-km (2.0-mi) stretch of the South Fork as impaired due to elevated mercury levels (ADEQ 2010, p. 22). Boston Mountain streams that support the yellowcheek darter are typically characterized by adequate water quality; however, increasing activity within the watersheds related to resource extraction, urban development, and other human related activities is reason for concern regarding the recovery potential of the yellowcheek darter.

Therefore, based on the information above, we identify aquatic macroinvertebrate prey items; permanent surface flows, as measured during average rainfall years; moderate to strong water velocity in riffles; and adequate water quality to be physical or biological features for the yellowcheek darter.

Chucky Madtom

The chucky madtom's prey items are unknown; however, least madtom (*N. hildebrandi*) prey items include midge larvae, caddisfly larvae, stonefly larvae, and mayfly nymphs (Mayden and Walsh 1984, p. 339). In smoky madtoms, mayfly nymphs comprised 70.7 percent of stomach contents analyzed, followed by fly, mosquito, midge, and gnat larvae (2.4 percent); caddisfly larvae (4.4 percent); and stonefly larvae (1.0 percent) (Dinkins and Shute 1996, p. 61). Significant daytime feeding was observed in smoky madtoms.

The TVA Index of Biological Integrity results indicate that Little Chucky Creek is biologically impaired (Middle Nolichucky Watershed Alliance 2006, p. 13). Given the predominantly agricultural land use within the Little Chucky Creek watershed, nonpoint source sediment and agrochemical discharges may pose a threat to the chucky madtom by altering the physical characteristics of its habitat, thus potentially impeding its ability to feed, seek shelter from predators, and successfully reproduce. The City of Greeneville also discharges sediments and contaminants into the creek, thereby threatening the chucky madtom. Wood and Armitage (1997, pp. 211–212) identify at least five impacts of sedimentation on fish, including: (1) Reduction of growth rate, disease tolerance, and gill function; (2) reduction of spawning habitat and egg, larvae, and juvenile development; (3) modification of migration patterns; (4) reduction of food availability through the blockage of primary production; and (5) reduction of foraging efficiency.

Water quality is important to the persistence of the chucky madtom. The species requires relatively clean, cool, flowing water to successfully complete its life cycle, but specific water quality requirements (such as temperature, dissolved oxygen, pH, and conductivity) that define suitable habitat conditions for the chucky madtom have not been determined. In general, optimal water quality conditions for fishes and other aquatic organisms are characterized by moderate stream temperatures and acceptable dissolved oxygen concentrations, and they lack harmful levels of pollutants, such as inorganic contaminants like iron, manganese, selenium, and cadmium; organic contaminants such as human and animal waste products; pesticides and herbicides; nitrogen, potassium, and phosphorus fertilizers; and petroleum distillates.

As relatively sedentary animals, madtoms must tolerate the full range of such parameters that occur naturally within the streams where they persist. Both the amount of water (flow) and its physical and chemical conditions (water quality) vary widely according to seasonal precipitation events and seasonal human activities within the watershed. In general, the species survives in areas where the magnitude, frequency, duration, and seasonality of water flow is adequate to remove fine particles and sediments (silt-free) without causing degradation, and where water quality is adequate for year-round survival (for example, moderate to high levels of dissolved oxygen, low to moderate input of nutrients, and relatively unpolluted water and sediments). Relatively silt-free is defined for the purpose of this rule as silt or fine sand within interstitial spaces of substrates in amounts low enough to have minimal impact to the species.

Therefore, based on the information above, we identify aquatic macroinvertebrate prey items; cool, clean, flowing water; shallow depths; permanent surface flows, as measured during average rainfall years; and adequate water quality with substrates that are relatively silt-free to be physical or biological features for the chucky madtom.

Laurel Dace

The laurel dace's preferred prey items include fly larvae, stonefly larvae, and caddisfly larvae (Skelton 2001, p. 126). Skelton observed that the morphological feeding traits of laurel dace, including a large mouth, short digestive tract, reduced number of pharyngeal (located within the throat) teeth, and primitively shaped basioccipital bone (bone that articulates the vertebra), are consistent

with a diet consisting largely of animal material.

Strange and Skelton (2005, p. 7 and Appendix 2) identified siltation as a threat in all of the occupied Piney River tributaries (Youngs, Moccasin, and Bumbee Creeks). The Bumbee Creek type locality for the laurel dace is located within industrial forest that has been subjected to extensive clear-cutting and road construction in close proximity to the stream. Strange and Skelton (2005, p. 7) noted a heavy sediment load at this locality and commented that conditions there in 2005 had deteriorated since the site was visited by Skelton in 2002. In general, the species occupies areas that are relatively silt-free. Relatively silt-free is defined for the purpose of this rule as silt or fine sand within interstitial spaces of substrates in amounts low enough to have minimal impact to the species.

Strange and Skelton (2005, pp. 7 and 8 and Appendix 2) also commented on excessive siltation in localities they sampled on Youngs and Moccasin creeks, and observed localized removal of riparian vegetation around residences in the headwaters of each of these streams. They considered the removal of riparian vegetation problematic not only for the potential for increased siltation, but also for the potential thermal alteration of these small headwater streams. Skelton (2001, p. 125) reported that laurel dace occupy cool streams with a maximum recorded temperature of 26 °C (78.8 °F). The removal of riparian vegetation could potentially increase temperatures above the laurel dace's maximum tolerable limit.

Water quality is important to the persistence of the laurel dace. The species requires relatively clean, cool, flowing water to successfully complete its life cycle, but specific water quality requirements (such as temperature, dissolved oxygen, pH, and conductivity) that define suitable habitat conditions for the laurel dace have not been determined. In general, optimal water quality conditions for fishes and other aquatic organisms are characterized by moderate stream temperatures and acceptable dissolved oxygen concentrations, and they lack harmful levels of pollutants, such as inorganic contaminants like iron, manganese, selenium, and cadmium; organic contaminants such as human and animal waste products; pesticides and herbicides; nitrogen, potassium, and phosphorus fertilizers; and petroleum distillates.

Other factors that can potentially alter water quality and quantity are droughts and periods of low flow, nonpoint source run-off from adjacent land surfaces (for example, excessive amounts of nutrients, pesticides, and sediment), and random spills or unregulated discharge events. Run-off or discharges could be particularly harmful during drought conditions when flows are depressed and pollutants are more concentrated. Adequate water quality is essential for normal behavior, growth, and viability during all life stages of the laurel dace. Adequate water quantity and flow and good to optimal water quality are essential for normal behavior, growth, and viability during all life stages. Culverts, pipes, and bridge or road maintenance sites within the watersheds serve as dispersal barriers and have altered stream flows from natural conditions.

Other nonpoint source pollutants that affect the laurel dace include domestic sewage (through septic tank leakage or straight pipe discharges); agricultural pollutants such as fertilizers, pesticides, herbicides, and animal waste. There are no active coal mines within the range of the laurel dace; however, coal mining represents a potential threat to the species in the foreseeable future. Coal mining represents a major source of nonpoint source pollutants because it has the potential to contribute high concentrations of dissolved metals and other solids that lower stream pH or lead to elevated levels of stream conductivity (Pond 2004, pp. 6–7, 38–41; Mattingly *et al.* 2005, p. 59). The direct effect of elevated stream conductivity on fishes, including the laurel dace, is poorly understood, but some species, such as blackside dace, have shown declines in abundance over time as conductivity increased in streams affected by mining (Hartowicz 2008, pers. comm.).

Water temperature may also be a limiting factor in the distribution of this species (Skelton 1997, pp. 17, 19). Canopy cover of laurel dace streams often consists of eastern hemlock (*Tsuga canadensis*), mixed hardwoods, pines (*Pinus* sp.), and mountain laurel (*Kalmia latifolia*). The hemlock woolly adelgid (*Adelges tsugae*) is a nonnative insect that infests hemlocks, causing damage or death to trees. The woolly adelgid was recently found in Hamilton County, Tennessee, and could impact eastern hemlock in floodplains and riparian buffers along laurel dace streams in the future (Simmons 2008, pers. comm.). Riparian buffers filter sediment and nutrients from overland runoff, allow water to soak into the ground, protect stream banks and lakeshores, and provide shade for streams. Because eastern hemlock is primarily found in riparian areas, the loss of this species adjacent to laurel dace streams would be detrimental to fish habitat.

Therefore, based on the information above, we identify aquatic macroinvertebrate prey items; cool, clean, flowing water; shallow depths; permanent surface flows, as measured during average rainfall years; and adequate water quality with substrates that are relatively silt-free to be physical or biological features for the laurel dace.

Cover or Shelter

Cumberland Darter

Cumberland darters depend on specific habitats and bottom substrates for normal life processes such as spawning, rearing, resting, and foraging. As described above, the species' preferred habitats (shallow pools and runs) are dominated by sand or sand-covered bedrock with patches of gravel or debris (Thomas 2007, p. 4). Individuals were observed by O'Bara (1991, p. 10) and Thomas (2007, p. 4) in gently flowing runs or pools at depths ranging from 20 to 76 cm (average 36.2 cm) (3.9 to 30 in, average 14.3 in). Most of these habitats contain isolated boulders and large cobble that the species likely uses as cover. According to O'Bara (1991, p. 11), areas used by the Cumberland darter for cover and shelter are very susceptible to the effects of siltation, and the presence of relatively silt-free substrates is the major limiting factor for both the species' continued existence and its ability to colonize new habitats. Relatively silt-free is defined for the purpose of this rule as silt or fine sand—within interstitial spaces of substrates in amounts low enough to have minimal impact to the species.

Therefore, based on the information above, we identify stable, shallow pools and runs with relatively silt-free sand, sand-covered bedrock substrates, and isolated boulders and large cobble substrates to be a physical or biological feature for the Cumberland darter.

Rush Darter

Rush darters depend on specific stream substrates and stream margins consisting of aquatic vegetation for normal and robust life processes such as spawning, rearing, protection of young, protection of adults when threatened, foraging, and feeding. Preferred substrates are dominated by fine gravel, with lesser amounts of sand, fine silt, coarse gravel, cobble, and bedrock (Blanco and Mayden 1999, pp. 24–26; Drennen 2009, pers. obs.). In addition to these preferred substrates, rush darters generally prefer aquatic emergent

vegetation such as watercress (*Nasturtium officinale*), parrots feather (*Myriophyllum* sp.), rushes (*Juncus* spp.), and sedges (*Carex* spp.). This emergent vegetation is utilized by the rush darter, especially in the quiet water along stream margins and in ephemeral pools and tributaries (Boschung and Mayden 2004, p. 552; Stiles 2011, pers. comm.).

Excessive siltation of gravel substrates removes foraging and feeding sites for the rush darter (Sylte and Fischenich 2002, pp. 1–25), and eliminates conditions necessary for some aquatic plant species to flourish. Similarly, excessive nutrients promote dense filamentous algae growth on the substrate and within the water column (Drennen 2007, pers. obs.; Stiles 2011, pers. comm.), which may restrict rush darter habitat for foraging and spawning (Stiles 2011, pers. comm.).

Stormwater flows may result in scouring and erosion of important cover and shelter sites for the rush darter. Conversely, drought conditions render the darter populations vulnerable to higher water temperatures and restricted habitat, especially during the breeding season when they concentrate in wetland pools and shallow pools of headwater streams (Fluker *et al* 2007, p. 10).

Therefore, based on the information above, we identify quiet water along stream margins and in shallow ephemeral pools and headwater tributaries; aquatic emergent vegetation; a combination of silt, sand, and gravel substrates; and seasonal stream flows sufficient to provide connectivity and to remove excessive sediment covering the vegetation and stream bottom substrates to be a physical or biological feature for the rush darter.

Yellowcheek Darter

Summertime habitat selected by the yellowcheek darter includes high-velocity (greater than 0.4 meters per second or 1.3 feet per second) water over 8 to 128 millimeters (mm) (0.3 to 5.0 in) gravel and cobble substrate at depths of 11 to 30 cm (4.3 to 11.8 in) (Brophy and Stoeckel 2006, p. 42), which lends evidence to the suggestion by other researchers that it is a ''riffle-obligate'' species and is unlikely to occupy pool or run habitats when riffles are available. Preferred water depths for yellowcheek darters ranged between 11 and 30 cm (4.3 and 11.8 in), but yellowcheek darters have been found in shallower water, when greater depths with suitable velocities were scarce. Gravel and cobble from 8 to 128 mm (0.3 to 5.0 in) median diameter appears to be the important substrate type for yellowcheek darter (Brophy and Stoeckel 2006, p. 42). Larger boulder substrates are important during spring spawning periods (McDaniel 1984, p. 82). Siltation (excess sediments suspended or deposited in a stream) contributes to turbidity of the water and has been shown to suffocate aquatic insects, smother fish eggs, clog fish gills, and may fill in essential interstitial spaces (spaces between stream substrates) used by aquatic organisms for spawning and foraging; therefore, excessive siltation negatively impacts fish growth, physiology, behavior, reproduction, and survival. In general, the species occupies areas that are relatively silt-free. Relatively silt-free is defined for the purpose of this rule as silt or fine sand within interstitial spaces of substrates in amounts low enough to have minimal impact to the species.

Therefore, based on the information above, we identify high-quality riffle substrates that are relatively silt-free and contain a mixture of gravel, cobble, and boulder substrates to be a physical or biological feature for the yellowcheek darter.

Chucky Madtom

While nothing is known specifically about chucky madtom habitat preferences, available information for other similar members of the *Noturus* group is known. Both smoky and elegant madtoms (*N. elegans*) were found to nest under flat rocks (slab-rock boulders) at or near the head of riffles (Burr and Dimmick 1981, p. 116; Dinkins and Shute 1996, p. 56). Smoky madtoms have also been observed using shallow pools and to select rocks of larger dimension for nesting than were used for shelter during other times of year (Dinkins and Shute 1996, p. 56). Siltation (excess sediments suspended or deposited in a stream) contributes to turbidity of the water and has been shown to smother fish eggs, clog fish gills, and may fill in essential interstitial spaces (spaces between stream substrates) used by aquatic organisms for spawning and foraging; therefore, excessive siltation negatively impacts fish growth, physiology, behavior, reproduction, and survival.

Dinkins and Shute (1996, p. 50) found smoky madtoms underneath slab-rock boulders in swift to moderate current during May to early November. Habitat use shifted to shallow pools over the course of a 1-week period, coinciding with a drop in water temperature to 7 or 8 °C (45 to 46 °F), and persisted from early November to May. Eisenhour *et al.* (1996, p. 43) collected saddled madtoms in gravel, cobble, and slab-rock boulder substrates in riffle habitats with depths ranging from 0.1 to 0.3 m (0.33 to 0.98 ft). Based on their limited number of observations, Eisenhour *et al.* (1996, p. 43) hypothesized that saddled madtoms occupy riffles and runs in the daylight hours and then move to pools at night and during crepuscular hours (dawn and dusk) to feed.

Therefore, based on the information above, we identify gently flowing runs and pools with relatively silt-free flat gravel, cobble, and slab-rock boulder substrates to be a physical or biological feature for the chucky madtom.

Laurel Dace

Laurel dace have been most often collected from pools or slow runs from undercut banks or beneath slab-rock boulders, typically in first- or second-order, clear, cool (maximum recorded temperature 26 °C or 78.8 °F) streams. Substrates in streams where laurel dace are found typically consist of a mixture of cobble, rubble, and boulder and the streams tend to have a dense riparian zone consisting largely of mountain laurel (Skelton 2001, pp. 125–126). Siltation (excess sediments suspended or deposited in a stream) contributes to turbidity of the water and has been shown to smother fish eggs, clog fish gills, and may fill in essential interstitial spaces (spaces between stream substrates) used by aquatic organisms for spawning and foraging; therefore, excessive siltation negatively impacts fish growth, physiology, behavior, reproduction, and survival.

Water temperature may be a limiting factor in the distribution of this species (Skelton 1997, pp. 17, 19). Canopy cover of laurel dace streams often consists of eastern hemlock (*Tsuga canadensis*), mixed hardwoods, pines (*Pinus* spp.), and mountain laurel (*Kalmia latifolia*). Riparian buffers filter sediment and nutrients from overland runoff, allow water to soak into the ground, protect stream banks and lakeshores, and provide shade for streams. The hemlock woolly adelgid is a nonnative insect that infests hemlocks, causing damage or death to trees. The woolly adelgid was recently found in Hamilton County, Tennessee, and could impact eastern hemlock in floodplains and riparian buffers along laurel dace streams in the future (Simmons 2008, pers. comm.). Because eastern hemlock is primarily found in riparian areas, the loss of this species adjacent to laurel dace streams would be detrimental to fish habitat.

Habitat destruction and modification also stem from existing or proposed infrastructure development in association with silvicultural activities. The presence of culverts at one or more

road crossings in most of the streams inhabited by laurel dace may disrupt upstream dispersal within those systems (Chance 2008, pers. obs.). Such dispersal barriers could prevent re-establishment of laurel dace populations in reaches where they suffer localized extinctions due to natural or human-caused events.

Therefore, based on the information above, we identify stream connectivity, gently flowing runs and pools with relatively silt-free cobble and slab-rock boulder substrates with undercut banks, and canopy cover to be a physical or biological feature for the laurel dace.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Cumberland Darter

Little is known regarding the reproductive habits of the Cumberland darter. Thomas (2007, p. 4) reported the collection of male Cumberland darters in breeding condition in April and May, with water temperatures ranging from 15 to 18 °C (59 to 64 °F). Extensive searches by Thomas (2007, p. 4) produced no evidence of nests or eggs at these sites. Reproductive habits of its closest relative, the Johnny darter, have been well studied by Winn (1958a, pp. 163–183; 1958b, pp. 205–207), Speare (1965, pp. 308–314), and Bart and Page (1991, pp. 80–86). Spawning occurs from April to June, with males migrating to spawning areas prior to females and establishing territories at selected spawning sites. Males establish a nest under a submerged object (boulder or woody debris) by using fin movements to remove silt and fine debris. Females enter the nests, the spawning pair inverts, and females deposit between 40 and 200 adhesive eggs on the underside of the nest object. Males care for the nest by periodically fanning the area to remove silt. The eggs hatch in about 6 to 16 days, depending on water temperature. Hatchlings are about 5 mm (0.2 in) and reach 29 to 38 mm (1.1 to 1.5 in) at age 1. Given these specialized reproductive behaviors, it is apparent that the Cumberland darter requires second- to fourth-order streams containing gently flowing run and pool habitats with sand and bedrock substrates, boulders, woody debris, or other cover and that are relatively silt-free. It is essential to maintain the connectivity of these sites, to accommodate breeding, growth, and other normal behaviors of the Cumberland darter and to promote gene flow within the species.

Therefore, based on the information above, we identify stable, second- to fourth-order streams containing gently flowing run and pool habitats with sand and bedrock substrates, boulders, large cobble, woody debris, or other cover and that are relatively silt-free and stream connectivity to be a physical or biological feature for the Cumberland darter.

Rush Darter

Rush darters depend on bottom substrates dominated by sand, fine silt, fine gravel and some coarse gravel, and that have significant amounts of emergent aquatic vegetation (Drennen 2009, pers. obs.).

In July 2008, rush darter young-of-the-year were collected within areas of very little water in the headwaters of an unnamed tributary in Jefferson County (Kuhajda 2008, pers. comm.), and in January 2008, the same tributary was dry. In previous years, this area was a spawning and nursery site for rush darters (Kuhajda 2008, pers. comm.). During May and June, rush darters spawned at this site even though the area had been dewatered occasionally in the summer, fall, and winter (Kuhajda 2008, pers. comm.). Adults may be migrating upstream from watered areas or juveniles and adults may be moving downstream from the spring-fed wetland that constitutes the headwaters of the unnamed tributary (Kuhajda 2008, pers. comm.).

Therefore, based on the information above, we identify permanent and ephemeral shallow streams with quiet water along stream margins and in shallow ephemeral pools and headwater tributaries, along with seasonal stream flows sufficient to provide connectivity and promote the emergent aquatic vegetation necessary for spawning and rearing of young, to be a physical or biological feature for the rush darter.

Yellowcheek Darter

Yellowcheek darter spawning occurs from late May through June in the swift to moderately swift portions of riffles, often around or under the largest rocks (McDaniel 1984, p. 82), although brooding females have been found at the head of riffles in smaller gravel substrate (Wine *et al.* 2000, p. 3). During non-spawning months, there is a general movement to portions of the riffle with smaller substrate, such as gravel or cobble, and less turbulence (Robison and Harp 1981, p. 3). Weston and Johnson (2005, p. 24) observed that the yellowcheek darter moved very little during a 1-year migration study, with 19 of 22 recaptured darters found within 9 m (29.5 ft) of their original capture position after periods of several months.

A number of life-history characteristics, including courtship patterns, specific spawning behaviors, egg deposition sites, number of eggs per nest, degree of nest protection by males, and degree of territoriality are unknown at this time; however, researchers suggest that yellowcheek darters deposit eggs on the undersides of larger rubble in swift water (McDaniel 1984, p. 82). Wine and Blumenshine (2002, p. 10) noted that during laboratory spawning, yellowcheek darter females bury themselves in fine gravel or sand substrates (often behind large, fist-sized cobble) with only their heads and caudal fin exposed. A yellowcheek darter male will then position himself upstream of the buried female and fertilize her eggs. Clutch size and nest defense behavior were not observed. Given these specialized reproductive behaviors, the importance of riffle habitats that are characterized by good water quality and sufficient substrates that are relatively silt-free is apparent.

Therefore, based on the information above, we identify swift to moderately swift riffles with gravel, cobble, and boulder substrates that are characterized by good water quality and are relatively silt-free to be a physical or biological feature for the yellowcheek darter.

Chucky Madtom

Little is known regarding the reproductive habits of the chucky madtom; however, both smoky and elegant madtoms were found to nest under flat slab-rock boulders at or near the head of riffles (Burr and Dimmick 1981, p. 116; Dinkins and Shute 1996, p. 56). Shallow pools were also used by the smoky madtom. Smoky madtoms selected larger rocks for nesting than were used for shelter during other times of year (Dinkins and Shute 1996, p. 56). A single male madtom guards the nest in the cases of smoky, elegant, Ozark (*N. albater*), and least madtoms (Mayden *et al.* 1980, p. 337; Burr and Dimmick 1981, p. 116; Mayden and Walsh 1984, p. 357; Dinkins and Shute 1996, p. 56). While guarding the nest, many were found to have empty stomachs suggesting that they do not feed during nest guarding, which can last as long as 3 weeks.

Siltation (excess sediments suspended or deposited in a stream) contributes to turbidity of the water and has been shown to smother fish eggs, clog fish gills, and may fill in essential interstitial spaces (spaces between stream substrates) used by aquatic organisms for spawning and foraging; therefore, excessive siltation negatively impacts fish growth, physiology, behavior, reproduction, and survival.

Therefore, based on the information above, we identify streams containing

gently flowing run and pool habitats with flat or slab-rock boulder substrates that are relatively silt-free to be a physical or biological feature for the chucky madtom.

Laurel Dace

Little is known regarding the reproductive habits of the laurel dace. Skelton (2001, p. 126) reported having collected nuptial individuals from late March until mid-June, although Call (2004, pers. obs.) observed males in waning nuptial color during surveys on July 22, 2004. Laurel dace may be a spawning nest associate with nest-building minnow species, as has been documented in blackside dace (Starnes and Starnes 1981, p. 366). Soddy Creek is the only location in which Skelton (2001, p. 126) collected a nest-building minnow with laurel dace. The nests used by blackside dace had moderate flow and consisted of gravel substrate at depths of 20 cm (7.9 in) (Starnes and Starnes 1981, p. 366). These nests were noted to be approximately 0.7 m (2.3 ft) from undercut banks (Starnes and Starnes 1981, p. 366).

Siltation (excess sediments suspended or deposited in a stream) contributes to turbidity of the water and has been shown to smother fish eggs, clog fish gills, and may fill in essential interstitial spaces (spaces between stream substrates) used by aquatic organisms for spawning and foraging; therefore, excessive siltation negatively impacts fish growth, physiology, behavior, reproduction, and survival.

Therefore, based on the information above, we identify headwater streams containing moderately flowing run and pool habitats with gravel substrates, containing undercut banks, and that are relatively silt-free to be a physical or biological feature for the laurel dace.

Primary Constituent Elements

Under the Act and its implementing regulations, we are required to identify the physical and biological features essential to the conservation of the Cumberland darter, rush darter, yellowcheek darter, chucky madtom, and laurel dace in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the elements of physical and biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the five species' life history processes, we determine that the primary constituent elements are:

Cumberland darter

(1) Primary Constituent Element 1—Shallow pools and gently flowing runs of geomorphically stable second- to fourth-order streams with connectivity between spawning, foraging, and resting sites to promote gene flow throughout the species' range.

(2) Primary Constituent Element 2—Stable bottom substrates composed of relatively silt-free sand and sand-covered bedrock, boulders, large cobble, woody debris, or other cover.

(3) Primary Constituent Element 3—An instream flow regime (magnitude, frequency, duration, and seasonality of discharge over time) sufficient to provide permanent surface flows, as measured during years with average rainfall, and maintain benthic habitats utilized by the species.

(4) Primary Constituent Element 4—Adequate water quality characterized by moderate stream temperatures, acceptable dissolved oxygen concentrations, moderate pH, and low levels of pollutants. Adequate water quality is defined for the purpose of this rule as the quality necessary for normal behavior, growth, and viability of all life stages of the Cumberland darter.

(5) Primary Constituent Element 5—Prey base of aquatic macroinvertebrates, including midge larvae, mayfly nymphs, caddisfly larvae, and microcrustaceans.

Rush Darter

(1) Primary Constituent Element 1—Springs and spring-fed reaches of geomorphically stable, relatively low-gradient, headwater streams with appropriate habitat (bottom substrates) to maintain essential riffles, runs, and pools; emergent vegetation in shallow water and on the margins of small streams and spring runs; cool, clean, flowing water; and connectivity between spawning, foraging, and resting sites to promote gene flow throughout the species' range.

(2) Primary Constituent Element 2—Stable bottom substrates consisting of a combination of sand with silt, muck, gravel, or bedrock and adequate emergent vegetation in shallow water on the margins of small permanent and ephemeral streams and spring runs.

(3) Primary Constituent Element 3—Instream flow with moderate velocity and a continuous daily discharge that allows for a longitudinal connectivity regime inclusive of both surface runoff and groundwater sources (springs and seepages) and exclusive of flushing flows caused by stormwater runoff.

(4) Primary Constituent Element 4—Water quality with temperature not exceeding 26.7 °C (80 °F), dissolved oxygen 6.0 milligrams or greater per liter, turbidity of an average monthly reading of 10 Nephelometric Turbidity Units (NTU; units used to measure sediment discharge) and 15mg/L Total Suspended Solids (TSS; measured as mg/L of sediment in water) or less; and a specific conductance (ability of water to conduct an electric current, based on dissolved solids in the water) of no greater than 225 micro Siemens per centimeter at 26.7 °C (80 °F).

(5) Primary Constituent Element 5—Prey base of aquatic macroinvertebrates, including midge larvae, mayfly nymphs, blackfly larvae, beetles, and microcrustaceans.

Yellowcheek Darter

(1) Primary Constituent Element 1—Geomorphically stable second- to fifth-order streams with riffle habitats; and connectivity between spawning, foraging, and resting sites to promote gene flow within the species' range where possible.

(2) Primary Constituent Element 2—Stable bottom composed of relatively silt-free, moderate to strong velocity riffles with gravel, cobble, and boulder substrates.

(3) Primary Constituent Element 3—An instream flow regime (magnitude, frequency, duration, and seasonality of discharge over time) sufficient to provide permanent surface flows, as measured during years with average rainfall, and maintain benthic habitats utilized by the species.

(4) Primary Constituent Element 4—Adequate water quality characterized by moderate stream temperatures, acceptable dissolved oxygen concentrations, moderate pH, and low levels of pollutants. Adequate water quality is defined for the purpose of this rule as the quality necessary for normal behavior, growth, and viability of all life stages of the yellowcheek darter.

(5) Primary Constituent Element 5—Prey base of aquatic macroinvertebrates, including blackfly larvae, stonefly larvae, mayfly nymphs, and caddisfly larvae.

Chucky Madtom

(1) Primary Constituent Element 1—Gently flowing run and pool reaches of geomorphically stable streams with cool, clean, flowing water; shallow depths; and connectivity between spawning, foraging, and resting sites to promote gene flow throughout the species' range.

(2) Primary Constituent Element 2—Stable bottom substrates composed of

relatively silt-free, flat gravel, cobble, and slab-rock boulders.

(3) Primary Constituent Element 3—An instream flow regime (magnitude, frequency, duration, and seasonality of discharge over time) sufficient to provide permanent surface flows, as measured during years with average rainfall, and maintain benthic habitats utilized by the species.

(4) Primary Constituent Element 4—Adequate water quality characterized by moderate stream temperatures, acceptable dissolved oxygen concentrations, moderate pH, and low levels of pollutants. Adequate water quality is defined for the purpose of this rule as the quality necessary for normal behavior, growth, and viability of all life stages of the chucky madtom.

(5) Primary Constituent Element 5—Prey base of aquatic macroinvertebrates, including midge larvae, mayfly nymphs, caddisfly larvae, and stonefly larvae.

Laurel Dace

(1) Primary Constituent Element 1—Pool and run habitats of geomorphically stable first- to second-order streams with riparian vegetation; cool, clean, flowing water; shallow depths; and connectivity between spawning, foraging, and resting sites to promote gene flow throughout the species' range.

(2) Primary Constituent Element 2—Stable bottom substrates composed of relatively silt-free cobble and slab-rock boulder substrates with undercut banks and canopy cover.

(3) Primary Constituent Element 3—An instream flow regime (magnitude, frequency, duration, and seasonality of discharge over time) sufficient to provide permanent surface flows, as measured during years with average rainfall, and maintain benthic habitats utilized by the species.

(4) Primary Constituent Element 4—Adequate water quality characterized by moderate stream temperatures, acceptable dissolved oxygen concentrations, moderate pH, and low levels of pollutants. Adequate water quality is defined for the purpose of this rule as the quality necessary for normal behavior, growth, and viability of all life stages of the laurel dace.

(5) Primary Constituent Element 5—Prey base of aquatic macroinvertebrates, including midge larvae, caddisfly larvae, and stonefly larvae.

With this proposed designation of critical habitat, we intend to identify the physical and biological features essential to the conservation of these five species, through the identification of the appropriate quantity and spatial arrangement of the primary constituent elements sufficient to support the life-history processes of the species. All units proposed to be designated as critical habitat are currently occupied by these five species, except for Cumberland darter Units 5 (Indian Creek) and 7 (Kilburn Fork). All occupied units for these five species contain the primary constituent elements in the appropriate quantity and spatial arrangement sufficient to support the life-history needs of these species. All unoccupied units for the Cumberland darter are considered essential to the conservation of the species.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection.

Cumberland Darter

The 15 units we are proposing for designation as critical habitat for the Cumberland darter will require some level of management to address the current and future threats to the physical and biological features of the species. Due to their location on the Daniel Boone National Forest (DBNF), at least a portion of 13 of the 15 proposed critical habitat units are being managed and protected under DBNF's Land and Resource Management Plan (LRMP) (United States Forest Service (USFS) 2004, pp. 1–14). The LRMP is implemented through a series of project-level decisions based on appropriate site-specific analysis and disclosure. It does not contain a commitment to select any specific project; rather, it sets up a framework of desired future conditions with goals, objectives, and standards to guide project proposals. Projects are proposed to solve resource management problems, move the forest environment toward desired future conditions, and supply goods and services to the public (USFS 2004, pp. 1–14). The LRMP contains a number of protective standards that in general are designed to avoid and minimize potential adverse effects to the Cumberland darter and other federally listed species; however, the DBNF will continue to conduct project-specific section 7 consultation under the Act when their activities may adversely affect streams supporting Cumberland darters.

Two of the 15 proposed critical habitat units are located entirely on private property and are not presently under the special management or protection provided by a legally operative plan or agreement for the conservation of the species. Activities in or adjacent to these areas of proposed critical habitat may affect one or more of the physical and biological features essential to the Cumberland darter. For example, features in this proposed critical habitat designation may require special management due to threats posed by resource extraction (coal surface mining, silviculture, natural gas and oil exploration activities), agricultural activities (livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, nonpoint source pollution arising from stormwater runoff, and canopy loss caused by infestations of the hemlock wooly adelgid. These threats are in addition to adverse effects of drought, floods, or other natural phenomena. Other activities that may affect physical and biological features in the proposed critical habitat units include those listed in the Effects of Critical Habitat Designation section below.

Management activities that could ameliorate these threats include, but are not limited to: Use of BMPs designed to reduce sedimentation, erosion, and bank side destruction; moderation of surface and ground water withdrawals to maintain natural flow regimes; increase of stormwater management and reduction of stormwater flows into the systems; preservation of headwater springs and streams; regulation of off-road vehicle use; and reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water.

In summary, we find that the areas we are proposing as critical habitat for the Cumberland darter contain the physical or biological features for the species, and that these features may require special management considerations or protection. Special management consideration or protection may be required to eliminate, or to reduce to negligible levels, the threats affecting the physical or biological features of each unit. Additional discussion of threats facing individual units is provided in the individual unit descriptions below.

Rush Darter

The eight units we are proposing for designation as critical habitat will require some level of management to address the current and future threats to the physical and biological features of the rush darter. None of the proposed critical habitat units are presently under special management or protection provided by a legally operative plan or agreement for the conservation of the

rush darter. However, 4.7 km (2.9 mi) of the Turkey Creek watershed (Jefferson County) is designated critical habitat for the vermilion darter (*Etheostoma chermocki*) (75 FR 75913, December 7, 2010) which includes a portion of proposed rush darter unit 2. Various activities in or adjacent to the critical habitat units described in this proposed rule may affect one or more of the physical and biological features. For example, features in the proposed critical habitat designation may require special management due to threats posed by the following activities or disturbances: urbanization activities and inadequate stormwater management (such as stream channel modification for flood control or gravel extraction) that could cause an increase in bank erosion; significant changes in the existing flow regime within the streams due to water diversion or withdrawal; significant alteration of water quality; significant alteration in the quantity of groundwater and alteration of spring discharge sites; significant changes in stream bed material composition and quality due to construction projects and maintenance activities; off-road vehicle use; sewer, gas, and water easements; bridge construction; culvert and pipe installation; and other watershed and floodplain disturbances that release sediments or nutrients into the water. Other activities that may affect physical and biological features in the proposed critical habitat units include those listed in the Effects of Critical Habitat Designation section below.

Management activities that could ameliorate these threats include, but are not limited to: Use of BMPs designed to reduce sedimentation, erosion, and bank side destruction; moderation of surface and ground water withdrawals to maintain natural flow regimes; increase of stormwater management and reduction of stormwater flows into the systems; preservation of headwater springs, spring runs, and ephemeral rivulets; regulation of off-road vehicle use; and reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water.

In summary, we find that the areas we are proposing as critical habitat for the rush darter contain the physical or biological features for the species, and that these features may require special management considerations or protection. Special management consideration or protection may be required to eliminate, or to reduce to negligible levels, the threats affecting the physical or biological features of each unit. Additional discussion of threats facing individual units is provided in the individual unit descriptions below.

Yellowcheek Darter

The four units we are proposing for designation as critical habitat for the yellowcheek darter will require some level of management to address the current and future threats to the physical and biological features of the species. The yellowcheek darter is currently covered under a Candidate Conservation Agreement with Assurances (CCAA) in the upper Little Red River watershed in Arkansas, along with the endangered speckled pocketbook mussel, which does not have critical habitat designated. Of the 205,761 hectares (ha) (508,446 acres (ac)) within the upper Little Red River watershed and known to support the yellowcheek darter, approximately 35,208 ha (87,000 ac) are owned by private parties (Service 2007, p. 4). To date, multiple landowners have enrolled 4,672 ha (11,544 ac) in the program since its inception in mid-2007 and 10 more landowners with approximately 20,234 ha (50,000 ac) have pending draft agreements. Lands enrolled in these conservation programs include areas within the proposed critical habitat as well as riparian and upland areas that are outside of the proposed critical habitat boundary. Various activities in or adjacent to proposed critical habitat may affect one or more of the physical and biological features. For example, features in this proposed critical habitat designation may require special management due to threats posed by natural gas extraction; timber harvest; gravel mining; unrestricted cattle access into streams; water diversion for agriculture, industry, municipalities, or other purposes; lack of adequate riparian buffers; construction and maintenance of county and State roads; and nonpoint source pollution arising from development and a broad array of human activities. These threats are in addition to random effects of drought, floods, or other natural phenomena. Other activities that may affect physical and biological features in the proposed critical habitat units include those listed in the Effects of Critical Habitat Designation section below.

Management activities that could ameliorate these threats include, but are not limited to: Use of BMPs designed to reduce sedimentation, erosion, and bank side destruction; moderation of surface and ground water withdrawals to maintain natural flow regimes; increase of stormwater management and reduction of stormwater flows into the systems; preservation of headwater springs and streams; regulation of off-road vehicle use; and reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water.

In summary, we find that the areas we are proposing as critical habitat for the yellowcheek darter contain the physical or biological features for the species, and that these features may require special management considerations or protection. Special management consideration or protection may be required to eliminate, or to reduce to negligible levels, the threats affecting the physical or biological features of each unit. Additional discussion of threats facing individual units is provided in the individual unit descriptions below.

Chucky Madtom

The single unit we are proposing for designation of critical habitat for the chucky madtom will require some level of management to address the current and future threats to the physical and biological features of the species. The critical habitat unit is located on private property and is not presently under the special management or protection provided by a legally operative plan or agreement for the conservation of the species. Various activities in or adjacent to the critical habitat unit described in this proposed rule may affect one or more of the physical and biological features. For example, features in this proposed critical habitat designation may require special management due to threats posed by agricultural activities (*e.g.,* row crops and livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, gravel mining, and nonpoint source pollution arising from a wide variety of human activities. These threats are in addition to random effects of drought, floods, or other natural phenomena. Other activities that may affect physical and biological features in the proposed critical habitat unit include those listed in the Effects of Critical Habitat Designation section below.

Management activities that could ameliorate these threats include, but are not limited to: Use of BMPs designed to reduce sedimentation, erosion, and bank side destruction; moderation of surface and ground water withdrawals to maintain natural flow regimes; increase of stormwater management and reduction of stormwater flows into the systems; preservation of headwater springs and streams; regulation of off-road vehicle use; and reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water.

In summary, we find that the area we are proposing as critical habitat for the chucky madtom contains the physical or biological features for the species, and that these features may require special management considerations or protection. Special management consideration or protection may be required to eliminate, or to reduce to negligible levels, the threats affecting the physical or biological features of the unit. Additional discussion of threats facing the unit is provided in the unit description below.

Laurel Dace

The six units we are proposing for designation as critical habitat will require some level of management to address the current and future threats to the physical and biological features of the laurel dace. These units are located on private property and are not presently under the special management or protection provided by a legally operative plan or agreement for the conservation of the species. Various activities in or adjacent to these areas of proposed critical habitat may affect one or more of the physical and biological features. For example, features in this proposed critical habitat designation may require special management due to threats posed by resource extraction (coal and gravel mining, silviculture, natural gas and oil exploration activities), agricultural activities (row crops and livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, nonpoint source pollution arising from a wide variety of human activities, and canopy loss caused by infestations of the hemlock wooly adelgid. These threats are in addition to random effects of drought, floods, or other natural phenomena. Other activities that may affect physical and biological features in the proposed critical habitat units include those listed in the Effects of Critical Habitat Designation section below.

Management activities that could ameliorate these threats include, but are not limited to: Use of BMPs designed to reduce sedimentation, erosion, and bank side destruction; moderation of surface and ground water withdrawals to maintain natural flow regimes; increase of stormwater management and reduction of stormwater flows into the systems; preservation of headwater springs and streams; regulation of off-road vehicle use; and reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water.

In summary, we find that the areas we are proposing as critical habitat for the laurel dace contain the physical or biological features for the species, and that these features may require special management considerations or protection. Special management consideration or protection may be required to eliminate, or to reduce to negligible levels, the threats affecting the physical or biological features of each unit. Additional discussion of threats facing individual units is provided in the individual unit descriptions below.

Criteria Used To Identify Proposed Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available to designate critical habitat. We review available information pertaining to the habitat requirements of the species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we consider whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands usually lack physical and biological features for endangered species. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical and biological features in the adjacent critical habitat. The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of the species.

Cumberland Darter

We are proposing to designate critical habitat in areas within the geographical area occupied by the Cumberland darter at the time of listing in 2011. We also are proposing to designate specific areas outside the geographical area occupied by the species at the time of listing because we have determined that: (1) Such areas are essential for the conservation of the species; and (2) designation of only occupied habitats is not sufficient to conserve this species. Unoccupied habitats provide additional habitat for population expansion and promote greater genetic diversity, which will decrease the risk of extinction for the species.

We used information from surveys and reports prepared by the Kentucky Department of Fish and Wildlife Resources, Kentucky Division of Water, and Service records to identify specific locations occupied by the Cumberland darter. Delineations were based on the best available scientific information indicating portions of streams containing necessary physical and biological features to support the Cumberland darter. We set the upstream and downstream limits of each critical habitat unit by identifying landmarks (bridges, confluences, road crossings, dams) above and below the upper and lowermost reported locations of the Cumberland darter in each stream reach to ensure incorporation of all potential sites of occurrence.

We used ARCGIS to delineate the specific stream segments occupied by the Cumberland darter at the time of listing, and those locations outside the geographical area occupied by the species at the time it was listed that were determined to be essential for the conservation of the species. Areas proposed for critical habitat for the Cumberland darter include only stream channels within the ordinary high water line and do not contain any developed areas or structures. The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of the Cumberland darter.

We are proposing to designate as critical habitat all stream reaches in occupied habitat. We have defined occupied habitat as those stream reaches occupied at the time of listing and still known to be occupied by the Cumberland darter. These stream reaches comprise the entire known range of the species. As discussed above, currently occupied habitat for the Cumberland darter is limited to 13 streams in McCreary and Whitley Counties, Kentucky, and Campbell and Scott Counties, Tennessee. All currently occupied areas contain the physical and biological features of the species.

To identify essential areas outside of the geographical area occupied at the time of listing, we focused on identifying areas historically occupied (currently unoccupied) in the upper Cumberland River basin in Kentucky

(McCreary and Whitley Counties) and Tennessee (Campbell and Scott Counties). We then assessed the critical life-history components of the Cumberland darter, as they relate to the physical and biological features. We determined the appropriate length of stream segments by identifying the upstream and downstream limits of unoccupied sections necessary for the conservation of the Cumberland darter.

The unoccupied reaches we are proposing as critical habitat were not occupied by the Cumberland darter at the time of listing, but they are located within the historical range of the species. During our evaluation of unoccupied stream reaches that could be essential for the conservation of the Cumberland darter, we considered the availability of potential habitat throughout the historical range that may be essential to the survival and conservation of the species. We eliminated from consideration streams with degraded habitat and water quality conditions and other streams with potentially suitable habitat, but separated from basins with occupied habitats. This screening process produced two unoccupied stream reaches (Indian Creek and Kilburn Fork), which we are proposing as critical habitat. These reaches are adjacent to currently occupied areas where there is potential for natural dispersal and reoccupation by the species.

Currently occupied habitats of the Cumberland darter are highly localized and fragmented, with populations separated from one another by an average distance of 30.5 stream km (19 stream mi). As explained above, this fragmentation and isolation of populations reduces the amount of space for rearing and reproduction, reduces the connectivity between populations, and decreases genetic diversity. Long-term viability is founded on the conservation of numerous local populations that can move freely between habitats and exchange genetic information. These reaches are essential to the Cumberland darter because they provide additional habitat for population expansion and will promote connectivity and genetic exchange between populations; in addition both streams support diverse fish assemblages, including federally listed and at-risk species.

We are proposing for designation as critical habitat streams that we determined were occupied at the time of listing and contain sufficient elements of physical and biological features to support life-history processes essential for the conservation of the species, and lands outside of the geographical area occupied at the time of listing that we determined are essential to the conservation of the Cumberland darter. Thirteen units are proposed for designation based on sufficient elements of physical and biological features present to support Cumberland darter life-history processes. We consider these thirteen units to contain all of the identified elements of physical and biological features and to support multiple life-history processes for the Cumberland darter. Two additional units are proposed for designation because we consider them to be essential to the conservation of the species, and they may require special management considerations or protection.

Rush Darter

We are proposing to designate critical habitat in areas within the geographical area occupied by the rush darter at the time of listing in 2011. We are not currently proposing to designate any areas outside the geographical area occupied by the rush darter because occupied areas are sufficient for the conservation of the species.

We used information from surveys and reports prepared by the Alabama Department of Conservation and Natural Resources, Alabama Geological Survey, Samford University, University of Alabama, the U.S. Forest Service, the Natural Resources Conservation Service, and the Service to identify the specific locations occupied by the rush darter. Currently, occupied habitat for the species is limited and isolated. The species is currently located within tributaries of three watersheds in three counties in Alabama: the Turkey Creek watershed (Jefferson County) (Drennen 2008, pers. obs.); the Clear Creek watershed (Winston County); and the Cove Creek watershed (Etowah County). In the Turkey Creek watershed, the species is found in four tributaries including Beaver Creek, an unnamed tributary to Beaver Creek, the Highway 79 site, and Tapawingo or Penny Springs. In the Clear Creek watershed, it is found in Wildcat Branch, Doe Branch, and Mill Creek. In the Cove Creek watershed, it found in Little Cove Creek, Cove Spring and spring run, and Bristow Creek.

Following the identification of the specific locations occupied by the rush darter, we determined the appropriate length of stream segments by identifying the upstream and downstream limits of these occupied sections necessary for the conservation of the rush darter. Because populations of rush darters are isolated due to dispersal barriers, to set the upstream and downstream limits of each critical habitat unit, we identified landmarks (bridges, confluences, road crossings, and dams), and in some instances latitude and longitude coordinates and section lines above and below the upper and lowermost reported locations of the rush darter, in each stream reach to ensure incorporation of all potential sites of occurrence. In addition, within the Cove Spring run and Tapawingo or Penny Spring run, the total area of water that is pooled, and is rush darter habitat, was calculated in hectares (acres). The proposed critical habitat areas were then mapped using ARCGIS to produce the critical habitat map.

We are proposing to designate as critical habitat all stream and spring reaches in occupied habitat. We have defined occupied habitat as those stream reaches occupied at the time of listing and still known to be occupied by the rush darter; these stream reaches comprise the entire known range of the rush darter. We are not proposing to designate any areas outside the occupied range of the species because occupied areas are sufficient for the conservation of the species, and because the historical range of the rush darter, beyond currently occupied areas, is unknown and dispersal beyond the current range is not likely due to dispersal barriers. Areas proposed for critical habitat for the rush darter below include only stream channels within the ordinary high water line and spring pool areas and do not contain any developed areas or structures.

We are proposing for designation as critical habitat streams that we have determined were occupied at the time of listing and contain sufficient elements of physical and biological features to support life-history processes essential to the conservation of rush darter. Eight units are proposed for designation based on sufficient elements of physical and biological features present to support rush darter life-history processes. Some units contain all of the identified elements of physical and biological features and support multiple life-history processes. Some units contain only some elements of the physical and biological features necessary to support the rush darter's particular use of that habitat.

Yellowcheek Darter

We are proposing to designate critical habitat in areas within the geographical area occupied by the yellowcheek darter at the time of listing in 2011. We are not currently proposing to designate any areas outside the geographical area occupied by the yellowcheek darter

because occupied areas are sufficient for the conservation of the species.

We used information from surveys and reports prepared by Arkansas State University, Arkansas Tech University, Arkansas Game and Fish Commission, Arkansas Department of Environmental Quality, and the Service to identify the specific locations occupied by the yellowcheek darter. We identified those areas to propose for designation as critical habitat, within the geographical area occupied by the species at the time of listing, that contain the physical and biological features of the yellowcheek darter and which may require special management consideration or protection. All of the areas we considered for designation are currently part of ongoing recovery initiatives for this species and are targeted for special management considerations.

We used ARCGIS to delineate the specific stream segments occupied by the yellowcheek darter at the time of listing, which contain the physical and biological features essential to the species. We assessed the critical life-history components of the yellowcheek darter, as they relate to habitat. Delineations were based on the best available scientific information indicating portions of streams containing necessary physical and biological features necessary to support the yellowcheek darter. We set the upstream and downstream limits of each critical habitat unit by identifying landmarks (bridges, confluences, road crossings, dams, reservoir inundation elevations) above and below the upper and lowermost reported locations of the yellowcheek darter in each stream reach to ensure incorporation of all potential sites of occurrence. Areas proposed as yellowcheek darter critical habitat include only stream channels within the ordinary high water line and do not contain any developed areas or structures.

We are proposing for designation as critical habitat streams that we have determined were occupied at the time of listing and contain sufficient elements of physical and biological features to support life-history processes essential to the conservation of the yellowcheek darter. Four units are proposed for designation based on sufficient elements of physical and biological features present to support yellowcheek darter life-history processes. All units contain all of the identified elements of physical and biological features and support multiple life-history processes.

Chucky Madtom

We are proposing to designate critical habitat in areas within the geographical area occupied by the chucky madtom darter at the time of listing in 2011. We are not currently proposing to designate any areas outside the geographical areas occupied by the chucky madtom at the time of listing because the historical range, beyond currently occupied areas, is not well known.

We used information from surveys and reports prepared by Conservation Fisheries, Inc., and the Tennessee Valley Authority to identify the specific locations occupied by the chucky madtom. Currently, occupied habitat for the species is limited and isolated. At the time of listing, the current range of the chucky madtom was restricted to an approximately 3-km (1.8-mi) reach of Little Chucky Creek in Greene County, Tennessee.

Following the identification of the specific locations occupied by the chucky madtom, we determined the appropriate length of stream segments by identifying the upstream and downstream limits of these occupied sections necessary for the conservation of the species. To set the upstream and downstream limits of the single critical habitat unit, we identified landmarks (bridges, confluences, and road crossings) above and below the upper and lowermost reported locations of the chucky madtom in Little Chucky Creek to ensure incorporation of all potential sites of occurrence. The proposed critical habitat areas were then mapped using ARCGIS to produce the critical habitat unit map.

We are proposing to designate as critical habitat a single stream reach in Little Chucky Creek, which is occupied habitat. This stream reach comprises the entire known range of the chucky madtom. The proposed unit contains one or more of the physical and biological features in the appropriate quantity and spatial arrangement essential to the conservation of this species and support multiple life processes for the chucky madtom. The area proposed for critical habitat for the chucky madtom includes only the stream channel within the ordinary high water line and does not contain any developed areas or structures.

We are proposing for designation as critical habitat a stream that we have determined was occupied at the time of listing and contain sufficient elements of physical and biological features to support life-history processes essential to the conservation of the chucky madtom. One unit is proposed for designation based on sufficient elements of physical and biological features present to support chucky madtom life-history processes.

Laurel Dace

We are proposing to designate critical habitat in areas within the geographical area occupied by the laurel dace at the time of listing in 2011. We are not currently proposing to designate any areas outside the geographical area occupied by the laurel dace because occupied areas are sufficient for the conservation of the species.

We used information from surveys and reports prepared by the Tennessee Valley Authority, Tennessee Wildlife Resources Agency, University of Tennessee, and the Service to identify the specific locations occupied by the laurel dace. Currently, occupied habitat for the species is limited and isolated. The species is currently located in three independent systems: Soddy Creek, the Sale Creek system, and the Piney River system. Following the identification of the specific locations occupied by the laurel dace, we determined the appropriate length of stream segments by identifying the upstream and downstream limits of these occupied sections necessary for the conservation of the laurel dace. Because populations of laurel dace are isolated due to dispersal barriers, to set the upstream and downstream limits of each critical habitat unit, we identified landmarks (bridges, confluences, and road crossings), and in some instances latitude and longitude coordinates and section lines above and below the upper and lowermost reported locations of the laurel dace, in each stream reach to ensure incorporation of all potential sites of occurrence. The proposed critical habitat areas were then mapped using ARCGIS to produce the critical habitat unit maps.

We are proposing to designate as critical habitat all stream reaches in occupied habitat. We have defined occupied habitat as those stream reaches occupied at the time of listing and still known to be occupied by the laurel dace; these stream reaches comprise the entire known range of the laurel dace. The six proposed units contain one or more of the physical and biological features in the appropriate quantity and spatial arrangement essential to the conservation of this species and support multiple life-history processes for the laurel dace. Areas proposed for critical habitat for the laurel dace include only stream channels within the ordinary high water line and do not contain any developed areas or structures.

We are proposing for designation of critical habitat streams that we determined were occupied at the time of listing and contain sufficient elements of physical and biological features to

support life-history processes essential to the conservation of the laurel dace. Six units are proposed for designation based on sufficient elements of physical and biological features present to support laurel dace life-history processes. All units contain all of the identified elements of physical and biological features and support multiple life-history processes.

Proposed Critical Habitat Designation

Cumberland Darter

We are proposing 15 units as critical habitat for the Cumberland darter. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Cumberland darter. The 15 areas we propose as critical habitat are as follows: (1) Bunches Creek, (2) Calf Pen Fork, (3) Youngs Creek, (4) Barren Fork, (5) Indian Creek, (6) Cogur Fork, (7) Kilburn Fork, (8) Laurel Fork, (9) Laurel Creek, (10) Elisha Branch, (11) Jenneys Branch, (12) Wolf Creek, (13) Jellico Creek, (14) Rock Creek, and (15) Capuchin Creek. Critical habitat units are either in private ownership or public ownership (DBNF). In Kentucky and Tennessee, landowners own the land under non-navigable streams (*e.g.,* the stream channel or bottom), but the water is under State jurisdiction. Portions of the public-to-private boundary for units 6, 7, 8, 9, and 13 were located along the mid-line of the stream channel; lengths for these segments were divided equally between public and private ownership. Table 1 shows the occupancy of the units and ownership of the proposed designated areas for the Cumberland darter.

TABLE 1—OCCUPANCY AND OWNERSHIP OF THE PROPOSED CRITICAL HABITAT UNITS FOR THE CUMBERLAND DARTER

Unit	Location	Occupied	Private ownership km (mi)	Federal, State, County, City ownership km (mi)	Total length km (miles)
1	Bunches Creek	Yes	0	5.3 (3.3)	5.3 (3.3)
2	Calf Pen Fork	Yes	0	2.9 (1.8)	2.9 (1.8)
3	Youngs Creek	Yes	7.4 (4.6)	0	7.4 (4.6)
4	Barren Fork	Yes	0	6.3 (3.9)	6.3 (3.9)
5	Indian Creek	No	0	4.0 (2.5)	4.0 (2.5)
6	Cogur Fork	Yes	2.7 (1.7)	5.9 (3.7)	8.6 (5.4)
7	Kilburn Fork	No	0.9 (0.6)	3.7 (2.3)	4.6 (2.9)
8	Laurel Fork	Yes	1.3 (0.8)	2.2 (1.4)	3.5 (2.2)
9	Laurel Creek	Yes	0.6 (0.4)	8.8 (5.5)	9.4 (5.9)
10	Elisha Branch	Yes	0	2.1 (1.3)	2.1 (1.3)
11	Jenneys Branch	Yes	0	3.1 (1.9)	3.1 (1.9)
12	Wolf Creek	Yes	6.3 (3.9)	0	6.3 (3.9)
13	Jellico Creek	Yes	8.2 (5.1)	3.3 (2.1)	11.5 (7.2)
14	Rock Creek	Yes	3.9 (2.4)	2.2 (1.4)	6.1 (3.8)
15	Capuchin Creek	Yes	3.4 (2.1)	0.8 (0.5)	4.2 (2.6)
Total					85.3 (53.2)

We present brief descriptions of all units and reasons why they meet the definition of critical habitat for the Cumberland darter. The proposed critical habitat units include the stream channels of the creek within the ordinary high water line. As defined in 33 CFR 329.11, the ordinary high water mark on nontidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics, such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas. For each stream reach proposed as a critical habitat unit, the upstream and downstream boundaries are described generally below. More precise definitions are provided in the Proposed Regulation Promulgation at the end of this proposed rule.

Unit 1: Bunches Creek, Whitley County, Kentucky

This unit is located between Kentucky Highway 90 (KY 90) and the Cumberland River and includes 5.3 km (3.3 mi) of Bunches Creek from the confluence of Seminary Branch and Amos Falls Branch downstream to its confluence with the Cumberland River. Live Cumberland darters have been captured at two sites within proposed Unit 1 (Thomas 2007, pp. 11–12), specifically at the mouth of Bunches Creek and just below its confluence with Calf Pen Fork. This unit was included in the geographical area occupied by the species at the time of listing. This unit is located entirely on federal lands within the DBNF. Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14). The lower portion of Bunches Creek (stream km 0 to 0.3 (mi 0 to 0.1)) flows through a designated Kentucky Wild River corridor (KRS 146.200 to 146.360) that extends along an approximately 25.7-km (16-mi) reach of the Cumberland River. This Wild River corridor extends from Summer Shoals downstream to the backwaters of Lake Cumberland (KRS 146.241). The Bunches Creek-Cumberland River confluence is located approximately 3.0 km (1.9 mi) upstream of Cumberland Falls. The Bunches Creek watershed is relatively undisturbed and access is limited (no road crossings). The channel within proposed Unit 1 is relatively stable, with excellent instream habitat (PCE 1). There is an abundance of pool and run habitats (PCE 1), with relatively silt-free sand and bedrock substrates (PCE 2) and adequate instream flows (PCE 3). Water quality is good to excellent (PCE 4), as evidenced by diverse fish and macroinvertebrate communities (PCE 5).

Within proposed Unit 1, the Cumberland darter and its habitat may require special management considerations or protection to address potential adverse effects associated with silviculture-related activities, natural gas and oil exploration activities in headwater reaches, illegal off-road

vehicle use and other recreational activities, nonpoint source pollution originating in headwater reaches, and canopy loss caused by infestations of the hemlock wooly adelgid.

Unit 2: Calf Pen Fork, Whitley County, Kentucky

This unit includes 2.9 km (1.8 mi) of Calf Pen Fork, a tributary of Bunches Creek, from its confluence with Polly Hollow downstream to its confluence with Bunches Creek. Live Cumberland darters have been captured in Calf Pen Fork just above its confluence with Bunches Creek (Thomas 2007, pp. 11–12). This unit was included in the geographical area occupied by the species at the time of listing. This unit is located entirely on federal lands within the DBNF. Land and resource management decisions and activities within the DB proposed NF are guided by DBNF's LRMP (USFS 2004, pp. 1–14). Similar to the watershed of Unit 1, the Calf Pen Fork watershed is relatively undisturbed and access is limited (no road crossings). Within proposed Unit 2, the channel is relatively stable, with excellent instream habitat (PCE 1), an abundance of run and pool habitats (PCE 1), relatively silt-free sand and bedrock substrates (PCE 2), and adequate instream flows (PCE 3). Water quality is good to excellent (PCE 4), with diverse fish and macroinvertebrate communities (PCE 5).

Within proposed Unit 2, the Cumberland darter and its habitat may require special management considerations or protection to address potential adverse effects associated with silviculture-related activities, natural gas and oil exploration activities, illegal off-road vehicle use and other recreational activities, nonpoint source pollution arising from headwater reaches, and canopy loss caused by infestations of the hemlock wooly adelgid.

Unit 3: Youngs Creek, Whitley County, Kentucky

Proposed Unit 3 includes 7.4 km (4.6 mi) of Youngs Creek from Brays Chapel Road downstream to its confluence with the Cumberland River. Live Cumberland darters have been captured within proposed Unit 3 (Thomas 2007, pp. 11–12), specifically at the KY 204 bridge crossing. This unit was included in the geographical area occupied by the species at the time of listing. This unit is located entirely on private land. The watershed of Youngs Creek is less forested than proposed Units 1 and 2, with scattered residences and small farms. The channel is relatively stable (PCE 1), but activities associated with agriculture, silviculture, and residential development have contributed to a more open riparian zone, increased bank erosion, and some siltation of instream habitats. Despite these impacts, proposed Unit 3 continues to provide pool and run habitats with suitable sand and bedrock substrates for Cumberland darters to use in spawning, foraging, and other behaviors (PCEs 1 and 2). Flow is adequate as measured during years with average rainfall (PCE 3), water quality is adequate (PCE 4), and macroinvertebrate prey items are present (PCE 5).

Within this unit, the Cumberland darter and its habitat may require special management considerations or protection to address potential adverse effects caused by resource extraction (mining, silviculture, natural gas and oil exploration activities), agricultural activities (livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, illegal off-road vehicle use, nonpoint source pollution arising from a wide variety of human activities, and canopy loss caused by infestations of the hemlock wooly adelgid.

Unit 4: Barren Fork, McCreary County, Kentucky

Proposed Unit 4 includes 6.3 km (3.9 mi) of Barren Fork from its confluence with an unnamed tributary downstream to its confluence with Indian Creek. Based on survey results by Thomas (2007, pp. 11–12) and Stephens (2009, pp. 10–23), Barren Fork supports the most robust population of Cumberland darters within the species' range. Over the past 4 years, over 75 Cumberland darters have been observed within this unit (Thomas 2007, pp. 11–12; Stephens 2009, pp. 10–23). This unit was included in the geographical area occupied by the species at the time of listing. This unit is located entirely on federal lands within the DBNF. Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14). In the summer and fall of 2008, the Barren Fork watershed was adversely affected by several large sedimentation events originating from a county park construction site in the headwaters of the basin. Inadequate site planning and poor BMP implementation allowed significant quantities of sediment to leave the construction site and enter headwater tributaries of Barren Fork. The sediment was carried downstream into the mainstem of Barren Fork, eventually affecting the entire reach of proposed Unit 4. Until the construction site was stabilized in 2009, important spawning and foraging habitats for the Cumberland darter were degraded.

Despite these significant adverse effects, habitat conditions have improved since 2008, and are now similar to those described for proposed Units 1 and 2. The watershed is mostly forested, with relatively stable channels (PCE 1), abundant pool and run habitats (PCE 1), relatively silt-free sand and bedrock substrates (PCE 2), adequate flow (PCE 3), adequate water quality (PCE 4), and a diverse macroinvertebrate community (PCE 5).

Within this unit, the Cumberland darter and its habitat may require special management considerations or protection to address potential adverse effects caused by resource extraction (mining, silviculture, natural gas and oil exploration activities), lack of adequate riparian buffers, construction and maintenance of county roads, illegal off-road vehicle use, nonpoint source pollution arising from a wide variety of human activities, and canopy loss caused by infestations of the hemlock wooly adelgid.

Unit 5: Indian Creek, McCreary County, Kentucky

Proposed Unit 5 includes 4.0 km (2.5 mi) of Indian Creek from its confluence with an unnamed tributary, downstream to its confluence with Barren Fork. Live Cumberland darters have not been captured within proposed Unit 5. This unit was not included in the geographical area occupied by the species at the time of listing and it is not currently occupied by the species.

This unit is located entirely on federal lands within the DBNF. Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14).

This unit is located within the historical range of the species, and is adjacent to currently occupied areas where there is potential for natural dispersal and reoccupation by the Cumberland darter. This unit is essential to the conservation of the Cumberland darter because it provides additional habitat for population expansion and will promote connectivity and genetic exchange between adjacent units to the south (Unit 4, Barren Fork) and to the north (Unit 6, Cogur Fork).

Unit 6: Cogur Fork, McCreary County, Kentucky

Proposed Unit 6 includes 8.6 km (5.4 mi) of Cogur Fork from its confluence with an unnamed tributary downstream to its confluence with Indian Creek. Live Cumberland darters have been captured at several locations within an approximately 1-km (0.62-mi) reach

upstream of the KY 1045 road crossing (Thomas 2010, pers. comm.). This unit was included in the geographical area occupied by the species at the time of listing. The majority of this unit (5.9 km (3.7 mi)) is in public ownership (DBNF), with the remainder of the unit (2.7 km (1.7 mi)) in private ownership. Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14).

Cumberland darters have been captured within proposed Unit 6, but the population is considered to be small (Thomas 2010, pers. comm.). From 2008 to present, the fauna has been bolstered through propagation and augmentation efforts by KDFWR, Conservation Fisheries, Inc. (CFI), and the Service (Thomas *et al.* 2010, p. 107). Initial brood stock were collected in 2008, with subsequent releases of propagated darters in 2009 (60 individuals (inds)) and 2010 (335 inds). Both tagged (propagated, 50 inds) and non-tagged (native, 4 inds) darters were observed during recent surveys in November 2010. Individuals tagged and released by KDFWR and CFI traveled distances ranging from 0.4 to 0.7 km (0.2 to 0.4 mi) between their release date of September 22, 2010, and their recapture date of November 9, 2010 (period of 48 days) (Thomas 2010, pers. comm.).

Similar to other units located entirely or predominately on the DBNF (Units 1, 2, 4, and 5), this unit has relatively stable channels (PCE 1), abundant pool and run habitats (PCE 1), relatively silt-free sand and bedrock substrates (PCE 2), adequate flow (PCE 3), adequate water quality (PCE 4), and a diverse macroinvertebrate community (PCE 5).

Within this unit, the Cumberland darter and its habitat may require special management considerations or protection to address potential adverse effects caused by resource extraction (mining, silviculture, natural gas and oil exploration activities), lack of adequate riparian buffers, construction and maintenance of county roads, illegal off-road vehicle use, nonpoint source pollution arising from a wide variety of human activities, and canopy loss caused by infestations of the hemlock wooly adelgid.

Unit 7: Kilburn Fork, McCreary County, Kentucky

Proposed Unit 7 includes 4.6 km (2.9 mi) of Kilburn Fork from its confluence with an unnamed tributary downstream to its confluence with Laurel Fork. Live Cumberland darters have not been captured within proposed Unit 7 over the last 15 years (Thomas 2007, pp. 11–12). This unit was not included in the geographical area occupied by the species at the time of listing, and it is not currently occupied by the species.

The majority of this unit (3.7 km (2.3 mi)) is in public ownership (DBNF), with the remainder of the unit (0.9 km (0.6 mi)) in private ownership. Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14).

This unit is located within the historical range of the species, and is adjacent to currently occupied areas where there is potential for natural dispersal and reoccupation by the Cumberland darter. This unit is essential to the conservation of the Cumberland darter because it provides additional habitat for population expansion and will promote connectivity and genetic exchange between adjacent units to the south (Unit 6, Cogur Fork) and to the north (Unit 8, Laurel Fork).

Unit 8: Laurel Fork, McCreary County, Kentucky

Proposed Unit 8 includes 3.5 km (2.2 mi) of Laurel Fork from its confluence with Tom Fork downstream to its confluence with Indian Creek. Live Cumberland darters have been captured within proposed Unit 8 (Thomas 2007, pp. 11–12), specifically just upstream of its confluence with Kilburn Fork. This unit was included in the geographical area occupied by the species at the time of listing.

The majority of this unit (2.2 km (1.4 mi)) is in public ownership (DBNF), with the remainder of the unit (1.3 km (0.8 mi)) in private ownership. Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14).

Similar to other streams with major portions of their basins in the DBNF, the watershed of Laurel Fork is relatively intact and access is limited (limited roads and residential development). The channel within proposed Unit 8 is relatively stable (PCE 1), with suitable instream habitat to support the life-history functions of the Cumberland darter. There is an abundance of pool and run habitats (PCE 1), with relatively silt-free sand and bedrock substrates (PCE 2) and adequate flows (PCE 3). Water quality is good to excellent (PCE 4), as evidenced by diverse fish and macroinvertebrate communities (PCE 5).

Within this unit, the Cumberland darter and its habitat may require special management considerations or protection to address potential adverse effects caused by resource extraction (mining, silviculture, natural gas and oil exploration activities), lack of adequate riparian buffers, construction and maintenance of county roads, illegal off-road vehicle use, nonpoint source pollution arising from a wide variety of human activities, and canopy loss caused by infestations of the hemlock wooly adelgid.

Unit 9: Laurel Creek, McCreary County, Kentucky

Proposed Unit 9 includes 9.4 km (5.9 mi) of Laurel Fork Creek from Laurel Fork Reservoir downstream to its confluence with Jenneys Branch. Live Cumberland darters have been captured within proposed Unit 9 (Thomas 2007, pp. 11–12), specifically just upstream of its confluence with Elisha Branch and at the KY 478 bridge crossing. This unit was included in the geographical area occupied by the species at the time of listing. The majority of this unit (8.8 km (5.5 mi)) is in public ownership (DBNF), with the remainder of the unit (0.6 km (0.4 mi)) in private ownership. Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14).

The watershed of Laurel Creek is relatively intact, with extensive forest cover and few roads. The channel within Proposed Unit 9 is relatively stable (PCE 1), with suitable instream habitat to support the life-history functions of the Cumberland darter. There is an abundance of pool and run habitats (PCE 1), with relatively silt-free sand and bedrock substrates (PCE 2) and adequate instream flows (PCE 3). Water quality is good to excellent (PCE 4), with a diverse macroinvertebrate community (PCE 5).

Within this unit, the Cumberland darter and its habitat may require special management considerations or protection to address potential adverse effects caused by resource extraction (mining, silviculture, natural gas and oil exploration activities), lack of adequate riparian buffers, construction and maintenance of county roads, illegal off-road vehicle use, nonpoint source pollution arising from a wide variety of human activities, and canopy loss caused by infestations of the hemlock wooly adelgid.

Unit 10: Elisha Branch, McCreary County, Kentucky

Proposed Unit 10 includes 2.1 km (1.3 mi) of Elisha Branch from its confluence with an unnamed tributary (36.70132, −84.40843) downstream to its confluence with Laurel Creek. Live Cumberland darters have been captured within proposed Unit 10 (Thomas 2007, pp. 11–12), specifically just upstream of

its confluence with Laurel Creek. This unit was included in the geographical area occupied by the species at the time of listing. This unit is located entirely on public lands within the DBNF. Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14).

The watershed of Elisha Branch is relatively intact, with extensive forest cover and no road crossings. Within proposed Unit 10, the channel is relatively stable, with excellent instream habitat (PCE 1), an abundance of run and pool habitats (PCE 1), relatively silt-free sand and bedrock substrates (PCE 2), and adequate flows (PCE 3). Water quality is good to excellent (PCE 4), with diverse fish and macroinvertebrate communities (PCE 5).

Within this unit, the Cumberland darter and its habitat may require special management considerations or protection to address potential adverse effects caused by resource extraction (mining, silviculture, natural gas and oil exploration activities), lack of adequate riparian buffers, illegal off-road vehicle use, nonpoint source pollution arising from a wide variety of human activities, and canopy loss caused by infestations of the hemlock wooly adelgid.

Unit 11: Jenneys Branch, McCreary County, Kentucky

Proposed Unit 11 includes 3.1 km (1.9 mi) of Jenneys Branch from its confluence with an unnamed tributary (36.73680, -84.42420) downstream to its confluence with Laurel Creek. Live Cumberland darters have been captured within proposed Unit 11 (Thomas 2007, pp. 11–12), specifically just upstream of its confluence with Laurel Creek. This unit was included in the geographical area occupied by the species at the time of listing. This unit is located entirely on public lands within the DBNF. Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14).

The watershed of Jenneys Branch is relatively intact and remote, with extensive forest cover and only one road crossing in its headwaters. Within proposed Unit 11, the stream channel is relatively stable, with excellent instream habitat (PCE 1), an abundance of run and pool habitats (PCE 1), relatively silt-free sand and bedrock substrates (PCE 2), and adequate instream flows (PCE 3). Water quality is good to excellent (PCE 4), with diverse fish and macroinvertebrate communities (PCE 5).

Within this unit, the Cumberland darter and its habitat may require special management considerations or protection to address potential adverse effects caused by resource extraction (mining, silviculture, natural gas and oil exploration activities), lack of adequate riparian buffers, illegal off-road vehicle use, nonpoint source pollution arising from a wide variety of human activities, and canopy loss caused by infestations of the hemlock wooly adelgid.

Unit 12: Wolf Creek, Whitley County, Kentucky

Proposed Unit 12 includes 6.3 km (3.9 mi) of Wolf Creek from its confluence with Sheep Creek downstream to Wolf Creek River Road. Live Cumberland darters have been captured within proposed Unit 12 just downstream of the Little Wolf Creek River Road bridge crossing (Thomas 2007, pp. 11–12). This unit was included in the geographical area occupied by the species at the time of listing.

This unit is located entirely on private land. Land use within the watershed of Wolf Creek is similar to proposed Unit 3 and is less forested than units within the DBNF. The channel is relatively stable (PCE 1), but activities associated with agriculture, silviculture, and residential development have contributed to a more open riparian zone, increased bank erosion, and some siltation of instream habitats. Despite these impacts, proposed Unit 12 continues to provide pool and run habitats with suitable sand and bedrock substrates for Cumberland darters to use in spawning, foraging, and other behaviors (PCEs 1 and 2). Flow is adequate as measured during years with average rainfall (PCE 3), water quality is adequate (PCE 4), and macroinvertebrate prey items are present (PCE 5).

Within this unit, the Cumberland darter and its habitat may require special management considerations or protection to address potential adverse effects caused by resource extraction (mining, silviculture, natural gas and oil exploration activities), agricultural activities (livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, illegal off-road vehicle use, and nonpoint source pollution arising from a wide variety of human activities.

Unit 13: Jellico Creek, McCreary County, Kentucky, and Scott County, Tennessee

Proposed Unit 13 includes 11.5 km (7.2 mi) of Jellico Creek from its confluence with Scott Branch, Scott County, Tennessee downstream to its confluence with Capuchin Creek, McCreary County, Kentucky. Live Cumberland darters have been captured within proposed Unit 13 at the Jellico Creek and Shut-In Branch confluence and at the Gum Fork and Jellico Creek confluence (O'Bara 1988, p. 12; Thomas 2007, pp. 11–12). This unit was included in the geographical area occupied by the species at the time of listing. A portion of this unit in Kentucky (3.3 km (2.1 mi)) is in public ownership (DBNF), with the remainder of the unit (8.2 km (5.1 mi)) in private ownership. Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14).

Land use within the watershed of Jellico Creek is predominately forest, with scattered residences and small farms (cattle and hay production). The channel in proposed Unit 13 is relatively stable (PCE 1), but activities associated with agriculture, silviculture, and residential development have contributed to a more open riparian zone, increased bank erosion, and some siltation of instream habitats. Despite these impacts, proposed Unit 13 continues to provide pool and run habitats with suitable sand and bedrock substrates for Cumberland darters to use in spawning, foraging, and other behaviors (PCEs 1 and 2). Flow is adequate as measured during years with average rainfall (PCE 3), water quality is adequate (PCE 4), and macroinvertebrate prey items are present (PCE 5).

Within this unit, the Cumberland darter and its habitat may require special management considerations or protection to address potential adverse effects caused by resource extraction (mining, silviculture, natural gas and oil exploration activities), agricultural activities (livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, illegal off-road vehicle use, and nonpoint source pollution arising from a wide variety of human activities.

Unit 14: Rock Creek, McCreary County, Kentucky

Proposed Unit 14 includes 6.1 km (3.8 mi) of Rock Creek from its confluence with Sid Anderson Branch downstream to its confluence with Jellico Creek. Live Cumberland darters have been captured within proposed Unit 14 just above the mouth of Rock Creek at its confluence with Jellico Creek (Thomas 2007, pp. 11–12). This unit was included in the geographical area occupied by the species at the time of listing. A portion of this unit (2.2 km (1.4 mi)) is in public ownership (DBNF), but the majority (3.9 km (2.4 mi)) is in private ownership. Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14).

Most of the watershed is forested (especially along the ridge tops), but the valley floor has several open fields and is easily accessible via Little Rock Creek Road. Portions of the channel in Unit 14 have been modified by beaver (with some ponding), but it continues to be relatively stable, with excellent instream habitat (PCE 1), an abundance of run and pool habitats (PCE 1), relatively silt-free sand and bedrock substrates (PCE 2), and adequate instream flows (PCE 3). Water quality is good to excellent (PCE 4), with diverse fish and macroinvertebrate communities (PCE 5).

Within this unit, the Cumberland darter and its habitat may require special management considerations or protection to address potential adverse effects caused by resource extraction (mining, silviculture, natural gas and oil exploration activities), agricultural activities (livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, illegal off-road vehicle use, nonpoint source pollution arising from a wide variety of human activities, and canopy loss caused by infestations of the hemlock wooly adelgid.

Unit 15: Capuchin Creek, McCreary County, Kentucky, and Campbell County, Tennessee

Proposed Unit 15 includes 4.2 km (2.6 mi) of Capuchin Creek from its confluence with Hatfield Creek downstream to its confluence with Jellico Creek. Live Cumberland darters have been captured within proposed Unit 15 at the Kentucky-Tennessee State line (Thomas 2007, pp. 11–12). This unit was included in the geographical area occupied by the species at the time of listing. A portion of this unit in Kentucky (0.8 km (0.5 mi)) is in public ownership (DBNF); the remainder in Kentucky and Tennessee (3.4 km (2.1 mi)) is in private ownership. Land and resource management decisions and activities within the DBNF are guided by DBNF's LRMP (USFS 2004, pp. 1–14).

Land use within the watershed of Capuchin Creek is predominately forest, with scattered residences and small farms (cattle and hay production). The channel in proposed Unit 15 is relatively stable (PCE 1), but activities associated with agriculture, silviculture, and residential development have contributed to a more open riparian zone, increased bank erosion, and some siltation of instream habitats. Despite these impacts, proposed Unit 15 continues to provide pool and run habitats with suitable sand and bedrock substrates for Cumberland darters to use in spawning, foraging, and other behaviors (PCEs 1 and 2). Flow is adequate as measured during years with average rainfall (PCE 3), water quality is adequate (PCE 4), and macroinvertebrate prey items are present (PCE 5).

Within this unit, the Cumberland darter and its habitat may require special management considerations or protection to address potential adverse effects caused by resource extraction (mining, silviculture, natural gas and oil exploration activities), agricultural activities (livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, illegal off-road vehicle use, and nonpoint source pollution arising from a wide variety of human activities.

Rush Darter

We are proposing eight units as critical habitat for the rush darter. The critical habitat areas described below constitute our current best assessment of areas that meet the definition of critical habitat for the rush darter. The eight areas we propose as critical habitat are as follows: (1) Beaver Creek, (2) Unnamed Tributary to Beaver Creek and Highway 79 Spring Site, (3) Tapawingo or Penny Spring and Spring Run, (4) Wildcat Branch, (5) Mill Creek, (6) Doe Branch, (7) Little Cove Creek, Cove Spring Site, and (8) Bristow Creek. Table 2 shows the occupancy of the units and ownership of the proposed designated areas for the rush darter.

TABLE 2—OCCUPANCY AND OWNERSHIP OF THE PROPOSED CRITICAL HABITAT UNITS FOR THE RUSH DARTER

Unit	Location	Occupied	Private ownership km (mi)	State, county, city ownership km (mi)	Total length km (mi)	Total area** ha (ac)
1	Beaver Creek	Yes	0.9 (0.6)	< 0.1 (< 0.1)	1.0 (0.6)	
2	Unnamed Tributary to Beaver Creek and Highway 79 Spring Site.	Yes	3.6 (2.2)	0.7 (0.4)	4.3 (2.6)	
3	Tapawingo or Penny Spring and Spring Run	Yes	0.6 (0.4)	< 0.1 (< 0.06)	0.6 (0.4)	6.7 (16.5)
4	Wildcat Branch	Yes	6.6 (4.1)	< 0.1 (< 0.06)	6.6 (4.1)	
5	Mill Creek	Yes	5.9 (3.7)	< 0.1 (< 0.06)	5.9 (3.7)	
6	Doe Branch	Yes	4.3 (2.7)	< 0.1 (< 0.06)	4.3 (2.7)	
7	Little Cove Creek, Cove Spring, Spring Run	Yes	11.2 (6.1)	< 0.1 (< 0.06)	11.2 (6.1)	5.1 (12.7)
8	Bristow Creek	Yes	10.2 (6.3)	< 0.1 (< 0.06)	10.2 (6.3)	
Total *					42.3 (26.9)	19.4 (21.7)

* Totals may not sum due to rounding.
** Total area in ha (ac) are in private ownership.

We present brief descriptions of each unit and reasons why they meet the definition of critical habitat below. The proposed critical habitat units include the stream channels of the creek within the ordinary high water line, and the flooded spring pool in the case of Tapawingo or Penny Springs (Jefferson County) and Cove Springs (Etowah County). As defined in 33 CFR 329.11, the ordinary high water line on nontidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural water line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas. In Alabama, the riparian landowner owns the stream to the middle of the channel for non-navigable streams and rivers. For the spring pools, the area was determined and delineated by the presence of emergent vegetation patterns as noted on aerial photographs.

For each stream reach of proposed critical habitat, the upstream and downstream boundaries are described generally below; more precise descriptions are provided in the Proposed Regulation Promulgation at the end of this proposed rule.

Unit 1: Beaver Creek, Jefferson County, Alabama

Proposed Unit 1 includes 1.0 km (0.6 mi) of Beaver Creek from the confluence with Dry Creek, downstream to the confluence with Turkey Creek. This unit was included in the geographical area occupied by the species at the time of listing. Almost 0.9 km (0.6 mi), or 94 percent of this area is privately owned. The remaining 0.1 km (< 0.1 mi), or 6 percent, is publicly owned by the City of Pinson or Jefferson County in the form of bridge crossings and road easements.

Beaver Creek contains adequate bottom substrate and emergent vegetation for rush darters to use in spawning, foraging, and other life processes (PCE 2). Beaver Creek makes available additional habitat and spawning sites, and offers connectivity with other rush darter populations within the Highway 79 Spring System site and the Unnamed Tributary to Beaver Creek (PCE 1).

Beaver Creek provides habitat for the rush darters with adequate number of pools, riffles, runs (PCE 1), and emergent vegetation (PCE 2). These geomorphic structures provide the species with spawning, foraging, and resting areas (PCE 1), along with good water quality, quantity, and flow, which support the normal life stages and behavior of the rush darter (PCEs 3 and 4), the species' prey sources (PCE 5), and associated aquatic vegetation.

Threats to the rush darter and its habitat at Beaver Creek that may require special management of the PCEs include the potential of: urbanization activities (such as channel modification for flood control, construction of impoundments, and gravel extraction) that could result in increased bank erosion; significant changes in the existing flow regime due to inadequate stormwater management, water diversion, or water withdrawal; significant alteration of water quality; and significant changes in stream bed material composition and quality as a result of construction projects and maintenance activities, destruction of emergent vegetation, off-road vehicle use, sewer, gas and water easements, bridge and road construction and maintenance, culvert and pipe installation, and other watershed and floodplain disturbances that release sediments or nutrients into the water.

There are three road crossings over Beaver Creek (Pinson Valley Parkway, Old Bradford Road, and Spring Street) that at times may limit the overall connectivity and movement of the species within this unit. Movement might be limited due to changes in flow regime and habitat including: emergent vegetation, water quality, water quantity, and stochastic events such as drought. Populations of rush darters are small and isolated within specific habitat sites of Beaver Creek.

Unit 2: Unnamed Tributary to Beaver Creek and Highway 79 Spring Site, Jefferson County, Alabama

Proposed Unit 2 includes 4.3 km (2.6 mi) of the Unnamed Tributary of Beaver Creek and a spring run. The site begins at the Section 1 and 2 (T16S, R2W) line, as taken from the U.S. Geological Survey 7.5 topographical map (Pinson quadrangle), downstream to its confluence with Dry Creek, and includes a spring run beginning at the springhead (33.67449, −86.69300) just northwest of Old Pinson Road and intersecting with the Unnamed Tributary to Beaver Creek on the west side of Highway 79. This unit was included in the geographical area occupied by the species at the time of listing.

Almost 3.6 km (2.2 mi), or 85 percent, of this area is privately owned. The remaining 0.7 km (0.4 mi), or 15 percent, is publicly owned by the City of Pinson or Jefferson County in the form of bridge crossings and road easements.

The Unnamed Tributary to Beaver Creek supports populations of rush darters and is a feeder stream to Beaver Creek (PCEs 1 and 2). The Unnamed Tributary to Beaver Creek has been intensely geomorphically changed by man over the last 100 years. The majority of this reach has been channelized for flood control, as it runs parallel to Highway 79. There are several bridge crossings, and the reach has a history of industrial uses along the bank. However, owing to the groundwater that constantly supplies this reach with clean and flowing water (PCEs 3 and 4), the reach has been able to support significant emergent vegetation in shallow water on the margins to support several rush darter populations. The headwaters of the Unnamed Tributary to Beaver Creek is characterized by natural flows that are attributed to an abundance of spring groundwater discharges contributing adequate water quality, water quantity, emergent vegetation and appropriate substrates (PCEs 1, 2, 3, and 4). Increasing the connectivity of the rush darter populations (PCE 1) throughout the reaches of this tributary is an essential conservation requirement as it would decrease the vulnerability of these populations to stochastic threats. The Highway 79 Spring Site is the type locality for the species (Bart 2004, p. 194), supporting populations of rush darters and providing supplemental water quantity to the Unnamed Tributary to Beaver Creek (PCEs 1 and 3). The reach contains adequate bottom substrate and emergent vegetation for rush darters to use in spawning, foraging, and other life processes (PCE 2). The Highway 79 Spring site provides habitat and spawning sites, and offers connectivity with rush darter populations in the Unnamed Tributary to Beaver Creek (PCE 1).

Threats to the rush darter and its habitat that may require special management and protection of PCEs are: Urbanization activities (such as channel modification for flood control, and gravel extraction) that could result in increased bank erosion; significant changes in the existing flow regime due to inadequate stormwater management and impoundment construction, water diversion, or water withdrawal; significant alteration of water quality; and significant changes in stream bed material composition and quality as a result of construction projects and road maintenance activities, off-road vehicle use, sewer, gas and water easements, bridge construction, culvert and pipe installation, and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Unit 3: Tapawingo or Penny Spring and Spring Run, Jefferson County, Alabama

Proposed Unit 3 includes 0.6 km (0.4 mi) of spring run, historically called Tapawingo Plunge, along with 6.7 ha (16.5 ac) of flooded spring basin making up Penny Springs. Unit 3 is located south of Turkey Creek, north of Bud Holmes Road, and just east of Tapawingo Trail Road. The east boundary is at (33.69903, -86.66528): 1.0 km (0.6 mi) west of Section Line 28 to 29 (T15S, R1W) (U.S. Geological Survey 7.5 topographical map (Pinson quadrangle)). This unit was included in the geographical area occupied by the species at the time of listing. All 0.6 km (0.4 mi) stream miles and 6.7 ha (16.5 ac) of Unit 3 is privately owned except for that small amount that is publicly owned in the form of bridge crossings and road easements.

The Tapawingo or Penny Spring complex consists of an abundance of springs that drain directly into Turkey Creek by means of a large spring run at the old railroad crossing and Tapawingo Springs Road (PCEs 1 and 2). The historical spring run discharge ranges from 0.03 to 2.4 cubic meters per second (m^3/s) (500 to 38,800 gallons per minute (gal/min)) (Chandler and Moore 1987, p. 49), and there is an abundance of emergent vegetation (PCEs 1, 2, and 3).

Historically small numbers of rush darter have been collected in the spring area.

Threats to the rush darter and its habitat that may require special management and protection of physical and biological features are: Urbanization activities (such as channel modification for flood control, vegetation management, and gravel extraction) that could result in increased bank erosion; significant changes in the existing flow regime due to inadequate stormwater management and impoundment construction, water diversion, or water withdrawal; significant alteration of water quality; significant alteration or destruction of aquatic and emergent vegetation, and significant changes in stream bed material composition and quality as a result of construction projects and maintenance activities, off-road vehicle use, sewer, gas and water easements, bridge construction, culvert and pipe installation, and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Unit 4: Wildcat Branch, Winston County, Alabama

Proposed Unit 4 includes 6.6 km (4.1 mi) of Wildcat Branch from the streams headwaters just east of Winston County Road 29 to the confluence with Clear Creek. This unit was included in the geographical area occupied by the species at the time of listing. Almost 6.6 km (4.1 mi), or 100 percent, of this area is privately owned except for that small amount that is publicly owned by Winston County in the form of bridge crossings and road easements.

Wildcat Branch provides habitat for rush darters with a network of small pools and spring runs, along with an abundance of emergent vegetation (PCE 1 and 2). These geomorphic structures provide the species with spawning, foraging, and resting areas (PCE 1), along with good water quality, quantity, and flow (PCEs 3 and 4), which support the normal life stages and behavior of the rush darter, the species' prey sources (PCE 5). Rush darters are consistently collected in Wildcat Branch, but not in large numbers.

Threats that may require special management and protection of physical and biological features include: Road and roadside maintenance, urbanization activities (such as channel modification for flood control and gravel extraction) that could result in increased bank erosion; significant changes in the existing flow regime due to inadequate stormwater management and impoundment construction, water diversion, or water withdrawal; significant alteration of water quality; significant alteration or destruction of aquatic and emergent vegetation, and significant changes in stream bed material composition and quality as a result of construction projects and maintenance activities, off-road vehicle use, sewer, gas and water easements, bridge construction, culvert and pipe installation, and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Unit 5: Mill Creek, Winston County, Alabama

Proposed Unit 5 includes 5.9 km (3.7 mi) of Mill Creek from the stream headwaters just east of Winston County Road 195 to the confluence with Clear Creek. This unit was included in the geographical area occupied by the species at the time of listing. Almost 5.9 km (3.7 mi), or 100 percent, of this area is privately owned except for that small amount that is publicly owned by Winston County in the form of bridge crossings and road easements.

Mill Creek provides habitat for the rush darter with a network of small pools, and spring runs, along with an abundance of emergent vegetation (PCE 1 and 2). These geomorphic structures provide the species with spawning, foraging, and resting areas (PCE 1), along with good water quality, quantity, and flow (PCEs 3 and 4), which support the normal life stages and behavior of the rush darter, the species' prey sources (PCE 5). Rush darters are consistently collected in Mill Creek.

Threats that may require special management and protection of PCEs include: Road and roadside maintenance, urbanization activities (such as channel modification for flood control and gravel extraction) that could result in increased bank erosion; significant changes in the existing flow regime due to inadequate stormwater management and impoundment construction, water diversion, or water withdrawal; significant alteration of water quality; significant alteration or destruction of aquatic and emergent vegetation, and significant changes in stream bed material composition and quality as a result of construction projects and maintenance activities, off-road vehicle use, sewer, gas and water easements, bridge construction, culvert and pipe installation, and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Unit 6: Doe Branch, Winston County, Alabama

Proposed Unit 6 includes 4.3 km (2.7 mi) of Doe Branch from the stream headwaters North and West of Section Line 23 and 14 (R9W, T11S; Popular Springs Quadrangle) to the confluence with Wildcat Branch. This unit was included in the geographical area occupied by the species at the time of listing. Almost 4.3 km (2.7 mi), or 100 percent, of this area is privately owned except for that small amount that is publicly owned by Winston County in the form of bridge crossings and road easements.

Doe Branch provides habitat for the rush darter with a small network of small pools, and spring runs, along with adequate emergent vegetation (PCE 1 and 2). These geomorphic structures provide the species with spawning, foraging, and resting areas (PCE 1), along with good water quality, quantity, and flow (PCEs 3 and 4), which support the normal life stages and behavior of the rush darter, the species' prey sources (PCE 5). Although the species is considered rare in Doe Branch, there have been few collection attempts in the stream with a few darters captured (Mettee *et al.* 1989, p. 61). Doe Branch contains habitat for the species and is considered occupied. The stream joins Wildcat Branch before flowing into Clear Creek.

Threats that may require special management and protection of physical and biological features include: road and roadside maintenance, urbanization activities (such as channel modification for flood control and gravel extraction) that could result in increased bank erosion; significant changes in the existing flow regime due to inadequate stormwater management and impoundment construction, water diversion, or water withdrawal; significant alteration of water quality; significant alteration or destruction of aquatic and emergent vegetation, and significant changes in stream bed material composition and quality as a result of construction projects and maintenance activities, off-road vehicle use, sewer, gas and water easements, bridge construction, culvert and pipe installation, and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Unit 7: Little Cove Creek, Cove Spring and Spring Run, Etowah County, Alabama

Proposed Unit 7 includes 11.2 km (6.1 mi) of Little Cove Creek and the Cove Spring run system along with 5.1 ha (12.7 ac) of the spring run floodplain. Specifically, the Little Cove Creek section (11.0 km (6.0 mi)) is from the intersection of Etowah County Road 179 near the creek headwaters, downstream to its confluence with the Locust Fork

River. The Cove Spring and spring run section includes 0.2 km (0.1 mi) of the spring run from the springhead at the West Etowah Water and Fire Authority pumping station on Cove Spring Road to the confluence with Little Cove Creek and includes 5.1 ha (12.7 ac) of the spring run floodplain due south of the pumping facility. This unit was included in the geographical area occupied by the species at the time of listing. All 11.2 km (6.1 mi) of Unit 7 is privately owned except for that small amount that is publicly owned by Etowah County in the form of bridge crossings and road easements.

Little Cove Creek provides habitat for the rush darter with a network of small pools, and spring runs, along with an abundance of emergent aquatic vegetation (PCE 1 and 2). These geomorphic structures provide the species with spawning, foraging, and resting areas (PCE 1), along with good water quality, quantity, and flow (PCEs 3 and 4), which support the normal life stages and behavior of the rush darter, the species' prey sources (PCE 5). Rush darters are collected in Little Cove Creek, but not in large numbers. The Cove Spring and Spring Run site supports small populations of rush darters and provides supplemental water quantity to Little Cove Creek (PCEs 1 and 3). Water quantity from the spring averages 0.2 m^3/s (3,000 gal/min) (Snead 2011, pers. comm.) (PCE 4). The spring contains an abundance of gravel and silt along with significant emergent vegetation for rush darters to use in spawning, foraging, and other life processes (PCE 2). The Cove Spring and Spring Run site provides habitat and spawning sites, and offers connectivity with rush darter populations to Little Cove Creek (PCE 1).

Threats that may require special management and protection of physical and biological features include: road and roadside maintenance, agricultural and silviculture activities that could result in increased bank erosion; significant changes in the existing flow regime due to inadequate stormwater management; impoundment construction, water diversion, or water withdrawal for livestock and irrigation; significant alteration or destruction of aquatic and emergent vegetation, significant alteration of water quality due to release of chlorinated water and other chemicals into the Cove Spring run or Little Cove Creek by the water pumping facility or other sources; off-road vehicle use, sewer, gas and water easements, bridge construction, culvert and pipe installation, and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Unit 8: Bristow Creek, Etowah County, Alabama

Proposed Unit 8 includes 10.2 km (6.3 mi) of Bristow Creek beginning from its intersection with Fairview Cove Road, downstream to the confluence with the Locust Fork River. This unit was included in the geographical area occupied by the species at the time of listing. All 10.2 km (6.3 mi) of Bristow Creek, beginning at the bridge at Fairview Road, downstream to the confluence with the Locust Fork River is privately owned except for that small amount that is publicly owned by Etowah County in the form of bridge crossings and road easements.

Bristow Creek, although channelized in some locations, provides habitat and connectivity for the rush darters (PCE 1). Locations within the creek have the necessary stream attributes of some small pools, and spring runs (PCE 1) along with emergent vegetation (PCE 2). These geomorphic structures provide the species with spawning, foraging, and resting areas (PCE 1), along with supplemental water quantity and flow (PCE 3), which support the normal life stages and behavior of the rush darter, the species' prey sources (PCE 5). The rush darter is considered rare in Bristow Creek, but sampling has been limited.

Threats that may require special management and protection of physical and biological features include: road and roadside maintenance, agricultural and silviculture activities that could result in increased bank erosion; significant changes in the existing flow regime due to inadequate stormwater management; significant alteration or destruction of aquatic and emergent vegetation, impoundment construction, water diversion, or water withdrawal for livestock and irrigation; off-road vehicle use, sewer, gas and water easements, septic tank drain fields, bridge construction and maintenance, culvert and pipe installation, and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Yellowcheek Darter

We are proposing four units as critical habitat for the yellowcheek darter. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the yellowcheek darter. The four areas on the Little Red River that we propose as critical habitat are as follows: (1) Middle Fork, (2) South Fork, (3) Archey Fork, and (4) Devil's Fork (Includes Turkey Creek and Beech Fork). Table 3 shows the occupancy of the units and ownership of the proposed designated areas for the yellowcheek darter.

TABLE 3—OCCUPANCY AND OWNERSHIP OF THE PROPOSED CRITICAL HABITAT UNITS FOR THE YELLOWCHEEK DARTER

Unit	Location	Occupied	Private ownership km (mi)	State, county, city ownership km (mi)	Total length km (mi)
1	Middle Fork of Little Red River	Yes	64.2 (39.9)	6.0 (3.7)	70.2 (43.6)
2	South Fork of Little Red River	Yes	30.3 (18.8)	1.6 (1.0)	31.9 (19.8)
3	Archey Fork of Little Red River	Yes	27.1 (16.8)	≤ .3(.2)	27.4 (17.0)
4	Devil's Fork of Little Red River	Yes	26.4 (16.4)	1.1 (0.7)	27.5 (17.1)
Total					157.0 (97.5)

We present brief descriptions of all units and reasons why they meet the definition of critical habitat for the yellowcheek darter. The proposed critical habitat units include the river channels within the ordinary high water line. As defined in 33 CFR 329.11, the ordinary high water mark on nontidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics, such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas. In Arkansas, the riparian landowner owns the stream to the middle of the channel for non-navigable streams and

rivers. For each stream reach proposed as a critical habitat unit, the upstream and downstream boundaries are described generally below.

Unit 1: Middle Fork of the Little Red River, Searcy, Stone, and Van Buren Counties, Arkansas

Proposed Unit 1 includes 70.2 km (43.6 mi) of the Middle Fork of the Little Red River from Searcy County Road 167 approximately 3.4 km (2.1 miles) southwest of Leslie, Arkansas, to a point on the stream 7.7 river km (4.8 mi) downstream (35.66515, -92.25942) of the Arkansas Highway 9 crossing of the Middle Fork near Shirley, Arkansas. The lower boundary coincides with the 140.5-m (461-ft) elevation of the conservation pool for Greers Ferry Lake where suitable habitat becomes inundated by Greers Ferry Lake and no longer supports the yellowcheek darter. Live yellowcheek darters have been collected from four sites within proposed Unit 1. The uppermost site is immediately below the Hwy 65 Bridge near Leslie, Arkansas, and the lowermost site is immediately below the Hwy 9 Bridge in Shirley, Arkansas (Wine and Blumenshine 2002, p. 18). This unit was included in the geographical area occupied by the species at the time of listing. Approximately 64.2 km (39.9 mi), or 92 percent, of proposed Unit 1 is privately owned, and 6.0 km (3.7 mi) is within the Cherokee Wildlife Management Area owned by the State of Arkansas. County and State road crossings exist in all three counties and account for less than one percent of total proposed Unit 1 ownership.

This unit contains stable riffle areas of moderate to swift velocity (PCE 1) that are relatively silt-free (PCE 2) and maintain surface flows year round (PCE 3). Such characteristics are necessary for reproductive and sheltering requirements of yellowcheek darters. Water quality within this unit is also characterized by moderate temperatures, relatively high dissolved oxygen concentrations, moderate pH, and low levels of pollutants (PCE 4), which support abundant populations of aquatic macroinvertebrates that serve as prey items for yellowcheek darters (PCE 5).

The yellowcheek darter and its habitat may require special management considerations or protection to address changes in the existing stream ecology due to activities as associated with natural gas development, livestock grazing, county road maintenance, timber harvest, water diversion, gravel mining, and rock harvesting operations. Alteration of water quality and changes in streambed material composition from any other activities that would release sediments, nutrients, or toxins into the water also threaten the yellowcheek darter.

Unit 2: South Fork of the Little Red River, Van Buren County, Arkansas

Proposed Unit 2 includes 31.9 km (19.8 mi) of the South Fork of the Little Red River from Van Buren County Road 9 three miles north of Scotland, Arkansas, to a point on the stream (35.57364, -92.42718) approximately 5.5 river km (3.4 mi) downstream of U.S. Highway 65 in Clinton, Arkansas, where suitable habitat becomes inundated by Greers Ferry Lake and no longer supports the yellowcheek darter. Live yellowcheek darters have been collected from four sites along the South Fork Little Red River, including the uppermost boundary at the County Road 9 Bridge and just above the Hwy 65 Bridge in Clinton, Arkansas. This unit was included in the geographical area occupied by the species at the time of listing. Approximately 30.3 km (18.8 mi), or 95 percent, of proposed Unit 2 is privately owned, and 1.6 km (1.0 mi) is within the Cherokee Wildlife Management Area owned by the State of Arkansas or the city limits of Clinton, Arkansas. County and State road crossings account for less than one percent of total Unit 2 ownership.

This unit contains stable riffle areas of moderate to swift velocity (PCE 1) that are relatively silt-free (PCE 2) and maintain surface flows year round (PCE 3). Such characteristics are necessary for reproductive and sheltering requirements of yellowcheek darters. Water quality within this unit is also characterized by moderate temperatures, relatively high dissolved oxygen concentrations, moderate pH, and low levels of pollutants (PCE 4), which support abundant populations of aquatic macroinvertebrates that serve as prey items for yellowcheek darters (PCE 5).

The yellowcheek darter and its habitat may require special management considerations or protection to address changes in the existing stream ecology due to activities as associated with natural gas development, livestock grazing, county road maintenance, timber harvest, water diversion, and gravel mining. Alteration of water quality and changes in streambed material composition from any other activities that would release sediments, nutrients, or toxins into the water also threaten the yellowcheek darter.

Unit 3: Archey Fork of the Little Red River, Van Buren County, Arkansas

Proposed Unit 3 includes 27.4 km (17.0 mi) of the Archey Fork of the Little Red River from its junction with South Castleberry Creek to its confluence with the South Fork of the Little Red River near Clinton, Arkansas. Live yellowcheek darters have been collected just above the confluence of the Archey and South Forks (Wine *et al.* 2000, p. 10) and at a point 15.3 km (9.5 mi) above the confluence (Brophy and Stoeckel 2006, p. 3). This unit was included in the geographical area occupied by the species at the time of listing. Proposed Unit 3 is nearly 100 percent privately owned. County and state road crossings and portions within the city of Clinton, Arkansas, account for less than one percent of total Unit 3 ownership.

This unit contains stable riffle areas of moderate to swift velocity (PCE 1) that are relatively silt-free (PCE 2) and maintain surface flows year round (PCE 3). Such characteristics are necessary for reproductive and sheltering requirements of yellowcheek darters. Water quality within this unit is also characterized by moderate temperatures, relatively high dissolved oxygen concentrations, moderate pH, and low levels of pollutants (PCE 4), which support abundant populations of aquatic macroinvertebrates that serve as prey items for yellowcheek darters (PCE 5).

The yellowcheek darter and its habitat may require special management considerations or protection to address changes in the existing stream ecology due to activities as associated with natural gas development, livestock grazing, county road maintenance, timber harvest, water diversion, and gravel mining. Alteration of water quality and changes in streambed material composition from any other activities that would release sediments, nutrients, or toxins into the water also threaten the yellowcheek darter.

Unit 4: Devil's Fork of the Little Red River (Including Turkey Creek and Beech Fork), Stone and Cleburne Counties, Arkansas

Proposed Unit 4 includes 27.5 km (17.1 mi) of stream from Stone County Road 21 approximately 3 miles north of Prim, Arkansas, to a point (35.63556, -92.03400) on the Devil's Fork approximately 5.1 km (3.2 mi) southeast of Woodrow, Arkansas, where suitable habitat becomes inundated by Greers Ferry Lake and no longer supports the yellowcheek darter. Live yellowcheek darters have not been collected at the

uppermost site (Turkey Creek) since 1999 (Mitchell *et al.* 2002, p. 131). However, Wine and Blumenshine (2002, p. 11) did detect yellowcheek darters in the Beech Fork and it is likely that the species persists in very low numbers within the upper portions of the watershed during normal flow years. This unit was included in the geographical area occupied by the species at the time of listing. Approximately 26.4 km (16.4 mi), or 96 percent, of proposed Unit 4 is privately owned, and 1.1 km (0.7 mi) is within the Cherokee Wildlife Management Area owned by the State of Arkansas. County road crossings exist in both counties and account for less than one percent of total Unit 4 ownership.

This unit contains stable riffle areas of moderate to swift velocity (PCE 1) that are relatively silt-free (PCE 2) and maintain surface flows year round (PCE 3). Such characteristics are necessary for reproductive and sheltering requirements of yellowcheek darters. Water quality within this unit is also characterized by moderate temperatures, relatively high dissolved oxygen concentrations, moderate pH, and low levels of pollutants (PCE 4), which support abundant populations of aquatic macroinvertebrates that serve as prey items for yellowcheek darters (PCE 5).

The yellowcheek darter and its habitat may require special management considerations or protection to address changes in the existing stream ecology due to activities as associated with natural gas development, livestock grazing, county road maintenance, timber harvest, water diversion, and gravel mining. Alteration of water quality and changes in streambed material composition from any other activities that would release sediments, nutrients, or toxins into the water also threaten the yellowcheek darter.

Chucky Madtom

We are proposing one unit as critical habitat for the chucky madtom. The critical habitat area we describe below constitutes our current best assessment of the area that meets the definition of critical habitat for the chucky madtom. Lands in the critical habitat unit are either in private ownership or public ownership (Greene County road easements). In Tennessee, landowners own the land under non-navigable streams (*e.g.,* the stream channel or bottom), but the water is under State jurisdiction. The area we propose as critical habitat is: Little Chucky Creek, and was occupied at the time of listing. Table 4 shows the occupancy of the unit and ownership of the proposed designated area for the chucky madtom.

TABLE 4—OCCUPANCY AND OWNERSHIP OF THE PROPOSED CRITICAL HABITAT UNIT FOR THE CHUCKY MADTOM

Unit	Location	Occupied	Private ownership km (mi)	State, county, city ownership km (mi)	Total length km (mi)
	Little Chucky Creek	Yes	31.8 (19.7)	< 0.1 (< 0.06)	31.9 (19.8)
Total					31.9 (19.8)

We present a brief description of the unit and reasons why it meets the definition of critical habitat for the chucky madtom. The proposed critical habitat unit includes the river channel within the ordinary high water line. As defined in 33 CFR 329.11, the ordinary high water mark on nontidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics, such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas. For the stream reach proposed as a critical habitat unit, the upstream and downstream boundaries are described generally below; a more precise description is provided in the Proposed Regulation Promulgation at the end of this proposed rule.

Unit 1: Little Chucky Creek, Greene County, Tennessee

This unit includes 31.9 km (19.8 mi) of Little Chucky Creek from its confluence with an unnamed tributary, downstream to its confluence with the Nolichucky River, at the Greene and Cocke County line, Tennessee. Although the chucky madtom has not been observed since 2004, we still consider it to exist in Little Chucky Creek. Observations of the species have always been sporadic, and it is a cryptic species that is hard to locate. This unit was included in the geographical area occupied by the species at the time of listing. Almost 31.9 km (19.8 mi), or 100 percent, of this area is privately owned except for that small amount that is publicly owned by Greene County in the form of bridge crossings and road easements.

This proposed unit contains stable riffle and run areas of moderate to swift velocity (PCE 1); flat gravel, cobble, and slab-rock boulders that are relatively silt-free (PCE 2); and surface flows that are maintained year round (PCE 3). Such characteristics are necessary for reproductive and sheltering requirements of chucky madtoms. Water quality within this unit is also characterized by moderate temperatures, relatively high dissolved oxygen concentrations, moderate pH, and low levels of pollutants (PCE 4), which support abundant populations of aquatic macroinvertebrates that serve as prey items for the chucky madtom (PCE 5).

This critical habitat unit is located on private property and is not presently under the special management or protection provided by a legally operative plan or agreement for the conservation of the species. Various activities in or adjacent to the critical habitat unit described in this proposed rule may affect one or more of the PCEs. For example, features in this proposed critical habitat designation may require special management due to threats posed by agricultural activities (*e.g.,* row crops and livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, gravel mining, and nonpoint source pollution arising from a wide variety of human activities.

Laurel Dace

We are proposing six units as critical habitat for the laurel dace. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the laurel dace. The six areas we propose as critical habitat are as follows: (1) Bumbee Creek, (2) Youngs Creek, (3) Moccasin Creek, (4) Cupp Creek, (5) Horn Branch, and (6) Soddy Creek. Lands in critical habitat units are either in private ownership or public

ownership (county road easements). In Tennessee, landowners own the land under non-navigable streams (*e.g.,* the stream channel or bottom), but the water is under State jurisdiction. Table 5 shows the occupancy of the units and ownership of the proposed designated areas for the laurel dace.

TABLE 5—OCCUPANCY AND OWNERSHIP OF THE PROPOSED CRITICAL HABITAT UNITS FOR THE LAUREL DACE

Unit	Location	Occupied	Private ownership km (mi)	State, county, city ownership km (mi)	Total length km (mi)
1	Bumbee Creek	Yes	7.7 (4.7)	< 0.1 (< 0.06)	7.8 (4.8)
2	Youngs Creek	Yes	7.8 (4.8)	< 0.1 (< 0.06)	7.9 (4.9)
3	Moccasin Creek	Yes	8.9 (5.5)	< 0.1 (< 0.06)	9.0 (5.6)
4	Cupp Creek	Yes	4.9 (3.0)	< 0.1 (< 0.06)	5.0 (3.1)
5	Horn Branch	Yes	3.9 (2.4)	< 0.1 (< 0.06)	4.0 (2.5)
6	Soddy Creek	Yes	8.3 (5.1)	< 0.1 (< 0.06)	8.4 (5.2)
Total					42.2 (26.2)

We present brief descriptions of all units and reasons why they meet the definition of critical habitat for the laurel dace. The proposed critical habitat units include the river channels within the ordinary high water line. As defined in 33 CFR 329.11, the ordinary high water mark on nontidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics, such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas. For each stream reach proposed as a critical habitat unit, the upstream and downstream boundaries are described generally below; more precise descriptions are provided in the Proposed Regulation Promulgation at the end of this proposed rule.

Unit 1: Bumbee Creek, Bledsoe and Rhea Counties, Tennessee

Proposed Unit 1 includes 8.0 km (5.0 mi) of Bumbee Creek from its headwaters in Bledsoe County, downstream to its confluence with Mapleslush Branch in Rhea County, Tennessee. This unit was included in the geographical area occupied by the species at the time of listing. Almost 7.9 km (4.9 mi), or 100 percent, of this area is privately owned except for that small amount that is publicly owned by Bledsoe and Rhea Counties in the form of bridge crossings and road easements.

This unit contains stable headwater streams (PCE 1) that are relatively silt-free, contain cobble and slab-rock boulder substrates with canopy cover (PCE 2), and surface flows that are maintained year round (PCE 3). Such characteristics are necessary for reproductive and sheltering requirements of laurel dace. Water quality within this unit is also characterized by moderate temperatures, relatively high dissolved oxygen concentrations, moderate pH, and low levels of pollutants (PCE 4), which support abundant populations of aquatic macroinvertebrates that serve as prey items for laurel dace (PCE 5).

Various activities in or adjacent to these areas of proposed critical habitat may affect one or more of the physical and biological features. For example, features in this proposed critical habitat designation may require special management due to threats posed by resource extraction (coal and gravel mining, silviculture, natural gas and oil exploration activities), agricultural activities (row crops and livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, nonpoint source pollution arising from a wide variety of human activities, and canopy loss caused by infestations of the hemlock wooly adelgid. These threats are in addition to random effects of drought, floods, or other natural phenomena.

Unit 2: Youngs Creek, Bledsoe and Rhea Counties, Tennessee

Proposed Unit 2 includes 7.8 km (4.8 mi) of Youngs Creek from its headwaters in Bledsoe County, downstream to its confluence with Moccasin Creek in Rhea County, Tennessee. This unit was included in the geographical area occupied by the species at the time of listing. Almost 7.7 km (4.7 mi), or 100 percent, of this area is privately owned except for that small amount that is publicly owned by Bledsoe and Rhea Counties in the form of bridge crossings and road easements.

This unit contains stable headwater streams (PCE 1) that are relatively silt-free, contain cobble and slab-rock boulder substrates with canopy cover (PCE 2), and surface flows that are maintained year round (PCE 3). Such characteristics are necessary for reproductive and sheltering requirements of laurel dace. Water quality within this unit is also characterized by moderate temperatures, relatively high dissolved oxygen concentrations, moderate pH, and low levels of pollutants (PCE 4), which support abundant populations of aquatic macroinvertebrates that serve as prey items for laurel dace (PCE 5).

Various activities in or adjacent to these areas of proposed critical habitat may affect one or more of the physical and biological features. For example, features in this proposed critical habitat designation may require special management due to threats posed by resource extraction (coal and gravel mining, silviculture, natural gas and oil exploration activities), agricultural activities (row crops and livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, nonpoint source pollution arising from a wide variety of human activities, and canopy loss caused by infestations of the hemlock wooly adelgid. These threats are in addition to random effects of drought, floods, or other natural phenomena.

Unit 3: Moccasin Creek, Bledsoe County, Tennessee

Proposed Unit 3 includes 9.0 km (5.6 mi) of Moccasin Creek from its headwaters downstream to 0.1 km (0.6 mi) below its confluence with Lick Creek in Bledsoe County, Tennessee. This unit was included in the geographical area occupied by the species at the time of listing. Almost 8.9 km (5.5 mi), or 100 percent, of this area is privately owned except for that small amount that is publicly owned by Bledsoe County in the form of bridge crossings and road easements.

This unit contains stable headwater streams (PCE 1) that are relatively silt-free, contain cobble and slab-rock boulder substrates with canopy cover

(PCE 2), and surface flows that are maintained year round (PCE 3). Such characteristics are necessary for reproductive and sheltering requirements of laurel dace. Water quality within this unit is also characterized by moderate temperatures, relatively high dissolved oxygen concentrations, moderate pH, and low levels of pollutants (PCE 4), which support abundant populations of aquatic macroinvertebrates that serve as prey items for laurel dace (PCE 5).

Various activities in or adjacent to these areas of proposed critical habitat may affect one or more of the physical and biological features. For example, features in this proposed critical habitat designation may require special management due to threats posed by resource extraction (coal and gravel mining, silviculture, natural gas and oil exploration activities), agricultural activities (row crops and livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, nonpoint source pollution arising from a wide variety of human activities, and canopy loss caused by infestations of the hemlock wooly adelgid. These threats are in addition to random effects of drought, floods, or other natural phenomena.

Unit 4: Cupp Creek, Bledsoe County, Tennessee

Proposed Unit 4 includes 5.0 km (3.1 mi) of Cupp Creek from its headwaters downstream to its confluence with an unnamed tributary in Bledsoe County, Tennessee. This unit was included in the geographical area occupied by the species at the time of listing. Almost 4.9 km (3.0 mi), or 100 percent, of this area is privately owned except for that small amount that is publicly owned by Bledsoe County in the form of bridge crossings and road easements.

This unit contains stable headwater streams (PCE 1) that are relatively silt-free; contain cobble and slab-rock boulder substrates with canopy cover (PCE 2), and surface flows that are maintained year round (PCE 3). Such characteristics are necessary for reproductive and sheltering requirements of laurel dace. Water quality within this unit is also characterized by moderate temperatures, relatively high dissolved oxygen concentrations, moderate pH, and low levels of pollutants (PCE 4), which support abundant populations of aquatic macroinvertebrates that serve as prey items for laurel dace (PCE 5).

Various activities in or adjacent to these areas of proposed critical habitat may affect one or more of the physical and biological features. For example, features in this proposed critical habitat designation may require special management due to threats posed by resource extraction (coal and gravel mining, silviculture, natural gas and oil exploration activities), agricultural activities (row crops and livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, nonpoint source pollution arising from a wide variety of human activities, and canopy loss caused by infestations of the hemlock wooly adelgid. These threats are in addition to random effects of drought, floods, or other natural phenomena.

Unit 5: Horn Branch, Bledsoe County, Tennessee

Proposed Unit 5 includes 4.0 km (2.5 mi) of Horn Branch from its headwaters downstream to its confluence with Rock Creek in Bledsoe County, Tennessee. This unit was included in the geographical area occupied by the species at the time of listing. Almost 3.9 km (2.4 mi), or 100 percent, of this area is privately owned except for that small amount that is publicly owned by Bledsoe County in the form of bridge crossings and road easements.

This unit contains stable headwater streams (PCE 1) that are relatively silt-free, contain cobble and slab-rock boulder substrates with canopy cover (PCE 2), and surface flows that are maintained year round (PCE 3). Such characteristics are necessary for reproductive and sheltering requirements of laurel dace. Water quality within this unit is also characterized by moderate temperatures, relatively high dissolved oxygen concentrations, moderate pH, and low levels of pollutants (PCE 4), which support abundant populations of aquatic macroinvertebrates that serve as prey items for laurel dace (PCE 5).

Various activities in or adjacent to these areas of proposed critical habitat may affect one or more of the physical and biological features. For example, features in this proposed critical habitat designation may require special management due to threats posed by resource extraction (coal and gravel mining, silviculture, natural gas and oil exploration activities), agricultural activities (row crops and livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, nonpoint source pollution arising from a wide variety of human activities, and canopy loss caused by infestations of the hemlock wooly adelgid. These threats are in addition to random effects of drought, floods, or other natural phenomena.

Unit 6: Soddy Creek, Sequatchie and Bledsoe Counties, Tennessee

Proposed Unit 6 includes 8.4 km (5.2 mi) of Soddy Creek from its headwaters in Sequatchie County, downstream to its confluence with Harvey Creek in Sequatchie County, Tennessee. This unit was included in the geographical area occupied by the species at the time of listing. Almost 8.3 km (5.1 mi), or 100 percent, of this area is privately owned except for a small amount that is publicly owned by Sequatchie and Bledsoe Counties in the form of bridge crossings and road easements.

This unit contains stable headwater streams (PCE 1) that are relatively silt-free, contain cobble and slab-rock boulder substrates with canopy cover (PCE 2), and surface flows that are maintained year round (PCE 3). Such characteristics are necessary for reproductive and sheltering requirements of laurel dace. Water quality within this unit is also characterized by moderate temperatures, relatively high dissolved oxygen concentrations, moderate pH, and low levels of pollutants (PCE 4), which support abundant populations of aquatic macroinvertebrates that serve as prey items for laurel dace (PCE 5).

Various activities in or adjacent to these areas of proposed critical habitat may affect one or more of the physical and biological features. For example, features in this proposed critical habitat designation may require special management due to threats posed by resource extraction (coal and gravel mining, silviculture, natural gas and oil exploration activities), agricultural activities (row crops and livestock), lack of adequate riparian buffers, construction and maintenance of State and county roads, nonpoint source pollution arising from a wide variety of human activities, and canopy loss caused by infestations of the hemlock wooly adelgid. These threats are in addition to random effects of drought, floods, or other natural phenomena.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued

existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuits Court of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, or are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species 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 or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for the species. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

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 Cumberland darter, rush darter, yellowcheek darter, chucky madtom, and laurel dace. These activities include, but are not limited to:

(1) Actions that would alter the geomorphology of stream habitats. Such activities could include, but are not limited to, instream excavation or dredging, impoundment, channelization, road and bridge construction, mining, and discharge of fill materials. These activities could cause aggradation or degradation of the channel bed elevation or significant bank erosion, result in entrainment or burial of these fishes, and cause other direct or cumulative adverse effects to these species.

(2) Actions that would significantly alter the existing flow regime or water quantity. Such activities could include, but are not limited to, impoundment, water diversion, water withdrawal, and hydropower generation. These activities could eliminate or reduce the habitat necessary for growth and reproduction of these fishes.

(3) Actions that would significantly alter water quantity or water quality (for example, temperature, pH, contaminants, and excess nutrients). Such activities could include, but are not limited to, hydropower discharges, or the release of chemicals, biological pollutants, or heated effluents into surface water or connected groundwater at a point source or by dispersed release (nonpoint source). These activities could alter water conditions that are beyond the tolerances of these fishes and result in direct or cumulative adverse effects to the species.

(4) Actions that would significantly alter stream bed material composition and quality by increasing sediment deposition or filamentous algal growth. Such activities could include, but are not limited to, construction projects, livestock grazing, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances that release sediments or nutrients into the water. These activities could eliminate or reduce habitats necessary for the growth and reproduction of these fishes by causing excessive sedimentation or nutrification.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a)

required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, and any other relevant impacts. In considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors.

We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov,* or by contacting the Tennessee Ecological Services Field Office directly (see **FOR FURTHER INFORMATION CONTACT** section). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for the Cumberland darter, rush darter, yellowcheek darter, chucky madtom, and laurel dace are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposal, we have determined that there is one conservation agreement that exists for the yellowcheek darter in the upper Little Red River, Arkansas. The yellowcheek darter is currently covered under a joint Candidate Conservation Agreement with Assurances (CCAA) in the upper Little Red River watershed in Arkansas along with the endangered speckled pocketbook mussel. The CCAA will convert to a SHA, as the yellowcheek darter is listed as endangered and would be covered by an enhancement of survival permit, which expires January 1, 2044. We welcome comments pertaining to designation of critical habitat in the CCAA coverage area. Designation of critical habitat for the yellowcheek darter may be also beneficial to the federally endangered speckled pocketbook mussel given that extensive range overlap and water quality requirements occurs between the two species.

There are no HCPs or other management plans for the Cumberland darter, rush darter, yellowcheek darter, chucky madtom, or laurel dace, and the proposed designation does not include any tribal lands or trust resources. We anticipate no impact on tribal lands, partnerships, or HCPs from this proposed critical habitat designation.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least 1 to 2 appropriate and independent specialists for each species regarding this proposed

rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed designation of critical habitat.

We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this proposed rule under Executive Order 12866 (Regulatory Planning and Review). OMB bases its determination upon the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the 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 SBREFA amended RFA 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.

At this time, we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, we defer the RFA finding until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and Executive Order 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will announce availability of the draft economic analysis of the proposed designation in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. On the basis of the development of our proposal, we have identified certain sectors and activities that may potentially be affected by a designation of critical habitat for these five fishes. These sectors include coal, oil, and natural gas operations; timber operations; industrial development; urbanization; and the accompanying infrastructure associated with such projects such as road, storm water drainage, and bridge and culvert construction and maintenance.

We have concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect the designation of this proposed critical habitat to significantly affect energy supplies, distribution, or use. Natural gas and oil exploration and development activities occur or could potentially occur in the Cumberland darter (13 of 15 critical habitat units) and Yellowcheek darter (4 of 4 critical habitat units) proposed critical habitat. However, compliance with State regulatory requirements or voluntary BMPs would be expected to minimize impacts of natural gas and oil exploration and development in the areas of proposed critical habitat for both species. The measures for natural gas and oil exploration and development are generally not considered a substantial cost compared with overall project costs and are already being implemented by oil and gas companies.

Coal mining occurs or could potentially occur in 11 of the 15 proposed critical habitat units for the Cumberland darter. Incidental take for listed species associated with surface coal mining activities is currently covered under a programmatic, non-jeopardy biological opinion between the Office of Surface Mining and the Service completed in 1996 (Service 1996, entire). The biological opinion covers existing, proposed, and future endangered and threatened species that may be affected by the implementation and administration of surface coal mining programs under the Surface Mining Control and Reclamation Act of 1977. Through its analysis, the Service concluded that the proposed action (surface coal mining and reclamation activities) was not likely to jeopardize the continued existence of any threatened, endangered, or proposed species or result in adverse modification of designated or proposed critical habitat. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local,

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 would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) This rule would not significantly or uniquely affect small governments. The lands being proposed for Cumberland darter critical habitat designation are owned by the DBNF and private landowners. The lands being proposed for rush darter critical habitat designation are mostly owned by private landowners; a small portion of the City of Pinson; and road easements in Etowah, Jefferson, and Winston Counties, Alabama. The lands being proposed for yellowcheek darter are mostly owned by private landowners; a small portion are owned by the State of Arkansas (Cherokee Wildlife Management Area and road easements); and road easements in Cleburne, Searcy, Stone, and Van Buren Counties, Arkansas. Most of the lands being proposed for chucky madtom are private, a small portion consisting of road easements in Greene County, Tennessee. Most of the lands being proposed for laurel dace are located on private lands, a small portion consisting of road easements in Bledsoe, Rhea, and Sequatchie Counties, Tennessee. Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Cumberland darter, rush darter, yellowcheek darter, chucky madtom, and laurel dace in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of critical habitat for these five species does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Kentucky, Alabama, Arkansas, and Tennessee. The designation of critical habitat in areas currently occupied by these five fishes may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical and biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the elements of physical and biological features essential to the conservation of the Cumberland darter, rush darter, yellowcheek darter, chucky madtom, and laurel dace within the designated areas to assist the public in understanding the habitat needs of the species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 *et seq.*)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F. 3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise this rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, *etc.*

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

We determined that there are no tribal lands that were occupied by the Cumberland darter, rush darter, yellowcheek darter, chucky madtom, or laurel dace at the time of listing that contain the features essential for conservation of these species, and no tribal lands unoccupied by these five species that are essential for the conservation of these species. Therefore, we are not proposing to designate critical habitat for these five species on tribal lands.

References Cited

A complete list of references cited in this proposed rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary authors of this package are the staff members of the Arkansas, Kentucky, Mississippi, and Tennessee Ecological Services Field Offices.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entries for ''Dace, laurel,'' ''Darter, Cumberland,'' ''Darter, rush,'' ''Darter, yellowcheek,'' and ''Madtom, chucky'' under FISHES 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						
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Dace, laurel	*Chrosomus saylori*	U.S.A (TN)	Entire	E	791	17.95(e)	NA
*	*	*	*	*	*		*
Darter, Cumberland	*Etheostoma susanae*	U.S.A. (KY, TN)	Entire	E	791	17.95(e)	NA
*	*	*	*	*	*		*
Darter, rush	*Etheostoma phytophilum.*	U.S.A. (AL)	Entire	E	791	17.95(e)	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
Darter, yellowcheek	*Etheostoma moorei*	U.S.A. (AR)	Entire	E	791	17.95(e)	NA
*	*	*	*	*	*		*
Madtom, chucky	*Noturus crypticus*	U.S.A. (TN)	Entire	E	791	17.95(e)	NA
*	*	*	*	*	*		*

3. In § 17.95, amend paragraph (e) by adding entries for ''Laurel Dace (*Chrosomus saylori*)'', ''Cumberland Darter (*Etheostoma susanae*)'', ''Rush Darter (*Etheostoma phytophilum*)'', ''Yellowcheek Darter (*Etheostoma moorei*)'', and ''Chucky madtom (*Noturus crypticus*)'' in the same alphabetical order that those species appear in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Laurel Dace (*Chrosomus saylori*)

(1) Critical habitat units are depicted for Bledsoe, Rhea, and Sequatchie Counties, Tennessee, on the maps below.

(2) Within these areas, the primary constituent elements of the physical and biological features essential to the conservation of the laurel dace consist of five components:

(i) Pool and run habitats of geomorphically stable first- to second-order streams with riparian vegetation; cool, clean, flowing water; shallow depths; and connectivity between spawning, foraging, and resting sites to promote gene flow throughout the species' range.

(ii) Stable bottom substrates composed of relatively silt-free cobble and slab-rock boulder substrates with undercut banks and canopy cover. Relatively silt-free is defined for the purpose of this rule as silt or fine sand within interstitial spaces of substrates in amounts low enough to have minimal impact to the species.

(iii) An instream flow regime (magnitude, frequency, duration, and seasonality of discharge over time) sufficient to provide permanent surface flows, as measured during years with average rainfall, and maintain benthic habitats utilized by the species.

(iv) Adequate water quality characterized by moderate stream temperatures, acceptable dissolved oxygen concentrations, moderate pH, and low levels of pollutants. Adequate water quality is defined for the purpose of this rule as the quality necessary for normal behavior, growth, and viability of all life stages of the laurel dace.

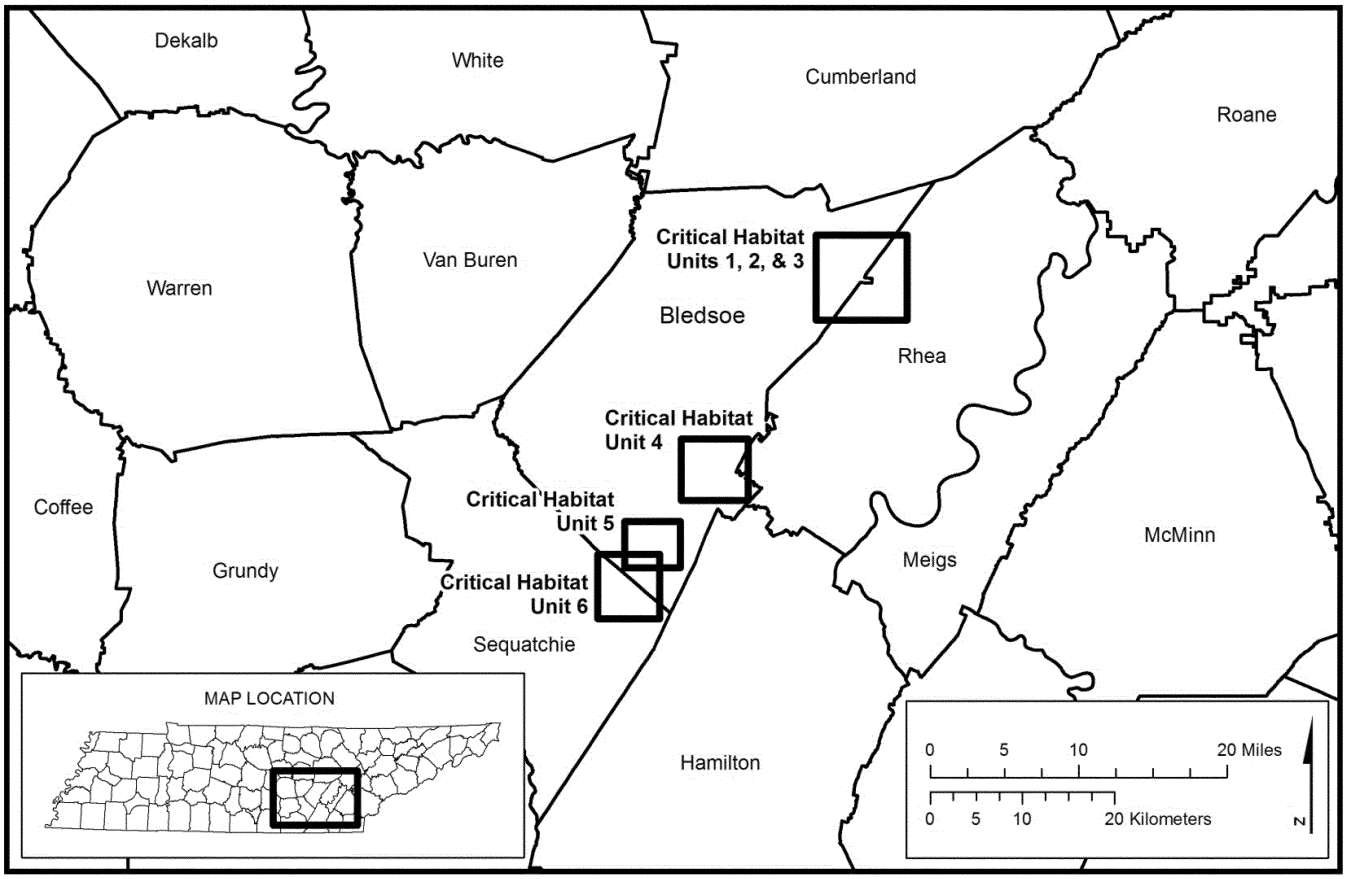
(v) Prey base of aquatic macroinvertebrates, including midge larvae, caddisfly larvae, and stonefly larvae.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat unit maps.* Data layers defining map units were created on a base of USGS digital ortho-photo quarter-quadrangles, and critical habitat units were then mapped using Tennessee State Plane, Lambert Conformal Conic Projection, units feet. Upstream and downstream limits were then identified by longitude and latitude using decimal degrees and projected in WGS 1984.

(5) *Note:* Overview of Critical Habitat Locations for Laurel Dace in Tennessee follows:

Overview of Critical Habitat Locations for Laurel Dace in Tennessee



This map is provided for illustrative purposes of critical habitat only. For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(6) Units 1, 2, and 3: Bumbee Creek and Youngs Creek, Bledsoe and Rhea Counties, Tennessee; and Moccasin Creek, Bledsoe County, Tennessee.

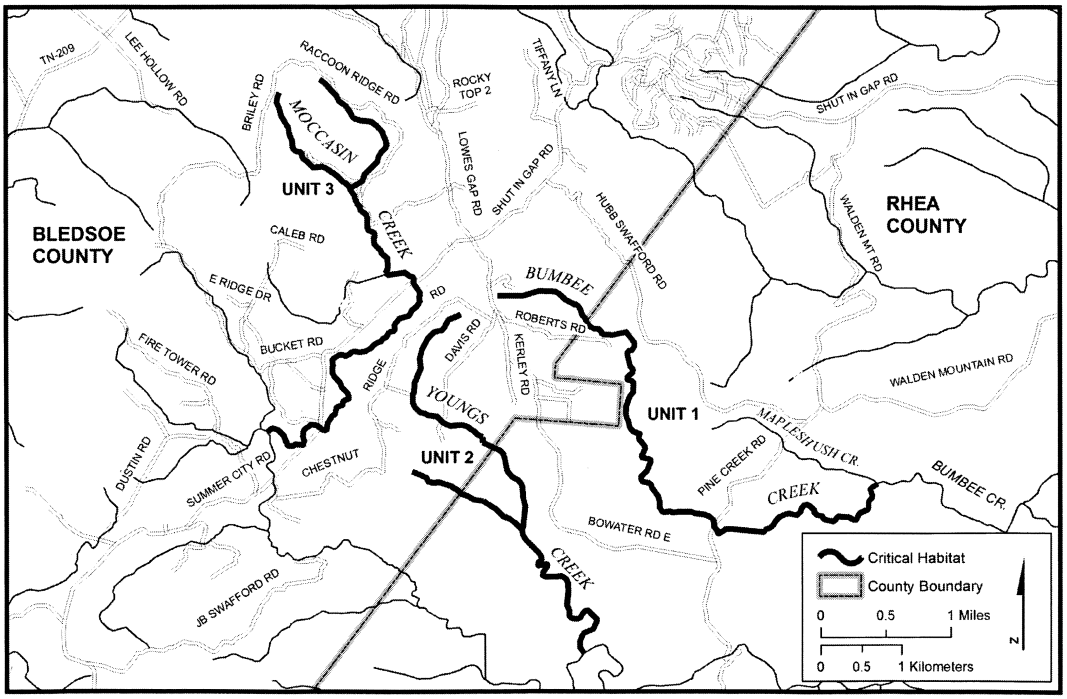
(i) Unit 1 includes 8.0 km (5.0 mi) of Bumbee Creek from its headwaters at (35.68933, −84.99763) in Bledsoe County, downstream to its confluence with Mapleslush Branch (35.66833, −84.94714) in Rhea County, Tennessee.

(ii) Unit 2 includes 7.8 km (4.8 mi) of Youngs Creek from its headwaters at (35.68745, −85.00261) and (35.67015, −85.00935) in Bledsoe County, downstream to its confluence with Moccasin Creek (35.65003, −84.98665) in Rhea County, Tennessee.

(iii) Unit 3 includes 9.0 km (5.6 mi) of Moccasin Creek from its headwaters at (35.71313, −85.02109) and (35.71179, −85.02662) downstream to 0.1 km (0.6 mi) below its confluence with Lick Creek (35.07462, −85.02876) in Bledsoe County, Tennessee.

(iv) *Note:* Map of Units 1 (Bumbee Creek), 2 (Youngs Creek), and 3 (Moccasin Creek) of critical habitat for the laurel dace follows:

Map of Units 1 (Bumbee Creek), 2 (Youngs Creek), and 3 (Moccasin Creek) of critical habitat for the laurel dace



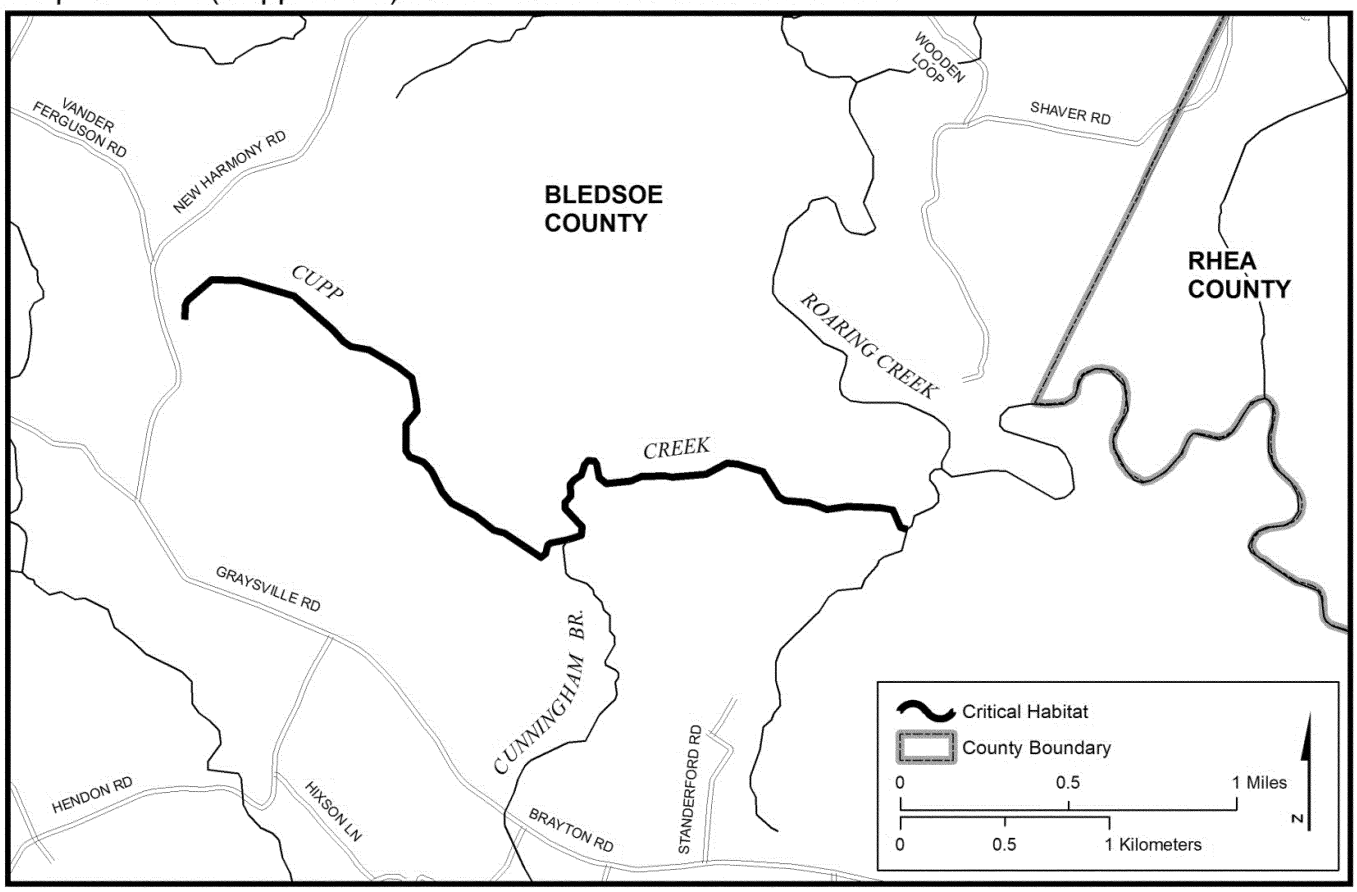
This map is provided for illustrative purposes of critical habitat only. For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(7) Unit 4: Cupp Creek, Bledsoe County, Tennessee.

(i) Unit 4 includes 5.0 km (3.1 mi) of Cupp Creek from its headwaters at (35.49533, −85.19120) downstream to its confluence with an unnamed tributary (35.48597, −85.15334) in Bledsoe County, Tennessee.

(ii) *Note:* Map of Unit 4 (Cupp Creek) of critical habitat for the laurel dace follows:

Map of Unit 4 (Cupp Creek) of critical habitat for the laurel dace



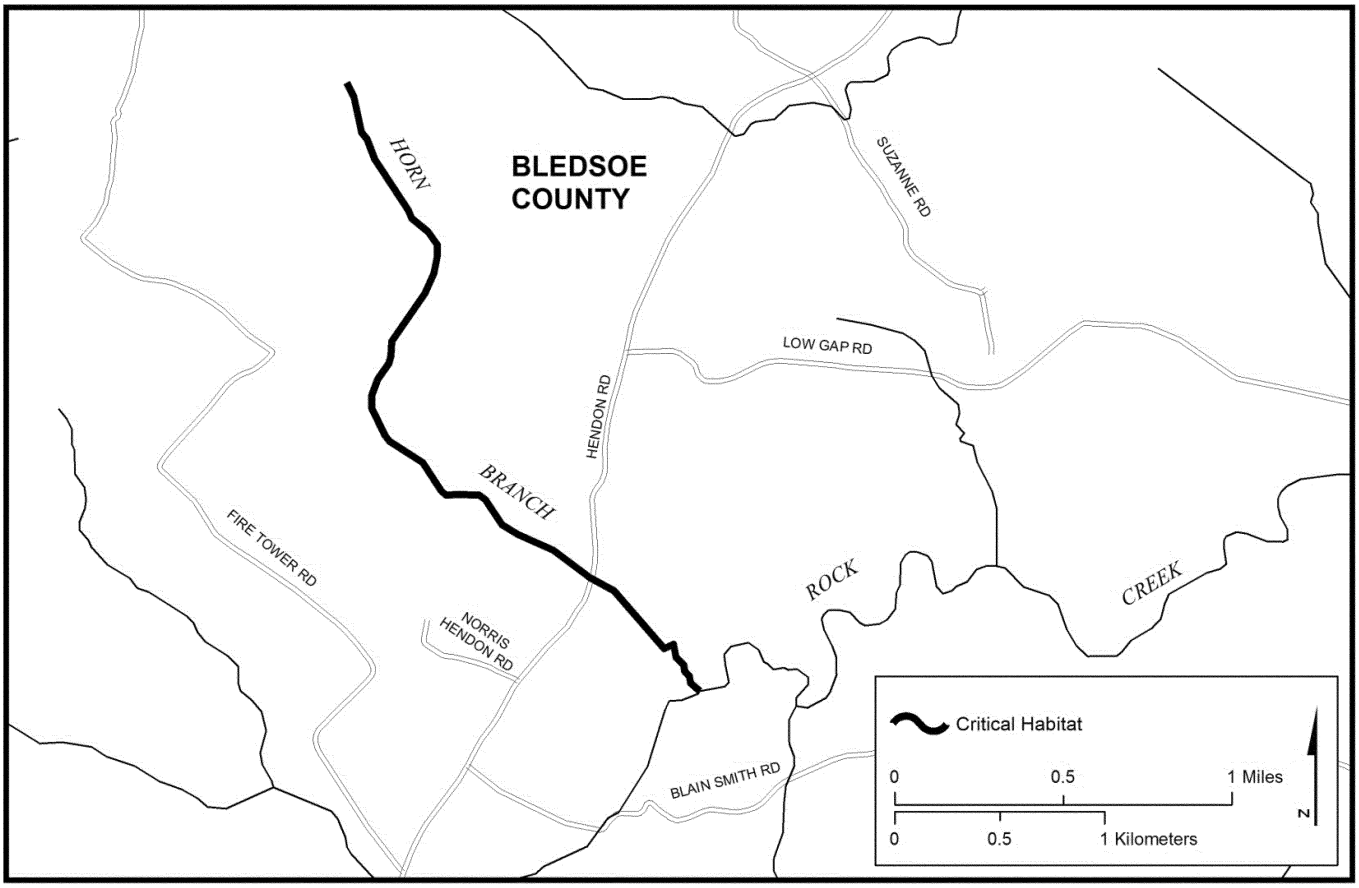
This map is provided for illustrative purposes of critical habitat only. For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(8) Unit 5: Horn Branch, Bledsoe County, Tennessee.

(i) Unit 5 includes 4.0 km (2.5 mi) of Horn Branch from its headwaters (35.43605, −85.25560) downstream to its confluence with Rock Creek (35.40999, −85.23731), Bledsoe County, Tennessee.

(ii) *Note:* Map of Unit 5 (Horn Branch) of critical habitat for the laurel dace follows:

Map of Unit 5 (Horn Branch) of critical habitat for the laurel dace



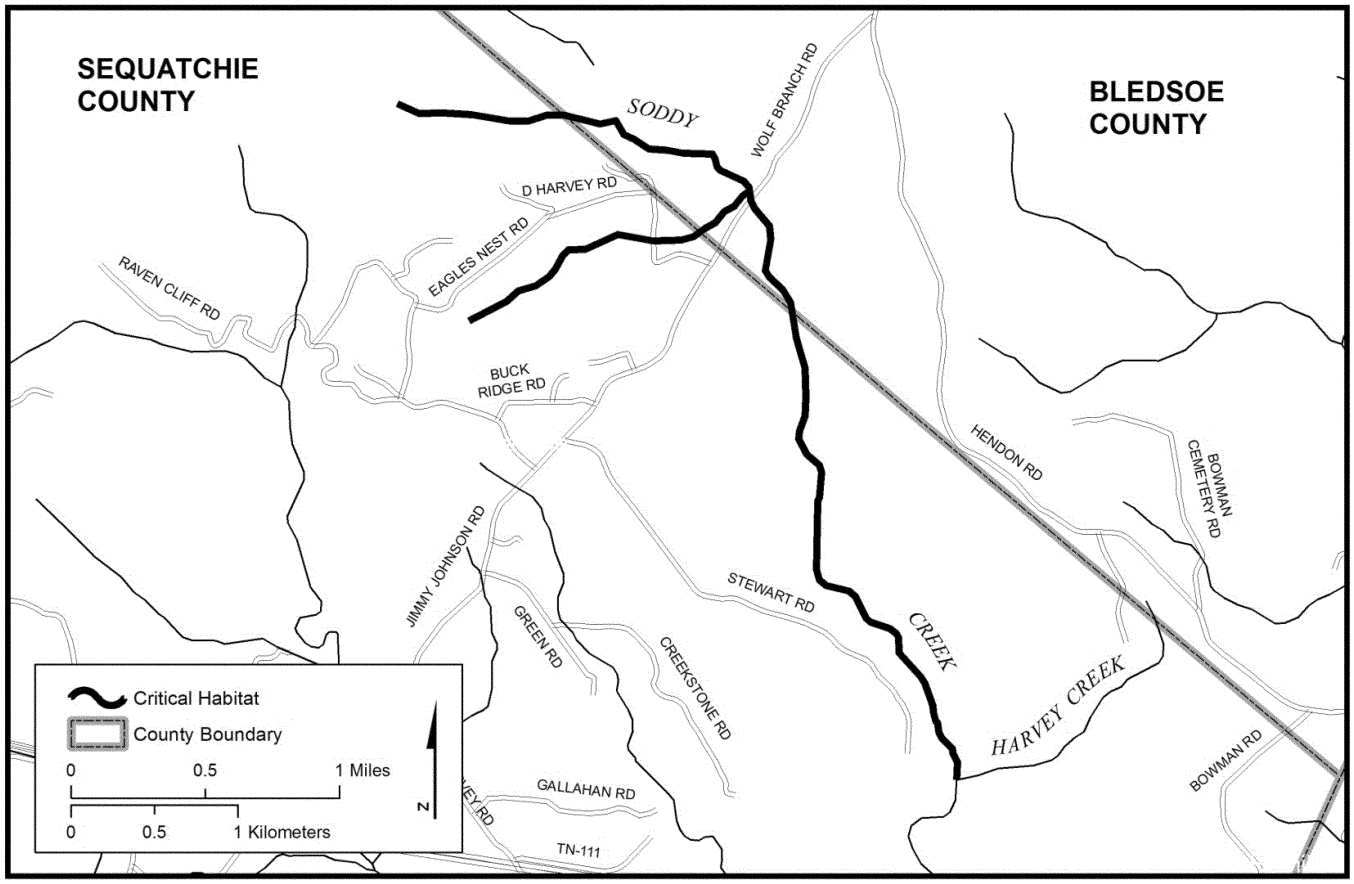
This map is provided for illustrative purposes of critical habitat only. For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(9) Unit 6: Soddy Creek, Sequatchie and Bledsoe Counties, Tennessee.

(i) Unit 6 includes 8.4 km (5.2 mi) of Soddy Creek from its headwaters at (35.39107, −85.28803) and (35.37926, −85.28331), Sequatchie County, downstream to its confluence with Harvey Creek (35.35422, −85.25133), in Sequatchie County, Tennessee.

(ii) *Note:* Map of Unit 6 (Soddy Creek) of critical habitat for the laurel dace follows:

Map of Unit 6 (Soddy Creek) of critical habitat for the laurel dace



This map is provided for illustrative purposes of critical habitat only. For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

* * * * *

Cumberland Darter (*Etheostoma susanae*)

(1) Critical habitat units are depicted for McCreary and Whitley Counties, Kentucky, and Campbell and Scott Counties, Tennessee, on the maps below.

(2) Within these areas, the primary constituent elements of the physical and biological features essential to the conservation of the Cumberland darter consist of five components:

(i) Shallow pools and gently flowing runs of geomorphically stable second- to fourth-order streams with connectivity between spawning, foraging, and resting sites to promote gene flow throughout the species' range.

(ii) Stable bottom substrates composed of relatively silt-free sand and sand-covered bedrock, boulders, large cobble, woody debris, or other cover.

(iii) An instream flow regime (magnitude, frequency, duration, and seasonality of discharge over time) sufficient to provide permanent surface flows, as measured during years with average rainfall, and maintain benthic habitats utilized by the species.

(iv) Adequate water quality characterized by moderate stream temperatures, acceptable dissolved oxygen concentrations, moderate pH, and low levels of pollutants. Adequate water quality is defined for the purpose of this rule as the quality necessary for normal behavior, growth, and viability of all life stages of the Cumberland darter.

(v) Prey base of aquatic macroinvertebrates, including midge larvae, mayfly nymphs, caddisfly larvae, and microcrustaceans.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, bridges, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of USGS digital ortho-photo quarter-quadrangles, and critical habitat units were then mapped using Tennessee State Plane, Lambert Conformal Conic Projection, units feet. Upstream and downstream limits were then identified by longitude and latitude using decimal degrees and projected in WGS 1984.

Note: Overview of Critical Habitat Locations for the Cumberland Darter in Tennessee and Kentucky follows:

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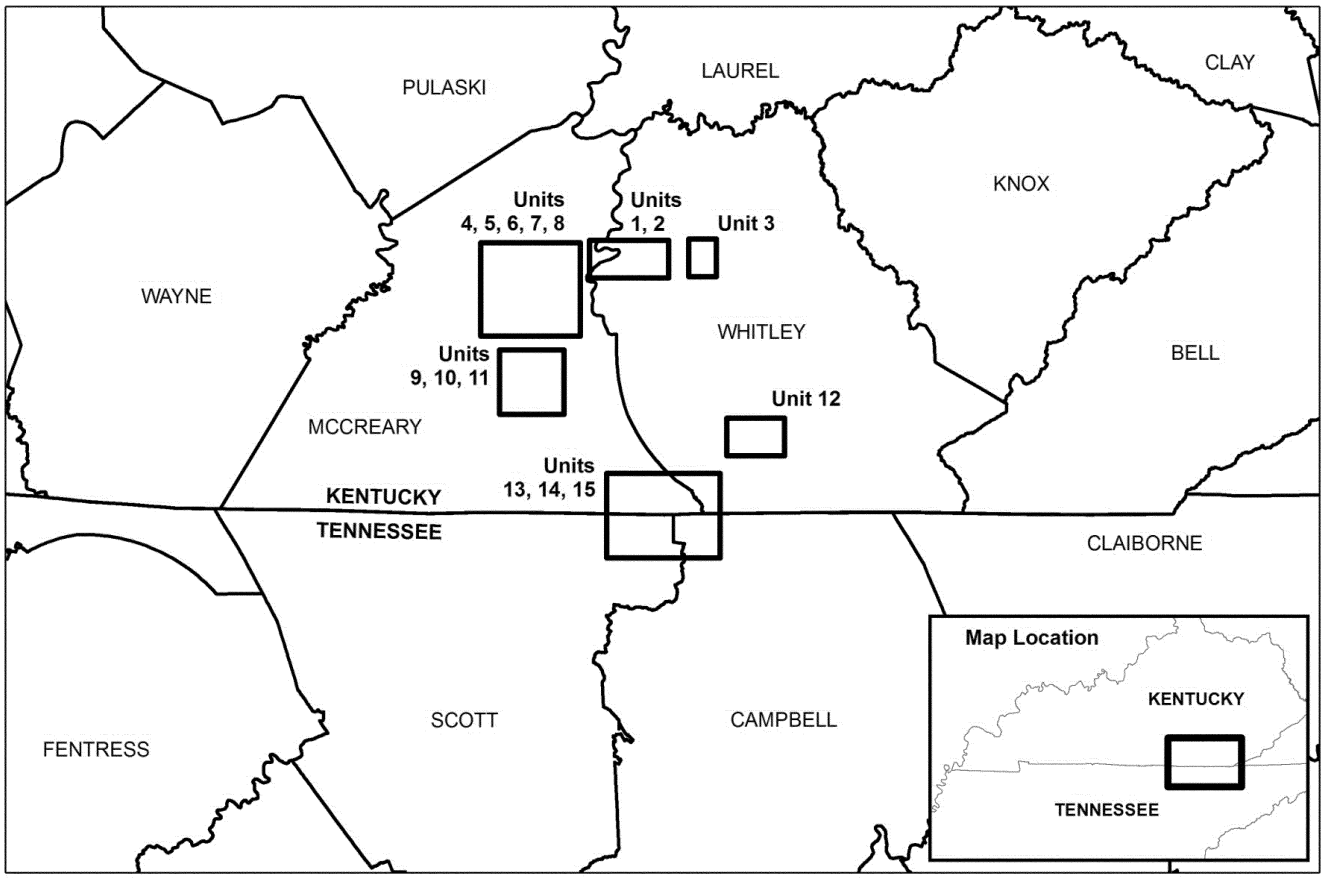
Overview of Critical Habitat Locations for the Cumberland Darter in Tennessee and Kentucky



This map is provided for illustrative purposes of critical habitat only. For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

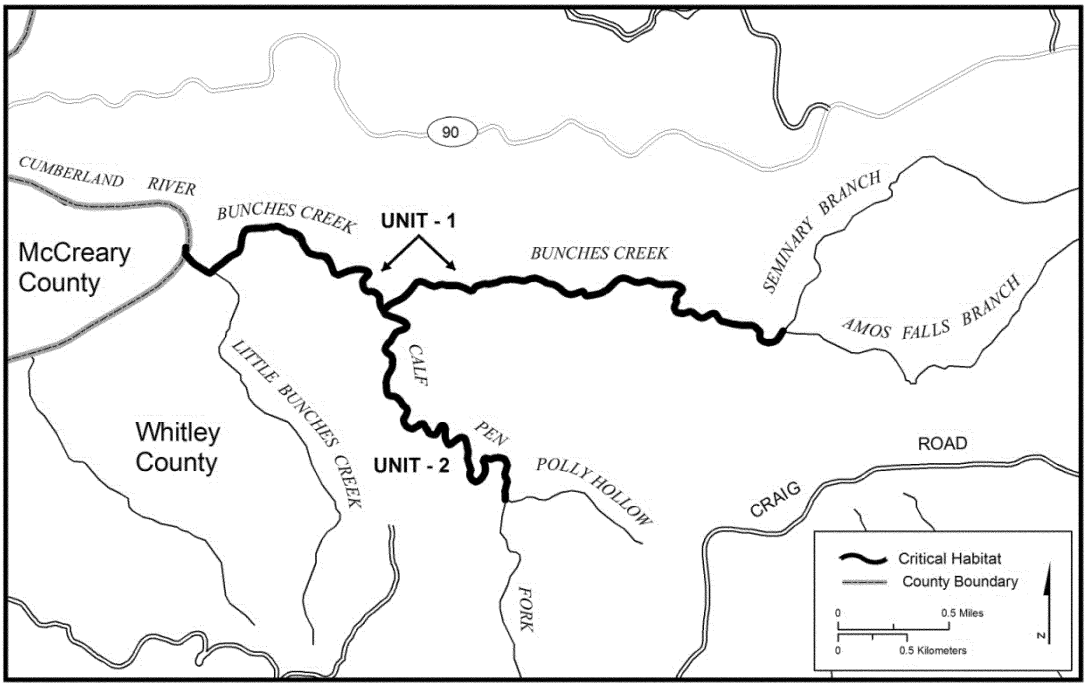
(6) Units 1 and 2: Bunches Creek and Calf Pen Fork, Whitley County, Kentucky.

(i) Unit 1 includes 5.3 km (3.3 mi) of Bunches Creek from the Seminary Branch and Amos Falls Branch confluence (36.82754, −84.26958) downstream to its confluence with the Cumberland River (36.83270, −84.31787).

(ii) Unit 2 includes 2.9 km (1.8 mi) of Calf Pen Fork from its confluence with Polly Branch (36.82955, −84.30191) downstream to its confluence with Bunches Creek (36.82935, −83.30215).

(iii) *Note:* Map of Units 1 (Bunches Creek) and 2 (Calf Pen Fork) of critical habitat for the Cumberland darter follows:

Map of Units 1 (Bunches Creek) and 2 (Calf Pen Fork) of critical habitat for the Cumberland darter



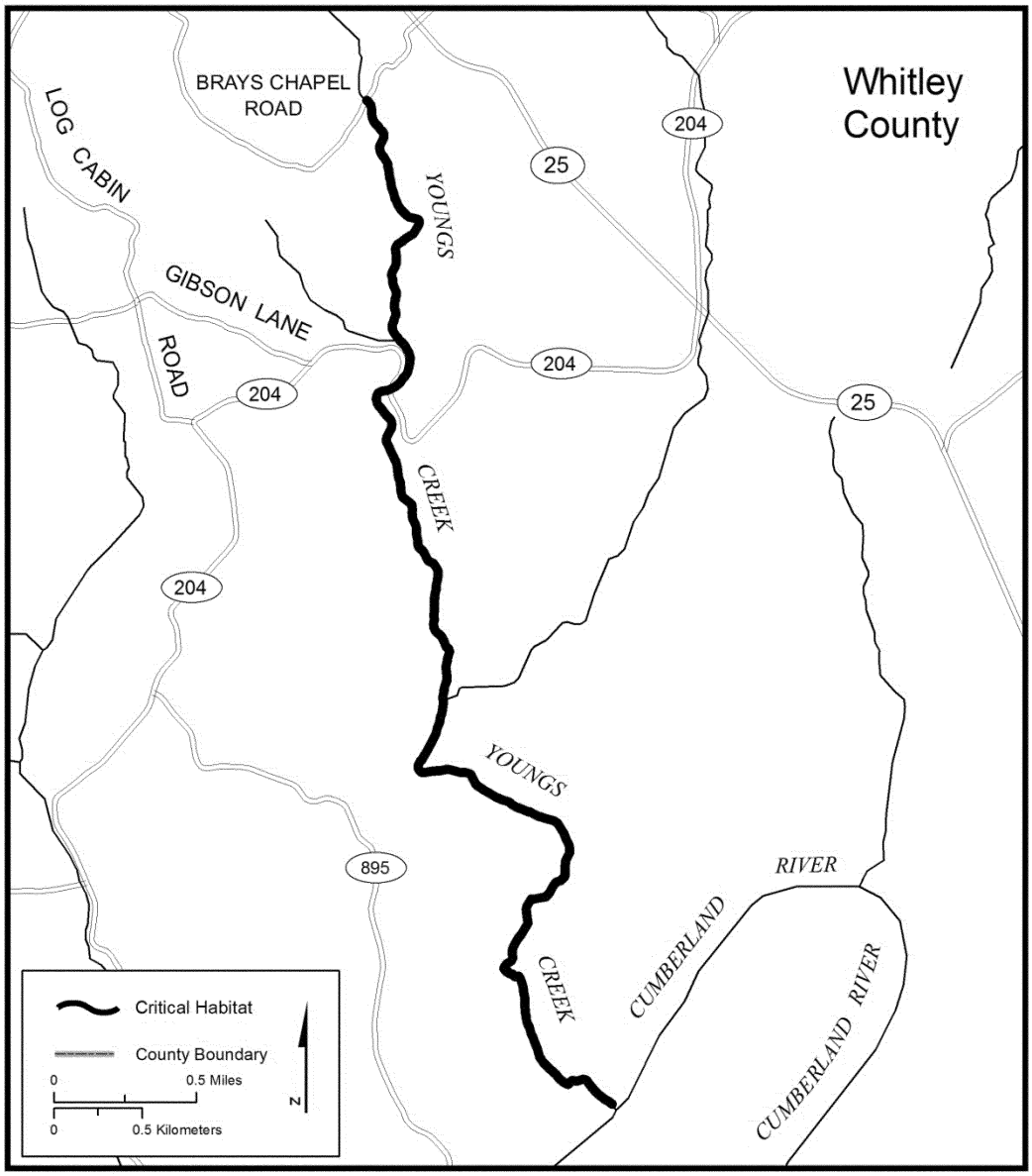
This map is provided for illustrative purposes of critical habitat only. For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(7) Unit 3: Youngs Creek, Whitley County, Kentucky.

(i) Unit 3 includes 7.4 km (4.6 mi) of Youngs Creek from Brays Chapel Road (36.83902, −84.22657) downstream to its confluence with the Cumberland River (36.81601, −84.21902).

(ii) *Note:* Map of Unit 3 (Youngs Creek) of critical habitat for the Cumberland darter follows:

Map of Unit 3 (Youngs Creek) of critical habitat for the Cumberland darter



This map is provided for illustrative purposes of critical habitat only. For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(8) Units 4, 5, 6, 7, and 8: Barren Fork, Indian Creek, Cogur Fork, Kilburn Fork, and Laurel Fork, McCreary County, Kentucky.

(i) Unit 4 includes 6.3 km (3.9 mi) of Barren Fork from its confluence with an unnamed tributary (36.76642, −84.46574) downstream to its confluence with Indian Creek (36.78652, −84.41622).

(ii) Unit 5 includes 4.0 km (2.5 mi) of Indian Creek from its confluence with an unnamed tributary (36.79511, −84.45084) downstream to its confluence with Barren Fork (36.78652, −84.41622).

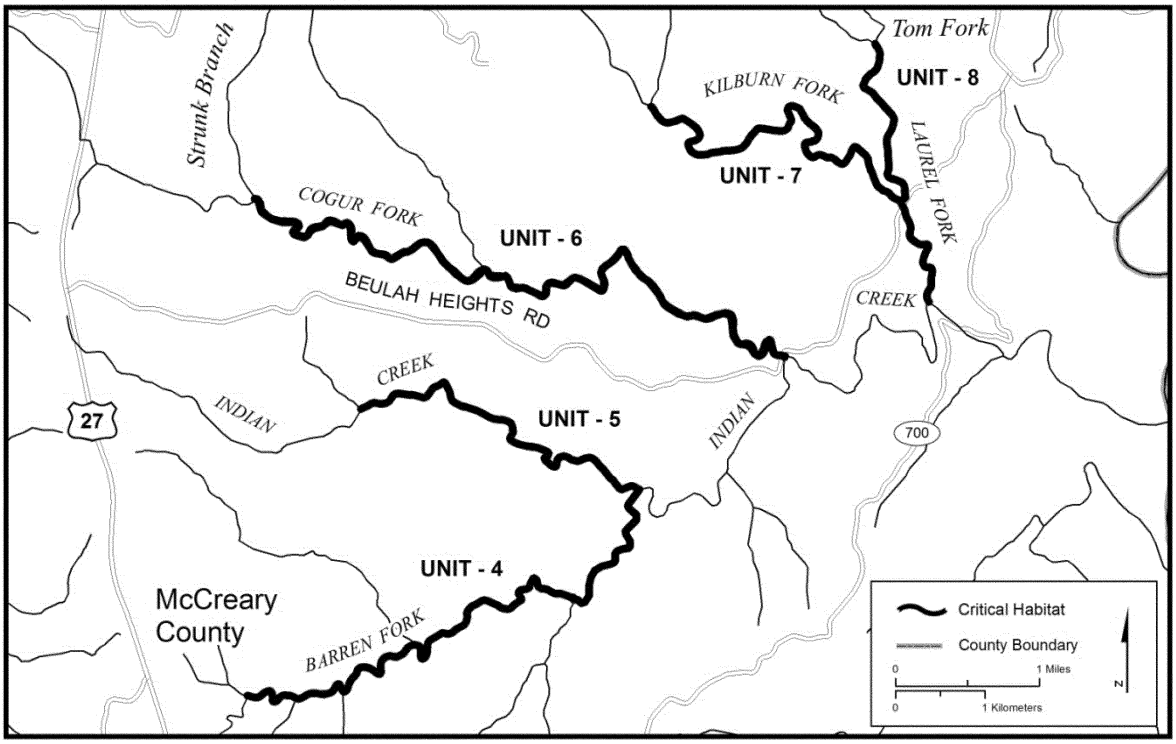
(iii) Unit 6 includes 8.6 km (5.4 mi) of Cogur Fork from its confluence with an unnamed tributary (36.81645, −84.46389) downstream to its confluence with Indian Creek (36.79965, −84.39775).

(iv) Unit 7 includes 4.6 km (2.9 mi) of Kilburn Fork from its confluence with an unnamed tributary (36.82518, −84.41411) downstream to its confluence with Laurel Fork (36.81527, −84.38298).

(v) Unit 8 includes 3.5 km (2.2 mi) of Laurel Fork from its confluence with Toms Fork (36.83115, −84.38582) downstream to its confluence with Indian Creek (36.80482, −84.37966).

(vi) *Note:* Map of Units 4 (Barren Fork), 5 (Indian Creek), 6 (Cogur Fork), 7 (Kilburn Fork), and 8 (Laurel Fork) of critical habitat for the Cumberland darter follows:

Map of Units 4 (Barren Fork), 5 (Indian Creek), 6 (Cogur Fork), 7 (Kilburn Fork), and 8 (Laurel Fork) of critical habital for the Cumberland darter



This map is provided for illustrative purposes of critical habitat only. For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(9) Units 9, 10, and 11: Laurel Creek, Elisha Branch, and Jenneys Branch, McCreary County, Kentucky.

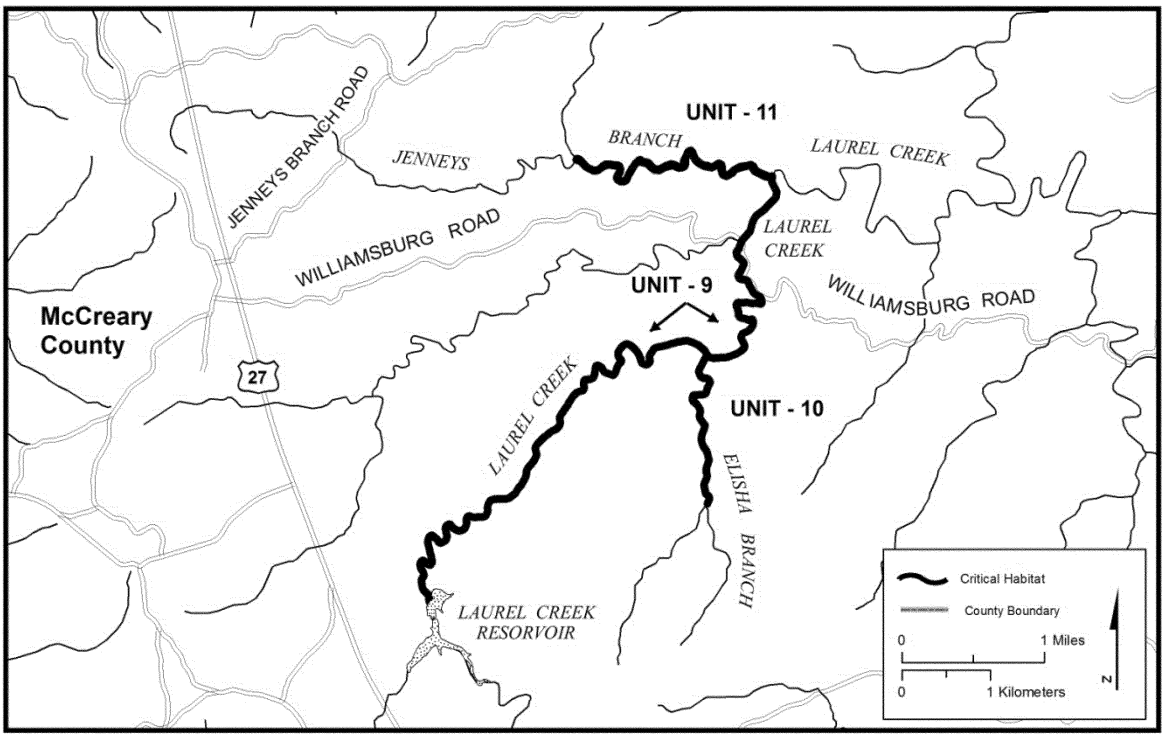
(i) Unit 9 includes 9.4 km (5.9 mi) of Laurel Creek from Laurel Creek Reservoir (36.69028, −84.44313) downstream to its confluence with Jenneys Branch (36.73485, −84.39951).

(ii) Unit 10 includes 2.1 km (1.3 mi) of Elisha Branch from its confluence with an unnamed tributary (36.70132, −84.40843) downstream to its confluence with Laurel Creek.

(iii) Unit 11 includes 3.1 km (1.9 mi) of Jenneys Branch from its confluence with an unnamed tributary (36.73701, −84.43159) downstream to its confluence with Laurel Creek.

(iv) *Note:* Map of Units 9 (Laurel Creek), 10 (Elisha Branch), and 11 (Jenneys Branch) of critical habitat for the Cumberland darter follows:

Map of Units 9 (Laurel Creek),10 (Elisha Fork), and 11 (Jenneys Branch) of critical habitat for the Cumberland darter



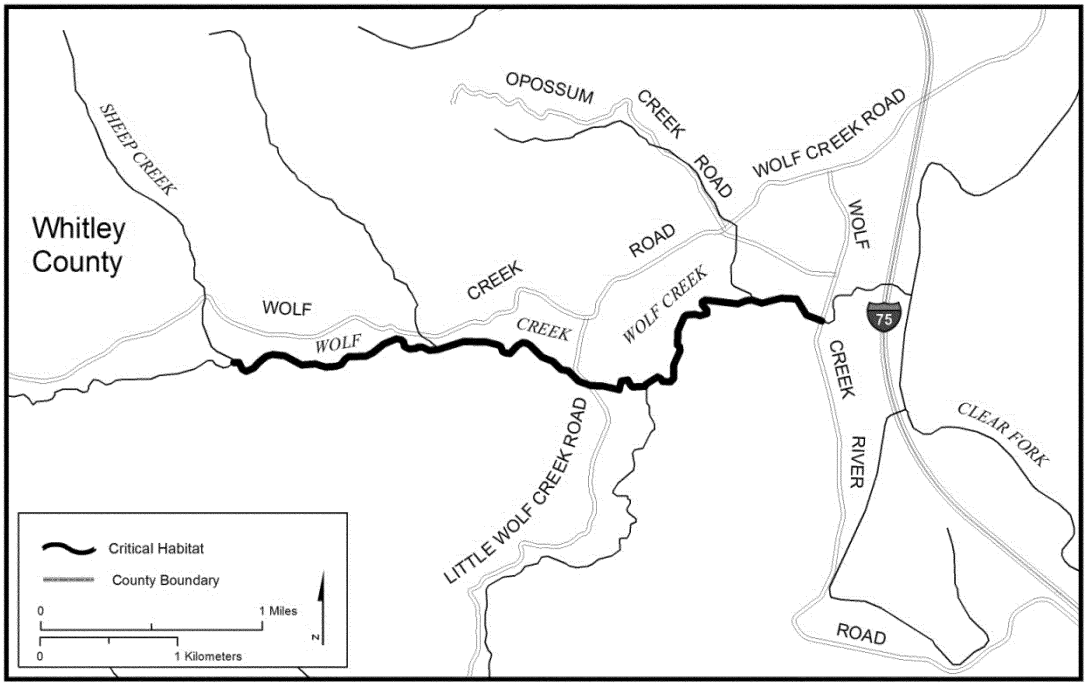
This map is provided for illustrative purposes of critical habitat only. For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(10) Unit 12: Wolf Creek, Whitley County, Kentucky.

(i) Unit 12 includes 6.3 km (3.9 mi) of Wolf Creek from its confluence with Sheep Creek downstream to its intersection with Wolf Creek River Road.

(ii) *Note:* Map of Unit 12 (Wolf Creek) of critical habitat for the Cumberland darter follows:

Map of Unit 12 (Wolf Creek) of critical habitat for the Cumberland darter



This map is provided for illustrative purposes of critical habitat only. For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(11) Units 13, 14, and 15: Jellico Creek, Rock Creek, and Capuchin Creek, McCreary and Whitley Counties, Kentucky, and Campbell and Scott Counties, Tennessee.

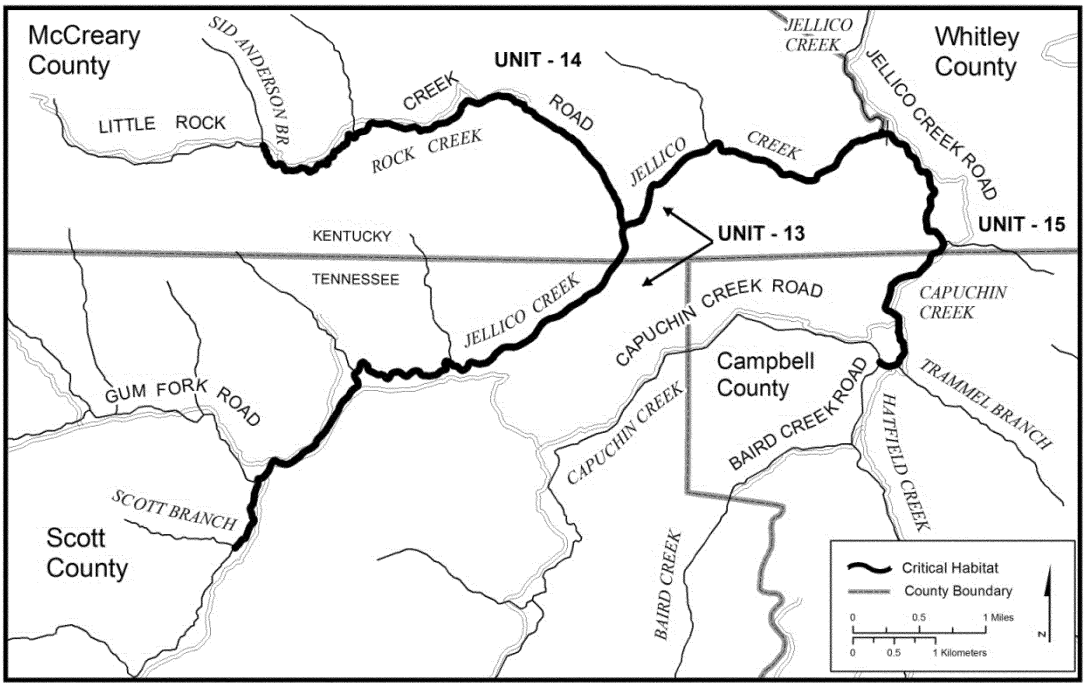
(i) Unit 13 includes 11.5 km (7.2 mi) of Jellico Creek from its confluence with Scott Branch, Scott County, Tennessee, downstream to its confluence with Capuchin Creek, McCreary County, Kentucky.

(ii) Unit 14 includes 6.1 km (3.8 mi) of Rock Creek from its confluence with Sid Anderson Branch downstream to its confluence with Jellico Creek.

(iii) Unit 15 includes 4.2 km (2.6 mi) of Capuchin Creek from its confluence with Hatfield Creek downstream to its confluence with Jellico Creek.

(iv) *Note:* Map of Units 13 (Jellico Creek), 14 (Rock Creek), and 15 (Capuchin Creek) of critical habitat for the Cumberland darter follows:

Map of Units 13 (Jellico Creek),14 (Rock Creek), and 15 (Capuchin Creek) of critical habitat for the Cumberland darter



This map is provided for illustrative purposes of critical habitat only. For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

* * * * *

Rush Darter (*Etheostoma phytophilum*)

(1) The critical habitat units are depicted for Jefferson, Winston, and Etowah Counties in Alabama, on the maps below.

(2) Within these areas, the primary constituent elements of the physical and biological features essential to the conservation of the rush darter consist of five components:

(i) Springs and spring-fed reaches of geomorphically stable, relatively low-gradient, headwater streams with appropriate habitat (bottom substrates) to maintain essential riffles, runs, and pools; emergent vegetation in shallow water and on the margins of small streams and spring runs; cool, clean, flowing water; and connectivity between spawning, foraging, and resting sites to promote gene flow throughout the species' range.

(ii) Stable bottom substrates consisting of a combination of sand with silt, muck, gravel, or bedrock and adequate emergent vegetation in shallow water on the margins of small permanent and ephemeral streams and spring runs.

(iii) Instream flow with moderate velocity and a continuous daily discharge that allows for a longitudinal connectivity regime inclusive of both surface runoff and groundwater sources (springs and seepages) and exclusive of flushing flows caused by stormwater runoff.

(iv) Water quality with temperature not exceeding 26.7 °C (80 °F), dissolved oxygen 6.0 milligrams or greater per liter, turbidity of an average monthly reading of 10 Nephelometric Turbidity Units (NTU; units used to measure sediment discharge) and 15mg/L Total Suspended Solids (TSS; measured as mg/L of sediment in water) or less; and a specific conductance (ability of water to conduct an electric current, based on dissolved solids in the water) of no greater than 225 micro Siemens per centimeter at 26.7 °C (80 °F).

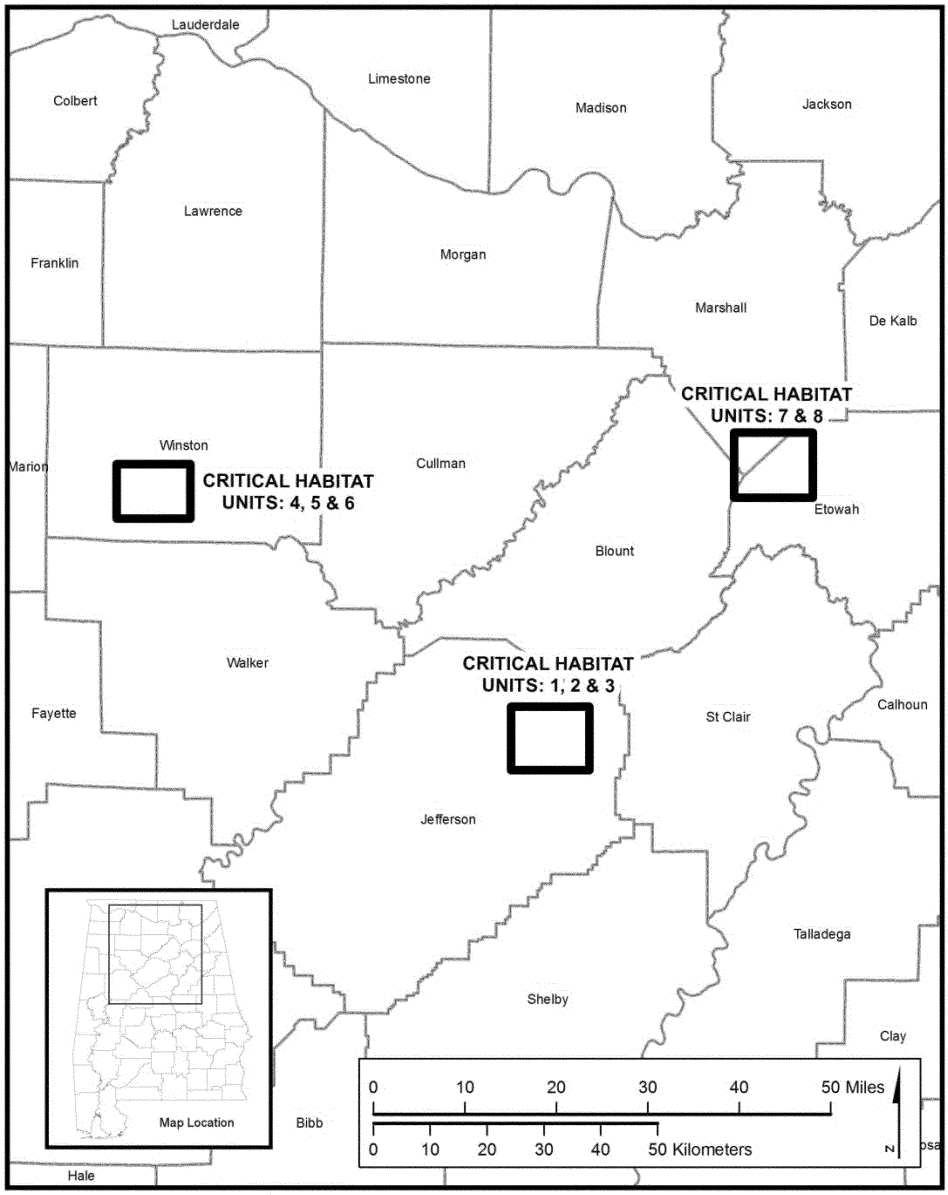
(v) Prey base of aquatic macroinvertebrates, including midge larvae, mayfly nymphs, blackfly larvae, beetles, and microcrustaceans.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of USGS digital ortho-photo quarter-quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) Zone 16N, NAD1983, coordinates. Upstream and downstream limits were then identified by longitude and latitude using decimal degrees and projected in WGS 1984.

(5) *Note:* Overview of Critical Habitat Locations for the Rush Darter in Alabama follows:

Overview of Critical Habitat Locations for the Rush Darter in Alabama



This map is provided for illustrative purposes of critical habitat only. For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(6) Units 1, 2, and 3: Beaver Creek, Unnamed Tributary to Beaver Creek and Highway 79 Spring Site, and Tapawingo or Penny Spring and Spring Run, Jefferson County, Alabama.

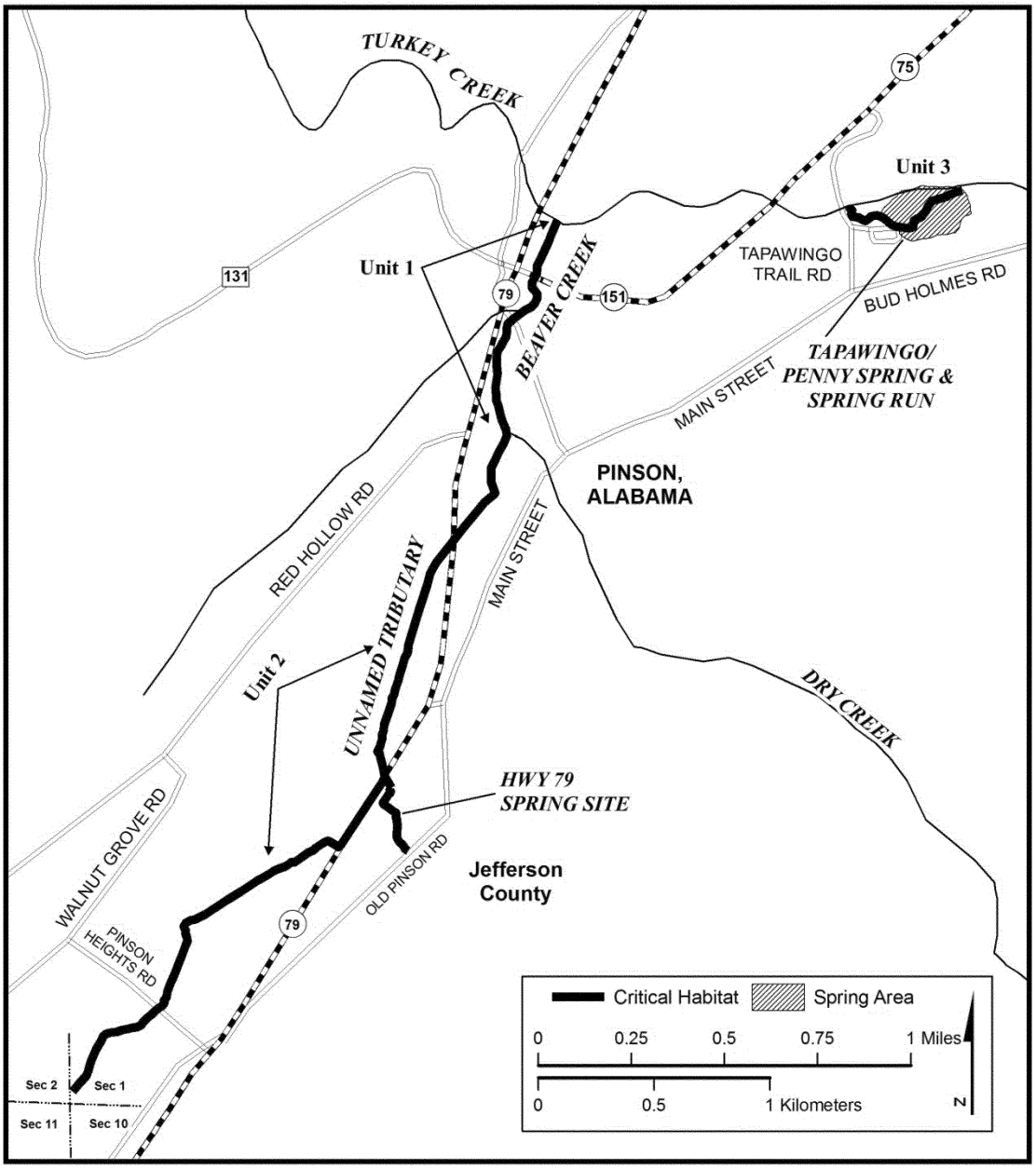
(i) Unit 1 includes 1.0 km (0.62 mi) of Beaver Creek from the confluence with an unnamed tributary to Beaver Creek, downstream to the confluence with Turkey Creek.

(ii) Unit 2 includes 4.3 km (2.57 mi) of an unnamed tributary of Beaver Creek and a spring run. The site begins at the section 1 and 2 (T16S, R2W) line, as taken from the U.S. Geological Survey 7.5 topographical map (Pinson quadrangle), downstream to its confluence with Dry Creek, and includes a spring run beginning at the springhead (latitude 33°40′28.15″ N, longitude 86°41′34.81″ W) just northwest of Old Pinson Road and intersecting with an unnamed tributary to Beaver Creek on the west side of Highway 79.

(iii) Unit 3 includes 0.63 km (0.39 mi) of spring run, historically called Tapawingo Plunge, along with 16.5 acres (6.68 ha) of flooded spring basin making up Penny Springs, located south of Turkey Creek, north of Bud Holmes Road, east of Tapawingo Trail Road. The east boundary is at latitude 33°41′56.50″ N and longitude 86°39′55.01″ W: 1.0 km (0.63 mi) west of section line 28 and 29 (T15S, R1W) (U.S. Geological Survey 7.5 topographical map (Pinson quadrangle)).

(iv) *Note:* Map of Units 1 (Beaver Creek), 2 (unnamed tributary to Beaver Creek and Highway 79 Spring Site), and 3 (Tapawingo or Penny Spring and Spring Run) of critical habitat for the rush darter follows:

Map of Units 1 (Beaver Creek), 2 (unamed tributary to Beaver Creek and Highway 79 Spring Site) and 3 (Tapawingo or Penny Spring and Spring Run) of critical habitat for the rush darter



This map is provided for illustrative purposes of critical habitat only. For precise legal definition of critical habitat, please refer to the narrative unit descriptions

(7) Units 4, 5, and 6: Wildcat Branch, Mill Creek, and Doe Branch, Winston County, Alabama.

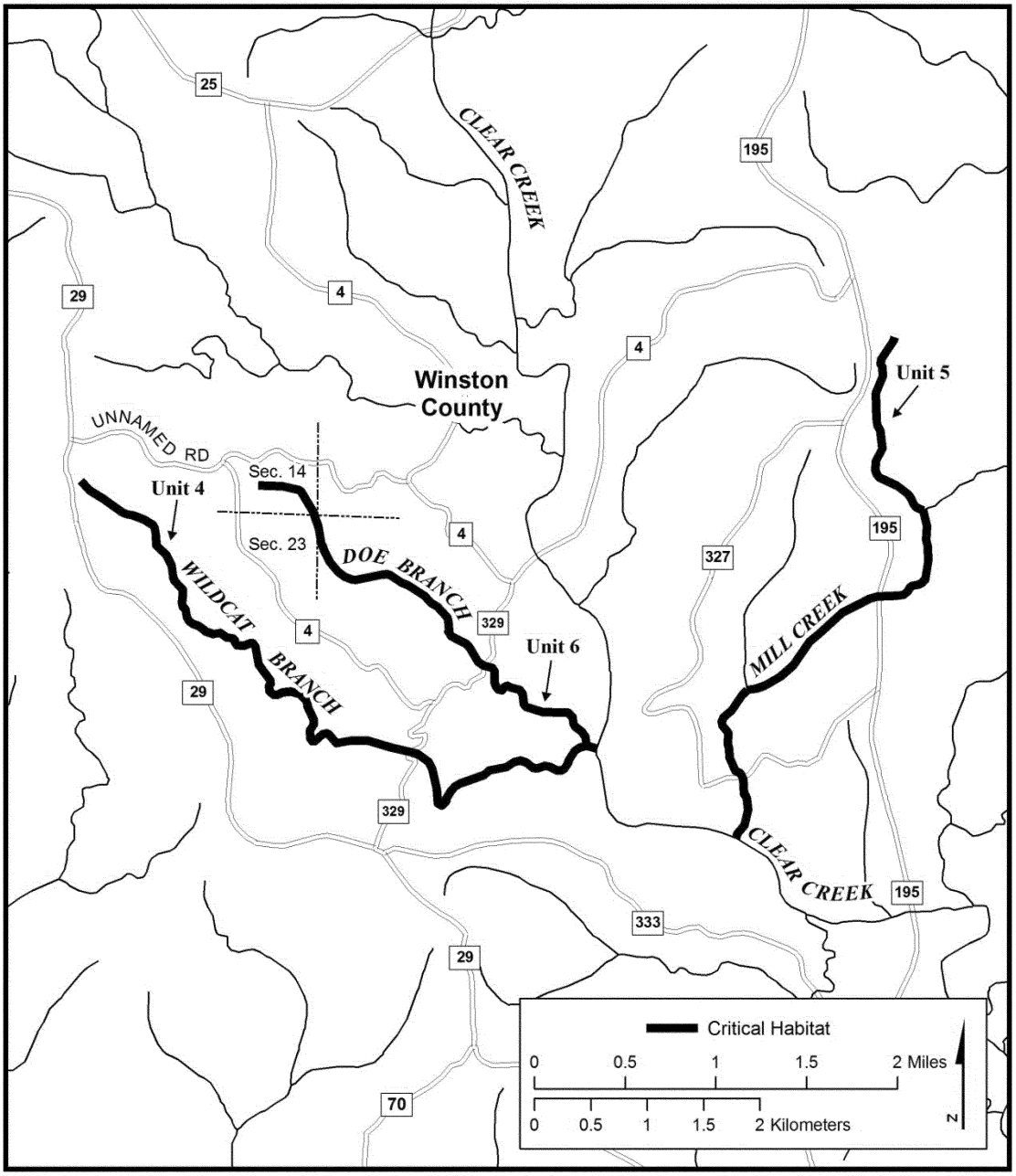
(i) Unit 4 includes 6.63 km (4.12 mi) of Wildcat Branch from the streams headwaters just east of Winston County Road 29 to the confluence with Clear Creek.

(ii) Unit 5 includes 5.89 km (3.66 mi) of Mill Creek from the streams headwaters just east of Winston County Road 195 to the confluence with Clear Creek.

(iii) Unit 6 includes 4.28 km (2.66 mi) of Doe Branch from the streams headwaters north and west of section line 23 and 14 (R9W, T11S; Popular Springs Quadrangle) to the confluence with Wildcat Branch.

(iv) *Note:* Map of Units 4 (Wildcat Branch), 5 (Mill Creek), and 6 (Doe Branch) of critical habitat for the rush darter follows:

Map of Units 4 (Wildcat Branch), 5 (Mill Creek) and 6 (Doe Branch) of critical habitat for the rush darter



This map is provided for illustrative purposes of critical habitat only. For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

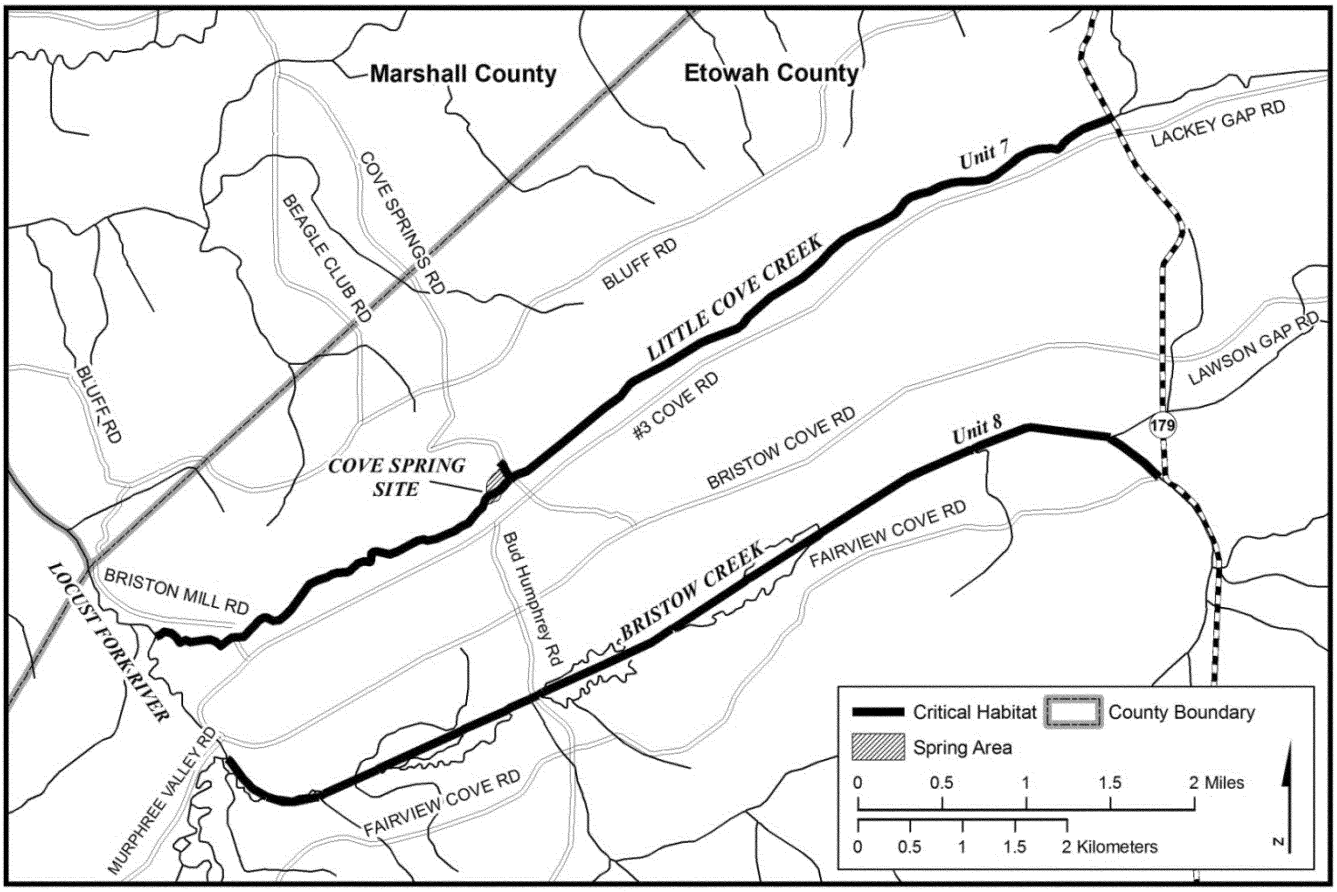
(8) Units 7 and 8: Little Cove Creek, Cove Spring and Spring Run, County, Alabama; and Bristow Creek, Etowah County, Alabama.

(i) Unit 7 includes 11.22 km (6.13 mi) of Little Cove Creek and the Cove Spring run system along with 12.7 acres (5.1 ha) of the spring run floodplain. Specifically, the Little Cove Creek section (11.01 km (6.00 mi)) is from the intersection of Etowah County Road 179 near the creek headwaters, downstream to its confluence with the Locust Fork River. The Cove Spring and spring run section includes 0.21 km (0.13 mi) of the spring run from the springhead at the West Etowah Water and Fire Authority pumping station on Cove Spring Road to the confluence with Little Cove Creek and includes 12.7 acres (5.1 ha) of the spring run floodplain due south of the pumping facility.

(ii) Unit 8 includes 10.12 km (6.29 mi) of Bristow Creek beginning from the bridge at Fairview Cove Road, downstream to the confluence with the Locust Fork River.

(iii) Map of Units 7 (Little Cove Creek, Cove Spring Site) and 8 (Bristow Creek) of critical habitat for the rush darter follows:

Map of Units 7 (Little Cove Creek, Cove Spring Site) and 8 (Bristow Creek) of critical habitat for the rush darter



This map is provided for illustrative purposes of critical habitat only. For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

* * * * *

Yellowcheek darter (*Etheostoma moorei*)

(1) Critical habitat units are depicted for Cleburne, Searcy, Stone, and Van Buren Counties, Arkansas, on the maps below.

(2) Within these areas, the primary constituent elements of the physical and biological features essential to the conservation of the yellowcheek darter consist of five components:

(i) Geomorphically stable second- to fifth-order streams with riffle habitats; and connectivity between spawning, foraging, and resting sites to promote gene flow within the species' range where possible.

(ii) Stable bottom composed of relatively silt-free, moderate to strong velocity riffles with gravel, cobble, and boulder substrates.

(iii) An instream flow regime (magnitude, frequency, duration, and seasonality of discharge over time) sufficient to provide permanent surface flows, as measured during years with average rainfall, and maintain benthic habitats utilized by the species.

(iv) Adequate water quality characterized by moderate stream temperatures, acceptable dissolved oxygen concentrations, moderate pH, and low levels of pollutants. Adequate water quality is defined for the purpose of this rule as the quality necessary for normal behavior, growth, and viability of all life stages of the yellowcheek darter.

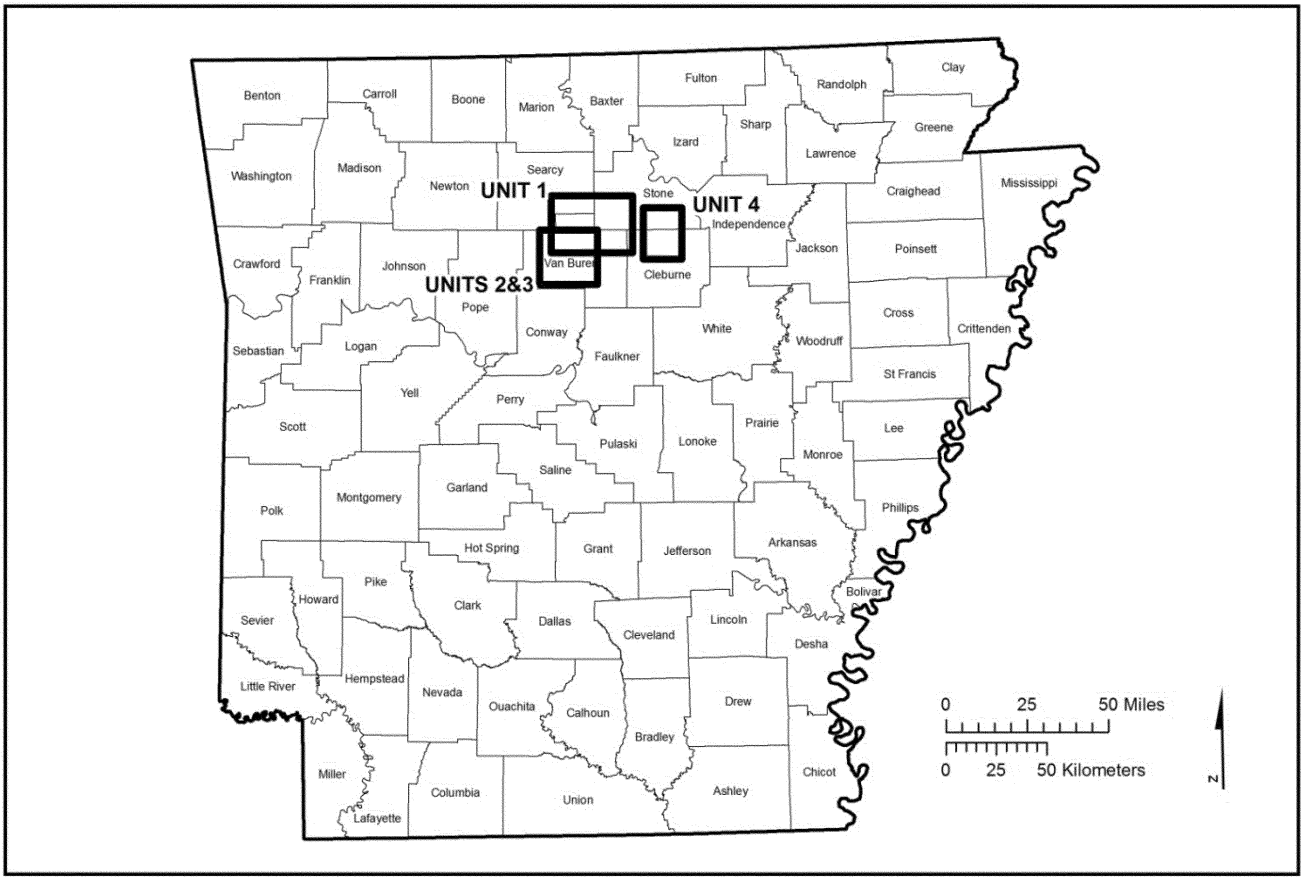
(v) Prey base of aquatic macroinvertebrates, including blackfly larvae, stonefly larvae, mayfly nymphs, and caddisfly larvae.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat unit maps.* Data layers defining map units were created on a base of USGS digital ortho-photo quarter-quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) Zone 15N, NAD1983, coordinates. Upstream and downstream limits were then identified by longitude and latitude using decimal degrees and projected in WGS 1984.

(5) *Note:* Overview of Critical Habitat Locations for Yellowcheek Darter in Arkansas follows:

Overview of Critical Habitat Locations for Yellowcheek darter in Arkansas



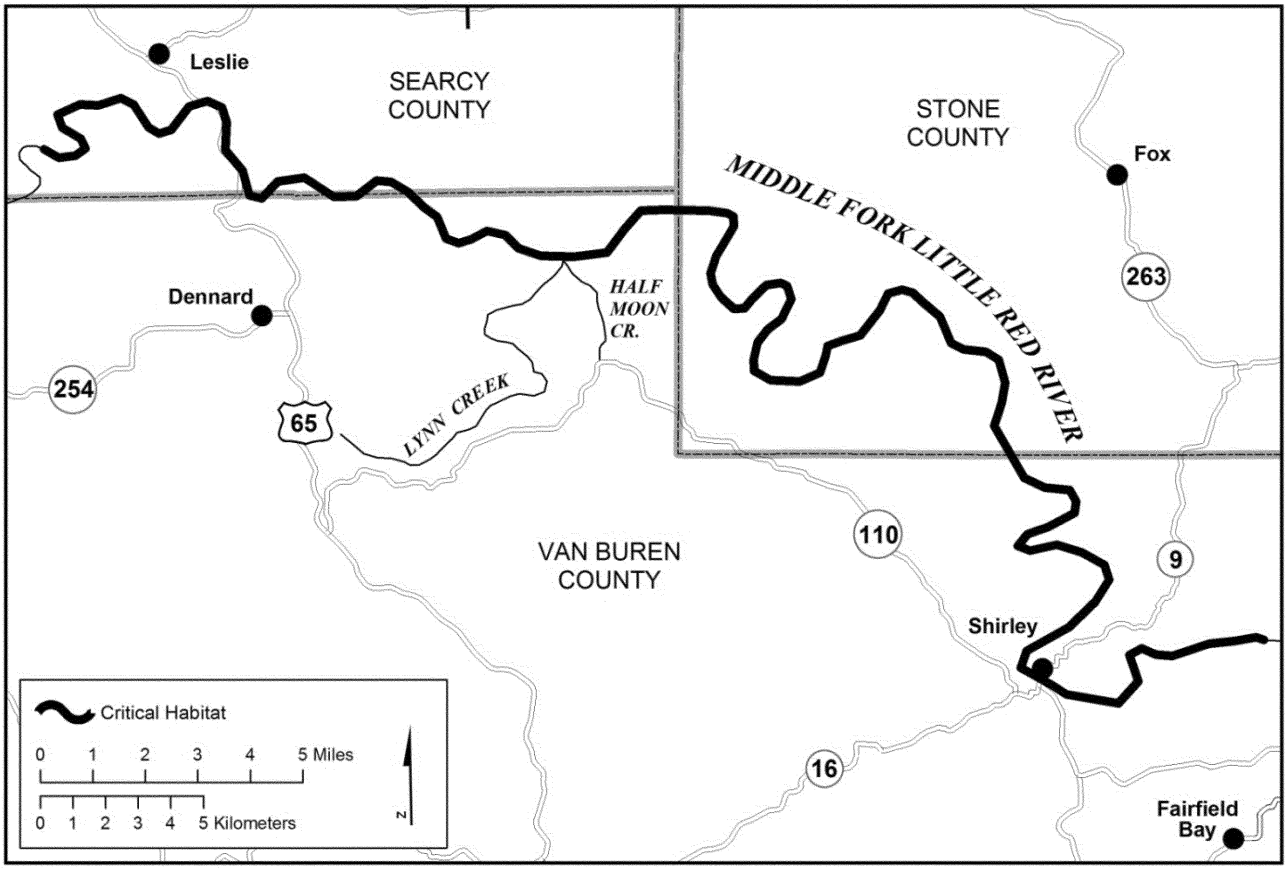
This map is provided for illustrative purposes of critical habitat only.
For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(6) Unit 1: Middle Fork Little Red River; Searcy, Stone and Van Buren Counties, Arkansas.

(i) Unit 1 includes 70.2 km (43.6 mi) of the Middle Fork of the Little Red River from Searcy County Road 167 approximately 3.4 km (2.1 miles) southwest of Leslie, Arkansas, to a point on the stream 7.7 river km (4.8 mi) downstream (35.665146, −92.259415) of the Arkansas Highway 9 crossing of the Middle Fork near Shirley, Arkansas

(ii) *Note:* Map of Unit 1 (Middle Fork) of critical habitat for the yellowcheek darter follows:

Map of Unit 1 (Middle Fork) of critical habitat for the yellowcheek darter



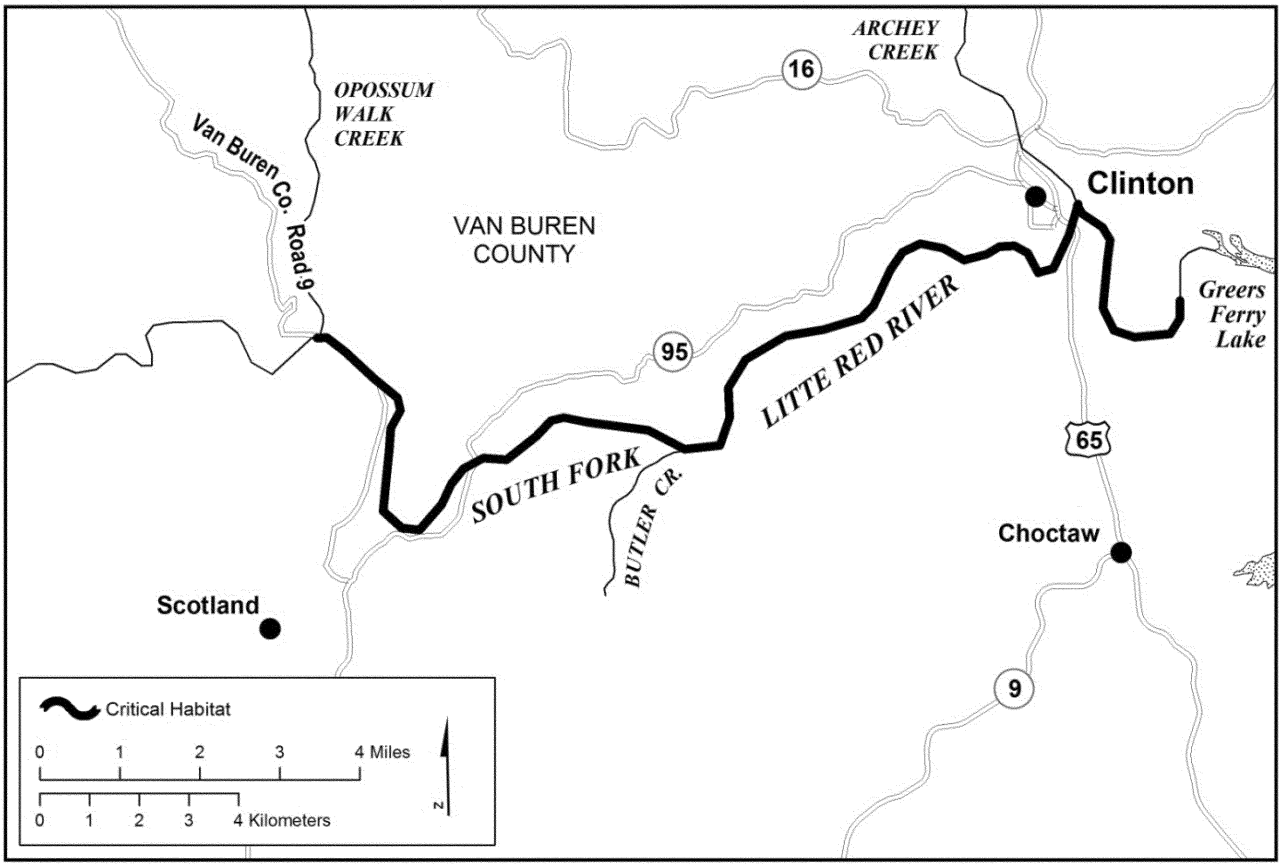
This map is provided for illustrative purposes of critical habitat only.
For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(7) Unit 2: South Fork Little Red River; Van Buren County, Arkansas.

(i) Unit 2 includes 31.9 km (19.8 mi) of the South Fork of the Little Red River from Van Buren County Road 9 three miles north of Scotland, Arkansas, to a point on the stream (35.573636, -92.427176) approximately 5.5 river km (3.4 mi) downstream of U.S. Highway 65 in Clinton, Arkansas, where it becomes inundated by Greers Ferry Lake.

(ii) *Note:* Map of Unit 2 (South Fork) of critical habitat for the yellowcheek darter follows:

Map of Unit 2 (South Fork) of critical habitat for the yellowcheek darter



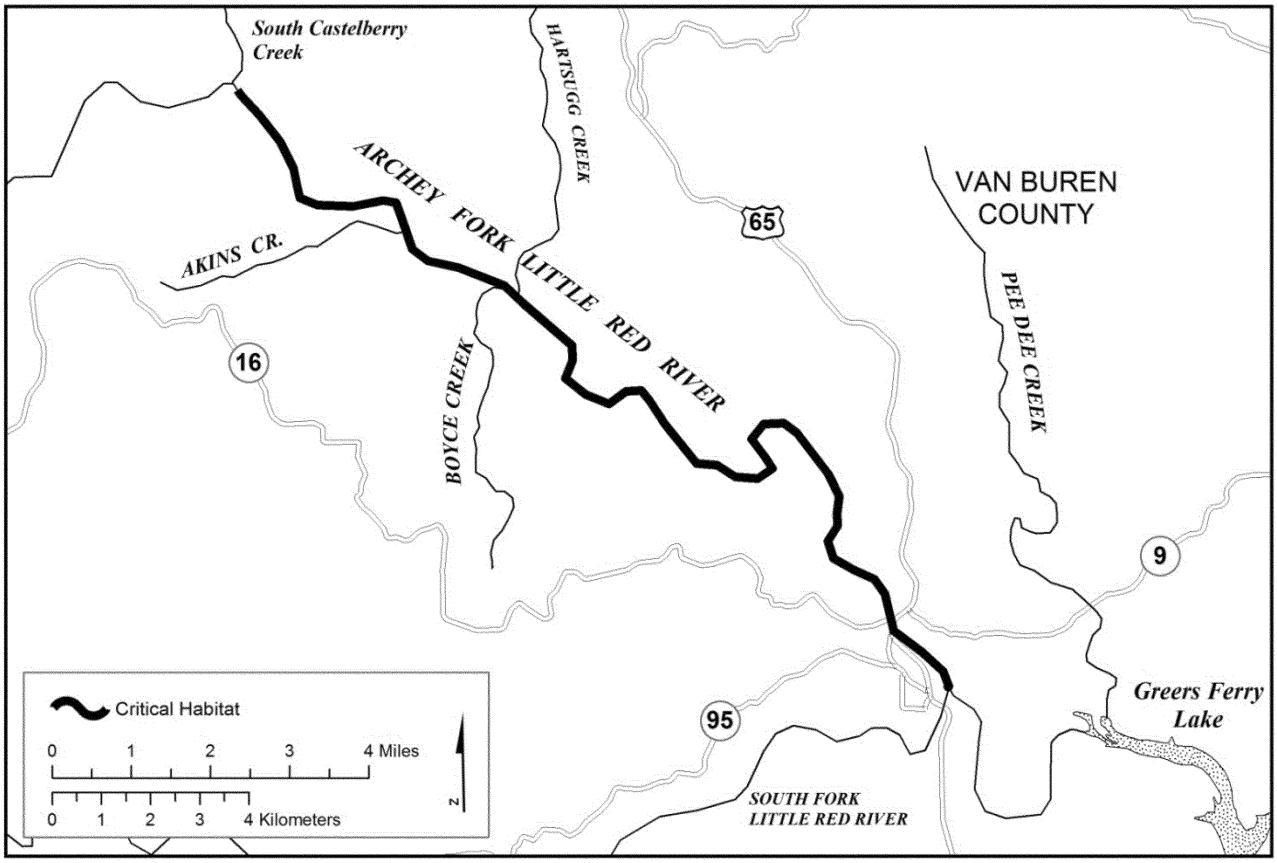
This map is provided for illustrative purposes of critical habitat only.
For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(8) Unit 3: Archey Fork Little Red River; Van Buren County, Arkansas.

(i) Unit 3 includes 27.4 km (17.0 mi) of the Archey Fork of the Little Red River from its confluence with South Castleberry Creek to its confluence with the South Fork of the Little Red River near Clinton, Arkansas.

(ii) *Note:* Map of Unit 3 (Archey Fork) of critical habitat for the yellowcheek darter follows:

Map of Unit 3 (Archey Fork) of critical habitat for the yellowcheek darter



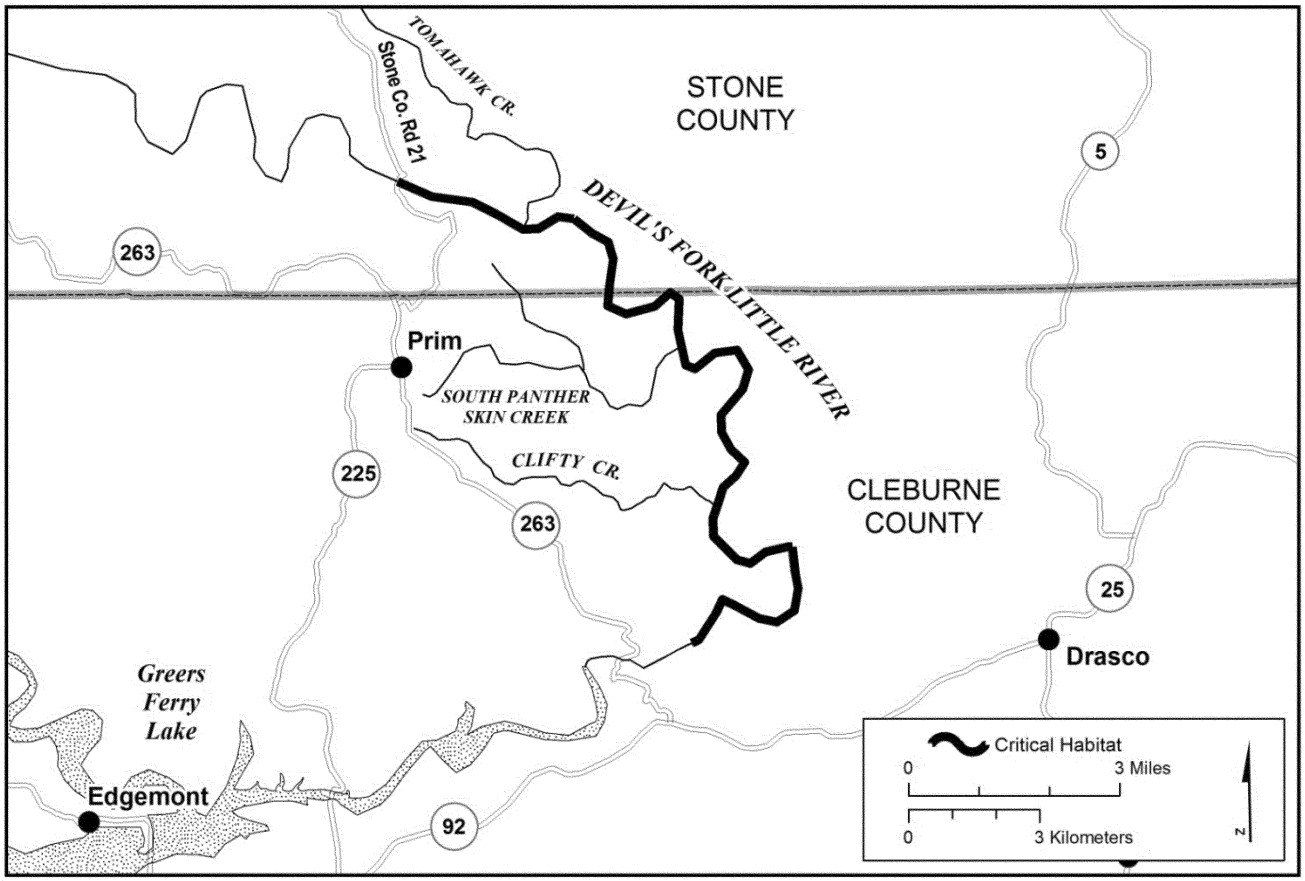
This map is provided for illustrative purposes of critical habitat only.
For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(9) Unit 4: Devil's Fork Little Red River (including Turkey Creek and Beech Fork); Cleburne and Stone Counties, Arkansas.

(i) Unit 4 includes 27.5 km (17.1 mi) of stream from Stone County Road 21 approximately three miles north of Prim, Arkansas, to a point on the Devil's Fork approximately 5.1 km (3.2 mi) southeast of Woodrow, Arkansas, at the point of inundation by Greers Ferry Lake (35.635557, −92.034003).

(ii) *Note:* Map of Unit 4 (Devil's Fork) of critical habitat for the yellowcheek darter follows:

Map of Unit 4 (Devil's Fork) of critical habitat for the yellowcheek darter



This map is provided for illustrative purposes of critical habitat only.
For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

* * * * *

Chucky Madtom (*Noturus crypticus*)

(1) Critical habitat units are depicted for Greene County, Tennessee, on the maps below.

(2) Within these areas, the primary constituent elements of the physical and biological features essential to the conservation of the chucky madtom consist of five components:

(i) Gently flowing run and pool reaches of geomorphically stable streams with cool, clean, flowing water; shallow depths; and connectivity between spawning, foraging, and resting sites to promote gene flow throughout the species' range.

(ii) Stable bottom substrates composed of relatively silt-free, flat gravel, cobble, and slab-rock boulders.

(iii) An instream flow regime (magnitude, frequency, duration, and seasonality of discharge over time) sufficient to provide permanent surface flows, as measured during years with average rainfall, and maintain benthic habitats utilized by the species.

(iv) Adequate water quality characterized by moderate stream temperatures, acceptable dissolved oxygen concentrations, moderate pH, and low levels of pollutants. Adequate water quality is defined for the purpose of this rule as the quality necessary for normal behavior, growth, and viability of all life stages of the chucky madtom.

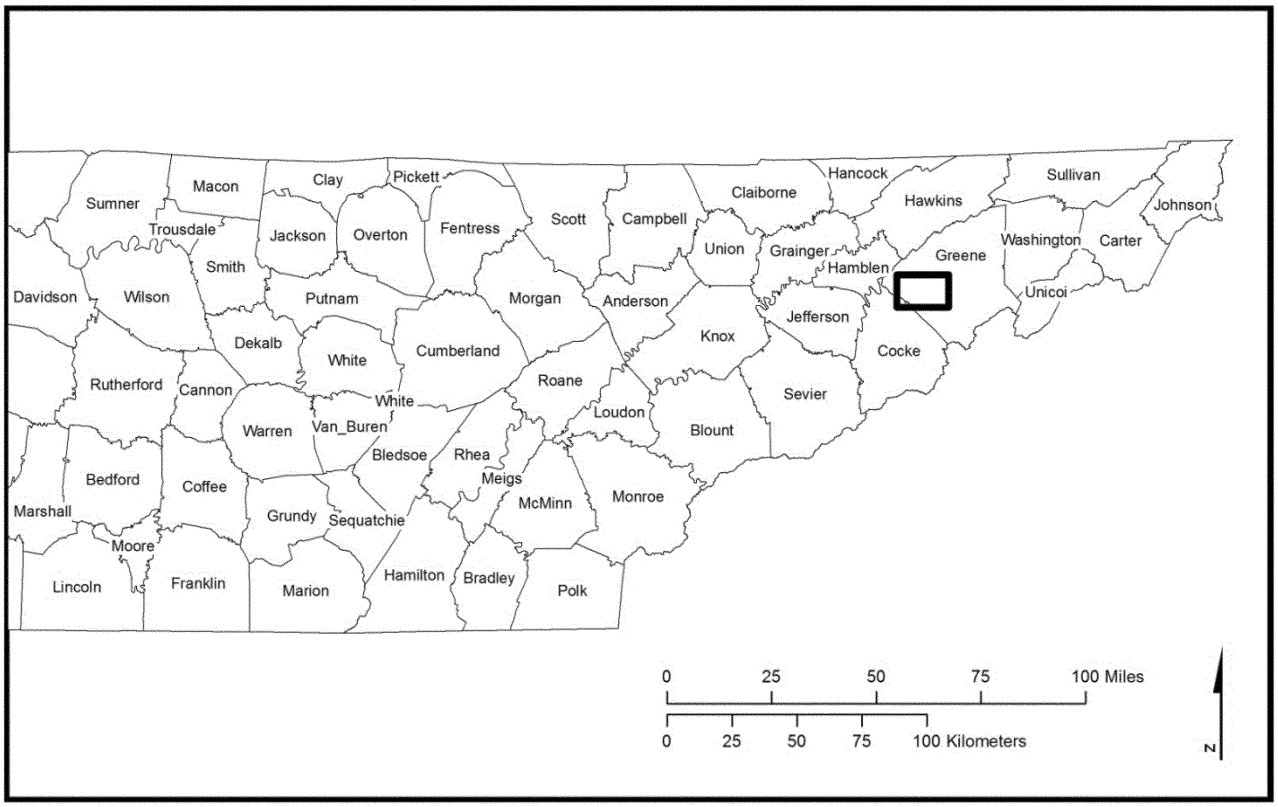
(v) Prey base of aquatic macroinvertebrates, including midge larvae, mayfly nymphs, caddisfly larvae, and stonefly larvae.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat unit maps.* Data layers defining map units were created on a base of USGS digital ortho-photo quarter-quadrangles, and critical habitat units were then mapped using Tennessee State Plane, Lambert Conformal Conic Projection, units feet. Upstream and downstream limits were then identified by longitude and latitude using decimal degrees and projected in WGS 1984.

(5) *Note:* Overview of Critical Habitat Locations for the Chucky Madtom in Tennessee follows:

Overview of Critical Habitat Locations for the Chucky Madtom in Tennessee



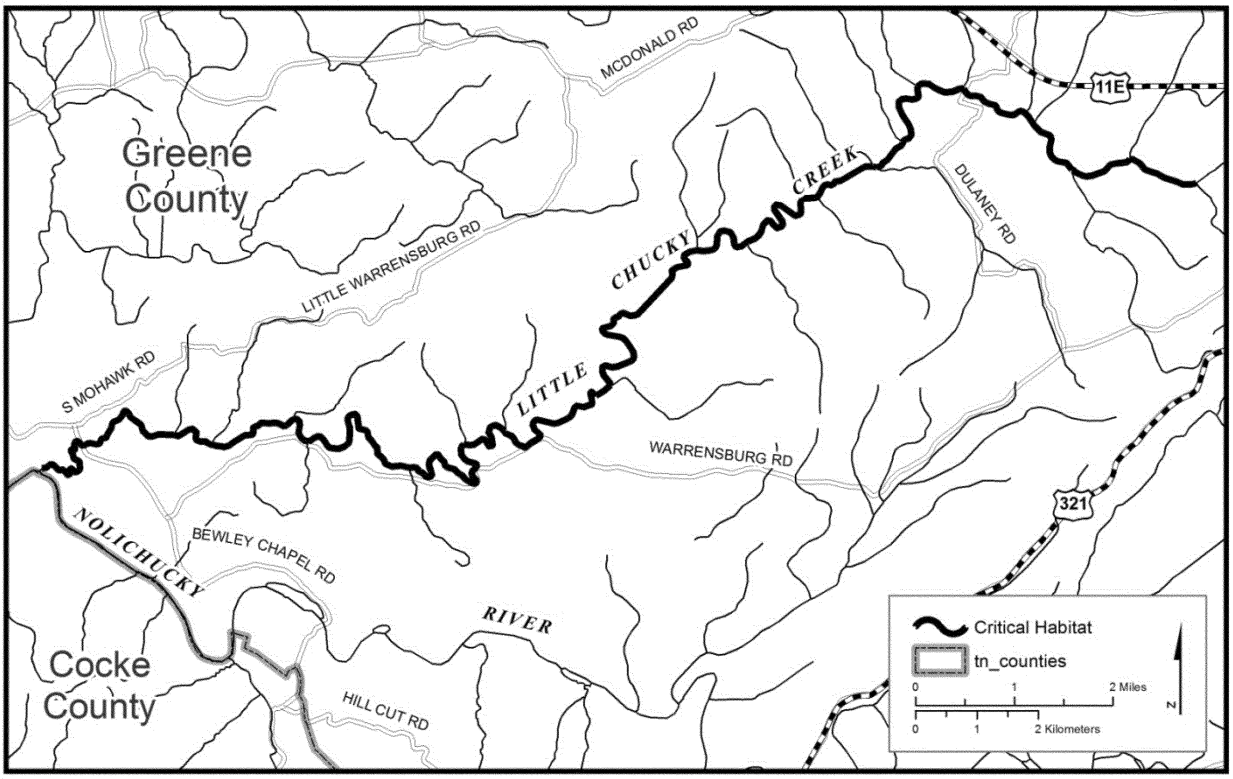
This map is provided for illustrative purposes of critical habitat only. For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(6) Little Chucky Creek Unit, Greene County, Tennessee.

(i) Little Chucky Creek Unit includes 31.9 km (19.8 mi) of Little Chucky Creek from its confluence with an unnamed tributary (36.15810, −82.88996), downstream to its confluence with the Nolichucky River (36.12095, −83.10665), at the Greene and Cocke County line, Tennessee.

(ii) *Note:* Map of Little Chucky Creek Unit of critical habitat for the chucky madtom follows:

Map of Little Chucky Creek Unit of critical habitat for the chucky madtom



This map is provided for illustrative purposes of critical habitat only. For precise legal definition of critical habitat, please refer to the narrative unit descriptions.

* * * * *

Dated: September 23, 2011.

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–25655 Filed 10–11–11; 8:45 am]

BILLING CODE 4310–55–P

FEDERAL REGISTER

Vol. 76 Wednesday,

No. 197 October 12, 2011

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Petition Finding, Proposed Listing of Coquí Llanero as Endangered, and Designation of Critical Habitat for Coquí Llanero; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2009–0022]

RIN 1018–AX68

Endangered and Threatened Wildlife and Plants; 12-Month Petition Finding, Proposed Listing of Coquí Llanero as Endangered, and Designation of Critical Habitat for Coquí Llanero

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; 12-month finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the coquí llanero (*Eleutherodactylus juanariveroi*), an endemic Puerto Rican tree frog, as endangered under the Endangered Species Act of 1973, as amended (Act) and to designate critical habitat. After review of all available scientific and commercial information, we find that listing the coquí llanero as an endangered species under the Act is warranted. Accordingly, we propose to list the coquí llanero as an endangered species throughout its range and designate critical habitat for the species pursuant to the Act. In total, we propose approximately 615 acres (249 hectares) of a freshwater wetland for designation as critical habitat. The proposed critical habitat is located in Sabana Seca Ward, Toa Baja, Puerto Rico. This proposed rule, if made final, would extend the Act's protections to this species. The Service seeks data and comments from the public on this proposed listing rule and the designation of critical habitat for the species.

DATES: We will consider comments received or postmarked on or before December 12, 2011. We must receive requests for a public hearing, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by November 28, 2011.

ADDRESSES: (1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for Docket No. FWS–R4–ES–2009–0022, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, *Attn:* FWS–R4–ES–2009–0022; 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 the Information Requested section below for more details).

FOR FURTHER INFORMATION CONTACT: Marelisa Rivera, Deputy Field Supervisor, U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, P.O. Box 491, Road 301 Km 5.1, Boquerón, Puerto Rico; by telephone, 787–851–7297, extension 206; or by facsimile, 787–851–7440. 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 Requested

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 Federal and State agencies, the scientific community, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(2) Any information on the biological or ecological requirements of the species, and ongoing conservation measures for the species and its habitat.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and regulations that may be addressing those threats.

(4) Current or planned activities in the areas occupied by the species and possible impacts of these activities on this species.

(5) Additional information regarding the threats to the species under the five listing factors, 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; and

(e) Other natural or manmade factors affecting its continued existence.

(6) The reasons why areas should or should not be designated as critical habitat as provided by section 4 of the Act (16 U.S.C. 1531 *et seq.*), including the possible risks or benefits of designating critical habitat, including risks associated with publication of maps designating any area on which this species may be located, now or in the future, as critical habitat.

(7) The following specific information on:

(a) The amount and distribution of habitat for coquí llanero;

(b) What areas, that were occupied at the time of listing (or are currently occupied) and that contain the physical and biological features essential to the conservation of this species, should be included in a critical habitat designation and why;

(c) Special management considerations or protection that may be needed for the essential features in critical habitat areas, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of this species and why.

(8) Information on the projected and reasonably likely impacts of changing environmental conditions resulting from climate change on the species and its habitat.

(9) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(10) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(11) Information on whether the benefits of an exclusion of any particular area outweigh the benefits of inclusion under section 4(b)(2) of the Act.

Please note that 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, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. 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 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.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(B) of the Act requires that, for any petition to revise the Federal Lists of Threatened and Endangered Wildlife and Plants that contains substantial scientific or commercial information that listing a species may be warranted, we make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is: (a) Not warranted; (b) warranted; or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether any species is 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. In this document, we have determined that the petitioned action to list coquí llanero is warranted, and we are publishing a proposed rule to list the species and to designate critical habitat for the species.

Previous Federal Actions

On May 22, 2007, we received a petition, dated May 11, 2007, from the Caribbean Primate Research Center (CPRC) (CPRC 2007, pp. 1–29) requesting that coquí llanero be listed as endangered under the Act. The petition also requested that we designate critical habitat concurrently with listing, if listing occurs. In a letter to the petitioner dated July 23, 2007, we acknowledged receipt of the petition and also stated that (1) We would not be able to address the petition until funding became available, and (2) actions requested by this petition were precluded by court orders and settlement agreements for other listing actions that required nearly all of our listing funds for the current (2007) fiscal year.

On January 22, 2009, we received an amended petition dated and signed by the petitioner on January 13, 2009. The amended petition included updated information on current threats to the species and its habitat (CPRC 2009, pp. 1–19). On July 8, 2009, we published in the **Federal Register** (74 FR 32510) our finding that the petition to list coquí llanero presented substantial information indicating that the requested action may be warranted, and we initiated a status review of the species.

In this document, we present our 12-month finding on the petition, and we also propose listing the species as endangered and propose to designate critical habitat for the species.

Species Information

Species Biology

Coquí llanero is an endemic Puerto Rican tree frog. Coquí llanero is the smallest and only known herbaceous wetland specialist within the taxonomic genus *Eleutherodactylus* in Puerto Rico (Ríos-López and Thomas 2007, p. 62). It has a mean snout-vent length of 0.58 inches (in.) (14.7 millimeters (mm)) in males and 0.62 in. (15.8 mm) in females. The nares (nasal passages) are prominent and a ridge connects them behind the snout tip, giving the tip a somewhat squared appearance. The species has well-developed glands throughout its body; its dorsal coloration is yellow to yellowish brown with a light, longitudinal, reversed comma mark on each side; and its mid-dorsal zone is broadly bifurcated (divided into two branches) (Ríos-López and Thomas 2007, p. 55). The species' communication call consists of a series of short, high-pitched notes with call duration varying from 4 to 21 seconds. The advertisement call has the highest frequency among all Puerto Rican *Eleutherodactylus,* between 7.38 and 8.28 kilohertz (Ríos-López and Thomas 2007, p. 61). The calling activity starts at approximately 4:30 p.m. and decreases significantly before midnight.

Coquí llanero is insectivorous (feeds on small insects). The species has been observed to reproduce only on the plant *Sagittaria lancifolia* (CPRC 2009, p. 4). Egg clutches were found on leaf axils (21 egg clutches) or leaf surfaces (3 egg clutches) of only *S. lancifolia* (Ríos-López and Thomas 2007, p. 60) within the wetland area. Coquí llanero has the lowest reproductive output of any coquí species in Puerto Rico; egg clutches are comprised of one to five eggs and are found on leaf axils or leaf surfaces between 1.3 feet (ft) (0.4 meters (m)) and 3.9 ft (1.2 m) above water level (Ríos-López and Thomas 2007, pp. 53–62). Observers did not witness parental care in the field (CPRC 2009, p. 5).

Genetics and Taxonomy

Coquí llanero was first collected by Neftalí Ríos-López and Richard Thomas in 2005. In 2007, coquí llanero was described as a new species of the genus *Eleutherodactylus,* family Leptodactylidae. Although the coquí llanero is similar to *Eleutherodactylus gryllus,* differences in morphological ratios, body coloration, call frequency and structure, DNA, and habitat association indicate that it is a well-differentiated species (Ríos-López and Thomas 2007, pp. 53–60; CPRC 2009, p. 1). Coquí llanero is the only known herbaceous wetland specialist within the taxonomic genus *Eleutherodactylus* in Puerto Rico (Ríos-López and Thomas 2007, p. 62).

Distribution and Habitat

The habitat of coquí llanero is located within the subtropical moist forest life zone (tropical and subtropical forest ecosystems) (Ewel and Whitmore 1973, pp. 20–38). This life zone (areas with similar plant and animal communities) covers about 60.5 percent of the total area of Puerto Rico (Ewel and Whitmore 1973, p. 9). The species appears to be an obligate marsh dweller (Ríos-López 2007, p. 195). Coquí llanero has been found only in freshwater, herbaceous, wetland habitat at 55.8-ft (17-m) elevation (Ríos-López and Thomas 2007, p. 60). The National Wetland Inventory (NWI) classifies the majority of this wetland as palustrine. Palustrine wetlands are non-tidal wetlands, where the salinity due to ocean-derived salts is less than 0.5 ‰ parts per thousand (ppt) and the emergent vegetation is persistent seasonally flooded having surface water present for extended periods during the growing season. The soils of this wetland consist of swamp and marsh organic deposits from Pleistocene or recent origin or both (Ríos-López and Thomas 2007, p. 60). The species' habitat may represent a relic of an endemic seasonally to permanently flooded, herbaceous, wetland habitat type (Ríos-López and Thomas 2007, p. 63). Herbaceous vegetation in this habitat shows a species composition consisting of *Blechnum serrulatum* (toothed midsorus fern), *Thelypteris interrupta* (willdenow's maiden fern), *Sagittaria lancifolia* (bulltongue arrowhead), *Cyperus* sp. (flatsedges), *Eleocharis* sp. (spike rushes), and vines and grasses

(Ríos-López and Thomas 2007, p. 60). The majority of coquí llaneros have been found perching and calling on the toothed midsorus fern and willdenow's maiden fern. At the time the species was first discovered, all the individuals collected were perching, sitting, or calling on herbaceous vegetation, mainly on ferns.

Coquí llanero was first collected by Neftalí Ríos-López and Richard Thomas in 2005 from a freshwater, herbaceous wetland on the closed U.S. Naval Security Group Activity Sabana Seca (USNSGASS) property and the Caribbean Primate Research Center (CPRC) of Medical Sciences Campus, University of Puerto Rico, Toa Baja, Puerto Rico (PR). This wetland area is considered as the ''type location'' (similar location) because the species was first collected and described from this area.

At the time the frog was described, it was known to occur at the Ingenio Sector in the Sabana Seca Ward, Toa Baja, a municipality of Puerto Rico located on the northern coast, north of Toa Alta and Bayamón, east of Dorado, and west of Cataño, approximately 12 miles (mi) (20 kilometers (km)) from San Juan, PR. The coquí llanero is now documented on lands owned or managed by three entities. One area, the closed USNSGASS, is comprised of approximately 865 ac (350.1 ha). Of these 865 ac (350.1 ha), the coquí llanero has been documented on 260 ac (105 ha) of wetlands within these lands. Further, coquí llanero has been found in a wetland area that comprises approximately 258 ac (104 ha) and is currently military reservation lands adjacent to the closed military facility (Tec Inc. and AH Environmental 2008, p. 3–1). In addition, approximately 97 ac (39 ha) of wetlands owned by the University of Puerto Rico and the Puerto Rico Land Authority have coquí llanero present. Thus, at the present time, the coquí llanero is known to occur on a total of 615 ac (249 ha) (Geo-Marine 2002, pp. 2–13; Ríos-López and Thomas 2007, p. 60; Joglar 2007, p. 2; Tec Inc. and AH Environmental 2008, p. 3–2; PR Land Authority 2011, unpublished data; Service 2011, unpublished data). The type locality (geographical location where species is known to occur) wetland where coquí llanero occurred was an area used by the USNSGASS between the late 1930s and early 1940s for military purposes during World War II (U.S. Navy 2006, p. 3–2). Since then, the habitat of coquí llanero within this area has experienced little disturbance due to restricted access of people and the limited development of military facilities (Ríos-López 2007, p. 196).

Coquí llanero's limited range may reflect a remnant population of a once widely distributed herbaceous wetland specialist whose habitat was decimated by historic land uses (Ríos-López and Thomas 2007, p. 62). During European colonization, land was extensively drained and modified for agricultural practices. A shift in the Puerto Rican economy from agriculture to industry led to land abandonment, and most of these lands were invaded by herbaceous vegetation or converted for urban development. Ríos-López and Thomas (2007, p. 63) indicated that recent surveys conducted in wetlands near the current known population of coquí llanero failed to locate the species and that, apparently, there are few or no wetlands with plant composition similar to that found in the species' type locality wetland. Ríos-López (2009, p. 4) also visited several nearby coastal palustrine wetlands in Cataño (Bacardi Factory area) to the east of the type locality wetland, all major regions of Toa Baja (within the same municipality of the type locality wetland), towards the west along several of the coastal municipalities (Dorado, Vega Alta, Manatí, Vega Baja and Camuy), and Mayagüez on the west side of the island. All of these areas were selected based on similar hydrogeological information provided by Geographic Information System experts from the Puerto Rico Department of Natural and Environmental Resources (PRDNER). Even though some of these wetlands would seem to provide suitable habitat for the coquí llanero, the species was not detected in any of the locations. Joglar (2007, p. 1) also visited other areas outside of the known type locality wetland, including the North Tract in Sabana Seca (USNSGASS) and other localities in Toa Baja and Las Cucharillas in Cataño, all in northern Puerto Rico. Coquí llanero was not detected at any of these locations.

Using the NWI maps, EGIS, Inc. conducted a limited search for potential suitable coquí llanero habitat outside of the type locality wetland, using *Sagittaria lancifolia* as an indicator (EGIS 2007, p. 21). They selected 15 sites within the freshwater emergent and forested/shrub wetland designations. They found extensive growth of *S. lancifolia* in only one of these localities. Tortuguero Lagoon is another freshwater wetland also mentioned to contain *S. lancifolia.* Ríos-López also searched for the coquí llanero within this lagoon but found no coquí llanero activity. In addition, EGIS included in their report a herbarium list from the University of Puerto Rico that specifies 11 localities where *S. lancifolia* was found (EGIS 2007, Appendix E). Some of these localities are within coquí llanero's type locality wetland, and others have already been searched for coquí llanero activity without positive results.

Coquí llanero was estimated to occur on approximately 445 ac (180 ha) when first discovered and described. Joglar (2007, p. 2) conducted additional surveys and estimated the distribution of the species to be approximately 504.5 ac (204 ha). The Service has estimated the palustrine herbaceous wetland area where the coquí llanero is now found to be about 615 ac (249 ha) (Service 2011, unpublished data).

Vega-Castillo (2011) conducted diurnal and nocturnal surveys in wetland areas and channels located between PR Road–867 and PR Road–165 to the north of where coquí llanero is currently found while evaluating the proposed alignment for a natural gas pipeline. These surveys were conducted during January 2011, using recorded male calling (Vega-Castillo 2011, pp. 9–12). During this period, Vega-Castillo (2011) detected at least 6 individuals of coquí llanero vocalizing at the edge of a vegetated drainage channel that is a tributary of the Cocal River. The location where these individuals were reported is located about 1.7 mi (2.7 km) northwest from the area where coquí llanero are known to currently inhabit. This area is mainly dominated by pasture (Vega-Castillo 2011, p. 12). In March 2011, Service biologists conducted several site visits to the area to confirm the report. In addition, the Service installed a recorder for a 24-hour period in March 2011, to detect individuals vocalizing in the area. However, the Service did not detect the species in this area. Based on the Service's observations, the area is highly degraded, is dominated by lands converted to pasture and burned, and is not considered in the total habitat occupied by coquí llanero.

Although the petition reports an average of 181 individuals per acre (450 individuals per hectare) (CPRC 2009, p. 5), at the present time, no current population estimates are available for the species.

Summary of Information Pertaining to the Five Threat Factors

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more

of the following 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; and

(E) Other natural or manmade factors affecting its continued existence.

Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors 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 our 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.

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The coquí llanero was discovered in 2005. Additional on-the-ground surveys based upon habitat characteristics revealed no additional populations. As a result, we do not know if the historical range of the species may be different from its present, known range. Thus, we are able to present and discuss only potential factors that may affect the current habitat or range of coquí llanero in this section, including: (1) Urban development; (2) operation and possible expansion of a go-kart and motorbike race track in coquí llanero wetland habitat; (3) contamination from the Toa Baja Municipal Landfill (TBML); (4) habitat degradation for flood control projects; and (5) competition from invasive wetland plant species.

Urban Development

Coquí llanero and its habitat are threatened by large-scale residential projects that are currently planned within and around the site where the species is known to occur (González 2010, pers. comm.; Ríos-López 2010, pers. comm.). The most significant portion of this habitat falls within the southern portion of the USNSGASS. The USNSGASS land comprises approximately 2,195 ac (888 ha), which is divided into two large areas: the North and South Tracts. The North Tract accounts for approximately 1,330 ac (538 ha), with the majority of land currently leased to a local cattle farmer. The South Tract comprises approximately 865 ac (350 ha) and is where the coquí llanero is known to occur on 260 ac (105 ha).

The U.S. Navy (USNSGASS) is disposing the property in accordance with Section 2801 of the National Defense Authorization Act (NDAA) for Fiscal Year 1996 (FY1996), Public Law 104–106, 110 Stat. 186 (10 U.S.C. 2871–2885), as amended. Section 2801 of NDAA provides the authority to the Department of Defense (DOD) to work with the private sector nationwide, in order to build and renovate family housing and ancillary facilities in key areas of need. The Navy is conveying approximately 2,075 ac (840 ha) of the property to a private entity, Sabana Seca Land Management (SSLM), LLC, which is associated with the Navy's Public Private Venture partnership for military family housing (Tec Inc. and AH Environmental 2008, p. ES–1). SSLM will market and sell the closed Navy base property to non-Federal entities through Forest City Enterprises, Inc.

The environmental assessment (EA) for the transfer-disposal of USNSGASS property states that the property disposed of by the Navy would be redeveloped in a manner similar to surrounding areas (Tec Inc. and AH Environmental 2008, p. 4–1). According to the EA, the preferred alternative for the wetland area that contains occupied coquí llanero habitat is residential use (Tec Inc. and AH Environmental 2008, p. 2–2). Furthermore, the coquí llanero wetland habitat is not within the areas that would be zoned for conservation by the Toa Baja municipality, and, according to their land-use plan, they intend to zone the wetland area for residential development. Also, coquí llanero wetland habitat is not within the parcels to be conveyed to the University of Puerto Rico to be protected in perpetuity.

The ultimate reuse of the USNSGASS property would be determined by the non-Federal entities receiving the property from SSLM and Forest City Enterprises, Inc. The EA explains that the development within wetlands and the magnitude of the impacts that could occur, if such development was permitted, would be dependent upon the actual placement of new residential areas and the amount of wetland removal or alteration allowed for site development (Tec Inc. and AH Environmental 2008, p. 4–15). Possible impacts (approximately 221 ac (89 ha) of palustrine emergent wetlands (Tec Inc. and AH Environmental 2008, p. 4–16)) could occur by draining and filling these wetlands, which are occupied by coquí llanero, leaving little to no suitable habitat for coquí llanero to carry out its life-history processes. In addition, filling the wetlands for future development could require Clean Water Act (CWA; 33 U.S.C. 1251 *et seq.*) Section 404 permits from the U.S. Army Corps of Engineers (Corps). If the species is listed, and the development would likely adversely affect the species, consultation under section 7 of the Act would be conducted between the Corps and the Service.

Nevertheless, prior to the discovery of coquí llanero, land use-history for this area has shown that urban and commercial development has adversely impacted wetland resources, and although not documented, presumably affected coquí llanero individuals and its habitat. An example of those impacts is the fill of a freshwater emergent wetland for residential housing at the western end of current coquí llanero habitat (Zegarra and Pacheco 2010, personal observation). The wetland where coquí llanero is currently known to be present was previously impacted by the construction and maintenance of Redman Road. This road was constructed in an area identified in the NWI maps as freshwater emergent and forested shrub wetlands and its construction interrupted the natural flow of water and affected the hydrology of the wetland. Further adverse effects to the same wetland habitat can be observed in the residential community that exists on the boundary of the closed USNSGASS property near the intersection of PR Road-867 and Redman Road. This community has expanded over the past 40 years and presently consists of approximately 50 houses, 20 of which are on Navy property (U.S. Navy 2000 *in* Tec Inc. and AH Environmental 2008, p. 3–4). Prior to the closure of the USNSGASS, the Navy was planning to construct a new fence on the property to eliminate further encroachment on its land

holdings (Tec Inc. and AH Environmental 2008, p. 3–6).

Implementing the preferred alternative of the EA for the disposal of the USNSGASS property may result in the destruction of approximately 416 ac (168 ha) of wetlands, including coquí llanero habitat (Tec Inc. and AH Environmental 2008, p. 4–5). Additionally, implementing the preferred alternative would most likely result in new residential development (Tec Inc. and AH Environmental 2008, p. 4–6). According to the Puerto Rican Planning Board (PRPB) Web site, 11 development projects are under evaluation around the southern section of the wetland currently occupied by coquí llanero, possibly impacting a total of 1,087 ac (440 ha) (*http://www.jp.gobierno.pr,* accessed online February 2010). Urban development adjacent to the wetland would fragment and directly impact coquí llanero suitable habitat and would limit the species' population expansion in the area. In addition, with the creation of new residential projects, traffic would be expected to increase, and thus, the three primary roadways surrounding the USNSGASS would likely require some improvements (Tec Inc. and AH Environmental 2008, p. 4–6). Vehicle traffic on roads within the essential habitat of amphibian species can be a direct source of mortality and, in some instances, can be catastrophic and should not be underestimated (Glista *et al.* 2007, p. 85). According to Janice Gonzáles, Director of the CPRC, approximately 30 CPRC employees drive vehicles on Redman Road daily as it is currently the main access road to the CPRC (Gonzáles 2010, pers. comm.). Any improvement of the road or increase in traffic may affect the suitability of the wetland. The biological effects to coquí llanero from the existing road network around the southern section of the wetlands are not well understood. The combination of habitat fragmentation and high vehicle use of the roads may negatively impact coquí llanero and its habitat through loss of habitat connectivity, degradation of water quality, direct mortality, edge effect of road and wetland, and changes in hydrology.

For these reasons, we conclude that urban development and associated infrastructure and human use is a significant threat to coquí llanero by direct mortality and due to permanent loss, fragmentation, or alteration of its habitat.

Go-Kart and Motorbike Race Track

Although the Service does not have information regarding the specific date of the construction of the existing race track, we estimate that approximately 29 ac (12 ha) of freshwater emergent and forested shrub wetlands were impacted. These data were quantified using Geographic Information Systems analysis with aerial photography and the NWI layers. The Puerto Rico Department of Natural and Environmental Resources (PRDNER) provided a photograph of coquí llanero habitat that was filled by the construction of the race track (PRDNER 2007b, p. 25). It is also evident that the race track floods during heavy rain events and serves as a potential source of contamination with oil, gasoline, and other pollutants, affecting the suitability of adjacent coquí llanero habitat (PRDNER 2007b, p. 25). The possible effects of waterborne contaminants on coquí llanero are discussed under Factor E.

Comments submitted by SSLM (2009, p. 4) expressed concern when the operators of the race track removed soil to expand the parking lot. The soil was deposited on the USNSGASS grounds, affecting coquí llanero habitat by filling part of the wetland. Joglar (2007, p. 2) identified the wetland area contiguous to the race track as occupied by coquí llanero.

Therefore, we conclude that any further expansion of the race track or its operation may potentially impact coquí llanero by permanent loss, alteration, or contamination of its habitat.

Toa Baja Municipal Landfill (TBML)

The current operation of the Toa Baja Municipal Landfill (TBML) constitutes a threat to coquí llanero. The landfill is located inland on top of a limestone hill 0.5 mi (0.8 km) south of known coquí llanero habitat. The polluted discharge or run-off waters from the continued operation of the landfill may pose a serious threat to the species because underground contaminated waters and leachates reaching the wetlands may change water quality, soils, and consequently plant composition (CPRC 2009, pp. 6–9). See discussion below under Factor E.

The legal representative for the Toa Baja Municipal Administration sent a letter to the Service dated September 8, 2009, supporting the listing of coquí llanero as endangered and supporting the PRDNER Essential Critical Natural Habitat delineation except for one 83 ac (33.6 ha) parcel necessary for the implementation of the TBML closure activities ordered by the U.S. Environmental Protection Agency (EPA). According to a PRDNER technical assistance letter dated February 26, 2010 (PRDNER 2010, pp. 1–6), another area on the north side of the TBML is also being considered for use in the landfill closure activities. This area, identified as Area B by the Puerto Rico Environmental Quality Board (EQB), is located within the PRDNER's designated Essential Critical Natural Habitat for the coquí llanero. Activities identified in the closure procedures will direct the TBML stormwater drainages towards the wetland. Stormwater that drains from the TBML currently flows into coquí llanero habitat and is contaminated with leachate (see Factor E discussion). In addition, the TBML closure measures would modify the hydrology of the area and could adversely affect the hydrology of the coquí llanero wetland by affecting part of the limestone hills, which supply water to the wetland and affect the suitability of habitat for the species.

Therefore, we conclude that the current operation and the possible closure measures of the TBML are a threat to the coquí llanero by potentially altering the hydrology of its wetland habitat and by contaminating the wetland with the landfill run-off.

Channel-Clearing Activities for Flood Control

The municipality of Toa Baja periodically removes riparian vegetation along the main drainage channel within the wetland where the coquí llanero is known to occur. These flood control measures are implemented during the rainy season to facilitate water flow and prevent flooding of nearby communities including Ingenio, Villas del Sol, and Brisas de Campanero. However, channel-clearing activities may facilitate drainage and drying of the wetland and accelerate colonization of invasive, herbaceous vegetation along the edges of the channel towards the wetland (Ríos-López 2009, p. 3). Preliminary studies on the reproductive biology of coquí llanero suggest that wetland areas subjected to prolonged dry periods (*e.g.,* towards the edges of wetland) are characterized by greater vegetation cover of grasses instead of the native ferns and arrowheads that the coquí llanero depends on for reproduction and survival. These areas also have a disproportionate abundance of coquí llanero egg clutch predators, both native and exotic mollusks and insects (Ríos-López 2009, pp. 3, 11).

Therefore, we conclude that channel-clearing activities may be an indirect threat to the coquí llanero because they prolong dryer conditions along the edges of the wetland, allowing invasive plants and predators to colonize the wetland.

Invasive Wetland Plant Species

Invasive, native wetland plants such as *Typha domingensis* (Southern cattail) may invade and alter diverse native wetland communities, often resulting in plant monocultures that support few wildlife species (Houlahan and Findlay 2004, p. 1132). Southern cattail may alter the wetland attributes, including geomorphology, fire regime, hydrology, microclimate, nutrient cycling, and productivity (Woo and Zedler 2002, p. 509). Based on our previous experience in the Laguna Cartagena National Wildlife Refuge, the southern cattail colonized disturbed areas faster than other native wetland plants, thereby excluding the other native plants. The southern cattail is currently found in patches within the coquí llanero wetland habitat (Service 2011, pers. obs.). If the southern cattail continues to spread and colonizes the coquí llanero wetland habitat, it could replace all *Sagittaria lancifolia* and the ferns that the coquí depends on for reproduction and normal behavior.

Therefore, we conclude that invasive wetland species are a threat to the coquí llanero due to changes in the wetland hydrology and plant species composition the coquí llanero needs for survival.

Summary of Factor A

Based on the best scientific and commercial information available, we consider the present or threatened destruction, modification, or curtailment of the species' habitat or range to be a high-magnitude and ongoing (imminent) threat to the coquí llanero. We believe that the species is currently threatened by urban development, by the operation of the existing race track, by activities associated with the operation and future closure of the TBML, by channel-clearing activities for flood control, and by invasive plant species. The scope of this factor is exacerbated because the only known population of coquí llanero occurs on land that is slated for development and surrounded by lands subject to urban development. Because these threats are already occurring on the extremely localized known range of the coquí llanero, they are having or are likely to have a significant impact on the species.

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Coquí llanero is not a commercially valuable species or a species sought after for recreational or educational purposes. However, this recently discovered tree frog species could be actively sought for scientific purposes. Forty-five coquí llanero specimens were collected for scientific purposes in 2005, to describe the species, and some specimens have been deposited in universities and private collections (Ríos-López and Thomas 2007, p. 54). In addition, an undisclosed number of eggs and individuals were collected for scientific research of the species' reproductive biology, potential captive breeding capability, and pathogen sampling. While scientific collecting had been identified as a possible contribution to the decline of other coquí species in Puerto Rico (Burrowes and Joglar 1991, p. 45), Commonwealth Law 241 and PRDNER Regulation 6766 promulgated in 2007 have prohibited collection of coquí llanero without authorization (PRDNER 2007a, p. 9). Currently, the species occurs in a closed area where access to the roads within the property is limited to Caribbean Primate Research Center (CPRC), University of Puerto Rico (U of PR), USNSGASS, and only permitted scientific research personnel (Ríos-López 2011, unpublished data).

Based on the best scientific and commercial information available, we do not consider overutilization for commercial, recreational, scientific or educational purposes to presently be a significant threat to coquí llanero. Currently, only a few researchers are working with the species, and collection is regulated by PRDNER. Therefore, coquí llanero is not threatened by overutilization for commercial, recreational, scientific, or educational purposes.

Factor C: Disease or Predation

The pathogenic chytrid fungus, *Batrachochytrium dendrobatidis* (*Bd*), is a widespread pathogen that is hypothesized to be the cause of mass mortality in some amphibian populations (Pilliod *et al.,* 2009, p. 1260). Chytridiomycosis (disease cause by the fungus) results when *Bd* invades keratinized tissue (tissue that makes the outside of the skin tough and resistant to injury) of an amphibian, disrupting cutaneous functions, compromising the host's immune system, and affecting the amphibian's behavior (Pilliod *et al.,* 2009, p. 1260). In Puerto Rico, it appears to be endemic above 1968.5 ft (600 m), occurring from eastern Luquillo Mountains (El Yunque National Forest), throughout the Central Cordillera up to Maricao (Burrowes *et al.* 2008, p. 322); however, this range is outside of the only known location where coquí llanero occurs (see *Species Information*). Five coquí llanero individuals have been sampled for *Bd,* with negative results (Burrowes *et al.* 2008, p. 323). Although *Bd* has been detected at lower elevations in other tropical environments, the best scientific and commercial information available for coquí llanero indicates that *Bd* is not a current threat to this species nor is it likely to become so in the near future, even taking into consideration changing environmental conditions due to climate change (see discussion under Factor E).

New information submitted by Ríos-López (2009, p. 11) indicates that natural predation pressure may be strong and that interspecific competition for breeding sites may be significant. Preliminary data indicated that coquí lanero has the lowest reproductive output of any coquí species in Puerto Rico, averaging three eggs per clutch (PRDNER 2007a, p. 3; Ríos-López and Thomas 2007, p. 60; Ríos-López 2009, p. 5). Egg predation by native and exotic invertebrates was observed, with some predators consuming entire egg masses in 3 days.

We conclude that the best scientific and commercial information available indicates, at the present time, that coquí llanero is not currently threatened by any disease. However, predation is a threat to coquí llanero, particularly at the dryer edges of the wetland, and could be exacerbated by the destruction, modification, or curtailment of the species' habitat (see discussion under Factor A). The information available suggests that flooded conditions may limit predation pressure against coquí llanero. Therefore, based on the best scientific and commercial information available to us, we conclude that predation is a threat to the continued existence of the species.

Factor D: The Inadequacy of Existing Regulatory Mechanisms

Puerto Rico DNER designated coquí llanero as Critically Endangered and designated its habitat as Essential Critical Natural Habitat under Commonwealth Law 241 and Regulation 6766 in July 2007 (PRDNER 2007a and 2007b). Article 2 of Regulation 6766 includes all prohibitions and states that the designation as ''critically endangered'' prohibits any person from taking the species; it prohibits harm, possession, transportation, destruction, or import or export of individuals, nests, eggs, or juveniles without previous authorization from the Secretary of PRDNER (PRDNER 2007a, p. 9). The Puerto Rico DNER also designated approximately 1,602 ac (648 ha) as ''essential critical natural habitat'' under Regulation 6766 (PRDNER 2007b, p. 28).

Article 4.05 of this regulation specifies that an area designated as Essential Critical Natural Habitat cannot be modified unless scientific studies determine that such designation should be changed. Because coquí llanero habitat is the first to be designated as Essential Critical Natural Habitat under Commonwealth Law 241 and Regulation 6766, the effective level of protection this law will provide is unknown. SSLM brought a lawsuit against the PRDNER for the critical habitat designation process of coquí llanero. Although PRDNER's critical habitat designation process was upheld, the ruling is currently under review by Puerto Rico's Supreme Court. Presently, both of PRDNER's designations are valid and in regulation.

Based on the best scientific and commercial information available and the uncertainty of the level of protection the existing laws will provide, we consider the inadequacy of existing regulatory mechanisms to be a threat to coquí llanero.

Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

In the following section we discuss the highly specialized ecological requirements of the species, as well as water and soil pollution, use of herbicides, brush fires, competition, climate change, and human use and access of the wetland area.

Highly Specialized Ecological Requirements

Because of its highly specialized ecological requirements for reproduction, coquí llanero's vulnerability to other threats discussed in this rule is exacerbated. As mentioned in the Background section, coquí llanero is known to exist in only one freshwater wetland in the municipality of Toa Baja, and after several searches in other similar locations (apparently there are few or no wetlands with similar plant composition), the species was not detected. Ríos-López and Thomas (2007, p. 60) found that the breeding events of coquí llanero were limited to one plant species, *Sagittaria lancifolia. S. lancifolia* is an obligate wetland species indicator, and a general description of the major substrate types of the wetland where the coquí llanero currently inhabits indicates a 7.4 percent vegetation cover of *S. lancifolia* (Ríos-López 2009, p. 9). Coquí llanero may also be selecting an intermediate *S. lancifolia* size class for egg laying, which suggests further specialization (Ríos-López 2010, unpubl. data, p. 8). Also, current research by Ríos-López (2010, unpubl. data, p. 11) suggests that reproduction may not occur randomly in space, but rather seems to be limited to plants located in areas of little disturbance, in areas that are permanently flooded, and in areas that are away from the wetland's edges.

In summary, we believe that the highly specialized ecological requirements of coquí llanero exacerbate its vulnerability to other threats, such that the continued existence of the species is likely to be impacted. Characteristics of the species, such as its limited distribution (currently found in only one freshwater wetland with a distinct vegetation composition) and the fact that it has the lowest reproductive output of all coquí species in Puerto Rico heighten the effects of other threats as described in this rule. In addition, considering that coquí llanero uses only the *Sagittaria lancifolia* for reproduction, it may limit the species' ability to expand to other wetland areas.

Water and Soil Pollution

CPRC (2009, p. 6), PRDNER (2007b, p. 24), EGIS (2007, p. 4), and Joglar (2007, p. 6) identify the TBML leachates as a threat to coquí llanero. This landfill is located on the limestone hills to the south of the wetland known to be occupied by coquí llanero. CPRC submitted to EGIS a photograph of contaminated leachates draining towards the wetland habitat of coquí llanero. The leachate study submitted by EGIS describes the hydrology of the area as typical of karst (an area of limestone terrene characterized by sinks, ravines, and underground streams) zones near the coast, in which the run-off generated in the limestone hills, including at the TBML, flows at or near the surface, through a series of channels and small valleys, until the flow reaches the marshes and wetlands areas (including coquí llanero habitat) at the north (EGIS 2007, Appendix B, p. 7). The study specifies that a dark-colored leachate is currently flowing from the TBML towards the closed USNSGASS property, and that even during periods of drought, the leachate flows continuously towards the USNSGASS property, with flows increasing during rain events (EGIS 2007, Appendix B, p. 23). The leachate study identified high levels of arsenic, cyanide, sodium, lead, and chromium, among other elements. There does not seem to be much indication of petroleum-related concerns, although sampling more strategically near the race track facility could more accurately assess this contamination impact relative to coquí llanero habitat (EGIS 2007, p. 5).

Additional analytical laboratory results at other threat zones associated with the wetland indicate elevation of certain heavy metals, coliform bacteria, chemical oxygen demand, and pesticides (EGIS 2007, p. 18). High coliform bacteria counts could be from several sources, such as septic systems or the CPRC (EGIS 2007, p. 5). Of particular concern is the possibility of bioaccumulation of toxins throughout the wetland food chain (PRDNER 2007b, p. 24). It is highly probable that the contaminated conditions represented in the soil and standing water would not be hospitable to a sensitive amphibian species such as coquí llanero that absorbs chemicals through the skin (EGIS 2007, p. 5). Such chemicals could directly affect the coquí llanero's development, cause abnormalities, or act indirectly by increasing the coquí llanero's susceptibility to other environmental stressors such as infectious disease and predation (Taylor *et al.,* 2005, p. 1497). We have no information indicating any negative response of the species to soil and water pollution; however, we consider water and soil pollution a potential threat to the species at this time.

Herbicides

CPRC (2009, p. 7) identifies the use of herbicides in the closed USNSGASS, as part of the maintenance work on the grounds, as a current threat to the species. However, SSLM (2009, p. 9) claims that it does not use herbicides on the borders of the wetland as part of maintenance work on the USNSGASS property, and that the practice of using herbicides is not in accordance with its institutional environmental policies and the activities authorized to SSLM at the USNSGASS by the Navy. During a site visit, there were no signs that herbicides are being used along Redman Road within the area where coquí llanero occurs on the USNSGASS, and a conversation with Ríos-López (2011 pers. comm.) confirmed that the practice has apparently ceased.

Nevertheless, herbicides may still be able to enter into the wetland because of possible herbicide use in the urban housing areas near coquí llanero habitat. These herbicides could cause developmental abnormalities (*e.g.,* limb malformations) to the coquí llanero. In fact, pesticides have been known to be dispersed through precipitation and wind (Sparling *et al.* 2001, p. 1595; Fellers *et al.* 2004, p. 2176). Other research suggests that important changes in an ecological community's food web result from pesticide and herbicide exposure, which influence the susceptibility of amphibian species to

contaminants (Boone and James 2003, p. 829). We have no information indicating any negative response of the species to herbicides; however, we consider the use of herbicides in the surrounding area as a potential threat to the species at this time.

Brush Fires

Brush fires have been identified as a current threat to the species (CPRC 2009, p. 6). SSLM (2009, p. 9) mentioned that the only fire incidents reported since 2007 have occurred on the North Tract of the USNSGASS and were limited to two or three incidents per year during the drought season. Coquí llanero habitat is surrounded by several developments (race track and urban housing) that facilitate exposure and invasion of any accidental or deliberate fires into the wetland footprint and adjacent forest. This could exacerbate the entrance of invasive plants such as southern cattail and change the vegetation composition of the wetland (see discussion under Factor A). In addition, these brush fires may encroach on the coquí llanero's current limited habitat. A possibly extinct coquí species in Puerto Rico (*Eleutherodactylus jasperi*) with limited distribution and highly specialized ecological requirements is known to have been adversely affected by fires in its type locality (Díaz 1984, p. 4).

Therefore, we believe that brush fires may be a threat to the coquí llanero and its habitat.

Competition

A common, and more widespread, coquí species of Puerto Rico (*Eleutherodactylus cochranae*) can utilize the same habitats as coquí llanero, specifically the *S. lancifolia* egg-laying locations, displacing and damaging coquí llanero eggs. These competitors rarely invade more permanently flooded areas of the wetland, suggesting a synergism between hydrology alteration and competition that may result in magnified, negative biological interactions against coquí llanero (Ríos-López 2009, p. 4).

Competition is a threat to coquí llanero, particularly at the dryer edges of the wetland and this threat could be exacerbated by the destruction, modification, or curtailment of the species habitat (See discussion in Factor A). The information available suggests that flooded conditions may limit competition pressure against coquí llanero. Therefore, based on the best scientific and commercial information available to us, we conclude that competition is a threat to the continued existence of the species.

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; ''climate change'' refers to a change in the mean or variability or both 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° Fahrenheit (1.1° Celsius) across the United States 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 1990s 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 indicate 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 an endangered or threatened species as defined under the Act. If a species is listed as endangered or threatened, 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). The effects of climate change on coastal wetlands could be significant if sea level rises. Changes in precipitation patterns and warmer temperatures can likewise have detrimental effects on wetland function (Mitsch and Gosselink 2007, p. 313). Climate-linked amphibian population declines in Puerto Rico have been explained by a possible synergistic interaction between drought and the pathological effect of the chytrid fungus (Burrowes *et al.* 2004, p. 141) (see Factor C discussion). While we do not have specific information for coquí llanero and its habitat, information in the literature suggests that changes in environmental conditions that may result from climate change can influence the spread of nonnative, invasive species, fire, and precipitation levels, thereby potentially impacting coquí llanero.

Human Access or Use

Although we currently do not have any information on the visitor use of the wetland where coquí llanero is known to occur, Ríos-López (2009, p. 3) suggests that visitation for educational, research, or recreational purposes may have significant impact on the unique vegetation assemblage of the wetland. These activities could result in vegetation destruction from the development of research transects and observation trails. Up to a 4-month delay of vegetation regeneration was documented after a transect was established for these activities and up to an 8-month delay of vegetation regeneration after a helicopter hovered approximately 30 ft (9 m) above a section of the wetland. Afterwards, short-term results included reduced calling by male coquí llanero and invasion by an edge-associated species, *Eleutherodactylus antillensis,* another species of coquí, in the bent vegetation, which had formed a raft-like area (Ríos-López 2009, p. 3). However, because the wetland area is generally closed to visitor access, and research is by permit only and limited, human impact from these activities is expected to be minimal.

Therefore, we conclude that human access or use is currently not a significant threat to coquí llanero and its habitat.

Summary of Factor E

In summary, coquí llanero may be threatened by a variety of natural and manmade factors that may affect the continued existence of the species. The primary natural or manmade factors affecting the species are its highly specialized ecological requirements, which exacerbate the threats posed by other factors to coquí llanero, and competition with other coquí species for egg-laying sites. Other potential threats that may affect the species are landfill leachate pollution, the use of herbicides, the threat of fire to the species' habitat, and changes in environmental conditions resulting from climate change. We determined that human access or use is not currently a significant threat to coquí llanero and its habitat. Based on the best available information, we conclude that coquí llanero may be threatened by other natural or manmade factors affecting its continued existence. Factors including coquí llanero's highly specialized ecological requirements, landfill leachate pollution, the use of herbicides, brush fires, competition, and environmental effects resulting from climate change are potential threats that may be expected to increase in the future depending on activities surrounding the species' habitat, placing coquí llanero at risk.

Finding

As required by the Act, we conducted a review of the status of the species and considered the five factors in assessing whether the coquí llanero is endangered or threatened throughout all or a significant portion of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the coquí llanero. We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with recognized coquí llanero experts and other Federal and State agencies.

The identified threats to the coquí llanero are attributable to Factors A, C, D, and E identified in section 4(a)(1) of the Act. The primary threat to the species is from habitat modification (Factor A) in the form of urban development and ongoing threats of habitat destruction and modification. Coquí llanero is endemic to Puerto Rico and has only been observed at one area, despite extensive survey efforts made by several researchers. Available information indicates that coquí llanero habitat may represent a relic of an endemic habitat type. The only known population is threatened by a variety of factors that are expected to persist indefinitely and impact, or have the potential to impact, remaining coquí llanero and their habitat. Additionally, predation may also present a current threat to coquí llanero, particularly at the dryer edges of the wetland, and its isolation makes it particularly susceptible to disease or predation (Factor C). The inadequacy of existing regulatory mechanisms is a threat due to the uncertainty of the level of protection the existing laws will provide (Factor D), and other natural or manmade factors affecting its continued existence, particularly its specialized ecological requirements, also may be threats to the species (Factor E). In general, the majority of the factors mentioned in the five-factor analysis may adversely affect the only known population of coquí llanero. Depending on the intensity and immediacy of such threats, these factors—either by themselves or combined—are operative threats that act on the species and its habitat.

Based on our evaluation of all scientific and commercial information available regarding the past, present, and future threats faced by coquí llanero, we have determined that the continued existence of coquí llanero is threatened by urban development and associated activities, changes in hydrology, surface and ground water pollution, use of herbicides, invasion of nonnative species, predation, climate change, brush fires, competition, and inadequate regulatory mechanisms. Because the species faces these threats throughout its extremely limited range, we find that coquí llanero is warranted for listing throughout its range.

Status Evaluation

The Act defines an endangered species as any species that is in danger of extinction throughout all or a significant portion of its range. A threatened species is one that is likely to become endangered in the foreseeable future throughout all or a significant portion of its range. Based on our evaluation of the best available scientific and commercial information related to the extremely restricted range of the species, significant threats to it and its habitat, and future potential threats, we have determined the species is in danger of extinction throughout all of its range. Because the range of the species comprises a single occurrence location, and we have determined that the species is in danger of extinction in that location, we do not need to further analyze whether there may be a significant portion of the range of the species. As a result, we find that coquí llanero meets the definition of an endangered species. Because the species is in danger of extinction now, as opposed to in the foreseeable future, coquí llanero meets the definition of an endangered species rather than a threatened species.

On the basis of our careful evaluation of the best available scientific and commercial information regarding the past, present, and future threats to the species as discussed above relative to the listing factors, we have determined that listing is warranted, and we propose to list coquí llanero as an endangered species throughout its range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprised of species experts, Federal and State agencies, nongovernment organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribal, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may also occur on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will become available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, under section 6 of the Act, the Commonwealth of Puerto Rico would be eligible for Federal funds to implement management actions that promote the protection and recovery of the coquí llanero. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include Federal activities that may affect coquí llanero including, but not limited to, the carrying out or the issuance of permits for discharging fill material on wetlands for road or highway construction; installation of pipelines; development of residential, tourism, and commercial facilities; farming; channeling or stream alterations; discharge of contaminated waters; wastewater facility development; and renewable energy projects. Additional detail is provided below:

(1) Actions that would significantly alter the structure and function of the wetland. Such actions or activities could include, but are not limited to, the filling or excavation of the wetland. The filling or excavation of the wetland would alter the hydrology of the site and would destroy the vegetation where coquí llanero spends all of its life stages. The filling or excavation of wetlands could result in the direct mortality of the species because it will destroy the only known population and locality where coquí llanero is found.

(2) Actions that would significantly alter the vegetation structure in and around the wetland. Such actions or activities could include, but are not limited to, vegetation cutting for expanding or maintaining roads, construction of new roads, development of new residences and commercial establishments. The alteration of the vegetation structure may change the wetland characteristics by changing the microhabitat (*e.g.,* change in temperature and humidity levels) and could result in direct mortality of individuals and egg clutches through desiccation from sun exposure.

(3) Actions that may alter the natural flow of water. Such actions or activities could include, but are not limited to, changes in the limestone hills located to the south of the wetland. The alteration of these limestone hills may affect the integrity of the wetland (*e.g.* change in hydrology, replenishment of water, sedimentation deposition or erosion). These activities could reduce the wetland composition including the vegetation and could result in direct or cumulative adverse effects to the species.

(4) Actions that would significantly degrade water quality (for example, contaminants and excess nutrients). Such actions or activities could include, but are not limited to landfill discharges, heated effluents into surface water or connected groundwater, and the spill of petroleum-based products by the nearby go-kart race track. These activities could alter water conditions that can consequently alter the plant composition in the wetland by exposing the species to more competition and result in direct or cumulative adverse effects to the species and their life cycles.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Introduction of nonnative species that compete with or prey upon the coquí llanero, such as the introduction of competing, nonnative species to Puerto Rico;

(3) The unauthorized release of biological control agents that attack any life stage of this species;

(4) Unauthorized modification of the vegetation composition or hydrology or violation of any discharge or water withdrawal permit that results in harm or death to any individuals of this species or that results in degradation of its occupied habitat to an extent that essential behaviors such as breeding, feeding, and sheltering are impaired;

(5) Unauthorized destruction or alteration of their habitats (such as unpermitted channelization, or discharge of fill material) that impairs essential behaviors, such as breeding, feeding, or sheltering, or results in killing or injuring coquí llanero; and

(6) Unauthorized discharges or dumping of toxic chemicals or other pollutants into the wetlands supporting coquí llanero that kills or injures or otherwise impairs essential life-sustaining requirements, such as breeding, feeding, or sheltering.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 1875 Century Blvd., NE., Atlanta, GA 30345 (telephone 404–679–7313; facsimile 404–679–7081).

If coquí llanero is listed under the Act, the Commonwealth of Puerto Rico's Commonwealth Law 241 and Regulation 6766 (PRDNER 2007a and 2007b) is automatically invoked, which would also prohibit take of these species and encourage conservation by Puerto Rico government agencies. Further, Puerto Rico may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (Commonwealth Law 241 and Regulation 6766). Funds for these activities could be made available under section 6 of the Act (Cooperation with the States). Thus, the Federal protection afforded to these species by listing them as endangered species will be reinforced and supplemented by protection under State Commonwealth law.

Critical Habitat

Background

It is our intent to discuss below only those topics directly relevant to the designation of critical habitat for coquí llanero in this section of the proposed rule.

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features:

(a) Essential to the conservation of the species; and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the 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 be otherwise 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 the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time it was listed must contain physical and biological features that are essential to the conservation of the species and which may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological constituent elements (primary constituent elements) within an area that are essential to the conservation of the species (such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type). Primary constituent elements are the elements of physical and biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

We can designate critical habitat in areas outside the geographic 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. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographic area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. 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, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for 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. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species; or (2) such designation of critical habitat would not be beneficial to the species.

Our regulations (50 CFR 424.12(a)(2)) further state that critical habitat is not determinable when one or both of the following situations exist: (1) Information sufficient to perform required analysis of the impacts of the designation is lacking, or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

As we have discussed above under the Factor B analysis, there is currently no imminent threat of take attributed to collection (for scientific or educational purposes) for this species. Moreover, there is no information to indicate that identification of critical habitat is

expected to create such a threat to the species.

Critical habitat designation identifies those physical and biological features of the habitat essential to the conservation of coquí llanero that may require special management and protection. Accordingly, this designation will provide information to individuals, local and Commonwealth governments, and other entities engaged in activities or long-range planning in areas essential to the conservation of the species. Conservation of coquí llanero and essential features of its habitat will require habitat management, protection, and restoration, which will be facilitated by knowledge of habitat locations and the physical and biological features of the habitat. Based on this information, we believe critical habitat would be beneficial to this species. Therefore, we have determined that the designation of critical habitat for coquí llanero is prudent. Delineation of critical habitat requires identification of the physical and biological habitat features that are essential to the conservation of the species. We have reviewed the available information pertaining to the known distribution of coquí llanero and the characteristics of the habitat currently occupied. This and other information represent the best scientific and commercial data available and lead us to conclude that, although limited, available information is sufficient to identify specific areas that meet the definition of critical habitat. Therefore, we have found that critical habitat is determinable for coquí llanero.

We have done a preliminary evaluation to determine if the designation of critical habitat for coquí llanero is prudent and determinable at this time. On the basis of that evaluation, we have determined that the designation of critical habitat is prudent and determinable for this species.

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 by the species at the time of listing to designate as critical habitat, we consider the 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 physical and biological features required for coquí llanero from studies of this species' habitat, ecology, and life history as described below. Unfortunately, little is known of the specific habitat requirements for coquí llanero other than it requires a palustrine herbaceous wetland and a specific vegetation composition. To identify the physical and biological needs of the species, we have relied on current conditions at locations where the species exists and the limited information available on this species.

Space for Individual and Population Growth and for Normal Behavior

Coquí llanero is currently known from palustrine herbaceous wetlands located on both Commonwealth and Federal lands in the Sabana Seca Ward, municipality of Toa Baja (see description above under the ''Distribution and Habitat'' section). The Service has estimated the palustrine herbaceous wetland area occupied by the species to cover approximately 615 ac (249 ha).

These wetland areas are within the subtropical moist forest life zone (Ewel and Whitmore 1973, p. 72). The variables used to delineate any given life zone are mean annual precipitation and mean annual temperature. The life zones and associations of which they are composed only define the potential vegetation or range of vegetation types that might be found in an area (Ewel and Whitmore 1973, p. 5). The mean annual precipitation for Puerto Rico is about 55 to 65 in (21.7 to 25.6 cm) a year (NOAA Web site 2009, *http://www.srh.noaa.gov/sju/?n=climo_annual01*) and the temperature is 79.4 °F (26.3 °C) (Geo-Marine 2002, p. 2–1). The palustrine herbaceous wetland is where the non-tidal water regime may be seasonal to permanently flooded (NWI Maps, Cowardin *et al.* 1979, pp. 10–22) and found at low elevations up to approximately 56 ft (17 m) (Ríos-López and Thomas 2007, p. 61). It appears that coquí llanero is an obligate marsh-dwelling species because it has not been found in areas outside the marsh (Ríos-López and Thomas 2007, p. 62).

The current herbaceous vegetation in these wetlands consists of *Blechum serrulatum* and *Thelypteris interrupta* (ferns), *Sagittaria lancifolia* (bulltongue arrowhead), *Cyperus* sp. (flatsedges), *Eleocharis* sp. (spike rushes), and vines and grasses. Although several of these plants have been documented at other sites in Puerto Rico, the vegetation composition (combination and abundance of each plant) is a unique ecosystem not found in other places in Puerto Rico (PRDNER 2007b, p. 11). Studies indicate that coquí llanero perch, sit, or call on or from the herbaceous vegetation and mainly on the ferns (Ríos-López and Thomas 2007, p. 60; PRDNER 2007b, p. 9). Wetlands are maintained by water quantity, channel slope, and sediment input to the system through periodic flooding. Changes in one or more of these parameters can result in changes in the wetland function and vegetation composition, with serious effects to coquí llanero. In addition, hydrology (the occurrence, circulation, and distribution of waters) is also an important factor to the wetland because it will connect areas that are separated by roads and other structures, hence making available nearby habitats for coquí llanero.

Hydrology connects the areas of currently known habitat of the species. Although the areas have several manmade drainage ditches used for agricultural purposes in the past, this has not modified the watershed boundaries (G.L. Morris Eng. 2007, p. 3; PRDNER 2007b, p. 19). The topography of the Sabana Seca—Ingenio area, in general, has an east to west inclination where the surface and ground water from the limestone hills found south of PR Road–867 discharges into the wetland, which goes north and northwest connecting to Caño Campañero, and then to Cocal River, and ends at the Atlantic Ocean (PRDNER 2007b, p. 15). Factors that might threaten the water quality or the water flow of these drainages may affect the currently known population of coquí llanero.

Hydrologic conditions are important for the maintenance of a wetland structure and function. Hydrology includes the transport of energy (water) and nutrients to and from wetlands through pathways such as precipitation, surface run-off, groundwater, tides, and flooding rivers. This could affect species composition and richness, primary conductivity (salinity), organic accumulation, and nutrient cycling within the wetlands (Mitsch and Gosselink 2007, p. 107). Wetlands are sometimes referred to as ''the kidneys of

the landscape'' because they filter the downstream waters and waste received from natural and human sources (Mitsch and Gosselink 2007, p. 4). Polluted waters that enter the wetland through its hydrology may affect the habitat of coquí llanero. For example, an increase in the current polluted waters from the continued operation of the landfill pose a threat to the species and its habitat because underground contaminated waters and leachates may change water quality, soils, and consequently plant composition in the wetland. In addition, nonpoint source run-off from adjacent land surfaces (for example, pesticides, herbicides, fertilizers, and sediments), and random spills or unregulated discharge events (for example, petroleum base substances from the nearby go-kart race track) may threaten the species and its habitat (see discussion under Factor A above). This could be particularly harmful during drought conditions when water flows are low and pollutants are more concentrated.

On the basis of the information above, the palustrine herbaceous wetland located in the Sabana Seca—Ingenio area provides space for normal behaviors of coquí llanero. In addition, hydrology is essential to the maintenance, structure, and function of the wetland. The water quality and water flow that discharges onto the wetland allows the growth of the required vegetation composition on which coquí llanero depends for normal behavior, growth, and viability during most of its life stages. Therefore, we have identified the palustrine herbaceous wetland, and particularly the hydrology and vegetation of this area, to be physical or biological features for this species.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Although the life history of coquí llanero has not been studied, the life histories of other amphibians in the *Eleutherodactylus* genus indicate that amphibians are opportunistic feeders where diets reflect the availability of food of appropriate size (Duellman and Trueb 1994, p. 229; Joglar, 2005, p. 73). The wetland provides a variety of food sources (insects) for coquí llanero. Food availability might be affected by water quality and contamination of the wetland. Contaminated waters may change water quality, soils, and consequently plant composition in the wetland. These changes can open an opportunity to other species (plants or animals) to overshadow the current species present in the wetland, making coquí llanero compete more for the available food sources or move the species to other, less competitive sites.

Therefore, based on the information above, we identify food availability provided by the palustrine herbaceous wetland to be a physical or biological feature for this species.

Cover or Shelter

Coquí llanero appears to be an obligate marsh-dwelling species because it has not been found in areas outside the marsh (Ríos-López and Thomas 2007, p. 62). The palustrine herbaceous wetland provides cover and shelter for coquí llanero. The vegetation found in the palustrine wetland consists of herbaceous emergent vegetation characterized by erect, rooted herbaceous hydrophytes usually dominated by perennial plants (Cowardin *et al.* 1979, p. 19), like ferns, *Sagittaria lancifolia,* flatsedges, spike rushes, vines, and grasses (Ríos-López and Thomas 2007, p. 60; PRDNER 2007b, p. 9). Studies on the species show normal behavior (for example, perching, sitting, or calling) occurs on the herbaceous vegetation (Ríos-López and Thomas 2007, p. 60; PRDNER 2007b, p. 9) (see ''Space for Individual and Population Growth and for Normal Behavior'').

Therefore, based on the information above, we identify the vegetation (plant species, structure, and composition) of the palustrine herbaceous wetland located in the Sabana Seca—Ingenio area to be a physical or biological feature for this species.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Callings or sound production by animals is a method of advertising the presence of one individual to others of the same species. It is common in animals that have low density dispersal and in animals that jump or fly. Anurans (any amphibian of the Order Anura, comprising the frogs and toads) have well-developed vocal structures capable of producing sounds that serve to attract mates, advertise territories, or express distress (Duellman and Trueb 1994, p. 87). It has been documented that coquí llanero uses the herbaceous vegetation in the wetland, especially the ferns, as calling areas.

In addition, it has been determined that the species deposits their egg clutches only in the leaf axis of *Sagittaria lancifolia,* and it appears that the species does not provide parental care (Ríos-López and Thomas 2007, p. 60; PRDNER 2007b, pp. 5, 9). Also, coquí llanero has direct development (embryos do not have an intermediate phase like tadpoles or aquatic larvae) where they develop directly to terrestrial amphibians (miniatures of the adults); hence the vegetation provides the only protection that egg clutches and the offspring might receive.

Therefore, based on the information above, we identify the herbaceous vegetation, especially *Sagittaria lancifolia* and the ferns of the palustrine wetland, to be an important physical or biological feature for this species.

Habitats Protected From Disturbance or Representative of the Historical, Geographical, and Ecological Distributions of the Species

The palustrine herbaceous wetland area where coquí llanero currently exists consists of lands previously managed by the U.S. Naval Security Group Activity (NSGA) and areas owned by the Commonwealth of Puerto Rico (University of Puerto Rico, PR Land Authority). The area previously managed by the NSGA had restricted access to people; thus, coquí llanero had experienced little disturbance from the military operations. The NSGA was managed as a high-frequency, direction-finding facility, and to the facility provided communications and related support, including communications relay, communications security, and communication manpower assistance, to components of the U.S. Navy and other Department of Defense elements (Geo-Marine 2002, p. 1–3). All DOD installations have to complete and implement an integrated natural resources management plan (INRMP) to ensure that all natural resources are managed on the site. However, the NSGA ceased operations in 2005, when technological advances and changes eliminated the need to continue the operations at the site. The area is no longer managed as a military base, and the INRMP implementation does not apply anymore. At present time, the area is proposed for transfer or disposal or a combination of both, and is currently leased to a private party for selling the area for private development (see Exemptions below).

In 2007, the Puerto Rico DNER (PRDNER) designated Essential Critical Natural Habitat for coquí llanero that includes the palustrine herbaceous wetland and the limestone hills found south of the wetland area. As part of the designation process, PRDNER conducted a hydrological evaluation of the area and concluded that the limestone hills located south of the palustrine wetland contribute to the hydrology that maintains the wetland (PRDNER 2007b, p. 28). The limestone hills are important for the water supply

of the wetland; however, they are not the only water source feeding the wetland. The hills do not provide habitat for the coquí llanero. The hills, although important for contributing to the hydrology of the wetland, are not essential for the conservation of the species. In addition, the hills are conservation lands protected in perpetuity and managed by the University of Puerto Rico because other Federal and Commonwealth-designated threatened and endangered species are found there.

Primary Constituent Elements for the Coquí Llanero

Under the Act and its implementing regulations, we are required to identify the physical and biological features essential to the conservation of coquí llanero in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the elements of physical and biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to coquí llanero are:

(1) Primary Constituent Element 1–*Palustrine herbaceous wetland.* Palustrine emergent persistent wetlands that are seasonally to permanently flooded. Ocean-derived salts need to be less than 0.5 ‰ parts per thousand (ppt) salinity.

(2) Primary Constituent Element 2–*Vegetation and vegetation composition of the palustrine herbaceous wetland.* Emergent vegetation characterized by erect, rooted herbaceous hydrophytes usually dominated by perennial plants like ferns, *Sagittaria lancifolia,* flatsedges, spike rushes, vines, and grasses. In addition to the combination of vegetation, at least 25 percent of the vegetation should be ferns and *S. lancifolia.*

(3) Primary Constituent Element 3–*Hydrology.* A hydrologic flow regime (the pathways of precipitation, surface run-off, groundwater, tides, and flooding of rivers and canals (manmade ditches)) that transports water to and from and maintains the palustrine herbaceous wetland.

With this proposed designation of critical habitat, we intend to identify the physical or biological features essential to the conservation of the species, through the identification of the appropriate quantity and spatial arrangement of the primary constituent elements sufficient to support the life-history processes of the species. The proposed unit to be designated as critical habitat is currently occupied by coquí llanero and contains essential physical and biological features composed of the primary constituent elements in the appropriate quantity and spatial arrangement sufficient to support the life-history needs of the species.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species, which may require special management considerations or protection.

We find that the essential features within the area occupied at the time of listing may require special management consideration or protection due to threats to coquí llanero and or its habitat. The proposed unit is adjacent to roads, homes, or other manmade structures in which various activities in or adjacent to the critical habitat unit may affect one or more of the primary constituent elements. The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats or potential threats that may result in changes in the composition and abundance of vegetation inside the wetland: fill of wetlands for development projects, degradation of water quality from underground contaminated waters and leachates from the nearby landfill, residential uses (*e.g.,* use of pesticides and fertilizers), and road maintenance (*e.g.,* use of herbicides).

Management activities that could ameliorate these threats or potential threats include but are not limited to: establishing permanent conservation easements or land acquisition to protect the species on private lands; establishing conservation agreements on private and Federal lands to identify and reduce threats to the species and its features; minimizing habitat disturbance, fragmentation, and destruction; preventing the destruction of the limestone hills that supply water to the wetland; minimizing water quality degradation of the wetland; and minimizing the effects of fires and droughts.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. We review available information pertaining to the habitat requirements of the species.

We have defined occupied critical habitat as palustrine emergent persistent wetland with an herbaceous vegetation composition dominated by perennial plants like ferns, *Sagittaria lancifolia,* flatsedges, spike rushes, vines and grasses occupied by the coquí llanero at the time of listing. We used information from site visits to the area, researchers, reports prepared the DNER, and consultants to identify the specific locations occupied by coquí llanero. All occurrence records of coquí llanero were plotted on maps in geographic information system as points and polygons. Once we determined which area of the wetland was occupied, we focused on aerial photographs of the area and the NWI maps to delineate the palustrine emergent persistent wetlands used by coquí llanero. We estimated the area using the limits of the boundaries of the palustrine emergent persistent wetland.

In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we consider whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. Our evaluation of areas outside the geographic area currently occupied by coquí llanero did not result in locating any areas essential for the conservation of the species. For instance, we stayed within the boundaries of the palustrine emergent wetland because the coquí llanero has extremely limited dispersal ability due to lack of habitat connectivity and does not occur in nearby closed canopy forests (Ríos-López 2009, p. 5). Therefore, we are not currently proposing to designate any areas outside the geographical area occupied by the species because occupied areas are sufficient for the conservation of the species.

In summary, we propose designating critical habitat in one area that we determine is occupied and contains sufficient and all primary constituent elements to support the life history functions essential to the conservation of the species and that require special management.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed

areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features for coquí llanero. The scale of the map we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger a section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We are proposing for designation of critical habitat lands that we have determined are occupied at the time of listing and contain sufficient elements of physical or biological features to support life-history processes essential for the conservation of the species.

Proposed Critical Habitat Designation

We are proposing one unit as critical habitat for coquí llanero. The critical habitat area we describe below constitutes our current best assessment of the areas that meet the definition of critical habitat for coquí llanero. The one area we propose as critical habitat is Sabana Seca, and it is occupied by coquí llanero.

TABLE 1—PROPOSED CRITICAL HABITAT UNIT FOR COQUÍ LLANERO AREA ESTIMATES REFLECT ALL LAND WITHIN THE CRITICAL HABITAT UNIT BOUNDARY

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)
Sabana Seca Unit	Commonwealth of Puerto Rico (University of PR and PR Land Authority)	97 ac (39 ha).
	Department of Defense (closed NSGA Sabana Seca and open Navy property)	518 ac (209 ha).
Total		615 ac (249 ha).

Note: Area sizes may not sum due to rounding.

We present a brief description of the unit, and reasons why it meets the definition of critical habitat for coquí llanero. State Plane NAD 83 coordinates and a more precise legal description of the unit are provided in the Proposed Regulation Promulgation section.

Sabana Seca Unit, Toa Baja Puerto Rico

The unit includes approximately 615 ac (249 ha) located south of State Road PR–867, west of Ramón Ríos Román Avenue, east of José Julián Acosta Road, and north of the limestone hills located north of Highway PR–22 in the municipality of Toa Baja, Puerto Rico. This unit contains a palustrine herbaceous wetland with emergent vegetation that includes ferns, *Sagittaria lancifolia,* flatsedges, spike rushes, vines, and grasses. This unit is known to be occupied at the time of listing (Ríos-López and Thomas 2005; PRDNER 2007b; Service 2011, unpublished data). All the essential physical and biological features are found within the unit, and the presence of the species and the physical and biological features at the site were confirmed by the Service during site visits conducted in January and March of 2011.

The essential features within this unit may require special management considerations or protection to insure maintenance or improvement of, and to address any changes that could affect, the existing palustrine herbaceous wetland, such as filling in of the wetland to develop the land; water diversion or water withdrawal; alteration of water hydrology or degradation of water quality; and changes in vegetation composition that might be caused by changes in hydrology or development, inappropriate management practices on the farmlands, and contamination from the underground polluted waters and leachates from the landfill.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, or are likely to

adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action;

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction;

(3) Are economically and technologically feasible; and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species 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 sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for coquí llanero. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

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 coquí llanero. These activities include, but are not limited to:

(1) Actions that would significantly alter the structure and function of the wetland. Such actions or activities could include, but are not limited to, the filling and/or excavation of the wetland. The filling or excavation of the wetland could alter the hydrology of the site and destroy or remove the vegetation where the only known population of coquí llanero is found. The filling or excavation of wetlands could result in elimination or alteration of coquí llanero habitat necessary for all life stages of the species.

(2) Actions that would significantly alter the vegetation structure in and around the wetland. Such actions or activities could include, but are not limited to, removing or cutting the vegetation for expanding or maintaining roads, construction of new roads, development of new or maintenance of residences, and commercial establishments. The alteration of the vegetation structure may change the wetland characteristics by changing the microhabitat (*e.g.,* change in temperature and humidity levels) and thereby negatively affect whether the coquí llanero is able to complete all normal behaviors and necessary life functions and/or allow invasion of competitors or predators.

(3) Actions that may alter the natural flow of water to the wetlands occupied by coquí llanero. Such actions or activities could include, but are not limited to, changes in the limestone hills located to the south of the wetland. The alteration of these limestone hills may affect the integrity of the wetland (*e.g.,* change in hydrology, replenishment of water, sedimentation deposition or erosion). These activities could reduce the natural cycling and functioning of the wetland; change its composition, including the vegetation types the species depends on; and result in direct or cumulative adverse effects to the species from the alteration of the wetland's hydrology.

(4) Actions that would significantly degrade water quality (for example, actions that would add contaminants and excess nutrients). Such actions or activities could include, but are not limited to, landfill discharges or leachates from landfill, heated effluents into surface water or connected groundwater, or the spill of petroleum-based products at the nearby go-kart race track. These activities could alter water conditions that can consequently alter the plant composition in the wetland and result in less suitable habitat for coquí llanero and the opening of the wetland to coquí llanero competitors.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural

resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

Approximately 865 ac (350 ha) of the proposed critical habitat resides in a closed military installation formerly managed by the NSGA, and the land had an INRMP (Geo-Marine 2002, pp. 1–5–4), which provided for the conservation of the natural resources inside the installation. The property was declared excess to the Navy in 2001, and the installation ceased operations in 2005, before the discovery of the species. Currently, the land is being leased to a private entity by the Military Housing Privatization Initiative as part of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104–106, Section 2801, 110 Stat. 186 (10 U.S.C. 2871–2885), as amended. Currently there is no INRMP in place that would provide a benefit to coquí llanero occurring in habitats within or adjacent the closed NSGA of Sabana Seca. Thus, there are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation.

Based on the above, we have determined that the identified lands are not subject to the exemptions under section 4(a)(3) 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 or make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, and any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors.

On the basis of the development of our proposal, we have identified certain sectors and activities that may potentially be affected by a designation of critical habitat for coquí llanero. These sectors include commercial development and urbanization, along with the accompanying infrastructure associated with such projects such as road, storm water drainage, bridge and culvert construction and maintenance. We recognize that not all of these sectors may qualify as small business entities. However, while recognizing that these sectors and activities may be affected by this designation, we are collecting information and initiating our analysis to determine (1) Which of these sectors or activities are or involve small business entities and (2) to what extent the effects are related to coquí llanero being listed as an endangered species under the Act (baseline effects) or whether the effects are attributable to the designation of critical habitat (incremental). We believe that the potential incremental effects resulting from a designation will be small. However, we will be conducting a thorough analysis to determine if this may in fact be the case. As such, we are requesting any specific economic information related to small business entities that may be affected by this designation and how the designation may impact small businesses.

We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov,* or by contacting the Caribbean Ecological Services Field Office directly (see **FOR FURTHER INFORMATION CONTACT** section). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. In preparing this proposal, we have determined that some of the lands within the proposed designation of critical habitat for the coquí llanero are lands being disposed of by the U.S. Navy, and therefore, we anticipate no impact to national security. Consequently, the Secretary does not propose to exert his discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposal, we have determined that there are currently no HCPs or other management plans for coquí llanero, and the proposed designation does not include any tribal lands or trust resources. We anticipate no impact on tribal lands, partnerships, or HCPs from this proposed critical habitat designation. Accordingly, the Secretary does not propose to exert his discretion to exclude any areas from the final designation based on other relevant impacts.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule.

The purpose of peer review is to ensure that our determination of status for this species and critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed listing determination and designation of critical habitat.

We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this proposed rule under Executive Order 12866 (Regulatory Planning and Review). OMB bases its determination upon the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the 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 SBREFA amended the RFA 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.

On the basis of the development of our proposal, we have identified certain sectors and activities that may potentially be affected by a designation of critical habitat for coquí llanero. These sectors include commercial development and urbanization along with the accompanying infrastructure associated with such projects such as road, storm water drainage, bridge and culvert construction and maintenance. We recognize that not all of these sectors may qualify as small business entities. However, while recognizing that these sectors and activities may be affected by this designation, we are collecting information and initiating our analysis to determine (1) Which of these sectors or activities are or involve small business entities and (2) what extent the effects are related to coquí llanero being listed as an endangered species under the Act (baseline effects) or whether the effects are attributable to the designation of critical habitat (incremental). We believe that the potential incremental effects resulting from a designation will be small. As a consequence, following an initial evaluation of the information available to us, we do not believe that there will be a significant impact on a substantial number of small business entities resulting from this designation of critical habitat for coquí llanero. However, we will be conducting a thorough analysis to determine if this may in fact be the case. As such, we are requesting any specific economic information related to small business entities that may be affected by this designation and how the designation may impact their business.

Upon completion of the draft economic analysis, we will announce the availability of the draft economic analysis of the proposed designation in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement a more thorough evaluation of potential effects of this designation on small businesses and, as appropriate, a revised certification statement.

Energy Supply, Distribution, or Use—Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect the designation of this proposed critical habitat to significantly affect energy supplies, distribution, or use. The proposed Sabana Seca unit is located approximately 1.4 mi (2.3 km) away from the proposed alignment of a natural gas pipeline project. Thus, possible construction and operation of the proposed energy project will not be affected by the proposed designation of critical habitat. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, 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 would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. In addition, adjacent upland properties are owned by private entities or State partners. Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for coquí llanero 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 proposed designation of critical habitat for coquí llanero does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), the proposed rule does not have significant Federalism effects. A Federalism impact summary statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Puerto Rico. The designation of critical habitat in areas currently occupied by the coquí llanero imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The critical habitat designation may have some benefit to this government because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the elements of physical or biological features essential to the conservation of the coquí llanero within the designated areas to assist the public in understanding the habitat needs of the species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with listing a species as endangered or threatened under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;
(2) Use the active voice to address readers directly;
(3) Use clear language rather than jargon;
(4) Be divided into short sections and sentences; and
(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, *etc.*

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our 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.

The commonwealth of Puerto Rico does not harbor any tribal lands. Therefore, we are not proposing to designate critical habitat for coquí llanero on tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Deputy Field Supervisor, Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are staff members of the Caribbean Ecological Services Field Office (see **FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding an entry for ''Coquí llanero'' to the List of Endangered and Threatened Wildlife in alphabetical order under AMPHIBIANS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
AMPHIBIANS							
*	*	*	*	*	*	*	
Coquí llanero	*Eleutherodactylus juanariveroi.*	U.S.A. (PR)	Entire	E		17.95(d)	NA
*	*	*	*	*	*	*	

3. In § 17.95, amend paragraph (d) by adding an entry for ''Coquí llanero (*Eleutherodactylus juanariveroi*),'' in the same alphabetical order that the species appears in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians.*

* * * * *

Coquí llanero (*Eleutherodactylus juanariveroi*)

(1) One critical habitat unit is depicted for Toa Baja, Puerto Rico, on the map below.

(2) Within this area, the primary constituent elements of the physical and biological features essential to the conservation of coquí llanero consist of three components:

(i) *Palustrine herbaceous wetland.* Palustrine emergent persistent wetlands that are seasonally to permanently flooded. Ocean-derived salts need to be less than 0.5 ‰ parts per thousand (ppt) salinity.

(ii) *Vegetation and vegetation composition of the palustrine herbaceous wetland.* Emergent vegetation characterized by erect, rooted herbaceous hydrophytes usually dominated by perennial plants like ferns, *Sagittaria lancifolia,* flatsedges, spike rushes, vines, and grasses. In addition to the combination of vegetation, at least 25 percent of the vegetation should be ferns and *S. lancifolia.*

(iii) *Hydrology.* A hydrologic flow regime (the pathways of precipitation, surface run-off, groundwater, tides, and flooding of rivers and canals (manmade ditches)) that transports water to and from and maintains the palustrine herbaceous wetland.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat unit map.* Data layers defining the map unit were created by delineating habitats that contained at least one or more of the primary constituent elements defined in paragraph (2) of this entry, over a base of USGS digital topographic map

quadrangle (Bayamón) and a USDA 2007 digital ortho-photo mosaic, in addition to the National Wetland Inventory Maps. The resulting critical habitat unit was then mapped using State Plane North American Datum (NAD) 83 coordinates.

(5) Sabana Seca Unit, Toa Baja, Puerto Rico.

(i) *General Description:* The Sabana Seca Unit consists of approximately 615 ac (249 ha) located south of State Road PR–867, west-southwest of Ramón Ríos Román Avenue, east of José Julián Acosta Road, and north of the limestone hills located north of Highway PR–22 in the municipality of Toa Baja, Puerto Rico.

(ii) *Note:* Map of Sabana Seca Unit, critical habitat for coquí llanero (*Eleutherodactylus juanariveroi*), Toa Baja, Puerto Rico, follows:

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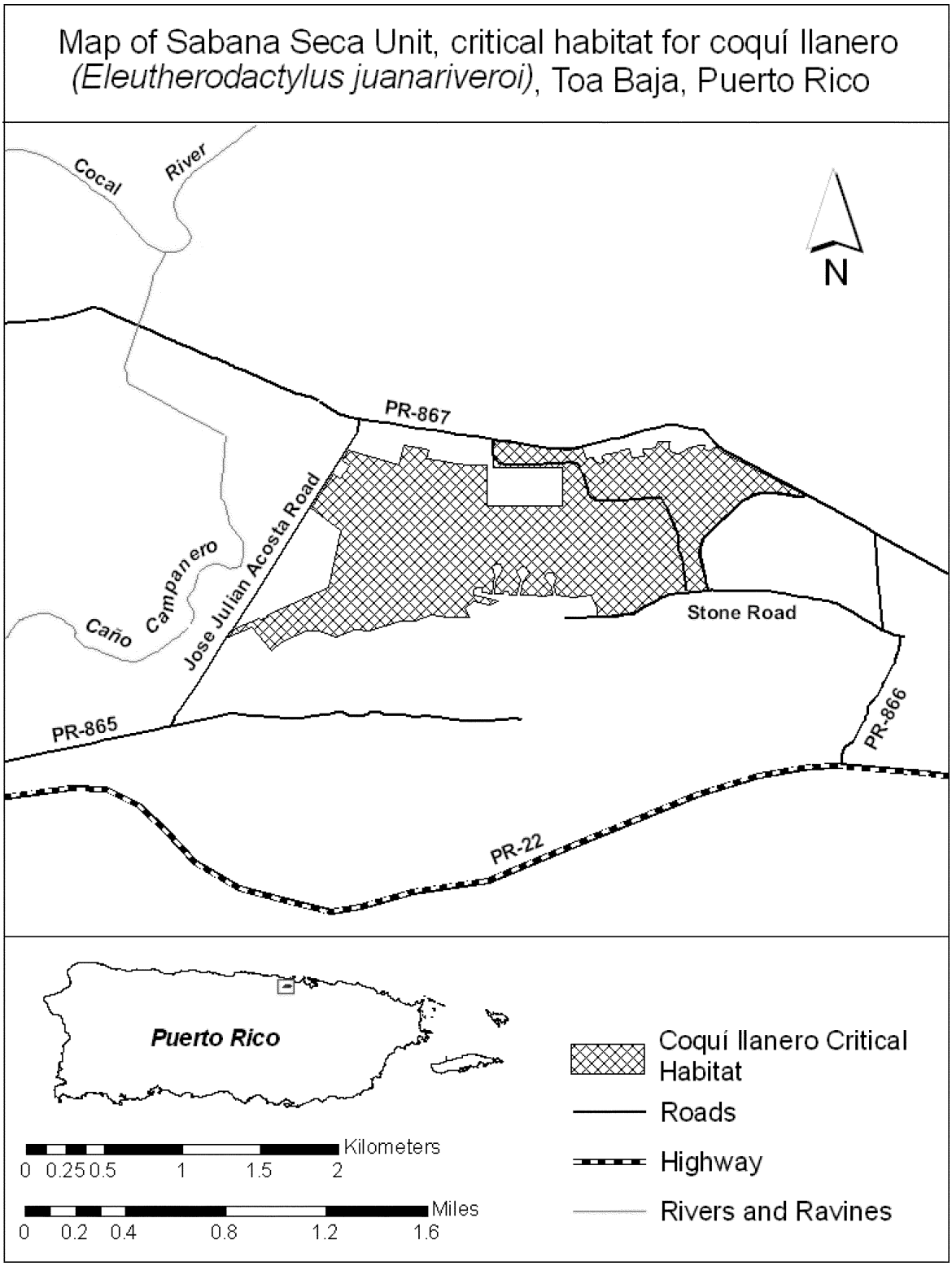

* * * * *

Dated: September 29, 2011.

Michael J. Bean,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–25809 Filed 10–11–11; 8:45 am]

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FEDERAL REGISTER

Vol. 76 Wednesday,

No. 197 October 12, 2011

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 Northern Leatherside Chub as Endangered or Threatened; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2011–0092; MO 92210–0–0008–B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Northern Leatherside Chub as Endangered or Threatened

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 northern leatherside chub (*Lepidomeda copei*) as endangered or threatened and to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that listing the northern leatherside chub rangewide is not warranted at this time. We ask the public to submit to us any new information that becomes available concerning the threats to the northern leatherside chub or its habitat at any time.

DATES: The finding announced in this document was made on October 12, 2011.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R6–ES–2011–0092. 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, Utah Ecological Services Field Office, 2369 West Orton Circle, Suite 50, West Valley City, UT 84119. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Larry Crist, Field Supervisor, Utah Ecological Services Field Office (see **ADDRESSES**); by telephone at 801–975–3330; or by facsimile at 801–975–3331; or Brian Kelly, Field Supervisor, Idaho Ecological Services Field Office; by telephone at 208–378–5243; or by facsimile at 208–378–5262. 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 this finding, we will determine that the petitioned action is: (1) Not warranted; (2) warranted; or (3) 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 July 30, 2007, we received a petition dated July 24, 2007, from Forest Guardians (now WildEarth Guardians), requesting that the Service: (1) Consider all full species in our Mountain Prairie Region ranked as G1 or G1G2 by the organization NatureServe, except those that are currently listed, proposed for listing, or candidates for listing; and (2) list each species as either endangered or threatened. The petition included the northern leatherside chub (*Lepidomeda copei*), which is addressed in this finding. The petition incorporated all analysis, references, and documentation provided by NatureServe in its online database at *http://www.natureserve.org/* into the petition. The document clearly identified itself as a petition and included the petitioners' identification information, as required in 50 CFR 424.14(a). We sent a letter to the petitioners, dated August 24, 2007, acknowledging receipt of the petition and stating that, based on preliminary review, we found no compelling evidence to support an emergency listing for any of the species covered by the petition.

On March 19, 2008, WildEarth Guardians filed a complaint (1:08–CV–472–CKK) indicating that the Service failed to comply with its mandatory duty to make a preliminary 90-day finding on their two multiple species petitions—one for mountain-prairie species, and one for southwest species.

On February 5, 2009 (74 FR 6122), we published a 90-day finding on 165 species from the petition to list 206 species in the mountain-prairie region of the United States as endangered or threatened under the Act. We found that the petition did not present substantial scientific or commercial information indicating that listing was warranted for these species and, therefore, did not initiate further status reviews in response to the petition. Two additional species were reviewed in a January 6, 2009, 90-day finding (74 FR 419) and, therefore, were not considered further in the February 5, 2009, 90-day finding. For the remaining 39 species, we deferred our findings until a later date. One species of the 39 remaining species, *Sphaeralcea gierischii* (Gierisch mallow), was already a candidate species for listing; therefore, 38 species remained. On March 13, 2009, the Service and WildEarth Guardians filed a stipulated settlement in the District of Columbia Court, agreeing that the Service would submit to the **Federal Register** a 90-day finding on the remaining 38 mountain-prairie species by August 9, 2009.

On August 18, 2009, we published a notice of 90-day finding (74 FR 41649) on 38 species from the petition to list 206 species in the mountain-prairie region of the United States as endangered or threatened under the Act. Of the 38 species, we found that the petition presented substantial scientific and commercial information for 29 species indicating that a listing may be warranted. The northern leatherside chub addressed in this 12-month finding was included in the list of 29 species. We initiated a status review of the 29 species to determine if listing was warranted. We also opened a 60-day public comment period to allow all interested parties an opportunity to provide information on the status of the 29 species. The public comment period closed on October 19, 2009. We received 224 public comments. Of these, five specifically mentioned northern leatherside chub. All substantial information we received was carefully considered in this finding. This notice constitutes the 12-month finding on the July 24, 2007, petition to list the northern leatherside chub as endangered or threatened.

Species Information

The northern leatherside chub (*Lepidomeda copei*) is a rare desert fish in the minnow family (Cyprinidae) that occurs in northern Utah and Nevada, southern and eastern Idaho, and western

Wyoming (Johnson *et al.* 2004, pp. 842–843; Utah Division of Wildlife Resources (UDWR) 2009, pp. 28–30; McAbee 2011, entire). The species is native to smaller, mid-elevation, desert streams in the northeastern portions of the Great Basin region (draining to the Great Salt Lake) and the southern and eastern portions of the Pacific Northwest Region (draining to the Pacific Ocean) (Johnson *et al.* 2004, pp. 842–843; UDWR 2009, pp. 28–30). Like many western North American non-game fish species, little was known about its biology, ecology, or status until recently (Belk and Johnson 2007, pp. 67–68).

Taxonomy and Species Description

The northern leatherside chub is one of two species, along with the southern leatherside chub (*Lepidomeda aliciae*), recently re-classified from the single species 'leatherside chub' (*Snyderichthys copei* or *Gila copei*) (Johnson *et al.* 2004, pp. 841, 852). Throughout the remainder of this finding, references to leatherside chub indicate data collected before the two species were delineated, and references to southern leatherside chub and northern leatherside chub indicate data specific to each species, exclusively. Because the northern and southern species were only recently separated, most species descriptions and life-history investigations are a combination of the two species. While many characteristics are common to both species, we will describe characteristics of only the northern leatherside chub when possible.

The taxonomic history of leatherside chub is complex. Even when considered a single species, taxonomists classified the leatherside chub in at least seven different genera over the past century and a half (Johnson *et al.* 2004, p. 841). The type locality for leatherside chub (*Squalius copei*; Jordan and Gilbert 1881) is from the Bear River at Evanston, Wyoming (UDWR 2009, p. 24). Classification by Miller in the mid-twentieth century (1945) placed leatherside chub in the monotypic genus *Snyderichthys,* but shortly thereafter Uyeno (1960) assigned it to the genus *Gila* (the chubs), subgenus *Snyderichthys* (UDWR 2009, p. 25). Many fisheries texts accepted *Gila copei* as the taxonomic classification over the next 40 years (Sigler and Miller 1963, p. 74; Sigler and Sigler 1996, p. 77), but acceptance was not unanimous, as evidenced by the American Fisheries Society supporting *Snyderichthys copei* in 2004 (UDWR 2009, p. 25). Taxonomic discrepancy was not fully rectified until a short time ago. Recent research demonstrated that what was previously considered the 'leatherside chub' is in fact two distinct species with discrete geographic, ecological, morphological, and genetic characteristics (Johnson *et al.* 2004, pp. 841, 852). Moreover, neither species belongs in the previously accepted genera, but rather both belong in the genus *Lepidomeda,* a group commonly referred to as the spinedaces (Johnson *et al.* 2004, pp. 841, 852).

Three different species concepts validate this taxonomic revision. Genetic analysis endorses two evolutionarily separate species under the phylogenetic species concept (defines a species as a set of organisms with a unique genetic history) (Johnson and Jordan 2000, pp. 1029, 1033; Johnson *et al.* 2004, pp. 841, 851). In addition, morphologic (cranial shape) and ecological (feeding and growth rates) divergence support two distinct species under the similarity and ecological species models, respectively (Johnson *et al.* 2004, p. 851). It also is worth noting that current taxonomy aligns with discrete geographic distributions of the species, with the unoccupied Weber River separating the two species' ranges and the uninhabitable Great Salt Lake preventing natural interaction between individuals of the two species (Belk and Johnson 2007, p. 69). Supported by multiple lines of evidence indicating that southern (*Lepidomeda aliciae*) and northern (*L. copei*) leatherside chub are two distinct species, the American Fisheries Society now recognizes the two species as such (Jelks *et al.* 2008, p. 390). Because northern leatherside chub is an acknowledged species, it is a listable entity under the Act.

The northern leatherside chub is a small fish, less than 150 millimeters (mm) (6 inches (in.)) in length, that received its common name from the leathery appearance created by small scales on a trim, tapering body (Sigler and Sigler 1996, p. 78; UDWR 2009, p. 26). It has rounded dorsal and anal fins, each with eight fin rays (Sigler and Sigler 1996, p. 78). Typically, the northern leatherside chub is bluish above and silver below, but orange to red coloration may occur on some fins (Sigler and Sigler 1996, p. 78). Males also have a golden-red speck at the upper end of the gill opening and between the eyes and the upper jaw (Sigler and Sigler 1996, p. 78).

Two characteristics that distinguish northern and southern leatherside chubs from each other are cranial shape and size-at-age (UDWR 2009, p. 26). Northern leatherside chub have deeper heads with shorter snouts (Johnson *et al.* 2004, p. 850) and are typically 15 percent smaller than southern leatherside chub of the same age, with northern leatherside chub reaching total length of approximately 60 mm (2.4 in.) at age 2 and 71 mm (2.8 in.) at age 3 (Belk *et al.* 2005, pp. 177, 181).

Life History

Before 1995, the life history of the leatherside chub was not well known, with just a few observations of age, growth, or reproduction (Johnson *et al.* 1995, p. 183). Investigations of populations now known as southern leatherside chub demonstrated the species could live up to 8 years and reached sexual maturity at age 2 (Johnson *et al.* 1995, p. 185). Further work corroborated that the majority of northern leatherside chub also mature at age 2, but some not until age 4 (Belk *et al.* 2005, p. 181).

The bulk of our reproductive knowledge about this species comes from the hatchery setting, where successful propagation has occurred. Northern leatherside chub produce translucent, whitish fertilized eggs that are adhesive and can clump together or adhere to substrate (Billman *et al.* 2008a, p. 277). In natural populations, eggs typically hatch in late June (Belk *et al.* 2005, p. 181), but in hatchery conditions, spawning occurs between April and September (Billman *et al.* 2008a, p. 276). In controlled hatchery conditions, eggs hatch between 4 and 6 days to produce fry that still reside in the substrate (Billman *et al.* 2008a, p. 277). Six days after hatching, fry emerge from the substrate, and by 40 days after hatching most have tripled in length to approximately 16 mm (0.63 in.) (Billman *et al.* 2008a, p. 277).

In the hatchery setting, spawning overwhelmingly occurs over cobble substrate (which provides interstitial space for eggs) and in higher velocity flows (which provide oxygen and remove fine sediment) (Billman *et al.* 2008a, p. 277). These conditions indicate main channel riffle or run habitats are likely the natural location of northern leatherside chub spawning.

Northern and southern leatherside chub have similar, relatively broad diets, with aquatic and terrestrial insects and crustaceans accounting for 75 percent of their consumption in one study (Bell and Belk 2004, p. 414). Aquatic and terrestrial insects dominated the autumnal northern leatherside chub diet at the Sulphur Creek sample site (Bell and Belk 2004, p. 414). The species foraged on a wide variety of prey items common to both the substrate and stream drift (Bell and Belk 2004, p. 414). However, it is likely

that the species' diet varies throughout the year and at different locations based on available food (Bell and Belk 2004, p. 414). The study results indicate that the species' diet overlaps with other native and nonnative fish, including sculpins (*Cottidae* family), shiners (Cyprinids), and cutthroat (*Oncorhynchus clarkii*) and brown (*Salmo trutta*) trout, suggesting possible competitive interactions (Bell and Belk 2004, p. 414).

Habitat

Northern leatherside chub inhabit small desert streams between elevations of approximately 1,250 to 2,750 meters (m) (4,100 to 9,000 feet (ft)) in the Bear, Snake, and Green River subregions (as defined by the U.S. Geological Survey's (USGS) National Hydrography Dataset (NHD)) (Idaho Department of Fish and Game (IDFG) 2005, p. 1). Streams of this nature encounter extreme seasonal and annual physical conditions because of variation in temperature and precipitation (Wilson and Belk 2001, p. 40). Therefore, northern leatherside chub must endure cold winters and hot summers (water temperature from 0 to 25 °C (32 to 77 °F); high, turbid spring runoff and low, clear summer base flows; and periodic droughts that reduce water in streams (Wilson and Belk 2001, p. 40). It is likely that enduring these variable extreme habitat conditions adapted northern leatherside chub to tolerate varied habitat conditions.

Most habitat descriptions are the result of investigations before leatherside chub was divided into two species, but habitat descriptions for the northern leatherside chub can be evaluated based on their distinct geographic range. Summer water temperature of occupied habitat is reportedly 10 to 23 °C (50 to 73.4 °F), but the current belief is that northern leatherside chub's range is actually restricted to 15.5 to 20 °C (59.9 to 68 °F) (UDWR 2009, p. 27). The species does not persist in lakes or reservoirs (UDWR 2009, p. 27). Northern leatherside chub prefer low water velocities (15 to 23 centimeters per second (cm/s) (0.5 to 0.75 feet per second (fps)), and their probability of occurrence decreases at higher velocities (UDWR 2009, p. 40). Water velocity and temperature generally limit the northern leatherside chub from occupying high headwater streams. Recent habitat investigations show that northern leatherside chub habitat associations are consistent with the results for the southern species (Belk and Wesner 2010, p. 12), allowing us to consider habitat data for southern leatherside chub as generally acceptable for northern leatherside chub.

Distribution

Recent and ongoing investigations continue to revise the current and historical distributions of northern leatherside chub by verifying or invalidating historical specimens, intensely resampling specific stream reaches suspected to harbor the species, and documenting new northern leatherside chub occurrences. For this finding, we completed a white paper summarizing current and historical distributions through fall 2010 (McAbee 2011, entire). We analyzed current and historical range at the subbasin level (otherwise known as 8-digit Hydrologic Unit Code (HUC) in the USGS' NHD or HUC8), and current population locations at the subwatershed level (otherwise known as 12-digit HUC or HUC12). We identified population locations in one to multiple subwatersheds, depending on the perceived interaction between individuals. State wildlife agencies and universities reviewed the document to ensure that it summarized their data collection correctly. Information from our population summary (also known as 'white paper') is used throughout this finding to inform our conclusions (McAbee 2011, entire).

The documented historical range of northern leatherside chub includes portions of the Bear River subregion that drain to the Great Salt Lake, and discontinuous subbasins in the Upper Snake River subregion that eventually drain to the Pacific Ocean (Figure 1; Table 1). It is unclear how this species came to inhabit two presently unconnected hydrologic regions. Past geologic events associated with the draining of Lake Bonneville or the connection of the Bear River to the Snake River as recently as 30,000 years ago (Behnke 1992, p. 134) are likely responsible for the separation (UDWR 2009, p. 25). The range of northern leatherside chub has declined over the past 50 years (Wilson and Belk 2001, p. 36; Johnson *et al.* 2004, pp. 841–842; UDWR 2009, p. 24), and the verified current range of the species is now limited to five of the eight documented historical subbasins (Table 1). However, additional survey efforts are planned or ongoing.

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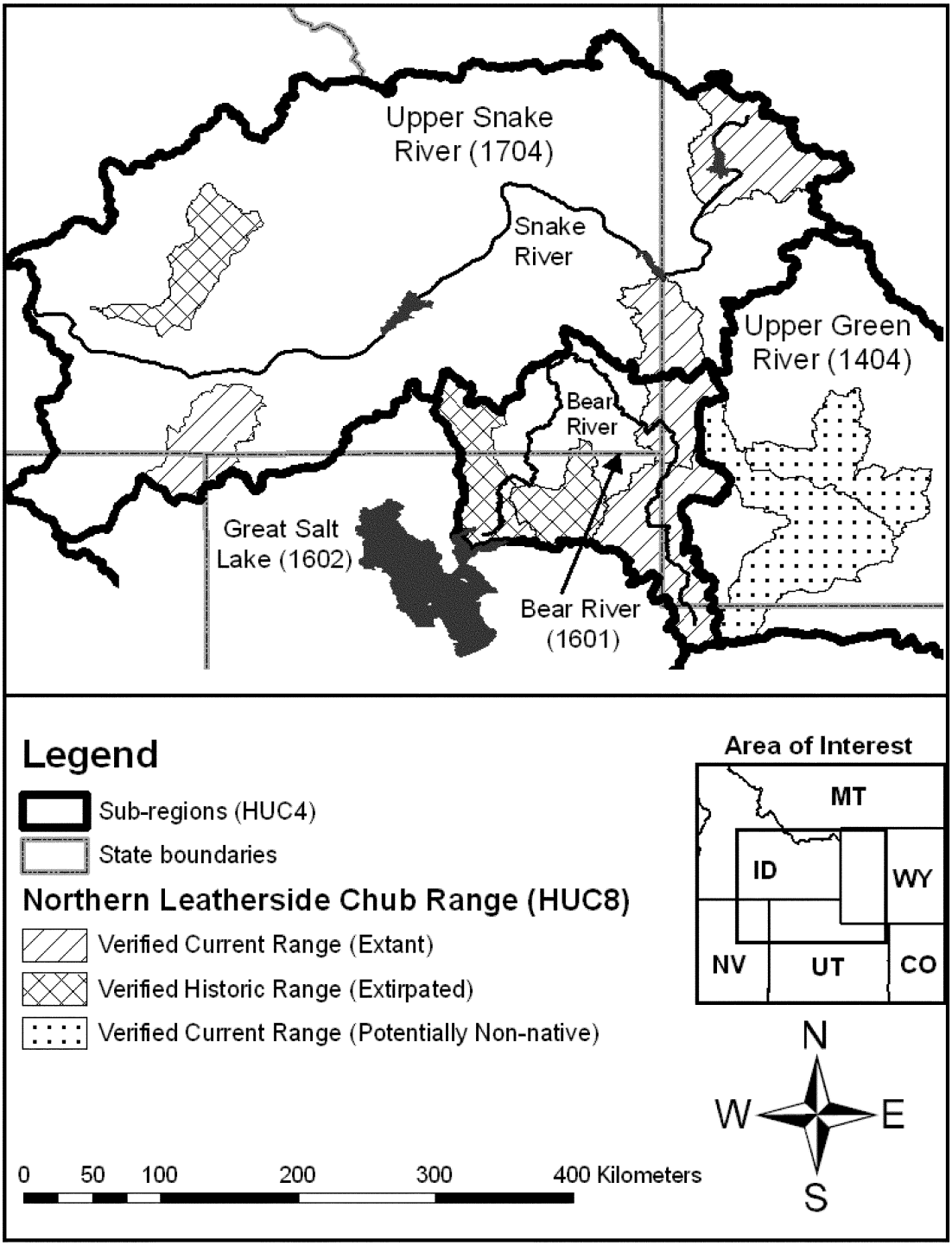

FIGURE 1. Northern leatherside chub range. Subregion names and codes are labeled.

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TABLE 1—DOCUMENTED RANGE OF THE NORTHERN LEATHERSIDE CHUB BY SUBBASIN

NATIONAL HYDROGRAPHY DATASET LOCATIONS			Status
Subregion (code)	Subbasin code and name		
Bear River (1601)	16010101	Upper Bear River	Currently occupied.
	16010102	Central Bear River	
	16010203	Logan River	Historical records only.
	16010204	Lower Bear River	
Upper Snake River (1704)	17040101	Snake Headwaters	Currently occupied.
	17040105	Salt River	
	17040211	Goose Creek	
	17040221	Little Wood River	Historical records only.
Upper Green River (1404)	14040103	Upper Green—Slate Creek	Currently occupied but unconfirmed native range.
	14040107	Blacks Fork	

In addition to the historical range, two populations are now known from the Upper Green River subregion in the Colorado River region (Table 1). It is possible that these occurrences are the result of human introductions. However, genetic analysis is necessary to confirm the origin of these populations, and this information is not yet available. For the purposes of this finding, we acknowledge these populations' conservation value.

Because verifiable, historical records are sparse, we are unable to produce a large-scale historical range boundary with this information. Therefore, we rely on the known, verified collections to analyze the status of the species.

Northern leatherside chub are difficult to identify in the field because they can be confused with other species with similar appearances. Therefore, many collections were incorrectly classified as northern leatherside chub, when in fact they were later verified as Utah chub (*Gila atraria*), speckled dace (*Rhinichthys osculus*), or redside shiner (*Richardsonius balteatus*). Ichthyologists at Brigham Young and Idaho State Universities worked to verify historical records and validate recent collections in order to authenticate data. As a result, many previously accepted collections were refuted, leading to a clearer understanding of the species' range (Northern Leatherside Chub Conservation Team 2010, p. 4). In fact, many subbasins once identified as part of the species' current or historical range are now either questioned or invalidated (Table 2). While we expect that the northern leatherside chub's natural distribution is more continuous than verifiable historical and current data indicate, we have no specific data to describe this range other than what is presented in this finding (Figure 1; Table 3).

TABLE 2—SUSPECTED SUBBASINS THAT ARE NO LONGER CONSIDERED NORTHERN LEATHERSIDE CHUB CURRENT OR HISTORICAL RANGE

NATIONAL HYDROGRAPHY DATASET LOCATIONS			Status
Subregion (code)	Subregion code and name		
Upper Snake River (1704)	17040207	Blackfoot River	Historical specimen incorrectly classified; No verified records.
	17040210	Raft River	Unvouchered historical record not corroborated by recent sampling; No verified records.
	17040213	Salmon Falls Creek	Unvouchered recent record not corroborated by repeated sampling; No verified records.
	17040219	Big Wood River	Unvouchered recent record not corroborated by repeated sampling; No verified records.
Middle Snake (1705)	unknown	Bruneau & Snake Rivers	Historical specimens incorrectly classified; No verified records.
	17050104	Upper Owyhee	Museum records need to be checked.
Great Salt Lake (1602)	16020309	Curlew Valley	Listed in conservation agreement, but no supporting data; No records.

TABLE 3—EXTANT POPULATIONS OF NORTHERN LEATHERSIDE CHUB IN 2010

NATIONAL HYDROGRAPHY DATASET LOCATIONS		POPULATION NAME	STATE
Subregion	Subbasin		
Bear River	Upper Bear	Upper Mill/Deadman Creeks	UT/WY
		Upper Sulphur/La Chapelle Creeks	WY

TABLE 3—EXTANT POPULATIONS OF NORTHERN LEATHERSIDE CHUB IN 2010—Continued

NATIONAL HYDROGRAPHY DATASET LOCATIONS		POPULATION NAME	STATE
Subregion	Subbasin		
		Yellow Creek	UT/WY
		Upper Twin Creek	WY
		Rock Creek	WY
	Central Bear	Dry Fork Smiths Fork	WY
		Muddy Creek	WY
Snake River	Snake Headwaters	Pacific Creek	WY
	Salt River	Jackknife Creek	ID
	Goose Creek	Trapper Creek	ID
		Beaverdam Creek	ID
		Trout Creek	NV/ID
Green River	Upper Green River/Slate Creek	North Fork Slate Creek	WY
	Blacks Fork	Upper Hams Fork	WY

Overall, our identification and confirmation of a northern leatherside population for this finding required the presence of multiple age classes, collection of a dense number of fish (more than five individuals), and documentation of fish collections over multiple years. Meeting these criteria demonstrated to us that northern leatherside chub populations were resident, reproducing, and persisting over time. Within the current range of the northern leatherside chub, we thus delineated 14 extant populations, spread across the Bear (7), Snake (5), and Green (2) River subregions (Table 3). Locations where northern leatherside chub were collected, but were not classified as a population, are detailed in our white paper analysis (McAbee 2011, entire).

Bear River Subregion

The Bear River subregion harbors seven extant populations of northern leatherside chub across two subbasins: Five in the Upper Bear River subbasin and two in the Central Bear River subbasin (Table 3). We are aware of the presence of some individual fish upstream (Hayden and Stillwater Forks) (Nadolski and Thompson 2004, pp. 3, 4, 7; Chase 2010, pers. comm.) and downstream (mainstem Bear River and lower Sulphur Creek) (Wyoming Game and Fish Department (WGFD) 2008, pp. 1, 3; Belk and Wesner 2010, p. 5) of these areas; however, we do not consider these as populations because they do not meet the definition of a population outlined above (specifically presence of multiple age classes and collection of a dense number of fish) due to their low densities and lack of juvenile fish.

In the Upper Bear River subbasin, the Upper Mill/Deadman Creeks and Yellow Creek populations harbor dense, reproducing populations of northern leatherside chub (McKay and Thompson 2010, pp. 4–7). In the Upper Mill/Deadman Creeks population, approximately 1,000 individuals per kilometer are found in Deadman Creek (McKay and Thompson 2010, pp. 6–7) and groups occur downstream in Mill Creek in Utah and Wyoming (Nadolski and Thompson 2004, pp. 3, 7; Belk and Wesner 2010, p. 5). The Yellow Creek population has groups of individuals from the upper reaches in Utah downstream through Wyoming and in Thief Creek, a tributary (Thompson *et al.* 2008, pp. 8–9; Zafft *et al.* 2009, p. 3; Belk and Wesner 2010, p. 5). The Upper Sulphur/La Chapelle Creeks population above Sulphur Creek Reservoir also harbors abundant northern leatherside chubs (Zafft *et al.* 2009, p. 3). This population is likely isolated by the presence of Sulphur Creek Reservoir, which is unsuitable habitat and is stocked with predatory nonnative trout (brown trout before 2000, rainbow trout (*Oncorhynchus mykiss*) currently) (WGFD 2010, pp. 3–6).

Twin Creek, a large tributary to the Bear River in the Upper Bear River subbasin, contains two populations of northern leatherside chub: Rock Creek and Upper Twin Creek. Multiple tributaries to Twin Creek comprise the Upper Twin Creek population, including Clear Creek and the North, East, and South Forks of Twin Creek (Belk and Wesner 2010, p. 5; Colyer and Dahle 2010, p. 5). These populations can presumably interact but are likely isolated from all other populations because sampling has failed to detect downstream emigrants (McKay and Thompson 2010, p. 18).

In the Central Bear River subbasin, the Smiths Fork area harbors at least two large populations: Dry Fork Smiths Fork and Muddy Creek. Both contain hundreds of individuals (Colyer and Dahle 2007, p. 8; Belk and Wesner 2010, p. 5). Individual fish from this population can disperse downstream, but many perish in irrigation canals before reaching the mainstem Bear River (Roberts and Rahel 2008, pp. 951, 955).

Snake River Subregion

The Snake River subregion contains eight subbasins with historical northern leatherside chub observations (UDWR 2009, pp. 44, 48). However, biologists have reexamined museum records, resampled stream reaches with presumed past observations, and refined the identification key for the species. As a result, four of the eight subbasins, the Raft, Big Wood, and Blackfoot Rivers, and Salmon Falls Creek, with past records were downgraded to ''unlikely to have contained or to contain northern leatherside chub'' (Table 2). One subbasin has verified historical records but no current records (Little Wood River), and is thus considered extirpated unless new information is obtained.

The remaining three subbasins with verified current records are Goose Creek, Snake Headwaters, and Salt River (Table 1; McAbee 2011, p. 2). Within the Goose Creek subbasin, we know of three reproducing populations at Trapper, Beaverdam, and Trout Creeks. All three populations have persisted over the past 10 to 15 years (Grunder *et al.* 1987, p. 80; Wilson and Belk 1996, p. 17; Keeley 2010, pp. 3–29). Trapper Creek is isolated from the other two by Oakley Reservoir, but there are no barriers between Trout and Beaverdam Creeks, and the populations likely interact. Collections of single northern

leatherside chub individuals in mainstem Goose Creek (Keeley 2010, pp. 24–29) indicate individuals may be dispersing from these two populations. Recent collections of individuals in Pole Creek in the Goose Creek subbasin suggest a population may occur in this tributary as well (Grunder 2010, p. 3). However, no juvenile fish were collected, and this is the first year northern leatherside were documented in this reach (Keeley 2010, pp. 6–11). Although these collections may constitute a colonization event, we do not consider Pole Creek a population in this finding because multiple age classes were not present (demonstrating the area has not shown successful reproduction or recruitment).

The single population in the Snake Headwaters subbasin is Pacific Creek, which has persisted since its discovery in the 1950s (Grand Teton National Park 2009, pp. 1–2; Zafft *et al.* 2009, pp. 2–5). In the Salt River subbasin, a single population is found in Jackknife Creek and its tributaries (Isaak and Hubert 2001, pp. 26–27; Keeley 2010, pp. 45–60). The Pacific Creek population is separated from the Jackknife Creek population by large stream distances and large reservoirs, making individual dispersal between the two populations unlikely. In addition, both the Pacific Creek and Jackknife Creek populations are isolated from the Goose Creek subbasin by upwards of 350 stream-kilometers (km) and many large reservoirs.

Green River Subregion

There are two northern leatherside chub populations in the Green River subregion, one each in the Upper Green River/Slate Creek and Blacks Fork subbasins (Table 3). However, based on the lack of historical collections in the Green River subregion, the lack of a documented natural connection between the Green River subregion and the Bear or Snake River subregions, and the prevalence of human translocations of fish, we determine that it is unlikely that this is the species' native range. The first population was identified in 1988 in North Fork Slate Creek (WGFD 1988 in Zafft *et al.* 2009, p. 2), and represented the first population outside the Bear or Snake River subregions. This population is approximately 30 km (18 mi) east of the Bear and Snake River subregions, making it close enough to be the result of a human introduction. The Upper Hams Fork population was later identified (Wheeler 1997 in Zafft *et al.* 2009, p. 3), and is located approximately 35 km (22 mi) northeast of the North Fork Slate Creek population. In addition, this population is just across the subregion boundary with the Dry Fork Smiths Fork population, making it even more possible that the population is the result of a human introduction. We also are aware of individual fish in the nearby West Fork of the Hams Fork in 2006 (Zafft *et al.* 2009, p. 3), which we include as part of the Upper Hams Fork population because they can interact.

These two populations indicate that northern leatherside chub are persisting in the Green River subregion. Whether these populations are native, or are recent human introductions, has yet to be resolved. Genetic analysis to answer this question is planned for completion in the near future, and will hopefully resolve this question. Until proof can be presented that these populations are not native, their conservation value to the species must be considered.

It is worth noting that genetic analysis of southern leatherside chub collections in the Fremont River (Green River subregion) demonstrated that they were not native, but rather a genetic match to an East Fork Sevier River population (Barrager and Johnson 2010, p. 7). These results show that a successful human translocation of a surrogate species has occurred, and is possible for the northern leatherside chub.

In summary, 14 extant northern leatherside chub populations persist across 3 subregions: 7 populations in the Bear River subregion; 5 populations in the Snake River subregion; and 2 populations in the Green River subregion (Figure 1, Table 1). Land ownership is comprised of privately owned land (31.5 percent in the States of Idaho, Nevada, Utah, and Wyoming), as well as lands managed by BLM (30 percent), NPS (3.5 percent), USFS (30.5 percent), and the States of Wyoming (4.3 percent) and Idaho (0.04 percent) (Service 2011, pp. 11–17). We will investigate threats to these extant populations in the remainder of this finding.

Summary of Information Pertaining to the 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 our 12-month finding on the petition we considered and evaluated the best available scientific and commercial information. Information pertaining to the northern leatherside chub in relation to the five factors provided in section 4(a)(1) of the Act is discussed below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The following potential threats that may affect the habitat or range of northern leatherside chub are discussed in this section, including: (1) Livestock grazing; (2) oil and gas development; (3) mining; (4) water development; (5) water quality; and (6) fragmentation and isolation of existing populations.

Livestock Grazing

Livestock presence generally disturbs streamside and instream habitats, particularly in the arid west where riparian and stream habitats are fragile ecosystems (Kauffman and Krueger 1984, p. 431; Helfman 2007, p. 102). Livestock grazing is especially detrimental to riparian habitats because livestock spend disproportionately more time near water (Helfman 2007, p. 102). They typically eat and trample riparian vegetation and compact soil, which leads to impacts that include increased sediment inputs from runoff, nutrient loading from livestock waste, higher stream temperatures from lack of vegetation shading, and reduction in invertebrate abundance (Kauffman and Krueger 1984, p. 432; Wohl and Carline 1996, p. 264; Stoddard *et al.* 2005, p. 8). These impacts combine to degrade habitats for many fish species, especially species requiring cool, clear water and gravel substrate, such as salmonids (Helfman 2007, p. 34).

However, some species, such as the northern leatherside chub, can tolerate certain habitat changes and persist despite disturbed conditions. Increased sediment may alter a fish community and allow for domination by species that thrive or contend well with sandy substrates (Sutherland *et al.* 2002, pp. 1801–1802) (see Water Quality section for specific discussion of sedimentation and northern leatherside chub). Similarly, increased water temperature also may alter the distribution of species, forcing out cold-water species,

and allowing for warm-water species to enter a habitat (Field *et al.* 2007, p. 631). Northern leatherside chub apparently can tolerate certain disturbances, largely because they can survive extreme environmental conditions to which they are evolutionarily adapted (Belk and Johnson 2007, p. 70), such as high water temperatures (Isaak and Hubert 2001, p. 27; Wilson and Belk 2001, p. 39), with a critical thermal maximum of approximately 30 °C (86 °F) (Billman *et al.* 2008b, p. 463) and persist in large numbers in areas deemed degraded (Muddy Creek and Upper Twin Creek). However, we do not have specific data indicating their tolerances to all water quality conditions. While habitats impacted by grazing may not be preferred, populations of northern leatherside chub persist in locations deemed degraded and impaired.

For example, in the Bear River subregion, the Upper Twin Creek population persists even though overgrazing has reduced the riparian vegetation cover (Colyer and Dahle 2010, pp. 16, 19) to the point that the streams are classified as degraded (BLM 2011, entire). In the same subregion, Muddy Creek is another example of a dense northern leatherside chub population that persists (Colyer and Dahle 2007, Table 6) despite altered conditions from overgrazing that result in a very wide, shallow channel and degraded riparian habitats (BLM 1999, p. 7; BLM 2007a, pp. 1–2; Prichard 1998, p. 8; BLM 2005, p. 5). In the Snake River subregion, populations persist in Beaverdam and Trapper Creeks although the water quality in both streams is impaired, most likely as the result of overgrazing (Lay 2003, pp. 69–70, 125). However, it is worth noting that impacts from grazing affect Beaverdam and Trapper Creeks in qualitatively different ways (high suspended sediment) than Muddy and Upper Twin Creeks (reduced riparian cover).

Data indicate that some level of livestock grazing occurs across the entire range of the northern leatherside chub and near all existing populations (Service 2011, pp. 18–24). Because of the prevalence of grazing across the western United States, the species will likely encounter livestock grazing effects. However, we expect effects from livestock grazing will decrease over time on Federally managed lands as management agencies address livestock grazing practices. For example, the U.S. Forest Service (USFS) recently implemented changes in the grazing management on the Goose Creek grazing allotment that occurs in the upstream portions of Beaverdam and Trout Creeks (Northern Leatherside Chub Conservation Team 2011, p. 3). On a broader scale, Bureau of Land Management (BLM) guidelines in Idaho (BLM 1997, p. 4, Standard #2), Wyoming (BLM 2007c, p. 1, Standard #2), Utah (BLM 2009, p. 1, Standard #1b), and Nevada (BLM 2007b, p. 1, Standard #2) require all streams to have riparian health consistent with natural, functional habitats, indicating that grazing impacts will be improving on BLM lands. Upstream land ownership for all but three occupied sub-watersheds (11 of 14) is over 50 percent federally owned, demonstrating the importance of Federal land management for northern leatherside chub (see detailed discussion of land ownership under Factor D below).

In summary, there is no apparent indication that grazed areas are negatively impacting existing populations of northern leatherside, although grazing has likely affected water quality (discussed later). Populations of northern leatherside chub occur in a wide variety of habitat conditions, from unaltered locations to those with heavily altered riparian conditions impacted by livestock grazing practices. In fact, some of the densest populations occur in areas that are heavily grazed. Also, there is evidence to indicate that livestock grazing impacts will be declining in the future, as more sustainable rangeland management practices are applied. We found no information that grazing may act on this species to the point that the species itself may be at risk, nor is it likely to become so.

Oil and Gas Development

Oil and gas exploration and development can impact fish habitats, primarily through degraded watershed health. Increased land disturbance from roads and pads reduce water quality because of increased sediment loads (WGFD 2004, p. 25; Matherne 2006, p. 1). Road culverts also can fragment fish habitats if they are designed in a way that impedes fish migration (Aedo *et al.* 2009, p. 2). Drilling operations often require water depletions from local water sources and can result in accidental spills of contaminants into fish habitat (Stalfort 1998, p. ES–2; Etkin 2009, pp. 35–42). Accumulations of contaminants, such as hydrocarbons and produced water (water locked away in formation with oil and gas that is typically not suitable for human or wildlife use), can result in lethal or sublethal impacts across the entire aquatic food chain, including sensitive fish species (Stalfort 1998, Section 4). Water depletions can reduce or eliminate aquatic habitat, creating multiple negative effects (see Water Development, below).

To analyze the potential impacts from oil and gas development, we investigated past and present levels of development and the potential for future development in occupied populations. We summarized the analysis in an internal white paper (Hotze 2011, pp. 1–8) and reference the results throughout this finding. Data sources for the investigation included Bureau of Land Management Resource Management Plans (BLM 1985, entire; BLM 2010, entire); State databases of oil and gas development (Hess *et al.* 2008, entire; Utah Division of Oil, Gas, and Mining 2009, entire; Wyoming Oil and Gas Conservation Commission 2009, entire; State of Idaho 2011, entire); and energy development maps (Garside and Hess 2007, map; Energy Information Administration (EIA) 2009a, map; EIA 2009b, map; EIA 2011, entire).

TABLE 4—SUMMARY OF OIL AND GAS DEVELOPMENT IN EXTANT NORTHERN LEATHERSIDE CHUB POPULATIONS

National hydrography dataset locations		Population name	State	Active oil & gas wells (inactive)	Overlap with known coalbed methane reserves (%)
Subregion	Subbasin				
Bear River	Upper Bear	Upper Mill/Deadman Creeks	UT/WY	0 (6)	4
		Upper Sulphur/La Chapelle Creeks.	WY	2 (1)	47
		Yellow Creek	UT/WY	28 (63)	25
		Upper Twin Creek	WY	0 (0)	9

TABLE 4—SUMMARY OF OIL AND GAS DEVELOPMENT IN EXTANT NORTHERN LEATHERSIDE CHUB POPULATIONS—Continued

National hydrography dataset locations		Population name	State	Active oil & gas wells (inactive)	Overlap with known coalbed methane reserves (%)
Subregion	Subbasin				
		Rock Creek	WY	0 (1)	131
	Central Bear	Dry Fork Smiths Fork	WY	0 (0)	0.1
		Muddy Creek	WY	0 (0)	0
Snake River	Snake Headwaters	Pacific Creek	WY	0 (0)	0
	Salt River	Jackknife Creek	ID	0 (0)	16.6
	Goose Creek	Trapper Creek	ID	0 (0)	0
		Beaverdam Creek	ID	0 (0)	0
		Trout Creek	NV/ID	0 (0)	0
Green River	Upper Green River/Slate Creek	North Fork Slate Creek	WY	0 (5)	32
	Blacks Fork	Upper Hams Fork	WY	0 (0)	0

We found that throughout the range of northern leatherside chub, neither active development nor potential for future development of oil and gas are common, with both being limited to one localized area, the Yellow Creek population in the Bear River subregion (Table 4) (Hotze 2011, pp. 1–8). A quarter of the Yellow Creek population overlaps with proven Federal oil and gas reserves, mostly in the western and northern portions of the subwatershed (EIA 2009a, map; Hotze 2011, p. 5). Current and past well activity follow this overlap, with 63 inactive and 28 active wells in the population's subwatershed, mainly near the occupied areas of Thief Creek and lower Yellow Creek in Wyoming (Hotze 2011, p. 2). No development activity has occurred in the upstream portions of Yellow Creek, which contain high densities of northern leatherside chub, and no proven Federal oil and gas reserves occur there. A quarter of the Yellow Creek population overlaps with coalbed methane reserves, in the eastern-central portion in Wyoming, suggesting the potential for development (Hotze 2011, p. 7).

The populations in the northern portions of the Bear River subregion have seen little past or current development and have a low probability of future development. The Twin Fork drainage has only one inactive well across the Rock and Upper Twin Creek populations (Hotze 2011, p. 2). A small portion (less than 1 percent) of the Rock Creek population overlaps with the Collett Creek field, which contains proven Federal oil and gas reserves (Hotze 2011, pp. 4–5). The Smiths Fork drainage is north of the Wyoming Thrust Belt (an optimal geologic formation for retrieving oil and gas resources), so development of oil reserves has not historically occurred in the Muddy Creek and Dry Fork Smiths Fork populations, and is not likely to occur in the future (Hotze 2011, p. 2). Similarly, there is very little overlap between these two populations and known coalbed reserves (less than 1 percent of the Dry Fork Smiths Fork population) (Hotze 2011, p. 7), making it unlikely that coalbed methane development will take place in these populations.

In the remainder of the Bear River subregion, past and current resource development is rare, but resource potential exists. The Upper Sulphur/La Chapelle Creeks population has only one inactive and two active wells, but half of the population area overlaps with coalbed methane reserves (Hotze 2011, pp. 2, 7). However, the area has a low potential for resource extraction demonstrated by the low presence of current or past wells and the distance to the closest producing well. The Upper Mill/Deadman Creeks population has only six inactive wells, all in the Utah portion of the population's subwatershed (Hotze 2011, p. 2). Less than 5 percent of the Upper Mill/Deadman Creeks population overlaps with coalbed methane reserves, all in the most downstream reaches that do not contain northern leatherside chub (Hotze 2011, p. 7).

The Snake River subregion populations occur in areas that do not have active development and are characterized as low potential for future development (Hotze 2011, pp. 1–2). Currently, all populations in the Goose Creek subbasin (Trout, Trapper, and Beaverdam Creeks) are in areas open for oil and gas leasing, but there are no producing wells in either the Idaho or Nevada portions (Hotze 2011, p. 2). Further east, there is potential for development of the Idaho-Wyoming Thrust Belt in the Jackknife Creek population, but the probability of discovering and developing oil in this area is considered low by BLM (BLM 2010, p. Q–1). No wells are currently found in the Jackknife Creek population (Hotze 2011, p. 2). Finally, the Pacific Creek population may overlap with the Jackson Hole coalbed methane field, but management by Grand Teton National Park makes it unlikely that development of these resources will take place (Hotze 2011, p. 2).

In the portions of the Green River subregion occupied by northern leatherside chub, there is little active or historical development of any kind and minor potential for future development exists, chiefly from coalbed methane reserves. The Upper Hams Fork is outside of any known coalbed reserves, the population is north of the Wyoming Thrust Belt and west of the Wyoming Overthrust coalbed reserves (Hotze 2011, pp. 2, 7). As a result, it has no active or inactive wells within its boundary, and we consider future development potential in this population negligible (Hotze 2011, p. 2). The North Fork Slate Creek population has only five inactive wells within its boundary, but overlaps with the Wyoming Overthrust coalbed reserves in the upstream third of the population (Hotze 2011, pp. 2, 7). It is possible that development could occur in this population, but we have no data to indicate that development is planned or imminent. Also, without environmental planning for this development, we cannot say what impacts the development would have on northern leatherside chub.

To summarize, past, present, and future oil and gas development is likely to impact one population of northern leatherside chub, Yellow Creek in the Bear River subregion, and only in the downstream half. Only two populations overlay with proven Federal oil and gas reserves, Yellow and Rock Creeks (Table 4). The Rock Creek overlap is insignificant, accounting for less than 1 percent of the population's subwatershed. However, the Yellow

Creek overlap is sizable, at approximately a quarter of the population's subwatershed. Correspondingly, only Yellow Creek has measurable levels of current energy development at a moderate scale. Because the impacts to Yellow Creek are downstream of a large portion of the occupied area within the population boundary, we find oil and gas development does not threaten the persistence of the Yellow Creek population. Although some resource potential is found throughout the range of the species, future development is unlikely to occur or impact all but one population (Yellow Creek). Oil and gas development impacts only a small portion of the species' total range, and the impacted population will likely persist in upstream reaches. We found no information that oil and gas development may act on this species to the point that the species itself may be at risk, nor is it likely to become so.

Mining

Hardrock mining for such materials as gold, copper, iron ore, uranium, and others is the most common mining activity in the western United States (Trout Unlimited 2011, p. 1). Underground and surface mining activities have the potential to negatively affect fish species by releasing solid wastes and contaminated mine water (Helfman 2007, pp. 160–161; Trout Unlimited 2011, p. 1).

Solid waste from mining includes overburden, which is the topsoil and surface rock that is above a mineral deposit; waste rock, which is the low grade ore that surrounds a mineral deposit; and tailings, which are the fine-grained materials that are left over from the processing of raw ore (Trout Unlimited 2011, p. 1). Abandoned and currently operating mine sites can impact downstream fish species from the sedimentation that results from erosion of waste rock (Helfman 2007, pp. 112, 113) (see Water Quality section for specific discussion of sedmentation and northern leatherside chub).

Contaminated mine water is the ground or surface water that accumulates and is discharged from a mine or its associated waste rock piles (Trout Unlimited 2011, p. 1). This water can cause deleterious effects to fishes via acidification and heavy metal contamination (Helfman 2007, pp. 160–161, 168–169). Stream acidification results from drainage of waters from mines or their waste rock by-products. This water is highly toxic because the associated low pH harms fish respiratory function and can impact reproduction rates and rearing outcomes (Helfman 2007, p. 159). Low pH in aquatic systems also can negatively affect aquatic plants and macroinvertebrates and thereby reduce food sources and habitat for fish (Helfman 2007, pp. 160–161; Trout Unlimited 2011, p. 1). Heavy metal contamination of aquatic habitats also can result from mine water that is discharged from mines or that infiltrates and then runs out of waste rock or tailings piles. Heavy metals such as lead, copper, zinc, cadmium, mercury, aluminum, iron, manganese, and selenium can be toxic to fishes at low concentrations and can ultimately interfere with embryonic development, digestion, respiration, general growth, and survival (Helfman 2007, pp. 160, 161; Trout Unlimited 2011, p. 1).

We assessed mining activity within the range of northern leatherside chub by reviewing mining location data as reported by State agencies and in GeoCommunicator, the publication Web site for the National Integrated Land System as operated by a joint venture between the BLM and USFS (*http://www.Geocommunicator.gov/GeoComm,* Mining Claims). This information shows that uranium, coal, and non-coal (all other mine types) were prospected for in much of the northern leatherside chub range (Service 2011, pp. 25–32). However, the majority of these mines or prospects are historical and are no longer in operation (Service 2011, pp. 25–32).

In the Bear River subregion, there are no abandoned mines, active mines, or mining claims in the Upper Mill/Deadman Creeks, Upper Sulphur/La Chapelle Creeks, Yellow Creek, or Muddy Creek populations (Service 2011, pp. 28, 30). In the Rock Creek drainage, there are 11 quarter sections with 1 to 5 mining claims each; however, these are located downstream of northern leatherside chub occupied habitat and are not being actively developed (Service 2011, p. 29). The Upper Twin Creek population has one abandoned mine about 2 miles (mi) upstream of occupied habitat on North Fork Twin Creek, and approximately four abandoned mines upstream of occupied habitat on East Fork Twin Creek (Service 2011, p. 29). Also, a small portion of the headwaters of the Upper Twin Creek population is under an active coal lease; however, the active mining associated with this lease is found on the other side of the watershed boundary, meaning impacts will not affect northern leatherside chub (WSGS 2009, map). We have no information to indicate that any of these abandoned mines are having an effect on adjacent northern leatherside chub in the Upper Twin Creek population. In the Dry Fork Smiths Fork population, there are eight quarter sections with one to five mining claims; however, these are located primarily downstream of northern leatherside chub occupied habitat, are not developed, and thus should not have an effect on occupied habitat (Service 2011, p. 30).

In the Snake River subregion, there are no abandoned mines, active mines, or mining claims within northern leatherside chub habitats in the Trout or Jackknife Creek populations (Service 2011, pp. 25, 26). The Trapper Creek and Beaverdam Creek populations have several abandoned mines of lignite and uranium prospects/deposits that are adjacent to northern leatherside chub occupied habitat (about four to five sites in each drainage) (Service 2011, p. 25). Because prospects and identified deposits usually involve a small disturbance such as a shallow hole or a short adit (an entrance to an underground mine which is horizontal or nearly horizontal), we determine these features are having negligible impact on northern leatherside chub occupied habitat. In the Pacific Creek population where northern leatherside chub are found, there are 11 quarter sections with 1 to 5 mining claims each (Service 2011, p. 27). These mining claims occur upstream of northern leatherside chub occupied habitat; these claims are not developed, and we have no information to suggest that these will be developed. At this time we have no information to suggest that any of these abandoned mines or mining claims are having a significant effect on adjacent northern leatherside chub at an individual or population level.

In the Green River subregion, neither the Slate Creek nor the Upper Hams Fork populations have abandoned mines, active mines, or mining claims (Service 2011, pp. 31–32). Thus, there are no effects from mining on northern leatherside chub populations in these areas.

In summary, recent examination of mining activity in northern leatherside chub habitat has determined that mining-related impacts are limited. Mining was historically prevalent in occupied portions of the Bear and Snake subregions, but largely absent in occupied portions of the Green River subregion. Some mines do still operate in northern leatherside chub populations. However, we have no information at this time to suggest that mining activities are having an effect on water resources or habitat of northern leatherside chub. We found no information that mining activities may act on this species to the point that the

species itself may be at risk, nor is it likely to become so.

Water Development

Water development in western North America has the potential to impact native fish species by degrading aquatic habitats and altering natural ecological mechanisms (Minckley and Douglas 1991, p. 15; Naiman *et al.* 2002, p. 455). Water development can affect aquatic species through desiccation (drying that results in loss of habitat), reduction in available habitat from reduced flows, reduced population connectivity, and decreases in water quality (e.g., higher water temperatures in summer months because of lower water volume or increased concentration of pollutants). In addition, water diversion structures often entrain (pull in and trap) fish into canal systems along with irrigation water, placing fish in lethal habitats because water supplies are typically shut off at the end of the irrigation season (Roberts and Rahel 2008, p. 951).

The development of water resources in the Bear, Snake, and Green River subregions has led to the conversion of some northern leatherside chub stream habitats into seasonally dewatered channels (complete absence of flowing water) (Nadolski and Thompson 2004, p. 4; Thompson *et al.* 2008, p. 20; McKay *et al.* 2009, p. iv; Yarbrough 2011, pers. comm.), representing a complete loss of habitat in some areas. In the following analysis, we consider the impact of complete dewatering and entrainment on each northern leatherside chub population. We do not consider impacts of reduced water volume for each population because leatherside chub have a broad tolerance of extreme environmental conditions (Belk and Johnson 2007, p. 70) and have persisted in a number of locations where low water levels occurred. Leatherside chub are adapted to periodic low water conditions and can survive in remnant pools for several weeks after the water flow is completely eliminated (Belk and Johnson 2007, p. 70). Therefore, complete dewatering represents the highest risk for mortality of individuals and represents the primary barrier for movement. Similarly, entrainment creates the risk of direct mortality, as entrained fish, especially northern leatherside chub, are not expected to survive in irrigation canals.

Dewatering of Streams

We determined occurrences and temporal extent of recent dewatering events in occupied populations through agency reports and expert accounts. In recent, recorded history, no known dewatering events occurred near 8 of the 14 populations: Upper Mill/Deadman Creeks (Thompson 2011, pers. comm.); Dry Fork Smiths Fork (BLM 2002, p. B–7); Muddy Creek (Henderson 2011, pers. comm.); Pacific Creek (Clark *et al.* 2004, pp. 26–29; O'Ney 2011, pers. comm.); Jackknife Creek (Lyman 2011, pers. comm.); Trapper Creek (Bisson 2011, pers. comm.); Trout Creek (Lay 2003, p. 8); and Upper Hams Fork (Yarbrough 2011, pers. comm.). As a result, we determine that these populations are not threatened by current water development.

However, six northern leatherside populations did experience complete dewatering events in areas adjacent to or within their known habitat and we further analyzed effects to these populations (Table 5). All dewatering events are seasonal in nature and occur in mid to late summer (Nadolski and Thompson 2004, p. 4; Thompson *et al.* 2008, p. 20; McKay *et al.* 2009, pp. 20–21), when dry weather and irrigation pressures are highest. We will address dewatering conditions and the population response for five population areas (two populations, Rock and Upper Twin Creek, are experiencing the same nearby dewatering, so will be considered together): (1) Upper Sulphur/La Chapelle Creeks; (2) Yellow Creek; (3) Rock and Upper Twin Creeks, all in the Bear River subregion; (4) Beaverdam Creek in the Snake River subregion; and (5) North Fork Slate Creek in the Green River subregion.

TABLE 5—NORTHERN LEATHERSIDE CHUB POPULATIONS THAT HAVE ENCOUNTERED PAST DEWATERING EVENTS AND THE NATURE OF THESE EVENTS

National hydrography dataset locations		Population	Nature of dewatering event
Subregion	Subbasin		
Bear River	Upper Bear	Upper Sulphur/La Chapelle Creeks.	Dewatering upstream in headwaters & downstream near reservoir; No threat to population.
		Yellow Creek	In downstream portion; Reproduction still occurs locally & upstream portions unaffected; No threat to population.
		Upper Twin Creek Rock Creek	Downstream of both populations; Does not prevent movement between populations; No threat to populations.
Snake River	Goose Creek	Beaverdam Creek	In downstream portion; Population sustains in perennial portion but becomes isolated; No threat to population.
Green River	Slate Creek	North Fork Slate Creek	Downstream portions are intermittent but local areas perennial; No threat to population.

Irrigation demands periodically dewater portions of Upper Sulphur Creek directly upstream of Sulphur Reservoir (Amadio 2011, pers. comm.), possibly preventing the migration of northern leatherside chub between the two occupied areas of the Upper Sulphur/La Chapelle Creeks population in the Bear River subregion. Additionally, headwater portions of this area were dewatered in Utah in 2007 (Webber 2008, p. 21). However, neither of the dewatered areas are the primary occupied portion of the population, as northern leatherside chub occupy portions of Sulphur and La Chapelle Creek in Wyoming upstream of Sulphur Creek Reservoir, and also downstream of the Utah border. Because dewatering events do not impact habitats occupied by the population, we conclude dewatering is not a threat to this population.

The lower reaches of Yellow Creek (Bear River subregion) have low flows (Thompson *et al.* 2008, p. 21) or are completely dewatered (Nadolski and Thompson 2004, p. 4) in the summer months. However, successful reproduction was evident in nearby upstream portions of Yellow Creek in 2002, 2005, and 2008 (Thompson *et al.*

2008, p. 11). Upper portions of Yellow Creek (from Utah-Wyoming border to the headwaters) retain water throughout the year and are occupied by a healthy northern leatherside chub community (Thompson *et al.* 2008, p. 21). The upper portions of Yellow Creek likely act as a source population to lower Yellow Creek reaches in years of extreme low water, and for this reason dewatering is not a threat to this population.

Lower portions of mainstem Twin Creek in the Bear River subregion are completely dewatered by an irrigation diversion 6.75 km (4.2 mi) upstream of the Utah-Wyoming border during most of the irrigation season (Thompson *et al.* 2008, p. 20). However, northern leatherside chub are present in several locations upstream of this diversion, including two extant populations—the Rock and Upper Twin Creek populations (Belk and Wesner 2010, p. 5; Colyer and Dahle 2010, p. 5). Northern leatherside chub move through the lower mainstem Twin Creek (downstream of the diversion) to the mainstem Bear River during portions of the year when there is water (Thompson *et al.* 2008, p. 20), demonstrating the connectivity of these rivers. Because of the connection between upstream and downstream communities within this population, and because the upstream communities of Rock and Clear Creeks are perennial streams (Wyoming Department of Environmental Quality 2010, p. 15), dewatering is not a threat to these populations.

Beaverdam Creek in the Snake River subregion begins at the confluence of Left Hand Fork Beaverdam Creek and Right Hand Fork Beaverdam Creek, with flow being supported by approximately seven intermittent or ephemeral streams (Lay 2003, p. 99). Lower portions of Beaverdam Creek are commonly dewatered, leading the Idaho Department of Environmental Quality (IDEQ) to identify the lower two-thirds of Beaverdam Creek as intermittent (Lay 2003, p. 99). These sections include portions near the Emery Ranch and the lowest 3 to 5 km (1.9 to 3.1 mi) of stream from Emery Ranch to Goose Creek (Lay 2003, p. 99). However, Upper Beaverdam Creek maintains high enough year-round flow to sustain a cutthroat trout population (Lay 2003, p. 99). Northern leatherside chub populations also are located in the perennial waters of upper Beaverdam Creek. The effect of ephemeral dewatering in lower Beaverdam Creek on northern leatherside chub is to seasonally isolate this population from other Goose Creek populations in all but the wettest conditions. Because this population is reproducing and self-sustaining, we conclude that seasonal dewatering is not currently a threat to the population.

Portions of Slate Creek in the Green River subregion and its tributaries are intermittent (Yarbrough 2011, pers. comm.). The South and Middle Forks of Slate Creek were completely dewatered in July 2003 (WGFD 2009, p. 4). We have little information regarding the demography of this population, except that several age classes were found in mainstem Slate Creek and North Fork of Slate Creek during 2003 (WGFD 2009, p. 5). This suggests reproduction and juvenile recruitment is not impacted by dewatering in adjacent streams. There is no record of dewatering in the North Fork or mainstem of Slate Creek where northern leatherside chub are found. Because dewatering occurs downstream of occupied habitat and reproduction is occurring, we do not consider dewatering a threat to this population.

While the preceding analysis considered past and current water development, future water development across the range of northern leatherside chub may alter the level of impacts. Northern leatherside chub-occupied subwatersheds in Utah and Idaho are closed to new water appropriations for any significant consumptive use such as large-scale irrigation (Dean 2011, pers. comm.; Jordan 2011, pers. comm.). In contrast, subwatersheds occupied by northern leatherside chub in Nevada and Wyoming are still open to new water appropriations (Randall 2011, pers. comm.; Jacobs and Brosz 2000, p. 7). However, we expect minimal future water development near the only population in Nevada (Trout Creek) because of the low human population density in the area and because we are not aware of any new water-intensive land use planned for the area (Randall 2011, pers. comm.). Although irrigated agriculture production is the largest water use in Wyoming's three northern leatherside chub occupied subbasins (Schroeder and Hinckley 2007, p. 5–2), agricultural water use is expected to increase at most 9.2, 5.6, and 5.2 percent for the Green, Bear, and Snake subregions in Wyoming, respectively, between 2007 and 2037 (Schroeder and Hinckley 2007, pp. 6–2—6–4). We consider these small increases and conclude that this full development would not be a threat to northern leatherside chub in Wyoming. Because predictions for future water development for occupied subbasins indicate water development is either prohibited or minimal, the available information indicates that the northern leatherside chub is not threatened throughout all of its range by water development, nor is it likely to become so.

In summary, while northern leatherside chub are adapted to endure short-term low water conditions, complete dewatering events can result in the temporary, seasonal loss of northern leatherside chub habitat. However, in all of the dewatering events described above, individual fish are either not locally impacted by dewatering or are able to move to nearby perennial reaches during the dewatered period. Additionally, future water development is closed in Utah and Idaho, unlikely in Nevada, and small-scale in Wyoming. We found no information that dewatering may act on this species to the point that the species itself may be at risk, nor is it likely to become so.

Entrainment

Fish encountering unscreened irrigation intake structures are often injured or killed, primarily through entrainment, the process by which aquatic organisms are diverted into irrigation structures (Zydlewski and Johnson 2002, p. 1276; Gale *et al.* 2008, p. 1541). Entrainment into irrigation canals is considered a major source of mortality for fish populations in the western United States because individual fish entering canal systems typically cannot escape back into stream habitat (Carlson and Rahel 2007, p. 1335; Roberts and Rahel 2008, p. 951). Near 100 percent mortality is expected once an individual enters an irrigation canal structure because of the numerous unnatural conditions in the canals. Individuals entrained into canals are exposed to higher water temperatures and non-natural substrate (often concrete), while also becoming easier prey for predatory birds and mammals. Those fish that survive for long periods ultimately encounter the end of the irrigation season, when water is often shut off from the canals (Roberts and Rahel 2008, p. 954), trapping individual fish in dewatered, lethal conditions. Screening intake structures is the most common method to minimize entrainment of fish (Zydlewski and Johnson 2002, p. 1276; Moyle and Israel 2005, p. 20; Gale *et al.* 2008, p. 1541). However, screening facilities must be designed to meet individual criteria at each location, taking into account the sizes and swimming abilities of the fish species that will encounter the structure.

Because they are small minnows with weak swimming abilities, all northern leatherside chub entrained into canals are expected to die (Roberts and Rahel

2008, p. 957). For example, irrigation facilities in the Smiths Fork River entrained an estimated 195 northern leatherside chub downstream of two populations, Dry Fork Smiths Fork and Muddy Creek (Roberts and Rahel 2008, p. 957). Similarly, a large irrigation structure in lower mainstem Twin Creek entrained native fish species, including northern leatherside chub, downstream of two populations, Upper Twin and Rock Creeks (Colyer and Dahle 2010, p. 5). These data show that where northern leatherside encounter irrigation structures, they are entrained.

Across the range of northern leatherside chub, irrigation is a common practice. However, besides the large network of irrigation intakes in the Smiths Fork (Carlson and Rahel 2007, p. 1336) and Twin Creek drainages (Colyer and Dahle 2010, p. 6), we know of no other documented instances of entrainment. In addition, many of the diversions that could entrain northern leatherside chub in the Twin Creek drainage were updated with screened, fish-friendly structures by Trout Unlimited over the past few years (Colyer and Dahle 2010, p. 6), thereby greatly reducing their threat to northern leatherside chub.

Based on the data from the Smiths Fork and Twin Creek drainages, we conclude entrainment into canals is likely preferentially targeting migrating individuals because entrainment is occurring primarily downstream of populations. This makes entrainment more of an agent of fragmentation than a threat to extant populations. We expect that when irrigation diversions are not taking the entire water supply from the stream, an unknown portion of individuals can bypass the structure, likely providing enough population interaction (as shown in other species: Hanson 2001, p. 331; Gale *et al.* 2008, p. 1546). For example, because the documented entrainment in the Smiths Fork drainage is downstream of both populations, individuals from the Dry Fork Smiths Fork population could reach the Muddy Creek population without encountering the entraining structure.

In summary, while the potential impact of entrainment occurs across the species' range (anywhere an unscreened diversion exists), it has been documented downstream of only four populations, all in the Bear River subregion. While the loss of emigrating individuals is important to adequate species metapopulation dynamics, entrainment likely affects only a small fraction of migrating individuals and does not impact resident individuals in the core population areas. Entrainment may reduce the ability of northern leatherside chub to migrate between populations, but without an irrigation structure diverting the entire stream, some individuals should be able to bypass structures. We found no information that entrainment may act on this species to the point that the species itself may be at risk, nor is it likely to become so.

Summary of Water Development

We determined that current levels of water development—entrainment and dewatering—impact only a small portion of the extant populations of northern leatherside chub, and primarily occur downstream of the inhabited population areas. Because these factors are not occurring near the existing core areas, they are largely impacting migrating individuals and reducing population connectivity, not imperiling overall population persistence. Future water development is closed in Utah and Idaho, unlikely in Nevada, and small-scale in Wyoming. We found no information that water development may act on this species to the point that the species itself may be at risk, nor is it likely to become so.

Water Quality

Water pollution and habitat degradation impair the ability of aquatic systems to support life for at least 34 percent of the river and stream habitats in the United States (Environmental Protection Agency (EPA) 2002, p. 12). Examples of pollutants of concern for aquatic systems include heavy metals, biocides, endocrine disrupters, acid rain, sediments, dissolved solids, and excess nutrients (Stoddard *et al.* 2005, p. 8; Helfman 2007, p. 158). The effects of pollution on fish can include immediate death or long-term disabilities, such as increased incidence of disease, abnormalities, and altered behavioral or metabolic responses (Helfman 2007, p. 160).

Waters that do not meet water-quality standards due to point and non-point sources of pollution are listed on the EPA's 303(d) list of impaired water bodies. Therefore, we used the EPA 303(d) list of impaired waters (see discussion under Factor D) to assist in determining if pollution or degraded water quality is a threat to northern leatherside chub (EPA 2010, pp. 1–2). Because the EPA's water quality standards are thought to be protective of aquatic life, we determined that a stream not listed as impaired on the EPA 303(d) list did not have a high enough magnitude of pollution impacts to warrant further analysis. States must submit to the EPA a 303(d) list (water-quality-limited waters) and a 305(b) report (status of the State's waters) every 2 years, making our analysis up-to-date. Of the 14 northern leatherside populations, 2 populations that occur in the Goose Creek subbasin (Trapper and Beaverdam Creeks) are found in streams listed in Idaho's most recent 2008 integrated 303(d)/305(b) report. Trapper Creek's water quality is listed as impaired from nutrients (defined by Idaho as including phosphorus, nitrogen, and organic compounds), specifically total phosphorous, sediment, and dissolved oxygen (IDEQ 2010, p. vii). Beaverdam Creek is impaired by nutrients (total phosphorous), bacteria, temperature, sediment, and dissolved oxygen (Lay 2003, p. xxii). Impaired water-quality conditions in both creeks may be the result of livestock grazing effects (Lay 2003, pp. 69–70, 125).

These impairments can have varying impacts to fish and stream habitats, although we have no information on how these impacted water-quality parameters potentially affect northern leatherside chub. Phosphorus is typically in limited supply in aquatic systems and, therefore, excess phosphorus is considered a nutrient pollutant. Excess phosphorus can cause eutrophication, which often results in harmful algal blooms. These algal blooms, in turn, lead to depleted oxygen conditions as they decay (Helfman 2007, p. 176). The State of Idaho adopted guidelines from EPA that monthly averages of total phosphorus should not exceed 0.05 milligram per liter (mg/L) in streams that enter a lake or reservoir and 0.1 mg/L in any stream or other flowing water to avoid eutrophication (IDEQ 2010, p.1).

Trapper Creek, a stream that enters Oakley Reservoir, is currently listed on Idaho's 303(d) list for phosphorous and sediment (Lay 2003, p. 45). Although total phosphorus levels exceeded guidelines in Trapper Creek in almost all sampling events, there was little evidence of eutrophication (nuisance algae growth) (Lay 2003, p. 68). Beaverdam Creek exceeded the 0.1 mg/L total phosphorus limit in 16 out of 41 sampling events (39 percent) in 2001 (Lay 2003, p. 45). Although no eutrophication has been seen, these results suggest that eutrophic conditions could affect aquatic habitats in the future.

Fish need adequate dissolved oxygen in the water to breath. At extremely low oxygen levels, fish suffocation is possible; however, it is very uncommon, as fish have evolved a number of mechanisms to escape this fate (Kramer 1987, p. 81). More common nonlethal

effects of reduced dissolved oxygen include reduced growth rates and greater susceptibility to bird predators (fish approach water surface for higher oxygen water and are more easily identified by birds) (Kramer 1987, p. 82). Idaho established a dissolved oxygen minimum concentration of 6 mg/L (Lay 2003, p. 48). This limit considers salmonid spawning requirements (Lay 2003, p. 48) and is likely adequate for northern leatherside chub. Dissolved oxygen levels are not specifically considered to be impaired for Trapper Creek (IDEQ 2010, p. vii) and are likely sufficient to fully support aquatic life, including the northern leatherside chub. It is likely that northern leatherside chub can persist in periodic, short-term, low dissolved oxygen situations because they have been documented to persist in isolated pool environments even after other species have perished (Belk and Johnson 2007, pp. 70–71). It is unclear how they would respond to low dissolved oxygen in the long term, as dissolved oxygen is a key attribute for fish health. However, unless conditions were severe, we would expect any low dissolved oxygen events to be short-term in nature.

Sediment in the water column, also called Total Suspended Solids (TSS), affects fish by reducing feeding abilities (rate and success), degrading habitat (filling interstitial substrate space), and removing oxygen (Newcombe and Jensen 1996, pp. 694–695). Sediment pollution can come from various sources, including, but not limited to, grazing, mining, and dirt roads. Hatchery experiments showed that northern leatherside chub prefer cobble substrates with adequate interstitial space for egg deposition (Billman *et al.* 2008a, p. 278), and field research determined that northern leatherside chub feed on insects in both the water column and the stream substrate (Bell and Belk 2004, p. 414). High sediment loads could interfere with the natural ecology (e.g., feeding and reproduction) of the northern leatherside chub through sedimentation of spawning and feeding habitats. Correspondingly, microhabitat analysis does indicate that sand-silt substrate is negatively associated with leatherside chub presence and leatherside chub are more abundant at locations with gravel substrate (Wilson and Belk 2001, p. 40). However, this analysis did not include any of the large populations now known to inhabit degraded areas, such as Muddy and Upper Twin Creeks, and included only one population now known as northern leatherside chub (Trapper Creek, which is impacted by other ecological factors as well as sediment pollution; the other populations analyzed were southern leatherside chub) (Wilson and Belk 2001, p. 38). Because many of the populations of northern leatherside chub persist in degraded areas and no data exist to clearly link sediment with negative impacts, we conclude that sediment alone is not a threat to northern leatherside chub. However, sediment may act in conjunction with other impacts to threaten populations.

Limits of 25 mg/L TSS will provide a high level of protection for aquatic organisms and 400 mg/L TSS will provide low protection (Lay 2003, p. 47). Idaho uses a monthly average of 50 mg/L TSS and a daily maximum of 80 mg/L TSS as the upper limits for sediment (Lay 2003, p. 47). Both Trapper Creek and Beaverdam Creek exceeded daily maximum and monthly average limits for TSS in 2001. Sediment levels in Trapper Creek are highest following runoff events in the spring (March-May) (IDEQ 2010, p. 6), and appear to negatively affect salmonids in the lower sections of Trapper Creek (Lay 2003, p. 68). One event, from September 2001, documented a monthly average of 1,649 mg/L TSS in Beaverdam Creek, which is about 33 times the established Idaho threshold (Lay 2003, p. 102). Elevated TSS conditions such as this may cause low reproductive or feeding success by filling in substrate used for both egg deposition and macroinvertebrate habitat and reducing visibility for northern leatherside chub.

Thermal pollution (unnatural water temperatures) can affect fish by altering metabolism and stressing biological norms. Thermal limits are unique for each fish species. Idaho has established an upper temperature standard of 22 °C (72 °F) for an instantaneous limit and 19 °C (66 °F) as a daily average for cold water biota (IDEQ 2010, p. 11). We determined that these temperature thresholds are adequately conservative for northern leatherside chub (Lay 2003, pp. 38–39). Northern leatherside chub can tolerate higher stream temperatures than salmonids, are documented to persist in streams as high as 23 °C (73 °F) (Isaak and Hubert 2001, p. 27), and have an upper incipient lethal temperature of 26 to 30 °C (79 to 86 °F) (as temperatures are increased in a tank, this is the temperature at which 50 percent die) (Billman *et al.* 2008b, pp. 463, 468–469). Beaverdam Creek has reached daily averages of 19.32 °C (66.78 °F) and 21.75 °C (71.15 °F), although we do not consider these temperatures to be outside the thermal tolerance range for northern leatherside chub.

Water-quality issues have been documented in Beaverdam and Trapper Creeks within the Goose Creek subbasin, although aquatic communities in each of these creeks still persist. For example, macroinvertebrate communities in Trapper Creek and the upper portions of Beaverdam Creek were considered healthy, and the fish community included species believed to tolerate moderately impaired water quality (Lay 2003, pp. 99–100). However, the macroinvertebrate community in lower Beaverdam Creek was indicative of poor water quality. Although Trapper Creek does not harbor native trout normally associated with cool water systems (Lay 2003, pp. 67, 68), Trapper Creek has been shown to support the designated beneficial uses of cold-water biota and salmonid spawning (IDEQ 2010, p. 9).

In summary, impaired water quality (based on 303(d) lists from the various States) affects the habitat of two populations of northern leatherside chub rangewide (Beaverdam and Trapper Creeks), both in the Idaho portion of the Goose Creek subbasin (Snake River subregion), although we know of no specific information on how impaired water quality may affect the species. Levels of total phosphorus and suspended sediment have been elevated in these streams and resulted in correspondingly low dissolved oxygen levels. Because research cited above demonstrates that elevated sediment, elevated phosphorus, and reduced dissolved oxygen affect fish life-history traits, such as reducing reproductive success (from clogged interstitial space), decreasing feeding success (through impacts to macroinvertebrates), or restricting growth (from low dissolved oxygen levels), it is possible that these conditions have depressed population abundance in these streams.

Only 2 of 14 populations occur in water-quality-impaired streams and these streams are not known to be lethal to aquatic biota. We found no information that water quality may act on this species to the point that the species itself may be at risk, nor is it likely to become so.

Fragmentation and Isolation of Existing Populations

The arrangement, or interconnected nature, of species occurrences is especially important when assessing species vulnerability, because numerous studies link habitat fragmentation to population declines and increased extinction risk (Dunham *et al.* 1997, p. 1126; Fagan *et al.* 2002, p. 3250; Fagan *et al.* 2005, p. 34 and references therein).

Human modifications to stream systems in the western United States, such as reservoir creation, nonnative fish introductions, and irrigation practices, fragment native fish distributions (Dunham *et al.* 1997, p. 1128; Hilderbrand and Kershner 2000, p. 513), including those of the northern leatherside chub (UDWR 2009, pp. 5, 31). In the western United States, physical barriers to dispersal (i.e., dams or culverts) and unsuitable habitat (i.e., lakes, dewatered stretches, or areas with increased predator abundance) are the most common agents of stream fragmentation (Fagan *et al.* 2002, p. 3255).

Fragmentation of stream systems is unique, because unlike terrestrial organisms, fish species are limited to movement through the stream corridor and cannot simply move around an obstruction such as a dam (Neraas and Spruell 2001, p. 1153; Fagan 2002, p. 3243). Because stream fragmentation is often caused by impassable barriers, such as dams or lakes, fish populations become isolated. Whether it is the result of human alterations or natural patchiness in habitat, isolation of local populations increases the risk of extirpation events because immigration and recolonization events, ''rescue effects,'' are precluded (Stacey and Taper 1992, p. 26; Dunham *et al.* 1997, p. 1131; Fagan *et al.* 2002, p. 3250). When new individuals are unable to enter into an area to supplement declining populations or to re-establish a population after a catastrophic extirpation event, it is much more likely the population will disappear permanently. It has been demonstrated that the overall number of occurrences of a species is less important to extinction risk than the fragmentation of occurrences when other variables remain constant (abundance, etc.), with species having a few clustered, interacting populations being less vulnerable to extinction than a species with many, isolated populations (Fagan *et al.* 2002, p. 3254).

It is important to consider the species' mobility and colonization ability when fragmentation is discussed. For many freshwater fish species, most individual fish do not emigrate from their resident home area, but those that do tend to move great distances (Fagan *et al.* 2002, p. 3255). These long-distance dispersers are likely the primary mechanism for the quick recolonization of extirpated stream reaches (Peterson and Bayley 1993, p. 199). We know that the surrogate species southern leatherside chub follows this pattern, with many individuals having high site fidelity, but a small cohort (not dependent on individual size) moving long distances for a small minnow species (0.5 to 2 km (0.3 to 1.25 mi)) over short time spans (within 1 year) (Rasmussen 2010, pp. 42, 48–49). Based on similar physical capabilities and life histories, it is likely that northern leatherside chub can move similar distances. This ability to move provides a mechanism for individuals to leave unsuitable habitat when conditions warrant and to emigrate to new areas for natural demographic reasons.

We conclude that when suitable migratory corridors exist, northern leatherside chub will successfully use them. Supporting this conclusion, the collection of individual northern leatherside chub throughout habitats downstream of known populations may indicate that either yet undocumented populations exist or individuals are migrating into new habitats. Regardless of the distinction, the collection of individual northern leatherside chub found large distances away from known populations, as defined in this finding, supports the conclusion that northern leatherside chub can move large distances when suitable pathways exist. For example, collections of individuals in lower Sulphur Creek and the mainstem Bear River are between 17 and 29 km (10.5 and 18 mi) downstream of the Yellow Creek population and between 11 and 19 km (7 and 12 mi) from the Upper Mill/Deadman Creeks population (approximate distances) (McAbee 2011, p. 6). The occurrence of individuals many kilometers downstream in the large inter-population corridor (whether they be resident or emigrants) supports a conclusion that these two populations could potentially interact because individual presence demonstrates a suitable, occupied pathway exists and is being used. Additionally, individuals collected downstream of the Rock Creek population were between 8 and 13 km (5 and 8 mi) away from the population center (Colyer and Dahle 2010, p. 5), which is a distance similar to that separating the Rock Creek and Upper Twin Creek populations. Similarly, individuals entrained in irrigation canals were 8 km (5 mi) downstream of the Muddy Creek population (Roberts and Rahel 2008, p. 951). Finally, individuals collected in mainstem Goose Creek were between 6 and 18 km (4 and 11 mi) downstream of the Beaverdam Creek population, which is distance similar to that separating the Trout Creek population from Beaverdam (in the opposite direction). Therefore, based on our knowledge of the northern leatherside chub's movement ability and based on the occurrence of individuals many kilometers downstream of extant populations, we conclude that populations separated by moderate-distance (up to about 48 km (30 mi)), barrier-free corridors are able to interact (Table 6).

TABLE 6—SUMMARY OF FRAGMENTATION FOR EXTANT NORTHERN LEATHERSIDE CHUB POPULATIONS

NATIONAL HYDROGRAPHY DATASET LOCATIONS		Population name	State	Connected to another population	Multiple occurrences	Occurrences within population
Subregion	Subbasin					
Bear River	Upper Bear	Upper Mill/Deadman Creeks.	UT/WY	Yes	Yes	Throughout Mill Creek (UT & WY); Deadman Creek.
		Upper Sulphur/La Chapelle Creeks.	WY	No	Yes	Upper Sulphur Creek; La Chapelle Creek.
		Yellow Creek	UT/WY	Yes	Yes	Throughout Yellow Creek (UT & WY); Thief Creek.
		Upper Twin Creek	WY	Yes	Yes	Clear Creek; North Fork Twin Creek.
		Rock Creek	WY	Yes	No	Rock Creek.
	Central Bear	Dry Fork Smiths Fork.	WY	No	No	Dry Fork Smiths Fork.
		Muddy Creek	WY	Yes	Yes	Muddy Creek; Mill Creek.
Snake River	Snake Headwaters	Pacific Creek	WY	No	No	Pacific Creek.
	Salt River	Jackknife Creek	ID	No	Yes	Jackknife Creek; Squaw Creek; Trail Creek.

TABLE 6—SUMMARY OF FRAGMENTATION FOR EXTANT NORTHERN LEATHERSIDE CHUB POPULATIONS—Continued

NATIONAL HYDROGRAPHY DATASET LOCATIONS		Population name	State	Connected to another population	Multiple occurrences	Occurrences within population
Subregion	Subbasin					
	Goose Creek	Trapper Creek	ID	No	No	Trapper Creek.
		Beaverdam Creek	ID	Yes	No	Beaverdam Creek.
		Trout Creek	NV/ID	Yes	No	Trout Creek.
Green River	Upper Green River/ Slate Creek.	North Fork Slate Creek.	WY	No	Yes	North Fork Slate Creek; Slate Creek.
	Blacks Fork	Upper Hams Fork	WY	No	Yes	Upper Hams Fork; West Fork Hams Fork.

When analyzing the potential threat of fragmentation of northern leatherside chub, we considered two patterns of isolation. First, we assessed the distribution of populations (defined in this finding as an individual or set of 12-digit HUC(s)) across the species' range. For example, we can say that the Jackknife and Pacific Creek populations are isolated from other populations over the range, but the Upper Twin Creek and Rock Creek populations can interact with each other (Table 6). Second, we assessed the occurrences of individuals within the population boundaries, or, more simply stated, how widespread individuals are within the population boundary. For example, we can say that the Pacific and Rock Creek populations have one local occurrence, but that the Jackknife and Upper Twin Creek populations have multiple occurrences within one population boundary (Table 6). In other words, the Jackknife Creek population has a more continuous distribution within the subwatershed, while the Pacific Creek population is isolated to one area.

This two-tiered approach lets us determine the overall extirpation (localized extinction) risk to populations because catastrophic events can range in scale from the entire population area to smaller areas within the population. In the above population isolation example (Jackknife and Pacific Creeks vs. Upper Twin and Rock Creeks), there are no nearby populations to recolonize the Jackknife or Pacific Creek populations if all individuals died from a large-scale disturbance. However, if all individuals in the Rock Creek population died, downstream emigrants from the Upper Twin Creek population could recolonize the area. In the second example, if a catastrophic event affected only part of the Jackknife Creek population (such as the Squaw Creek tributary) and all individuals died, the area could be recolonized by another occurrence (such as the Trail Creek tributary). However, if a catastrophic event affected the single occurrence in Pacific Creek and killed all individuals, the entire population would be extirpated.

For this finding, we classified each population as either isolated or not isolated based on known barriers preventing movement into the population (reservoirs, culverts (Aedo *et al.* 2009, p. 1), or impassable stream distances) (Table 6). If a population could interact with at least one other population, we considered it not isolated. Also, we focused only on permanent barriers, such as large reservoirs or stream distances, instead of temporary barriers, because we assumed permanent barriers will never be bypassed, but temporary barriers could be bypassed at a low frequency with proper conditions. For example, dewatered stretches were not considered a large scale barrier, because in wetter years and wetter seasons they may carry enough water for bypass. Conditions for recolonization or immigration need to occur only sporadically to repopulate areas devoid of fish. Finally, we focused on barriers affecting dispersal only into the population, because we are primarily concerned with recolonization of extirpated areas.

Large reservoirs isolate three populations of northern leatherside chub: Trapper and Jackknife Creeks in the Snake River subregion; and Upper Sulphur/La Chapelle Creeks in the Bear River subregion. Large stream distances isolated three additional populations from all other populations: Pacific Creek in the Snake River subregion; and North Fork Slate Creek and Upper Hams Fork in the Green River subregion. Impassable culverts isolated one more population: Dry Fork Smiths Fork in the Bear River subregion (Trout Unlimited 2010a, p. 7–8). The other seven populations were considered connected to at least one other population. Populations connect primarily in pairs: Muddy Creek and Dry Fork Smiths Fork (Dry Fork Smiths Fork is isolated from Muddy Creek, but not vice versa because culverts are impassable only in the upstream direction); Yellow and Upper Mill/Deadman Creeks; and Rock and Upper Twin Creeks in the Bear River subregion; and Beaverdam and Trout Creeks in the Snake River subregion. These results are summarized in Table 6.

We next determined if each population contained multiple occurrences within the population boundary. We considered a population to have multiple occurrences if multiple tributaries were occupied or northern leatherside chub were in divergent areas of the same stream (separated by at least 10 km (6 mi) of approximate stream distance). Of the 14 northern leatherside chub populations, 3 (Pacific and Trapper Creeks in the Snake River subregion, and Dry Fork Smiths Fork in the Bear River subregion) are isolated and likely contain only one occurrence, making them vulnerable to a large-scale disturbance or stochastic event.

The Trapper Creek population occurs in an upstream tributary to Oakley Reservoir. Oakley Reservoir, and other reservoirs, act as ''environmental filters,'' preventing movement of small-bodied fish between tributaries and fragmenting distributions (Matthews and Marsh-Matthews 2007, p. 1042). Given the difference in stream and lake habitats, and the presence of large-bodied predators in most reservoirs, we believe it is unlikely that northern leatherside chub could survive migrating through Oakley Reservoir because it supports large populations of piscivorous (fish-eating) rainbow trout (*Oncorhynchus mykiss*) and walleye (*Sander vitreus*) (IDFG 2010a, p. 2; 2010b, p. 3). We are not aware of other northern leatherside chub populations that are located in direct tributaries to a reservoir.

Within the Bear River subregion, culverts surrounding the Dry Fork Smiths Fork population likely prevent any immigration of northern leatherside chub into the population, but do not prevent emigration of individuals out of the population, as the barriers primarily prevent upstream movement. However, the large population size upstream of

these culverts indicates that these barriers have not caused a quantifiable impact to population size. In fact, these barriers may be preventing downstream nonnative trout from entering the area, thus protecting the population. Alternatively, these barriers may be causing genetic isolation that could negatively impact the population.

Rangewide, 7 of the 14 northern leatherside chub populations are isolated, which increases risk to large-scale disturbances or stochastic events, such as extreme drought, large wildfire, or invasion of nonnative species (Table 6). Four of the seven have multiple occurrences within the population, offering the potential for rescue effect dynamics. In fact, this situation may have recently played out in the Jackknife Creek population, where a wildfire in 1991 burned a significant portion of the sub-watershed, but did not affect upstream portions of Squaw Creek (Isaak and Hubert 2001, pp. 26–27). It is possible that northern leatherside chub either retreated to suitable habitat within Squaw Creek during and after the fire, or that emigrants from Squaw Creek recolonized other portions of Jackknife Creek.

In summary, isolation and fragmentation of northern leatherside chub populations in stream systems can substantially reduce recolonization potential, and increase the risk of a local extirpation event due to a large-scale disturbance or stochastic event (Fagan *et al.* 2002, p. 3255). When migratory pathways exist, fish species tend to quickly recolonize a stream (Peterson and Bayley 1993, p. 199). However, in desert systems, human modifications have reduced opportunities for recolonization, eliminating the natural counterbalance against extirpation (Fagan *et al.* 2002, p. 3255). Populations able to interact, such as closely distributed populations, are more likely to persist because clustered occurrences increase the probability of recolonization (Fagan *et al.* 2002, p. 3255).

Two fragmented populations of northern leatherside chub, Trapper and Pacific Creeks in the upper Snake River subregion, are isolated from other populations and are vulnerable to stochastic events, including local disturbances, such as disease, pollution, or floods. Conversely, we believe the isolated Dry Fork Smiths Fork population is not as vulnerable to a stochastic event due to its relatively large population and its isolation (due to culverts surrounding the population), which is precluding the migration of the predatory nonnative brown trout into its habitats. Other isolated populations are not impacted by fragmentation (Upper Sulphur/La Chapelle Creek; North Fork Slate Creek; Upper Hams Fork), but their isolation puts them at an increased risk from other large-scale threats and stochastic events. We found no information that fragmentation may act on this species to the point that the species itself may be at risk, nor is it likely to become so.

Summary of Factor A

We found no information that livestock grazing, oil and gas development, mining, water development, water quality, or fragmentation of populations may act on this species to the point that the species itself may be at risk, nor is it likely to become so. While these factors individually have been shown to affect one or a few extant populations of northern leatherside chub, none is considered a significant threat to the species' persistence. For example, stable, reproducing northern leatherside chub populations occur at many locations where degraded habitat conditions exist. While these habitat characteristics may not be optimal for northern leatherside chub populations, their continued persistence and successful reproduction demonstrate that they have some level of tolerance for less than optimal environmental conditions. Because of the sufficient number of populations, the interaction between several population locations, and the large size of many populations, we conclude that local extirpation risk to a small number of populations does not constitute a substantial threat to the species. The best scientific and commercial information available indicates that rangewide the northern leatherside chub is not threatened by the present or future destruction, modification, or curtailment of its habitat or range, nor is it likely to become so.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Commercial, recreational, scientific, and educational utilizations are not common northern leatherside chub-related activities, and protections are in place to limit their effect on the species. The use of live baitfish, including northern leatherside chub, is not permitted in the species' range (Harja 2009, p. 4; Miller *et al.* 2009, p. 3; UDWR 2009, p. 32). In addition, we are aware of no evidence that northern leatherside chub are being illegally collected for any purposes.

Across the northern leatherside chub's range, permits are required to collect the species for any reason. Individuals have been collected for genetic analysis from various populations across the species' range (Northern Leatherside Chub Conservation Team 2011, p. 4). These collections were permitted under each State's regulatory authority (see below), and because they are a small portion of the local population, should not negatively impact local population persistence.

Northern leatherside chub are considered a ''prohibited'' species under Utah's Collection, Importation, and Possession of Zoological Animals Rule (R–657–3–1), which makes it unlawful to collect, import, or possess northern leatherside chub without a permit (Harja 2009, p. 4). Use of the species for scientific or educational purposes also is controlled by the UDWR, and the agency reviews requests to make sure that no negative population impacts will occur (Harja 2009, p. 4). Recently, northern leatherside chub were collected for a hatchery population housed in Logan, Utah (Billman *et al.* 2008a, p. 274), and future collections will be required for this population to persist (Northern Leatherside Chub Conservation Team 2010, p. 5). However, the number of northern leatherside chub taken for scientific and educational purposes is low (UDWR 2009, p. 32).

The species is considered ''protected non-game'' under Idaho's Rules Governing Classification and Protection of Wildlife (IDAPA 13.01.06), which makes it unlawful to take or possess northern leatherside chub except with a permit under Rules Governing the Importation, Possession, Release, Sale, or Salvage of Wildlife (IDAPA 13.01.10) (Schriever 2009, p. 1). In Wyoming, a rigorous collection permitting system restricts commercial, scientific, and educational activities (Miller *et al.* 2009, p. 3). Small-scale permits are given to local residents to seine the Bear River drainage for baitfish (dead), but these few permits are not impacting populations of northern leatherside chub (Miller *et al.* 2009, p. 4). Northern leatherside chub is not a protected species in Nevada. However, the Nevada Department of Wildlife (NDOW) regulates collections of northern leatherside chub through a permitting process (Johnson 2011a, pers. comm.).

Summary of Factor B

Northern leatherside chub are not overutilized for commercial, recreational, scientific, or educational purposes. A limited number of northern

leatherside chub are collected from wild populations for hatchery augmentation or scientific investigation purposes, but the level of collection is very small. The best scientific and commercial information available indicates that the northern leatherside chub is not threatened by overutilization for commercial, recreational, scientific, or educational purposes, nor is it likely to become so.

Factor C. Disease or Predation

Disease and Parasitism

Disease and parasitism do not affect northern leatherside chub to a significant degree. It is likely that the species encounters natural diseases and parasites. However, we are not aware of any extant, wild population that was substantially impacted by a disease or parasite; no research project or collection effort has documented a disease or parasite problem.

There is no discussion of disease or parasites in the threats section of the Rangewide Conservation Agreement and Strategy for Northern Leatherside Chub (described in detail under Factor D below) (UDWR 2009, p. 32). However, one of the conservation elements in the Conservation Agreement and Strategy is 'Disease Management,' the goal of which is to determine the extent of infections, monitor any known infections, and prevent further infections by implementing biosecurity protocols (UDWR 2009, p. 37). An example of disease management already occurred in Utah, where UDWR raised a broodstock of wild northern leatherside chub and used progeny to repatriate (reintroduce a population) multiple sites (McKay *et al.* 2010, p. 1–3). Fishes brought into the hatchery setting were treated for internal and external parasites (Billman *et al.* 2008a, p. 274), ensuring that all restocked and progeny fish are pathogen-free (Harja 2009, p. 4). The UDWR also minimizes within-hatchery diseases, as demonstrated by their efforts to disinfect eggs for maximum survival (FES 2010, pp. 25, 26).

There are no known disease or parasite problems for the northern leatherside chub. We found no information that disease or parasites may act on this species to the point that the species itself may be at risk, nor is it likely to become so.

Predation

Northern leatherside chub are small minnows, and as such, are prey for larger fish and sometimes birds (Sigler and Sigler 1996, pp. 77–78). Historically, the main piscivorous (fish-eating) predator in northern leatherside chub habitats was cutthroat trout—Bonneville cutthroat trout (*Oncorhynchus clarkii utah*) in the Bear River subregion, and Yellowstone cutthroat trout (*Oncorhynchus clarkii bouvieri*) in the upper Snake River subregion (Greswell 1995, pp. 42–43; May and Albeke 2005, p. 20; Nannini and Belk 2006, p. 458; May *et al.* 2007, p. 15). However, these subspecies likely exerted moderately weak predation pressure on northern leatherside chub over much of their evolutionary history because cutthroat trout only become primarily piscivorous at larger sizes, when they tend to inhabit larger river systems where northern leatherside chub are typically not found (Walser *et al.* 1999, p. 276; Nannini and Belk 2006, pp. 458–459).

Weak predation pressure over evolutionary timescales often results in species losing strong antipredator responses, which in fish species includes escape (strong burst speeds) or concealment (effective camouflage) (Nannini and Belk 2006, pp. 453, 460). In contrast, short timescale adaptations to predation pressure include habitat shifts or populations of lower carrying capacity. Meeting this expectation, southern leatherside chub have slow and non-complex escape responses (Nannini and Belk 2006, p. 460) and respond to intense predation by shifting habitat usage (Walser *et al.* 1999, p. 272). Southern leatherside chub may be more vulnerable to predation risks than other native minnows because they lack effective predator responses, making them a preferred prey (Nannini and Belk 2006, p. 460).

Because they share similar ecological niches, such as habitat associations (Belk and Wesner 2010, p. 12) and native predators, we expect that northern leatherside chub have predator responses similar to southern leatherside chub and also are likely vulnerable to predation. By losing effective antipredator responses, northern leatherside chub were able to divert more energy to other life-history characteristics, such as foraging, reproduction, and growth (Nannini and Belk 2006, p. 460). This adaptation produces benefits under natural, evolutionarily historical conditions where northern leatherside chub primarily coexisted with other small-bodied fish and cutthroat trout species, but places it at a disadvantage when encountering highly predatory species.

One such predatory species is brown trout. Native to Europe and western Asia, brown trout is an introduced predator that was widely stocked throughout the United States for its value as a sportfish (Sigler and Sigler 1996, p. 205; Stoddard *et al.* 2005, pp. 11–12). Brown trout are highly predatory to the detriment of native fish communities, often out-competing and preying on native predators, while also consuming many small, native fish species (Garman and Nielsen 1982, p. 862; Behnke 1992, p. 54; Wang and White 1994, p. 475; Walser *et al.* 1999, p. 272; Budy *et al.* 2005, pp. xii–xiii, 58–73). Brown trout are now commonly distributed throughout adequate habitats in the Bear and upper Snake River subregions and have affected native fish in these areas. They have displaced native cutthroat species (Budy *et al.* 2005, p. xii), limiting cutthroat trout populations to mostly headwater streams where temperatures are generally too cold for brown trout survival. Therefore, it is likely that this introduced predator reduced the historical range of northern leatherside chub.

The closely related southern leatherside chub has altered habitat selection because of predation pressure by brown trout (Walser *et al.* 1999, p. 272). This outcome is not surprising, given that: (1) Piscivory is a dominant factor shaping fish community structure in stream ecosystems (Jackson *et al.* 2001, p. 157); (2) other prey species retreat to safer periphery habitat when faced with predation risks (Fraser *et al.* 1995, p. 1466); and (3) introduced populations of brown trout have affected native species worldwide (McDowall 2003, pp. 230–231). For example, in Diamond Fork Creek, Utah, southern leatherside chub inhabited less suitable, lateral habitats (cutoff pools and backwaters) when the main channel contained brown trout, despite the presence of suitable main channel microhabitats (Walser *et al.* 1999, p. 272). Because unoccupied main channel habitats were identical to those occupied in streams without brown trout, it is likely that southern leatherside chub select poorer quality habitat to avoid brown trout predation (Walser *et al.* 1999, p. 275). This hypothesis was confirmed on a broad geographic scale. In areas where brown trout populations overlapped with juvenile mountain sucker (*Catostomus platyrhynchus*) and southern leatherside chub, the latter two species used backwaters and cut-off pools almost exclusively, whereas in the absence of brown trout, they commonly used main channel pools (Olsen and Belk 2005, pp. 501, 503). This suggests that predation is an important factor affecting habitat use by small native fish, limiting them to areas of less suitable habitat.

Although considered poorer habitats than the main channel, lateral areas

likely offer native fish their only chance of persistence, because brown trout will prey on individuals in main channel habitats. Therefore, it is important to preserve lateral habitats where northern leatherside chub and brown trout overlap, because even with brown trout present, small native fish can survive with adequate habitat complexity (Olsen and Belk 2005, p. 504). Side channel habitats are only available in natural systems with adequate flow, not degraded or simplified systems, such as de-watered or channelized streams (Olsen and Belk 2005, p. 504). In the event that refuge areas are not available, it is not likely that northern leatherside chub populations can persist under such heavy predation pressure.

Based on an analysis of brown trout and southern leatherside chub, we expect that when refuge habitat is not available, brown trout predation exerts direct mortality on northern leatherside chub. Stream experiments revealed that southern leatherside chub are 16 times more likely to survive if brown trout are absent than if present (Nannini and Belk 2006, p. 458), which explains why lateral habitats are a safer option. For example, in Diamond Fork Creek, southern leatherside chub were absent in upstream areas without lateral habitats in 1999 (Walser *et al.* 1999, p. 276). Later, when flows were permanently reduced throughout Diamond Fork Creek by a water conveyance pipeline, lateral habitats disappeared completely and southern leatherside chub were soon extirpated from the entire system, presumably from brown trout predation (Hepworth and Wiley 2007, pp. 3–4).

Although brown trout and northern leatherside chub can co-occur, the presence of brown trout potentially impacts northern leatherside population densities in 3 of 14 populations (Jackknife Creek, Dry Fork Smiths Fork, and Muddy Creek). Brown trout were negatively correlated with the probability of encountering southern leatherside chub over many tributaries in the Sevier River drainage (Wilson and Belk 2001, p. 39). Areas with high densities of southern leatherside chub were always free of brown trout, and areas where the two species overlapped had consistent low densities of southern leatherside chub (Wilson and Belk 2001, p. 41). Low population densities are likely a result of cumulative losses of individuals to predation, preventing populations from reaching carrying capacity.

Even when brown trout do not inhabit the same location as northern leatherside chub, brown trout can exert indirect pressure on the species by acting as a migration barrier. Effective aquatic predators can act as a dispersal barrier by killing prey (Fraser *et al.* 1995, pp. 1461, 1468). Therefore, the predation pressure on main channel habitats (Walser *et al.* 1999, p. 272) may prevent northern leatherside chub from moving between populations, exacerbating an already fragmented species distribution. However, like resident fish, emigrants are more likely to survive migrations when complex habitat (through adequate water supply) is available (Gilliam and Fraser 2001, pp. 267, 270).

More broadly, predators can fragment an otherwise consolidated distribution of prey species, forcing the prey to abandon otherwise habitable areas for constricted peripheral locations (Fraser *et al.* 1995, p. 1461). In fact, it is possible that through past population extirpations combined with current migration impediments, brown trout are the cause of the current fragmentation of leatherside populations (Wilson and Belk 2001, p. 41).

An analysis of the range contraction of northern leatherside chub compared to brown trout stocking offers some insight into the relationship between the two species (current fish stocking policies are analyzed under Factor D). Between 1975 and 2005, the States of Utah and Wyoming stocked at least 2.28 million brown trout in the Bear River subregion (IDFG 2010c, entire; UDWR 2010, pp. 1–747; WGFD 2010, pp. 1–10). Recent surveys indicate that no extant northern leatherside chub populations are in close proximity to the stocking locations (Service 2011, pp. 33–34). While this could be simply an artifact of suitable habitat or preferential stocking locations, we conclude that the instances of historical extirpation combined with the ecological influences described above suggest a more causative effect.

Further support of this causative effect is documented in Utah. Between 1981 and 2005, approximately 400,000 brown trout were stocked in the Little Bear/Logan subbasin (UDWR 2010, pp. 1–747), where northern leatherside chub historically occurred but are no longer found (UDWR 2009, p. 42). Surveys of historical northern leatherside chub locations in the nearby Lower Bear subbasin also yielded no northern leatherside chub, but did document large numbers of brown trout (UDWR 2009, p. 42). Although there are no voucher specimens of northern leatherside chub for these historical locations, UDWR considers collections in the Little Bear River (four preserved skeletons) as reliable because of the reputation of the collector (W.F. Sigler) (McKay 2011, pers. comm.). It is not unreasonable to conclude that high densities of brown trout removed northern leatherside chub from these locations.

Stocking of brown trout also occurred in subbasins with extant northern leatherside chub. Near the Utah-Wyoming border, Utah and Wyoming stocked around 250,000 brown trout in the mainstem Bear River from 1980 to 1997, and Wyoming stocked around 500,000 in Woodruff Reservoir from 1985 to 1997 (UDWR 2010, pp. 1–45; WGFD 2010, pp. 7–10). These locations centralize an area of unoccupied habitat between the two sets of populations in the Upper Bear subbasin. In the Salt River subbasin, northern leatherside chub no longer occur in any tributaries stocked with brown trout. Lastly, Wyoming stocked around 250,000 brown trout in Sulphur Creek Reservoir, directly downstream of the Sulphur/LaChapelle Creeks population before 2000 (WGFD 2010, pp. 3–6), possibly isolating that population of northern leatherside chub completely. Therefore, it is possible that past stocking events and subsequent migration of brown trout shaped the current distribution of northern leatherside chub and could prevent many populations from interacting in the future.

Within the Snake River drainage, populations of northern leatherside chub persist in at least two streams where brown trout were historically stocked. In the Goose Creek subbasin, Nevada has not stocked brown trout since 1950 (Johnson 2010, pers. comm.), nor has Utah recently stocked any nonnative trout (Schaugaard and Thompson 2006, pp. 5–6). Idaho stocked about 5,500 brown trout in Trapper Creek in 1988 (IDFG 2010c, p. 10), but they did not persist, as rainbow trout are the only salmonid recently collected in the stream (Keeley 2010, pp. 3–4). Leatherside chub and brown trout also were found together at two sites in Jackknife Creek, but brown trout made up less than 6 percent of salmonid abundance at both sites (Univeristy of Wyoming 2010, pp. 1–4). In contrast, in the Twin Creek drainage, where a solely native fish community resides, two northern leatherside chub populations currently persist, with individuals in many tributaries (Colyer and Dahle 2010, p. 5).

The presence of brown trout can cumulatively intensify abiotic factors, such as reduced water level from drought or irrigation, or increased stream temperature from climate change (see discussion under Factor E). As was demonstrated in Diamond Fork Creek, reduced water levels force native, small-

bodied fish from refuge habitat to main channel habitat, where brown trout can easily prey on them. In fact, brown trout will prey on southern leatherside chub preferentially over redside shiner (Nannini and Belk 2006, p. 458). The relationship between water level and brown trout presence also potentially impacts migration patterns. Water levels do not affect prey fish movement in the absence of predators; however, water levels are an issue when predators are present (Gilliam and Fraser 2001, p. 270). In other words, when stream levels are low from drought or human use, northern leatherside chub are predicted to move freely if brown trout are absent, but will likely not move if brown trout are present. Water level is rendered influential only when a predator is present (Gilliam and Fraser 2001, p. 270).

Northern leatherside chub populations can endure if brown trout are absent or at very low densities. However, based on the ecological mechanisms described above and the lack of strong overlapping distribution, we conclude that future introduction of brown trout into streams with extant northern leatherside chubs, although not currently anticipated, would likely impact those populations.

Other salmonid species, both native and nonnative, could impact northern leatherside chub populations through predation as well. Although not normally as piscivorous as brown trout, introduced rainbow trout impact native fish communities worldwide (Lintermans 2000 in Blinn *et al.* 1993, p. 139; McDowall 2003, p. 231; Vigliano *et al.* 2009, p. 1406). In fact, rainbow trout likely influence habitat use, behavior, and distribution of another *Lepidomeda* species, the Little Colorado spinedace (*L. vittata*) (Blinn *et al.* 1993, pp. 141–142). The Little Colorado spinedace is similar to northern leatherside chub, in that it evolved without strong predation pressure but is now forced into suboptimal habitats by an introduced predator (Blinn *et al.* 1993, p. 142). We conclude that the introduction of rainbow trout also poses a threat, albeit less than brown trout, because rainbow trout exert similar nonnative predation pressure on northern leatherside chub.

Brook trout (*Salvelinus fontinalis*) are another nonnative trout species occurring in the northern leatherside chub's range. While brook trout are commonly referred to as carnivorous, voracious feeders, they primarily feed on insects throughout their life but will eat fish when possible (Sigler and Sigler 1996, p. 211). Amazingly, they are known to eat amphibians, reptiles, and mammals on rare occasions, demonstrating their variable diet (Sigler and Sigler 1996, p. 211). However, it is important to note that even large brook trout are not especially piscivorous (Sigler and Sigler 1996, p. 211), making them less of a predatory threat than either brown or rainbow trout.

The most likely impact of brook trout on northern leatherside chub is competition for available resources. Brook trout populations are known to become locally overabundant to the point that the size class of the population is stunted and resources are scarce (Sigler and Sigler 1996, pp. 212–213). However, brook trout inhabit coldwater habitats, such as cool, clear headwater streams and spring-fed streams and lakes (Sigler and Sigler 1996, p. 212). They seek water temperatures of 10 to 14.4 °C (50 to 58 °F), high-gradient streams (3 to 6 percent), and gravel substrate (Sigler and Sigler 1996, pp. 211–212; Nadolski 2008, p. 63). In contrast, northern leatherside chub occupy streams with higher temperatures (15.6 to 20 °C or 60 to 68 °F) (Sigler and Sigler 1996, p. 79), prefer low stream gradients (0.1 to 4 percent (Wilson and Belk 2001, p. 39)), and can tolerate sediment-laden habitats (UDWR 2009, p. 27).

Based on available information, we conclude that brook trout pose a very limited threat to northern leatherside chub even though brook trout occur both upstream and concurrently with 6 of 14 northern leatherside chub populations. Habitats that are occupied by northern leatherside chub are likely suboptimal for brook trout. While populations of the two species overlap, densities of brook trout are generally low in these locations, while densities of northern leatherside chub are generally stable and relatively high. We also conclude that upstream populations of brook trout are not a threat because many are characterized by abundant, small individuals that are not piscivorous and inhabit areas unlikely to support northern leatherside chub if they were removed (Nadolski 2008, pp. 78–79; WGFD 2009, p. 5). For example, at Deadman Creek, brook trout have seemingly overpopulated the portions upstream of a dense northern leatherside population (Nadolski 2008, p. 78). However, the brook trout population is comprised of small, sedentary, non-piscivorous fish (Nadolski 2008, p. 38; 2011 pers. comm.). We note that this is the only population where brook trout stomach contents have been collected, and it would improve our understanding of the species if more investigations studied the interactions between brook trout and northern leatherside chub. As discussed in more detail under Factor E (climate change), predation impacts from brook trout are not expected to increase if climate change predictions are accurate. Warming waters (either from increased air temperatures or drought conditions) may benefit northern leatherside chub and harm brook trout, as northern leatherside chub are more tolerant and ecologically adapted to warmer water temperatures.

The presence of native cutthroat trout species poses a very limited risk to northern leatherside chub persistence because cutthroat trout are a natural predator that does not exert excessive predation pressure. In fact, conservation actions that remove nonnative trout and introduce native cutthroat will likely produce beneficial effects to northern leatherside chub through reduced predation.

To fully assess the threat of nonnative trout, we assessed the probability that nonnative trout could currently alter populations or invade existing northern leatherside chub populations in the future. Fish stocking policies have recently changed, resulting in a large reduction of brown trout stocking in the area. An analysis of recent collection data shows that nonnative trout populations are nearby 8 of the 14 extant northern leatherside chub populations, although the number is reduced to only 5 when brook trout (which are less piscivorous) are excluded (Table 7).

TABLE 7—PRESENCE OF NONNATIVE SALMONIDS (BROOK, BROWN, AND RAINBOW TROUT) AND NATIVE CUTTHROAT TROUT AT EXTANT NORTHERN LEATHERSIDE CHUB POPULATIONS

National Hydrography Dataset Boundaries		Population	Presence of Salmonids	
Subregion	Subbasin		Nonnative (brook, brown, or rainbow)	Native cutthroat
Bear River	Upper Bear	Upper Mill/Deadman Creeks	Brook trout upstream	Yes.

TABLE 7—PRESENCE OF NONNATIVE SALMONIDS (BROOK, BROWN, AND RAINBOW TROUT) AND NATIVE CUTTHROAT TROUT AT EXTANT NORTHERN LEATHERSIDE CHUB POPULATIONS—Continued

National Hydrography Dataset Boundaries		Population	Presence of Salmonids	
Subregion	Subbasin		Nonnative (brook, brown, or rainbow)	Native cutthroat
		Upper Sulphur/La Chapelle Creeks.	No	Yes.
		Yellow Creek	No	Yes.
		Upper Twin Creek	No	Downstream.
		Rock Creek	No	Yes.
	Central Bear	Dry Fork Smiths Fork	Brown & brook trout downstream	Downstream.
		Muddy Creek	Brown & brook trout downstream	Downstream.
Snake River	Snake Headwaters	Pacific Creek	Brook trout present	Yes.
	Salt River	Jackknife Creek	Brown trout downstream	Yes.
	Goose Creek	Trapper Creek	Rainbow trout present	No.
		Beaverdam Creek	No	No.
		Trout Creek	No	Yes.
Green River	Upper Green River/Slate Creek.	North Fork Slate Creek	Brook trout upstream	No.
	Blacks Fork	Upper Hams Fork	Rainbow present/Brook trout upstream.	No.

In the Bear River subregion, the only populations accessible by nonnative trout are the Dry Fork Smiths Fork, Muddy Creek, and Upper Mill/Deadman Creeks populations. Although the Muddy Creek and Dry Fork Smiths Fork populations do not currently have nonnative trout in occupied northern leatherside chub habitat, downstream tributaries in the Smiths Fork drainage (not occupied by northern leatherside chub) contain brown and brook trout (Roberts and Rahel 2008, p. 951; Trout Unlimited 2010b, pp. 78–91, Table 6). Muddy Creek is accessible to these downstream populations, because there is no barrier separating the areas (Colyer and Dahle 2007, p. 8), but Dry Fork Smiths Fork is isolated by impassable culverts (Trout Unlimited 2010a, pp. 7–8, 10–12). However, the aquatic habitat in Muddy Creek is currently unsuitable for brown trout, likely preventing their colonization of the area. Brook trout are currently found upstream of occupied northern leatherside habitat in Deadman Creek, but not in the rest of the system (Nadolski and Thompson 2004, p. 3; Nadolski 2008, p. 78; Belk and Wesner 2011, pp. 1–4).

Although Sulphur Creek Reservoir, downstream of the Upper Sulphur/La Chapelle Creeks population, contains brown and rainbow trout, we conclude they cannot access northern leatherside chub habitat. Prior to 2000, the WGFD stocked thousands of brown trout in Sulphur Creek Reservoir (WGFD 2010, pp. 3–6), creating a possible source for colonization into the Upper Sulphur/La Chapelle Creeks population. However, no brown trout were collected in upstream reaches occupied by northern leatherside (Belk and Wesner 2011, pp. 1–4). Brown trout have not moved upstream likely because there are abundant food resources in the reservoir and habitat directly upstream of the reservoir is degraded by irrigation return flow (Amadio 2011, pers. comm.).

In the upper Snake River subregion, nonnative trout co-occur with leatherside chub in two of the five populations and are downstream of another population. Brown trout are found in lower reaches of Jackknife Creek and were previously shown to co-occur with northern leatherside chub (Isaak and Hubert 2001, pp. 6, 27), although more recently brown trout were not found at occupied northern leatherside chub sites (Keeley 2010, pp. 45–60). Although brook trout inhabit the same reach of Pacific Creek occupied by northern leatherside chub, they generally use different habitats (Grand Teton National Park 2009, p. 1). Introduced rainbow trout are documented in Trapper Creek (Keeley 2010, pp. 4–5), although information is lacking on what if any impact they have on the northern leatherside chub population.

In the Green River subbasin, both northern leatherside chub populations occur downstream of brook trout (WGFD 2009, pp. 1–5). In addition, low densities of rainbow trout occur in the Upper Hams Fork, but they are likely not reproducing (WGFD 2009, pp. 1–3).

Summary of Predation

Nonnative predators, especially brown trout, impact northern leatherside chub populations. In the presence of brown trout, leatherside chub occupy lateral habitats that could provide refuge against predation (Walser *et al.* 1999, p. 272), likely reducing reproductive and forage success. Brown trout hold leatherside chub populations at low density (Wilson and Belk 2001, p. 41), likely because leatherside chub are preferred prey (Nannini and Belk 2006, p. 458).

While the stocking of brown trout has been greatly reduced in recent years in several streams within the range of northern leatherside chub, established brown trout populations are likely sustainable in many locations, as shown in the Salt River subbasin (Isaak and Hubert 2001, p. 6). Currently, the distribution of brown and rainbow trout overlaps with northern leatherside chub populations only in a few locations (Trapper Creek, Upper Hams Fork, and the lowest portion of Jackknife Creek). Any changes in current stream conditions (i.e., changing water quality and temperatures) could facilitate upstream distributional shifts for these nonnatives, putting northern leatherside chub at increased risk of predation. For example, if the projected changes in climate warms waters across the western United States (EPA 2008, p. 8), brown trout could possibly move upstream into currently occupied northern leatherside chub habitats; however, we have no specific information to indicate that this is likely to happen.

In summary, we found no information that predation may act on this species to the point that the species itself may be at risk, nor is it likely to become so. Most populations (9 of 14) do not share habitats with nonnative trout of concern, and 3 of 5 potentially impacted populations occur where habitats are

likely not suitable for salmonids (i.e., Muddy Creek), contain migration barriers in the form of impassable culverts (i.e., Dry Fork Smiths Fork), or have only low densities of the nonnative rainbow trout (i.e., Upper Hams Fork). Therefore only two northern leatherside chub populations (in the Snake River subregion) may be vulnerable to the effects of nonnative trout. However, we have no information to indicate how the species and its habitats have been impacted. Brown trout occur in the lower reaches of Jackknife Creek, primarily downstream of northern leatherside chub populations in warmer waters (although they have been found to co-occur in past samples). Rainbow trout continue to co-occur with northern leatherside chub in Trapper Creek where the IDFG continues to stock nonnative rainbow trout into Oakley Reservoir. Because nonnative trout impact a small proportion of populations, predation does not act on this species to the point that the species itself may be at risk, nor is it likely to become so.

Summary of Factor C

At this time we know of no information that indicates that the presence of parasites or disease significantly affects northern leatherside chub, or is likely to do so. There is strong evidence that northern leatherside chub can be impacted by predation from nonnative trout, especially brown trout. Nonnative trout currently occur near or downstream to 5 of 14 northern leatherside chub populations. While these populations are more vulnerable to predation and other effects from nonnative trout, we have no information that indicates nonnative trout are currently impacting these populations or the species as a whole. We found no information that disease or predation may act on this species to the point that the species itself may be at risk, nor is it likely to become so.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

The Act requires us to examine the inadequacy of existing regulatory mechanisms with respect to extant threats that place northern leatherside chub in danger of becoming either endangered or threatened. Regulatory mechanisms affecting the species fall into three general categories: (1) Land management; (2) State mechanisms; and (3) Federal mechanisms.

Land Management

Land ownership in the entire upland watershed affects aquatic habitats because land activities distribute effects downslope into the stream corridor. Subwatersheds harboring populations of northern leatherside chub are distributed across BLM, private, State, USFS, and National Park Service (NPS) lands and incur varying regulatory mechanisms depending on land ownership (USFWS 2011, pp. 11–17). The following section provides a brief description of how land ownership affects regulatory mechanisms where extant northern leatherside chub populations occur. We first analyze the land ownership of the entire upland area to analyze general effects, and then analyze local riparian corridor ownership to investigate more local effects.

Currently occupied northern leatherside chub streams are contained in 14 populations based on subwatersheds (HUC12) covering approximately 242,864 hectares (938 square mi). Land ownership in occupied subwatersheds is comprised of privately owned land (31.5 percent in the States of Idaho, Nevada, Utah, and Wyoming), as well as lands managed by BLM (30 percent), NPS (3.5 percent), USFS (30.5 percent), and the States of Wyoming (4.3 percent) and Idaho (0.04 percent) (Service 2011, pp. 11–17). Aside from the subwatersheds in the Upper Bear River subbasin (Upper Mill/Deadman Creeks, Upper Sulphur/La Chapelle Creeks, and Yellow Creek), which are almost entirely privately owned, most northern leatherside chub subwatersheds are affected by upstream lands that are managed by the BLM and the USFS, or the NPS for Pacific Creek (Table 8). However, more than three-quarters of northern leatherside chub subwatersheds have some, or their entire, occupied habitat on private lands, which typically encompasses the wetted channel and the riparian buffer surrounding the stream (Table 9).

TABLE 8—LAND OWNERSHIP BY PERCENT OF SUBWATERSHEDS (12-DIGIT HUC) WITH NORTHERN LEATHERSIDE CHUB POPULATIONS

Population name	Upland watershed land ownership by entity (% land owned)				
	BLM	Private	State	USFS	NPS
Bear River Subregion					
Upper Mill/Deadman Creeks	0	68	1	31	0
Upper Sulphur/La Chapelle Creeks	6	88	6	0	0
Yellow Creek	1	95	4	0	0
Upper Twin Creek	77	14	6	0	3
Rock Creek	61	19	10	0	10
Dry Fork Smiths Fork	40	26	10	24	0
Muddy Creek	63	19	18	0	0
Total	45	41	8	3	3
Snake River Subregion					
Pacific Creek	0	4	0	48	48
Jackknife Creek	1	5	0	94	0
Trapper Creek	12	5	1	82	0
Beaverdam Creek	19	8	1	72	0
Trout Creek	41	8	0	51	0
Total	9	5	<1	71	15

TABLE 8—LAND OWNERSHIP BY PERCENT OF SUBWATERSHEDS (12-DIGIT HUC) WITH NORTHERN LEATHERSIDE CHUB POPULATIONS—Continued

Population name	Upland watershed land ownership by entity (% land owned)				
	BLM	Private	State	USFS	NPS
Green River Subregion					
North Fork Slate Creek	88	9	3	0	0
Upper Hams Fork	12	13	2	73	0
Total	30	13	2	55	0

TABLE 9—ESTIMATED LAND OWNERSHIP IN MILES FOR OCCUPIED HABITAT OF NORTHERN LEATHERSIDE CHUB POPULATIONS

Population name	Land ownership of occupied habitat					Approximate river miles of occupied habitat
	BLM (percent)	Private (percent)	State (percent)	USFS (percent)	NPS (percent)	
Bear River Drainage						
Upper Mill/Deadman Creeks	0	100	0	0	0	10
Upper Sulphur/La Chapelle Creeks	0	100	0	0	0	15
Yellow Creek	2	96	2	0	0	27
Upper Twin Creek	40	40	20	0	0	9
Rock Creek	30	70	0	0	0	3
Dry Fork Smiths Fork	65	35	0	0	0	3
Muddy Creek	5	0	95	0	0	5
Snake River Drainage						
Pacific Creek	0	0	0	0	100	2
Jackknife Creek	0	0	0	100	0	8
Trapper Creek	15	60	0	25	0	8
Beaverdam Creek	20	50	0	30	0	3
Trout Creek	10	90	0	0	0	5
Green River Drainage						
North Fork Slate Creek	80	20	0	0	0	9
Upper Hams Fork	10	15	15	60	0	10
Total Estimated River Miles	.....	.....	.....	.....	.....	117

Quantifying riparian habitat ownership for areas surrounding occupied northern leatherside chub stream reaches required an internal investigation. No published information is available regarding the number of river-kilometers occupied by northern leatherside chub populations; therefore, we calculated a basic estimate by using presence and absence data supplied by various researchers and agencies. Our estimate indicates that occupied river-kilometers for northern leatherside chub are approximately 188 km (117 mi). This total includes approximately 115 km (72 mi) on private land in Idaho, Nevada, Utah, and Wyoming; 29 km (18 mi) on lands managed by the BLM; 14 km (9 mi) on lands managed by the States of Wyoming and Idaho; and 3 km (2 mi) and 27 km (17 mi) on lands managed by the NPS and USFS, respectively (Table 9). Thus, a total of 61 percent of the estimated occupied northern leatherside chub habitat in the 4–State area occurs on privately owned land (Service 2011, pp. 11–17).

Subwatersheds with significant portions of federally owned land allow for greater regulatory control over land management practices (oil and gas development, grazing, water development, mining, etc.) that have the potential to negatively affect northern leatherside chub populations and their habitat. Federal agencies conduct land management activities under various legislations (see Federal Mechanisms below) that do not apply to private lands. On private lands, the Clean Water Act (CWA; 33 U.S.C. 1251 *et seq.*) and State mechanisms (see below) are the primary regulatory mechanisms that regulate land use activities.

State Mechanisms

Collection or Possession

Northern leatherside chub are considered ''prohibited'' species under the Utah Collection Importation and Possession of Zoological Animals Rule (R–657–3–1), making them unlawful to collect or possess (UAC 2011, pp. 18–19). These species receive protection from unauthorized collection and take. In Wyoming, the use of live baitfish is prohibited throughout the range of northern leatherside chub and very few live baitfish collection licenses are sold in the Bear River drainage. Persons that have these permits collect baitfish on a small scale for individual use (Miller *et al.* 2009, pp. 3–4) (see discussion under Factor B). The State of Idaho has classified northern leatherside chub as a ''Protected Nongame'' species, and State

regulations specify that no person shall take or possess such species at any time or in any manner except as provided for in authorized circumstances (Schriever 2009, p. 1). Northern leatherside chub are not listed as a protected species in the State of Nevada; however, the use of live baitfish is prohibited in the State within the species' range, and the NDOW monitors collection of rare species by researchers (UDWR 2009, pp. 32–33). These policies are adequately protecting northern leatherside chub from overutilization (see Factor B discussion) and are not expected to change in the future.

Conservation and Protection

The States of Idaho, Wyoming, Nevada, and Utah provide protection and conservation direction for northern leatherside chub under their State comprehensive wildlife conservation strategies, which are required by the Service for a State wildlife agency to receive State wildlife grants. In addition, all States within the range of the species are signatory to the ''Rangewide Conservation Agreement and Strategy for Northern Leatherside''. The goals of this document are to ensure the long-term persistence of the northern leatherside chub within its historical range and to support the development of multi-State conservation efforts through coordinated conservation actions and regulatory consistency. The objectives of the document are to identify and reduce threats to northern leatherside chub and its habitat, determine the existing range of the species, maintain and monitor existing self-sustaining populations and their habitat, restore populations at selected localities within the historical range, augment selected populations if necessary, maintain genetic diversity, and pursue additional research questions (UDWR 2009, p. 1). Other signatories to the document include the Service, BLM, NPS, Bureau of Reclamation, USFS, Trout Unlimited, and The Nature Conservancy (UDWR 2009, pp. 2–3). While we do not rely on these strategies for our finding, they are extremely valuable because they help prioritize conservation actions within each State and form partnerships across the species' range (UDWR 2009, entire). These policies are not expected to change in the future.

Fish Stocking

The UDWR follows their Policy for Fish Stocking and Transfer Procedures, and no longer stocks nonnative fish into northern leatherside chub habitat (UDWR 2009, p. 32). This Statewide policy specifies protocols for the introduction of nonnative species into Utah waters and states that all stocking actions must be consistent with ongoing recovery and conservation actions for State of Utah sensitive species, including northern leatherside chub. The Nevada Board of Wildlife Commissioners has enacted Commission Policy Number 33, which states that waters or reaches of waters managed as ''wild'' or ''native'' will not be stocked with hatchery trout (State of Nevada Board of Wildlife Commissioners 1999, p. 5). This includes northern leatherside chub waters; therefore, no stocking is done within the range of the species in Nevada (Johnson 2011b, pers. comm.). In Wyoming, northern leatherside chub waters were historically stocked. There is now better awareness of northern leatherside chub-occupied habitat, and the State generally does not stock in these waters (Miller 2011, pers. comm.). The State of Idaho operates similar to Wyoming, and there is an informal policy that discourages stocking of salmonids in northern leatherside chub habitat (Grunder 2011, pers. comm.). Although we did not rely on these policies for our finding, the implementation of such policies affords adequate protection to northern leatherside chub. These policies are not expected to change in the future.

Water Rights

To a considerable extent, water rights are managed under State law in the four States with northern leatherside chub-occupied habitat. The doctrine of prior appropriation or ''first in time—first in right'' is the basis for administering surface water rights, and each State does so via a State agency, a State Engineer, or some combination of the two (BLM 2001, entire). As discussed under Factor A (Water Development), much of the northern leatherside chub-occupied habitat was historically impacted by surface water development and diversion. Currently, occupied subwatersheds in Utah and Idaho are closed to new water appropriations for any significant consumptive use such as large-scale irrigation (Dean 2011, pers. comm.; Jordan 2011, pers. comm.). However, subwatersheds occupied by northern leatherside chub in Nevada and Wyoming are still open to new water appropriations (Randall 2011, pers. comm.; Jacobs and Brosz 2000, p. 7). As described under Factor A (Water Development), this level of water development is not a significant threat to extant populations of northern leatherside chub because populations are able to reoccupy temporarily dewatered areas when flows return, and because low water conditions do not threaten the species because they evolved to persist in drought conditions. Future water development in Utah and Idaho is limited, and limited increases in surface water usage are predicted for Nevada (Randall 2011, pers. comm.) and Wyoming (Schroeder and Hinckley 2007, pp. 6–2 to 6–4) within the range of the species, indicating that water development in these States is not a significant threat, nor is it likely to become so. Available information indicates that the State regulatory mechanisms in existence adequately protect the northern leatherside chub from the threat of reduction of habitat due to water development projects.

Federal Mechanisms

The major Federal mechanisms for protection of northern leatherside chub and its habitat are through the CWA section 404 permitting process, the CWA section 303(d) impaired water body list, and the National Environmental Policy Act (42 U.S.C. 4231 *et seq.*) (NEPA). Various Executive Orders (11990 for wetlands, 11988 for floodplains, and 13112 for invasive species) provide guidance and incentives for Federal land management agencies to manage for habitat characteristics essential for conservation. As explained below, Federal land management agencies (BLM, USFS, and NPS) have legislation that specifies how their lands are managed for sensitive species.

As stated above in the Land Management section, approximately two-thirds of the lands in subwatersheds with northern leatherside chub are managed by Federal land agencies, and approximately one-third of all occupied stream miles are on these lands. The northern leatherside chub is designated as a sensitive species by the BLM in Utah, Wyoming, Nevada, and Idaho. The policy in BLM Manual 6840-Special Status Species Management states: ''Consistent with the principles of multiple use and in compliance with existing laws, the BLM shall designate sensitive species and implement species management plans to conserve these species and their habitats and shall ensure that discretionary actions authorized, funded, or carried out by the BLM would not result in significant decreases in the overall range-wide species population and their habitats'' (BLM 2008, p. 10). BLM land management practices are intended to avoid negative effects whenever possible, while also providing for multiple-use mandates; therefore, maintaining or enhancing northern

leatherside chub habitat is being considered in conjunction with other agency priorities. Available information indicates that BLM management policies are currently adequately reducing impacts to northern leatherside chub on BLM land.

The USFS Sensitive Species Policy in Forest Manual 2670 outlines procedures for conserving sensitive species. The policy applies to projects executed under the 1982 National Forest Management Act (NFMA) implementing regulations. The range of the northern leatherside chub is within USFS Region 4 (Intermountain Region), where it is designated a sensitive species by the USFS (USFS 2010, p. 5), and where the National Forests have land and resource management plans developed under NFMA. The USFS manuals and handbooks codify the agency's policy, practices, and procedures and are sources of administrative direction for USFS employees.

The USFS Region 4 applies practices outlined in their Soil and Water Conservation Practices Handbook to northern leatherside chub habitat (USFS 1988, pp. 1–71). This handbook states that the USFS will apply watershed conservation practices to sustain healthy soil, riparian, and aquatic systems. The handbook provides management measures with specific criteria for implementation. For example, Management Measure No. 11.01 states: ''The Northern and Intermountain Regions will manage watersheds to avoid irreversible effects on the soil resource and to produce water of quality and quantity sufficient to maintain beneficial uses in compliance with State Water Quality Standards.'' Irreversible effects include reduced natural woody debris, excess sediment production that could reduce fish habitat, water temperature and nutrient increases that could affect beneficial uses, and compacted or disturbed soils that could cause site productivity loss and increased soil erosion. The USFS land management practices are intended to avoid these effects whenever possible, while also providing for multiple-use mandates; therefore, maintaining or enhancing northern leatherside chub habitat is being considered in conjunction with other agency priorities. Available information indicates that USFS and BLM management policies are adequately reducing impacts to northern leatherside chub on USFS land.

The National Park Service Organic Act (16 U.S.C. 1 *et seq.*) specifies that the NPS will ''promote and regulate the use of the Federal areas known as national parks, monuments, and reservations * * * which purpose is to conserve the scenery and the natural and historic objects and the wild life 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.'' Consequently, livestock grazing, timber harvest, mining, and water development do not occur in Grand Teton National Park. The 2006 NPS Management Policies' section 4.4.1.1 (Plant and Animal Population Management Principles) states that the NPS will maintain all native plant and animal species and their habitats inside parks. In addition, these policies state that ''the (National Park) Service will work with other land managers to encourage the conservation of the populations and habitats of these species outside parks whenever possible'' (NPS 2006, p. 43). The implementation of previously described policies should afford some protection to northern leatherside chub. Available information indicates that NPS statutes, regulations, and management policies adequately reduce impacts to the species.

The NEPA provides authority for the Service to assume a cooperating agency role for Federal projects undergoing evaluation for significant impacts to the human environment. This includes participating in updates to resource management plans. As a cooperating agency, we have the opportunity to provide recommendations to the action agency to avoid impacts or enhance conservation for northern leatherside chub and its habitat. For projects where we are not a cooperating agency, we often review proposed actions and provide recommendations to minimize and mitigate impacts to fish and wildlife resources. Acceptance of our NEPA recommendations is at the discretion of the action agency. The BLM and USFS land management practices are intended to ensure avoidance of negative effects to species whenever possible, while also providing for multiple-use mandates; therefore, maintaining or enhancing northern leatherside chub habitat is considered in conjunction with other agency priorities. We determine that NEPA and its implementing regulations and policies are currently adequately reducing impacts to northern leatherside chub.

The CWA is the primary legislation protecting water quality in U.S. aquatic habitats and establishes a process to identify and clean polluted waters. Section 303(d) of the CWA requires each State to develop a list of impaired waters, defined as a waterbody that does not meet certain water-quality uses (CWA 1977, entire). States must evaluate all existing and readily available information in developing their lists of impaired waters (EPA 2002, p. 9). There are several established water quality uses including drinking water supply, swimming, and aquatic life support (EPA 2002, p. 11). To meet the aquatic life support use, a waterbody must provide suitable habitat for a balanced community of aquatic organisms (EPA 2002, p. 11). Best professional judgment, along with numeric and narrative criteria created by the State and the EPA, is considered when evaluating the ability of a water body to serve its uses.

Northern leatherside chub population areas contain wetland and stream habitats, and section 404 of the CWA regulates fill in wetlands and streams that meet certain jurisdictional requirements. Activities that result in fill of jurisdictional wetland and stream habitat require a section 404 permit. We can review permit applications and provide recommendations to avoid and minimize impacts and to implement conservation measures for fish and wildlife resources, including the northern leatherside chub. However, incorporation of Service recommendations into section 404 permits is at the discretion of the U.S. Army Corps of Engineers (Corps). In addition, not all activities in wetlands or streams involve fill and not all wetlands or streams fall under the jurisdiction of the Corps. Regardless, earlier in this finding we evaluated threats to northern leatherside chub habitat where fill of wetlands or streams may occur, including mining and oil and gas development. We found no information indicating that impacts from stream or wetland fill are acting on the species to the point that the species itself may be at risk, nor is it likely to become so.

Summary of Factor D

Available information indicates that land management regulatory mechanisms are sufficiently minimizing and mitigating potential threats from land development to extant northern leatherside chub populations. The BLM and USFS continue to work with permittees on Federal lands to implement beneficial land use practices and minimize impacts. The BLM and USFS have provided protective mechanisms for conservation agreement and sensitive species, including the northern leatherside chub, which can minimize impacts from oil and gas drilling, mining, and grazing. We have the ability to comment on NEPA evaluations for other projects on BLM

and USFS lands that may impact the northern leatherside chub. The NPS mandate to conserve wildlife and leave it unimpaired has allowed NPS lands to currently be adequately and sufficiently protected and will sufficiently minimize future threats on NPS-managed lands. As discussed above, the BLM, USFS, and NPS are also signatories to the ''Rangewide Conservation Agreement and Strategy for Northern Leatherside'', the goals of which are to ensure the long-term persistence of the northern leatherside chub and to support the development of multi-State conservation efforts through coordinated conservation actions and regulatory consistency. As signatories to this conservation strategy these agencies are addressing issues related to the northern leatherside chub.

Although regulatory mechanisms are not in place to sufficiently protect the northern leatherside chub from local or large-scale water withdrawal and development in Wyoming and Nevada, projected development in these States should be minimal in the areas where northern leatherside chub occurs (see Factor A: Water Development for more information regarding water withdrawal and development). We found no information that inadequacy of existing regulatory mechanisms may act on this species to the point that the species itself may be at risk, nor is it likely to become so.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Natural and manmade threats to northern leatherside chub include: (1) Hybridization; (2) climate change; and (3) cumulative effects of all activities that may impact the species.

Hybridization

Hybridization can be a concern for some fish populations. An introgressed population can result when a genetically similar species is introduced into or invades northern leatherside chub habitat, the two species interbreed (i.e., hybridize), and the resulting hybrids survive and reproduce. If the hybrids backcross with one or both of the parental species, genetic introgression occurs (Schwaner and Sullivan 2009, p. 198). Continual introgression can eventually lead to the loss of genetic identity of one or both parent species, thus resulting in a ''hybrid swarm'' consisting entirely of individual fish that often contain variable proportions of genetic material from both of the parental species (Miller and Behnke 1985, p. 514).

Hybridization is commonly associated with disturbed environments (Helfman 2007, p. 215) because in natural, complex habitats, different species are able to reproduce separately by using different habitat types. Additionally, disturbances allow dispersal of species to habitats where they did not naturally occur. For example, water diversions and transfers may allow isolated habitat that previously held distinctly separate populations (allopatric) to overlap habitats (sympatric) and present an opportunity for hybridization to occur.

We are aware of a historical record that fish collections from Sulphur Creek in the Bear River subregion contained redside shiner x leatherside chub hybrids and that it is possible for leatherside chub to hybridize with speckled dace (Baxter and Stone 1995, pp. 70–71); however, we do not know how this determination was made (i.e., morphologically or via genetic analysis), or when these fish were collected. Northern leatherside chub populations coexist with speckled dace in La Chapelle, Mill, Sulphur, and Yellow Creeks, where both species are native to these drainages (Amadio *et al.* 2009, p. 1). Examination of northern leatherside chub from these drainages using morphological characteristics suggested that populations in La Chapelle Creek and Yellow Creek were genetically pure, but that specimens from the other two creeks exhibited intermediate morphological characteristics of both species, thereby suggesting potential hybridization. However, subsequent genetic analysis determined that there was no evidence of genetic mixing; thus we conclude that hybridization is not occurring in these drainages at significant levels (Amadio *et al.* 2009, entire). Although no other hybridization-specific studies were conducted on northern leatherside chub, other recent genetic investigations have not documented hybridization in extant northern leatherside chub populations (Johnson and Jordan 2000, entire; Johnson *et al.* 2004, entire).

In summary, recent examination of northern leatherside chub from habitats where potential northern leatherside chub hybrids were historically found has determined that hybridization is not present. Genetically pure northern leatherside chub still occur at these sites, and no new evidence of hybridization has surfaced. Despite the historical supposition of hybridization in some localized areas, there are no known new occurrences. We found no information that hybridization may act on this species to the point that the species itself may be at risk, nor is it likely to become so.

Climate Change

Stream conditions across the range of the northern leatherside chub are shaped by regional climatic conditions, primarily precipitation and temperature. Water and precipitation is limited in this arid region. Seasonally, conditions range from cold, snowy winters to hot, dry summers. Annually, extended oscillations between wet and dry periods also are common (Barnett *et al.* 2008, p. 1080). Hydrological patterns are dominated by high-elevation snow accumulation that subsequently supports spring runoff and groundwater recharge (Haak *et al.* 2010, p. 1). Northern leatherside chub evolved in this arid ecosystem, demonstrating their ability to withstand historical climatic variability, including drought conditions.

Predictions of future climatic conditions can no longer rely on analysis of past climatic trends, but must instead take into account predicted global climate change. Both the Intergovernmental Panel on Climate Change and the U.S. Global Climate Change Program conclude that changes to climatic conditions, such as temperature and precipitation regimes, are occurring and are expected to continue in western North America over the next 100 years (Parson *et al.* 2000, p. 248; Smith *et al.* 2000, p. 220; Solomon *et al.* 2007, p. 70, Table TS.76; Trenberth *et al.* 2007, pp. 252–253, 262–263). Climate variability adds uncertainty to predictions of water availability in stream systems, both in volume of water and timing of flows (Haak *et al.* 2010, p. 2). Therefore, it is important to consider how future climatic conditions may impact northern leatherside chub.

In western North America, surface warming and precipitation changes resulting in reduced mountain snowpack (Trenberth *et al.* 2007, p. 310; Mote *et al.* 2005 and Regonda *et al.* 2005, cited in Vicuna and Dracup 2007, p. 330) and a trend toward earlier snowmelt (Stewart *et al.* 2004, pp. 217, 219, 223) are climatic conditions most likely to impact stream ecosystems (Field *et al.* 2007, p. 619; EPA 2008, p. 11; American Fisheries Society 2010, p. 7). Less snow accumulation, along with earlier and more rapid snowmelt, can affect physical ecosystem properties in many ways, such as: Reducing aquifer recharge and groundwater supplies for consistent stream flows; increased water temperatures associated with lower summer stream flows; increased spring flooding from rain storms onto snowpack; increased wildfire risk from earlier snowmelt and drier vegetation;

and prolonged drought conditions (American Fisheries Society 2010, p. 11; many citations in Haak *et al.* 2010, p. 2). The alterations, especially reduction in consistent flows and increased water temperatures, also will have a myriad of biotic ecosystem effects, including: Reduction in available aquatic habitat and resources (increasing competition, while simultaneously reducing carrying capacity); alteration of migration and reproduction patterns; shifting species assemblages as suitable conditions move geographically; and increased nonnative species invasions (Helfman 2007, pp. 185–186; American Fisheries Society 2010, p. 11). Out of this large set of impacts, we will analyze the following potential impacts of climate change on northern leatherside chub because they are the most likely to negatively impact the species: Increased chance of extreme events (spring floods, severe wildfire, and prolonged drought); shift in distribution to higher elevation or latitude; and upstream shift of nonnative trout.

Increased Chance of Extreme Events

The first potential impact from climate change is increased likelihood of extreme events, such as spring floods, wildfire, and drought. Because northern leatherside chub populations mostly occur in small, localized areas and in smaller streams, a localized extreme event that alters stream conditions to lethal levels could extirpate a local population isolated or fragmented from other populations. Furthermore, isolated populations are at a greater risk of extirpation because recolonization following the event may be precluded (American Fisheries Society 2010, p. 9). The three most likely extreme events that would affect northern leatherside chub are atypical spring floods, severe wildfire, and prolonged drought. Northern leatherside chub seemingly have a tolerance of short-term, extreme environmental conditions (Belk and Johnson 2007, pp. 70–71), suggesting the species may be able to adapt to short-term disturbances resulting from climate change.

Uncharacteristic flooding may be a large stressor for fish species (Williams *et al.* 2009, p. 533; American Fisheries Society 2010, p. 7), especially small-bodied individuals (Harvey 1987, p. 851) like the northern leatherside chub. A flood event could wash individuals from local habitats, carrying them downstream to unsuitable habitats, such as reservoirs, mainstem channels, or even onto upland habitat, or could cause direct mortality (Poff 2002, p. 1500). Even if individuals survived, they may not be able to return to their native location if they were carried over fish barriers. As an example of this for closely related minnow species, biologists hypothesize that a monsoonal flood event in Clay Creek, a tributary to the East Fork of the Sevier River, may be responsible for the extirpation of aquatic populations, including the southern leatherside chub (Golden *et al.* 2009, p. 2; Borden and Cox 2010, p. 2). The likelihood of entrainment during flood conditions is reduced because canals carry less percentage of the river into the canal and during high flows, most canals are closed to preserve infrastructure and fields likely have enough water.

All species of native fish could be impacted by wildfire effects, elevating the topic to a primary concern for western forest ecosystem management (Rinne 2004, p. 151). Severe wildfires (complete denuding of landscape and death of all vegetation) can alter stream systems both instantaneously (ash inputs changing water chemistry or flames heating stream water) and chronically (debris and sediment inputs from denuded uplands, or water warming from lack of riparian vegetation) (multiple citations in American Fisheries Society 2010, p. 9). These changes cannot only cause fish mortality and population loss, but also have long-term effects on the food web through macroinvertebrate mortality (Rinne 1996, p. 653). Severe wildfire events have caused documented local extirpation events for multiple salmonid populations in the western United States (Rinne 1996, p. 653; 2004, p. 151), but in areas where nearby source populations exist, recolonization has occurred (Howell 2006, p. 983). We expect similar responses from northern leatherside chub because severe wildfires often produce conditions that are more extreme than the occupied habitats discussed in previous sections, such as under Factor A: Grazing. Additional impacts arise from fire suppression efforts that can create physical disturbances (increased erosion and overland flow, temporary reduction or cessation of flows in small streams when drafting or dipping water (Backer *et al.* 2004, p. 939, Table 1), or chemical disturbances (commonly used fire retardants and suppressant foams are toxic to aquatic species)) (Gaikowski *et al.* 1996, p. 252; Buhl and Hamilton 2000, p. 408; McDonald *et al.* 1996, p. 63). It is possible that a severe wildfire could threaten northern leatherside chub through both immediate and long-term effects.

Northern leatherside chub are resilient to moderate wildfire conditions (charred landscape but some vegetation remains). For example, a 1991 fire centered in the Trail Creek portion of the Jackknife Creek subwatershed (Snake River subregion) did not extirpate the population (Isaak and Hubert 2001, p. 27). Five years after the fire, individuals were found in multiple locations throughout the Jackknife Creek subwatershed, indicating population persistence (Isaak and Hubert 2001, pp. 26–27). It is worth noting that the entire subwatershed was not burned and that individuals caught in 1996 may be emigrants from a nearby population from the tributary Squaw Creek. Regardless, northern leatherside chub were found to be persisting in the still degraded post-fire Trail Creek area, with stream temperatures often exceeding 23 °C (73 °F) in the summer because of a lack of riparian cover (Isaak and Hubert 2001, p. 27).

Prolonged drought is the third category of extreme event we considered as a potential threat to northern leatherside chub. Prolonged drought alters stream conditions by reducing available water, leading to diminished habitat and habitat of lower quality (e.g., increased temperature, decreased oxygen) (Helfman 2007, p. 184). The presence of suitable water conditions in streams is fundamentally linked to the distribution, reproduction, fitness, and survival of fish species (Helfman 2007, p. 97; American Fisheries Society 2010, p. 7). Less available habitat space causes niches to overlap, increasing predatory pressure on prey species and competitive pressures throughout the food web, and causing an overall reduction in carrying capacity and supported biomass (Helfman 2007, p. 13). Northern leatherside chub diets overlap with many other native fish species (Bell and Belk 2004, p. 414), and they are a prey species for others, demonstrating that these biotic effects could potentially arise.

Prolonged drought also has a human component, as drought conditions generally lead to increased irrigation demands on stream and groundwater resources (Alley *et al.* 1999, pp. 20–21). This suggests that human demands could exacerbate natural drought conditions created by climate change (EPA 2008, p. 12). Additionally, within the Bear River subbasin, irrigation canals might take larger percentages of the river flow in low-flow years, which would likely entrain a correspondingly higher percentage of fish, including northern leatherside chub (Gale *et al.* 2008, p. 1546), but the relationship may not be one to one (Hanson 2001, p. 331).

All of these disturbance events currently occur in localized areas across the species' range. Nevertheless, future

climate conditions may increase the severity or frequency of the events (EPA 2008, p. 11). To test this possibility, the USGS and Trout Unlimited recently analyzed how predicted future climatic conditions would alter the risk of extreme floods, wildfire, and drought for all subbasins containing inland native trout species. With this information they produced risk classifications applied at the subwatershed scale (Haak *et al.* 2010, pp. 1–16; Service 2011, pp. 1–4). Because the risk of these three events are species-independent (results are based on climate, elevation, etc., and not species characteristics), and because northern leatherside chub distribution overlaps with Yellowstone, Bonneville, and Colorado River cutthroat trout, the risk models created in this report can be applied to all extant northern leatherside chub populations.

Researchers used existing broad-scale data, combined with local drainage characteristics, to describe potential future disturbance regimes (Haak *et al.* 2010, pp. 5–16). Using their results, we determined potential risk to northern leatherside chub populations from these disturbances. All extant northern leatherside chub populations had a low risk of extreme winter flooding except the three populations in the Goose Creek subbasin, which had moderate risk resulting from a future forecasted transition from snow to snow/rain mix (Table 10) (Haak *et al.* 2010, pp. 9, 30, 59; Service 2011, pp. 1–4). Rangewide, all northern leatherside chub populations occur in watersheds assessed at high risk for increased wildfires because they inhabit elevational bands that are expected to have earlier snowmelt and subsequent longer fire seasons, except the Goose Creek subbasin (Table 10) (Haak *et al.* 2010, pp. 12, 30, 59; Service 2011, pp. 1–4). However, wildfire effects will likely be local in scale and we expect northern leatherside chub can either retreat to habitat refuges during a fire, or recolonize extirpated areas after a fire has ended because most populations have a recolonization potential. All populations except for the Pacific Creek population (moderate risk from higher elevation and higher mean precipitation) were at a high risk for future forecasted drought impacts (Table 10) (Haak *et al.* 2010, pp. 15, 31, 60; Service 2011, pp. 1–4).

TABLE 10—RISK ASSESSMENT OF NORTHERN LEATHERSIDE CHUB POPULATIONS [HAAK *et al.* 2010]

National hydrography dataset subbasin	Population	Risks classifications from USGS climate change paper		
		Flood	Wildfire	Drought
Upper Bear	Upper Mill/Deadman Creeks	Low	High	High.
	Upper Sulphur/La Chapelle Creeks	Low	High	High.
	Yellow Creek	Low	High	High.
	Upper Twin Creek	Low	High	High.
	Rock Creek	Low	High	High.
Central Bear	Dry Fork Smiths Fork	Low	High	High/Moderate.
	Muddy Creek	Low	High	High.
Snake Headwaters	Pacific Creek	Low	High	Moderate.
Salt River	Jackknife Creek	Low	High	High.
Goose Creek	Trapper Creek	Moderate	Low	High.
	Beaverdam Creek	Moderate/High	Low	High.
	Trout Creek	Moderate/High	Low	High.
Upper Green River/Slate Creek	North Fork Slate Creek	Low	High	High.
Blacks Fork	Upper Hams Fork	Low	High	High/Moderate.

This analysis demonstrates that most subwatersheds harboring northern leatherside chub (11 of 14) are at risk for increased wildfire impacts. Even more strikingly, all extant northern leatherside chub populations are at risk for increased drought conditions because local conditions will not mitigate predicted regional extreme drought. However, most northern leatherside chub populations (11 of 14) are not at risk for increased flooding caused by earlier rain on snow events.

Based on this analysis we conclude that enhanced spring flooding is not a threat to populations of northern leatherside chub because only a fraction of the populations are at risk from this factor. Northern leatherside chub populations assessed at moderate to moderate/high risk of spring flooding occur in the Goose Creek subbasin, Snake River subregion. Spring flooding could be a factor or become a threat depending upon the magnitude of the flooding event, which could displace fish downstream into reservoir habitats where predation is a concern or strand individuals into unsuitable habitats or out of the water channel.

Although there is evidence that wildfire risks will increase, we conclude that wildfire also is not a substantial risk to the entire species, because wildfires and wildfire effects will likely be local in scale relative to the large, multi-state, widely distributed range of the species. Local wildfires may extirpate populations, but we expect northern leatherside chub can either retreat to habitat refuges during a fire, or recolonize extirpated areas after a fire has ended because most populations have a recolonization potential (see discussion under Factor A: Fragmentation and isolation section). We hypothesize that a similar mechanism took place in Jackknife Creek in the early 1990s, allowing the population to persist after a wildfire.

Increased drought is a predicted rangewide problem for northern leatherside chub populations (Table 10). While this species evolved in an arid region and dealt with historical drought conditions, human modifications to riverine systems for water consumption (irrigation diversions, reservoir construction and management, municipal water use, etc.) have greatly altered the natural hydrology over the past 200 years. Therefore, current conditions, including human water development, must be analyzed. An analysis of water development in extant population locations indicates that dewatering is not common in most populations, suggesting that these populations have elasticity to deal with lower water availability in the future. In addition, northern leatherside chub are documented to persist in degraded habitats, such as remnant pools, and seem to persist in short-term low water conditions (Belk and Johnson 2007, p.

71). Because of these adaptations to deal with harsh conditions, and their ability to shift habitats as drought conditions warrant, drought has a limited effect on the species rangewide. We found no information that drought may act on this species to the point that the species itself may be at risk, nor is it likely to become so.

Northern Leatherside Chub and Nonnative Trout Habitat Shifts

Large-scale climatic warming trends are expected to result in warmer water temperatures nationwide (EPA 2008, p. 8). Because water temperature is a keystone feature of fish community distribution, predicted changes are expected to negatively affect cold-water fisheries continent-wide and cool-water fisheries in the southern latitudes, while benefiting warm-water species continent-wide and cool-water species in the northern latitudes (Field *et al.* 2007, p. 631). Northern leatherside chub are adapted to warmer water temperatures, including seasonal water temperature changes associated with late summer baseflows in mid-elevation streams (Wilson and Belk 2001, p. 39; Belk and Johnson 2007, p. 71). As such, northern leatherside chub may not be as vulnerable to warming water trends as cold-water species such as brook trout.

Where suitable upstream habitats are available and stream gradient permits, we expect that northern leatherside chub populations can transition upstream, tracking suitable habitat conditions. Across the range of the species, most extant northern leatherside chub populations occur in mid-headwater reaches with upstream habitat often unoccupied by individuals. For example, for a few populations in the Bear River and Green River subregions, their upstream distribution is demarcated by the presence of brook trout or possibly cooler water temperatures, which are predicted to shift upstream and decline as water temperatures warm if forecasted climate change impacts occur (Field *et al.* 2007, p. 624).

If predicted water temperatures conditions change across the range of the northern leatherside chub, the distribution of other fish species will shift as well, including those that could impact northern leatherside chub (see discussion under Factor C: Predation). Low water temperatures are believed to currently restrict the distribution of brown trout (Sigler and Sigler 1996, p. 206), suggesting that region-wide warming water temperatures may benefit the species through increasing suitable upstream habitats. On the other hand, because rainbow trout are able to tolerate more wide-ranging water temperatures (Sigler and Sigler 1996, p. 184), their distribution may only moderately change.

Because brown trout are more tolerant of warmer waters than other trout species, increased stream temperatures as a result of climate change effects may allow brown trout populations to expand their range upstream and possibly impact three populations of northern leatherside chub, two in the central Bear River subbasin and one in the Salt River subbasin. For example, brown trout in lower Jackknife Creek are currently limited by cooler water temperatures and may be able to migrate (shift) upstream if increasing water temperatures result from climate change effects, as there are no physical barriers to movement. Although the Jackknife Creek leatherside chub population may be vulnerable to any future brown trout upstream re-distribution from warming waters, it is unclear how Jackknife Creek water temperatures will change, and how chub and brown trout will respond in terms of migration into currently unoccupied upstream and adjacent tributary habitats. Because northern leatherside chub currently occur in an approximately 13-km reach and at least two adjacent tributaries, it is highly unlikely that the species would be eliminated throughout this reach in the event brown trout redistributed upstream in response to warming water temperatures. Northern leatherside chub populations in the Dry Fork Smiths Fork or Muddy Creek (Bear River subregion) are not considered vulnerable to future impacts from downstream brown trout populations as a result of climate change, as existing fish passage barriers and degraded habitat conditions will likely inhibit their movement.

We expect that the distribution of existing rainbow trout populations will likely remain similar to today, or only change moderately because they are thermal generalists. Rainbow trout overlap with two extant northern leatherside chub populations, and any existing impacts are not likely to increase as a result of climate change.

Brook trout populations will likely be negatively impacted by climate change because they are a cold-water fish (Sigler and Sigler 1996, p. 212). We expect any future climate change effects will reduce brook trout abundance upstream of extant northern leatherside chub populations (i.e., brook trout occurrences that are not currently threatening the northern leatherside chub), which could benefit northern leatherside chub that may migrate upstream into suitable habitats no longer inhabited by brook trout.

We found no information that warming stream temperatures may act on this species to the point that the species itself may be at risk, nor is it likely to become so. Northern leatherside chub are adapted to warmer water temperatures, including seasonal water temperature changes associated with late summer baseflows in mid-elevation streams. Most populations occur in streams with currently upstream habitats that may become suitable as stream temperatures change, allowing populations to shift into currently unoccupied upstream or adjacent stream habitats. One northern leatherside chub population in Jackknife Creek may become vulnerable to future brown trout predation if brown trout redistribute upstream as a result of warming waters due to climate change, although it is unclear how Jackknife Creek water temperatures will change and how both chub and brown trout will respond in terms of migration into currently unoccupied upstream and adjacent tributary habitats.

Summary of Impacts of Climate Change

Because northern leatherside chub are able to survive in broad habitat conditions and tolerate warm water temperatures (Wilson and Belk 2001; Nannini and Belk 2006, p. 454), we believe that populations will be resilient to small-scale abiotic changes to habitat because of climate change (upstream habitat shift caused by temperature changes, etc.). We also believe there is adequate upstream habitat to facilitate upstream migration of populations in the face of warming stream temperatures.

Recent modeling efforts predict increased frequency of catastrophic events, especially increased wildfires and prolonged drought. We expect connected, large populations to weather these disturbances with natural demographic fluctuations. Wildfire impacts will likely take place on a small enough geographic scale to allow some portion of northern leatherside populations to survive, which will allow for recolonization and population expansion after the fire has receded and habitat has recovered. Prolonged or more frequent drought will likely occur on a larger scale. However, we expect northern leatherside chub to persist during these periods because individuals can survive in broad habitat conditions and are tolerant of low water levels. While the smaller, more isolated northern leatherside chub populations are at an increased risk from increased frequency of possible stochastic events associated with climate change, there is

still uncertainty on how, when, or if, these impacts may occur.

Shifting distributions of nonnative trout also are not expected to create undue risk to the species. Only one population of northern leatherside chub in Jackknife Creek may be at increased risk from shifting nonnative trout; therefore, we believe the species as a whole is resilient to this threat. We found no information that climate change effects may act on this species to the point that the species itself may be at risk, nor is it likely to become so.

Cumulative Impacts

Some of the threats discussed in this finding can work in concert with one another to cumulatively create situations that will impact northern leatherside chub beyond the scope of each individual threat. For example, as discussed under Factor C: Predation, the impacts of nonnative trout are exacerbated by drought conditions because individual northern leatherside chub will be exposed to brown trout if their side channel habitats are eliminated. In the absence of drought conditions, northern leatherside chub can potentially persist in the presence of brown trout, albeit in low densities. Similarly, in the absence of brown trout, drought conditions are not a threat to northern leatherside chub because the species is adapted to withstand a broad range of habitat conditions including higher stream temperatures and low water levels. Because of this relationship, we will analyze the cumulative impact of drought (as a result of climate change), water development (human-caused water reduction), and nonnative trout presence.

We also analyze the relationship between population size, isolation, and potential threats. Dense, connected populations are able to withstand impacts more vigorously than small, isolated populations. Dense populations are able to lose individuals without a corresponding loss of the entire population, but small populations are vulnerable if even a few individuals are lost. Similarly, connected populations are more secure from threats because nearby populations can provide rescue effects (immigrants and recolonization). In contrast, isolated populations have no potential to be rescued, so local extirpation is likely permanent.

Drought, Water Development, and Nonnative Trout

As mentioned previously, when nonnative trout are present, drought conditions greatly intensify northern leatherside chub mortality risk. Five northern leatherside populations harbor nearby or resident populations of rainbow or brown trout (Table 7): Dry Fork Smiths Fork and Muddy Creeks in the Bear River subregion; Jackknife and Trapper Creeks in the Snake River subregion; and Upper Hams Fork in the Green River subregion. All five of these populations have either high or moderate-to-high risk of increased drought from climate change (Table 10); however, none of these five populations have experienced dewatering events in the past (Table 5), indicating that natural flow (not irrigation) conditions will drive the water supply for habitat.

Increased drought will not increase the risk of nonnative trout in the Dry Fork Smiths Fork or Muddy Creek populations because lower water conditions will only reduce the chance of brown trout invasion. As a result of decreased water supply, Muddy Creek habitat conditions will become even less suitable for trout and Dry Fork Smiths Fork will be even more isolated by culverts.

We believe that the northern leatherside chub populations in the Upper Hams Fork and Trapper Creek will become more impacted by the resident rainbow trout in drought conditions. However, the low density of rainbow trout and the high density of northern leatherside chub in the Upper Hams Fork do not put this population at risk of extirpation. The Trapper Creek northern leatherside chub population is less dense and could experience more of an impact from rainbow trout predation in drought conditions than Upper Hams Fork.

Under drought conditions as a result of climate change, habitat conditions in the Jackknife Creek subwatershed may facilitate upstream movement by brown trout. Such warming conditions will initially be within the tolerable range of northern leatherside chub, but may expand the availability of brown trout habitat. However, with the possible exception of the northern leatherside chub population in Jackknife Creek, the species should be resilient to small-scale abiotic changes to habitat because of climate change (upstream habitat shift caused by temperature changes, etc.) and there is likely adequate upstream and nearby tributary habitats to adapt to under future drought conditions.

Drought and Water Quality

Two northern leatherside chub populations that occur in streams listed as 303(d) water quality impaired (Beaverdam and Trapper Creeks) may be at increased risk due to future drought severity effects (Table 10). The water quality impairments in these streams that would likely impact northern leatherside chub (elevated sediment and phosphorous, and low dissolved oxygen) would be exacerbated under lower flow conditions that result from future drought conditions. However, because there is no current information on how impaired water quality may be impacting existing northern leatherside chub populations, we cannot predict how future drought conditions will effect the species' habitats or water quality.

Population Fragmentation and Isolation in Relation to Other Threats

As demonstrated in the preceding section, impacts that do not threaten northern leatherside chub independently may work together and have substantial, cumulative impacts. In this analysis, we will analyze the cumulative impacts to populations and the species as a whole, paying particular attention to population isolation and fragmentation.

In the preceding analysis, we determined that 7 of 14 northern leatherside chub populations were isolated, and 6 of 14 contained only a single documented occurrence of the species (see Factor A discussion and Table 6). Because 3 populations were both isolated and contained a single occurrence, the remaining 11 populations were considered sufficiently resilient in terms of population size and distribution (connected to other occurrences or populations) and only minimally impacted from the previously analyzed threats and, therefore, not at increased vulnerability from various threat factors due to isolation and fragmentation.

Summary of Factor E

Recent examination of northern leatherside chub from habitats where suspected hybrids were historically found has determined that hybridization is not present. Therefore, with no known instances of hybridization, we conclude that hybridization is not a threat to northern leatherside chub.

Projected impacts from future climate change effects will likely impact all northern leatherside chub populations to some degree, although the synergistic effect of these impacts with identified and potential threats are uncertain. Because stable, reproducing northern leatherside chub populations occur at many locations where degraded habitat conditions exist, their continued persistence and successful reproduction demonstrates that they have some level of tolerance for less than optimal environmental conditions. We found no

information that other natural or manmade factors affecting its continued existence may act on this species to the point that the species itself may be at risk, nor is it likely to become so.

Finding

As required by the Act, we considered the five factors in assessing whether the northern leatherside chub (*Lepidomeda copei*) is endangered or threatened throughout all or a significant portion of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the northern leatherside chub. We reviewed the petition, information available in our files, other available published and unpublished information, and we consulted with recognized northern leatherside chub experts, other Federal and State agencies, and university researchers. We also prepared a white paper that analyzed specific issues to the species. In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to 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 endangered or threatened 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 endangered or threatened under the Act.

Northern leatherside chub are a small, mid-elevation fish endemic to streams within the Bear River, Upper Green River, and Upper Snake River Basins. The range of the northern leatherside chub has declined over the past 50 years, and there are currently 14 extant populations spread over the Bear (7), Snake (5) and Green (2) River subregions. The species evolved in an arid ecosystem characterized by extreme seasonal and annual changes in physical conditions.

The most widely distributed, relatively large populations occur in the Bear River subregion. Most populations in the Bear River subregion are largely free of threats (Upper Mill/Deadman Creeks), contain multiple populations, can easily interact (Upper Twin Creek and Rock Creek), and include relatively high-density populations (Upper Mill/Deadman Creeks, Yellow Creek, Dry Fork Smiths Fork, Muddy Creek, Rock Creek, and Upper Twin Creek). As a result, we concluded that the size, connectedness, and stability of the Bear River populations are sufficient to ensure the long-term persistence of the species as a whole. Although less monitoring and collection information is available to characterize northern leatherside chub populations within the Snake River subbasin, most extant populations in the Snake River subbasin are discontinuous from other populations and have relatively low population numbers. Three of five Snake River populations have one or more factors affecting each population, primarily impaired water quality and nonnative trout. These and other factors were not considered significant or imminent. We do not fully understand how these current or potential threats are impacting the species, and it is believed that northern leatherside chub tolerate some level of degraded or short-term, extreme conditions. Although the isolation of some Snake River populations likely increases their vulnerability to the effects of identified threats, these threats do not currently or in the foreseeable future pose a substantial risk to species rangewide.

When evaluating the potential impact to northern leatherside chub and their habitat from future climate change effects, it is likely that warming water temperatures predicted to occur will likely benefit the species, especially in those stream systems with currently unoccupied habitats upstream. The species is tolerant of short-term extreme environmental conditions, suggesting the species may be able to survive some of the shorter-term disturbances from climate change. Because of the uncertainty associated with future climate change predictions, the synergistic effect of future climate change scenarios, with identified or potential threats on stream systems where the northern leatherside chub occurs, are unknown.

Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the threats are not of sufficient imminence, intensity, or magnitude to indicate that the northern leatherside chub is in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened), throughout its range. Therefore, we find that listing the northern leatherside chub as an endangered or threatened species throughout its range is not warranted at this time.

Significant Portion of the Range

Having determined that the northern leatherside chub is not endangered or threatened throughout its range, we must next consider whether there are any significant portions of the range where the northern leatherside chub is in danger of extinction or is likely to become endangered in the foreseeable future.

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 ''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, nor 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 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, April. 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 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; 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, it, the species, is an ''endangered species.'' The same analysis applies to ''threatened species.'' Based on this interpretation and supported by 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 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 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; it does not conflict with established past agency practice (i.e., prior to the 2007 Solicitor's Opinion), 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, and as explained further below, 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 and its habitat 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 habitat types 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 or more 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'' (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) 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 the species being in danger of extinction in that portion would be sufficient to cause the species in 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 species in 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 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 determination that a species is in danger of extinction in a significant portion of its range 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 to the species occurs only in portions of the species' range that clearly would not meet the biologically based definition of ''significant,'' such portions will not warrant further consideration.

Decisions by the Ninth Circuit Court of Appeals in *Defenders of Wildlife* v. *Norton,* 258 F.3d 1136 (2001) and *Tucson Herpetological Society* v. *Salazar,* 566 F.3d 870 (2009) found that the Act requires the Service, in determining whether a species is endangered or threatened throughout a significant portion of its range, to consider whether lost historical range of a species (as opposed to its current range) constitutes a significant portion of the range of that species. While this is not our interpretation of the statute, we first address the lost historical range before addressing the current range.

Lost Historical Range

The available literature provides limited information on the historical distribution of northern leatherside chub. The type locality for the northern leatherside chub was discovered in 1881 from the mainstem Bear River near Evanston, Wyoming (Jordan and Gilbert 1881 in UDWR 2009, p. 39). The species is historically documented in portions of the Bear River and Upper Snake River subregions (Figure 1; Table 1). These historical collections demonstrate that the species existed over a wide geographic area from Idaho, to Wyoming, and into Utah.

Specifically, historical records (during the 1950s, 1960s, and 1970s) document the existence of individuals from three subbasins containing four locations that we consider populations today; one population in the Snake River subregion (Pacific Creek) and three populations in the Bear River subregion (Yellow Creek, Rock Creek, and Muddy Creek) (McAbee 2011, pp. 10, 19). Northern leatherside chub were also historically found in three subbasins that do not contain extant populations (McAbee 2011, p. 2). More recent investigations documented northern leatherside chub at two subbasins (Salt River and Goose Creek) within the Snake River subregion, thus adding four populations (Jackknife Creek, Trapper Creek, Beaverdam Creek, and Trout Creek) to the accepted historical range (McAbee 2011, p. 19).

The best scientific data allow us to document the historical existence of northern leatherside chub only at the subbasin scale. These historical data have more recently been compared to current distributional information to determine the presence of extant historical populations as explained above. We conclude that the historical range of northern leatherside chub included the following subbasins: Upper Bear River, Central Bear River, Logan River, Lower Bear River, Snake Headwaters, Salt River, Goose Creek, and Little Wood River.

Over the past 50 years, the range of the northern leatherside chub has declined, and the current range of the species is now contained in five of the eight documented historical subbasins (Wilson and Belk 2001, p. 36; Johnson *et al.* 2004, pp. 841–842; UDWR 2009, p. 24). Northern leatherside chub are likely extirpated from the Little Wood River in Idaho, where verified museum records exist, but recent collections failed to document any extant populations. Similarly, northern leatherside chub are likely extirpated from the Logan and Lower Bear Rivers in Utah and Idaho, where recent collections failed to document extant populations, and past collection records, while accepted as true, cannot be verified (McKay 2011, pers. comm.).

Although we acknowledge that there is some ambiguity in the historical and current ranges of northern leatherside chub (see Background: Distribution), we conclude that the species is extirpated from three of the eight historically occupied subbasins: The Logan River, Lower Bear River, and Little Wood River subbasins.

As described earlier (see Background: Distribution), despite the loss of the three historical populations, there remain 14 northern leatherside populations distributed across the Bear River, Upper Snake River, and Upper Green River subregions (see Figure 1). We now consider if the loss of the three historical populations (Logan River, Lower Bear River, and Little Wood River) is so important that individually or collectively this loss of range qualifies as ''significant'' by asking whether without these portions, the representation, redundancy, or resiliency of the species is so impaired that the species has an increased vulnerability to threats to the point that the overall species is in danger of extinction (see below for more information on justification for this assessment).

Although each of the three lost northern leatherside chub subbasins discussed above likely has features that make it unique, we determine that the historical populations were similar geographically and biologically to the current species' locations. For example, the species' potential spawning, feeding, and sheltering habitat in these locations was likely similar to current population locations (see Background: Life History, Habitat), and all occurred within

subregions that are currently occupied (see Figure 1).

The loss of the three historically occupied subbasins in portions of the species' range likely resulted in a reduction in the species overall population, but the remaining populations are independent of these populations and do not rely on any of the lost population's habitat for life-history processes (e.g., spawning, feeding, sheltering). Furthermore, this potential reduction of reproductive output has not reduced the species' range of variation or adaptive capabilities to such a level that they would be in danger of extinction. Despite the loss of these three historically occupied subbasins, the resiliency of northern leatherside chub has not been appreciably impacted, and the species will continue to be able to recover from periodic disturbance and withstand catastrophic events in other parts of its range.

In summary, although the species is extirpated from three historically occupied subbasins, the species is found in five other historically occupied subbasins and two additional subbasins in the Upper Green River subregion and now comprises 14 populations in these subbasins. We conclude that these remaining 14 populations provide sufficient representation and redundancy of northern leatherside chub habitat throughout the species' current range such that northern leatherside chub is not in danger of extinction despite the loss of historical habitat. Thus, the lost historical range of northern leatherside chub does not constitute a significant portion of the range of the subspecies.

Current Range

After reviewing the potential threats throughout the range of northern leatherside chub, we determine that five of fourteen populations within the species' current range could be considered to have concentrated threats (see discussion under Factor A, Factor C, and Factor E). Below, we outline the elevated risk from potential threats found at the five populations and then assess whether these portions of the species' range may meet the definition of ''significant,'' that is, whether the contributions of these portions of the northern leatherside chub's range to the viability of the species is so important that without those portions, the species would be in danger of extinction.

The Dry Fork Smiths Fork population (Central Bear River subbasin) is isolated and likely contains only one occurrence of northern leatherside chub, making it vulnerable to a large-scale disturbance or stochastic event such as drought. The Pacific Creek population (Snake Headwaters subbasin) is similarly isolated (see discussion under Factor A: Fragmentation and Isolation of Existing Populations). In Jackknife Creek (Salt River subbasin), a brown trout population occurs downstream of the northern leatherside chub population (see discussion under Factor C: Predation). Although this population currently coexists with brown trout, there is the potential that a climate change-induced increase in water temperature could force a habitat shift, pushing predacious brown trout into core northern leatherside chub habitat (see discussion under Factor E: Climate Change). The Beaverdam Creek and Trapper Creek populations (Goose Creek subbasin) both occur in streams listed as 303(d) water quality impaired, although aquatic communities continue to persist (see discussion under Factor A: Water Quality). These populations could be at increased risk if future drought conditions occur (see discussion under Factor E: *Drought and Water Quality*). The Trapper Creek population co-occurs with rainbow trout and may be vulnerable to predation from this nonnative species (see discussion under Factor C: Predation and Table 7). Also, this population is isolated, making it vulnerable to a large-scale disturbance or stochastic event such as drought (see discussion under Factor A: Fragmentation and Isolation of Existing Populations and Table 6).

Because the northern leatherside chub faces elevated risk from potential threats at the five population locations discussed above, we next assess whether these portions of the species' range may meet the biologically based definition of ''significant.'' For these areas, we evaluate whether the populations' biological contributions are so important that individually or collectively this hypothetical loss of range would qualify 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.

Although each of the five northern leatherside chub population locations discussed above likely has features that make it unique, we determine that they are similar geographically and biologically to other species' locations. For example, the species' spawning, feeding, and sheltering habitat is essentially the same at all population locations (see Background: Life History, Habitat). If the Dry Fork Smiths Fork, Pacific Creek, Jackknife Creek, Trapper Creek, and Beaverdam Creek populations could no longer support northern leatherside chub, other existing population locations could support the species' persistence. The remaining nine population locations are distributed within the species' current and historical range in the Bear River, Upper Snake River, and Upper Green River subregions (see Figure 1), and offer sufficient representation and redundancy of habitat and range such that northern leatherside chub would not be in danger of extinction if these five population locations were completely lost.

The loss of these five populations in portions of the species' range would directly result in a reduction in the species' overall population size, but the loss of individual populations would not cause a reduction in the local population size of any remaining population because each northern leatherside chub population is independent and does not rely on other population's habitat for life-history processes (e.g., spawning, feeding, sheltering). Also, the loss of the five populations would not reduce the species' range of variation or adaptive capabilities to such a level that they would be in danger of extinction. Without these five population locations, we expect that the resiliency of northern leatherside chub would not be appreciably impacted; the species would continue to be able to recover from periodic disturbances and withstand catastrophic events in other parts of its range.

In summary, despite having some locations of elevated risk to potential threats, we conclude that the portions of the northern leatherside chub's range where these threats occur are not significant portions of its range. Even if all of these population locations were extirpated at some time in the future, northern leatherside chub would persist at population locations not affected by these threats. As noted above, there is little that biologically distinguishes Dry Fork Smiths Fork, Pacific Creek, Jackknife Creek, Trapper Creek, and Beaverdam Creek from other population locations for northern leatherside chub. The existing, remaining population locations are distributed across the species' historical range in the Bear River, Upper Snake River, and Upper Green River subregions and provide adequate redundancy, resiliency, and representation for the species. Therefore, the five population locations (whether considered separately or combined) are not a ''significant'' portion of the species' range because

their contribution to the viability of the species is not so important that the species would be in danger of extinction without those portions.

We find that northern leatherside chub is not in danger of extinction now, nor is it likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Therefore, listing northern leatherside chub 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, northern leatherside chub to our Utah Ecological Services Field Office (see **ADDRESSES** section) whenever it becomes available. New information will help us monitor northern leatherside chub and encourage its conservation. If an emergency situation develops for the northern leatherside chub 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 Utah Ecological Services Field Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are the staff members of the Utah and Idaho Ecological Services Field Offices.

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 Gould,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2011–25810 Filed 10–11–11; 8:45 am]

BILLING CODE 4310–55–P

FEDERAL REGISTER

Vol. 76 Wednesday,

No. 197 October 12, 2011

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 Two South American Parrot Species; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R9–ES–2011–0071; MO 92210–0–0010 B6]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Two South American Parrot Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: 12-month finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a status review (12-month finding) on a petition to list the blue-headed macaw (*Primolius couloni*) and grey-cheeked parakeet (*Brotogeris pyrrhoptera*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that listing the blue-headed macaw or grey-cheeked parakeet is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the threats to these species or their habitat at any time.

DATES: The finding announced in this document was made on October 12, 2011.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R9–ES–2011–0071. 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, Endangered Species Program, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171. If you use a telecommunications device for the deaf (TDD), 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 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 this finding, we determine whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) 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 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

Petition History

On January 31, 2008, the Service received a petition dated January 29, 2008, from Friends of Animals, as represented by the Environmental Law Clinic, University of Denver, Sturm College of Law, requesting we list 14 parrot species under the Act. The petition clearly identified itself as a petition and included the requisite information required in the Code of Federal Regulations (50 CFR 424.14(a)). On July 14, 2009 (74 FR 33957), we published a 90-day finding in which we determined that the petition presented substantial scientific and commercial information to indicate that listing may be warranted for 12 of the 14 parrot species.

In our 90-day finding on this petition, we announced the initiation of a status review under the Act to list as threatened or endangered the following 12 parrot species:

Blue-headed macaw (*Primolius couloni*)
Crimson shining parrot (*Prosopeia splendens*)
Great green macaw (*Ara ambiguus*)
Grey-cheeked parakeet (*Brotogeris pyrrhoptera*)
Hyacinth macaw (*Anodorhynchus hyacinthinus*)
Military macaw (*Ara militaris*)
Philippine cockatoo (*Cacatua haematuropygia*)
Red-crowned parrot (*Amazona viridigenalis*)
Scarlet macaw (*Ara macao*)
White cockatoo (*C. alba*)
Yellow-billed parrot (*Amazona collaria*)
Yellow-crested cockatoo (*C. sulphurea*)

We initiated this status review to determine if listing each of the 12 species is warranted, and opened a 60-day period to allow all interested parties an opportunity to provide comments and information on the status of these 12 species. The public comment period closed on September 14, 2009.

On July 21, 2010, a settlement agreement was approved by the Court (CV–10–357, D. D.C.) in which the Service agreed to submit to the **Federal Register** by July 29, 2011; September 30, 2011; and November 30, 2011, respectively, determinations on whether the petitioned action is warranted, not warranted, or warranted but precluded by other listing actions for no fewer than four of the petitioned species. On August 9, 2011, the Service published in the **Federal Register** a 12-month status review and proposed rule for the following four parrot species: Crimson shining parrot, Philippine cockatoo, white cockatoo, and yellow-crested cockatoo (76 FR 49202).

Current Action

In this status review, we make a determination whether the petitioned action is warranted, not warranted, or warranted but precluded by other listing actions for the blue-headed macaw and grey-cheeked parakeet. This **Federal Register** document complies, in part, with the second deadline in the court-approved settlement agreement mentioned above.

Species Information and 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.

In considering whether a species may warrant listing under any of the five factors, we look beyond the species' exposure to a potential threat or aggregation of threats under any of the factors, and evaluate whether the species responds to those potential threats in a way that causes actual

impact to the species. The identification of threats that might impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence indicating that the threats are operative and, either singly or in aggregation, affect the status of the species. Threats are significant if they drive, or contribute 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.

Below is a species-by-species description and analysis of the five factors. The species are considered in alphabetical order, beginning with the blue-headed macaw, followed by the grey-cheeked parakeet.

I. Blue-Headed Macaw (*Primolius couloni*)

Species Description

The blue-headed macaw is a small species of macaw belonging to the family Psittacidae, the parrot family. It measures approximately 41 centimeters (cm) (16 inches (in)) in length. Average male and female wing length measures approximately 226 millimeters (mm) (8.9 in) and 220 mm (8.6 in), respectively. Average tail lengths for males and females measure 223 mm (8.7 in) and 204 mm (8.0 in), respectively (Forshaw 1973, p. 386). There is little sexual dimorphism between males and females (Lee 2010, p. 5). Adults are characterized by green general plumage with slightly more yellowish underparts. The entire head, except for the grey bare facial area, is blue. Primaries and primary-coverts (wing feathers) are blue and secondaries and outermost upper wing-coverts are blue edged with green. The upperside of the tail is blue, whereas the undersides of flight and tail feathers are a dusky yellow. The bill is grey-black, which becomes horn-colored on the culmen (the upper ridge of the bill) and at the tip of the upper mandible. The iris is yellow, and legs are flesh-pink. Immature blue-headed macaws have not been described (Forshaw 1973, p. 386).

The blue-headed macaw occurs mainly in eastern Peru, in the departments of Loreto, Huánuco, Pasco, Ucayali, Cusco, Madre de Dios, Ayacucho, Puno, and Junín; but it also occurs just inside the border of extreme western Brazil, in the States of Acre and Rondônia, and just inside the border of northern Bolivia, in the departments Pando, Beni, and La Paz (BirdLife International (BLI) 2011a, unpaginated; Tobias and Brightsmith 2007b, pp. 1–6). It has been recorded from 61 localities, with no significant association with forest type, riverine habitats, degree of disturbance, or altitude. Records of the blue-headed macaw occur in both foothill regions and lowlands ranging in elevation from 200 meters (m) (656 feet (ft)) to 1,500 m (4,921 ft), and in a wide range of habitats, including terra firme forests (forests not inundated by flood waters), mature floodplain forests, successional river edge forests, and *Mauritia* palm swamps. One study found that this species was slightly more common in degraded areas than in pristine forests (Brightsmith 2009, personal communication (pers. comm.); Tobias and Brightsmith 2007, pp. 126, 129–130).

The estimated total global range for this species is 609,494 square kilometers (km^2) (235,326 square miles (mi^2)) and spans large areas of remote and unexplored terrain. The extent of occurrence (the global range, excluding disjunctions and major areas of inappropriate habitat) has been calculated as 460,000 km^2 (177,606 mi^2), an area larger than previously thought (Brightsmith 2009, pers. comm.; Tobias and Brightsmith 2007, pp. 126, 129, 133). However, the extent of occurrence may be underestimated, as data is lacking from Brazil, the global range is more than 90 percent forested, and data suggest anthropogenic pressures have not eliminated this species from any large areas (Tobias and Brightsmith 2007, p. 129). Brightsmith (2009, pers. comm.) notes that the blue-headed macaw is not absent from any portion of its historical range.

In 1990, Lambert *et al.* (2003, as cited in Tobias and Brightsmith 2007, p. 127) estimated the global population of blue-headed macaws to be 10,000 individuals. In 2003, Gilardi estimated the global population to be well under 1,000 mature individuals; BLI revised the global estimate to 1,000–2,499 mature individuals in 2005 (Tobias and Brightsmith 2007, p. 127). It is unclear why population estimates have varied, but may be due to few published sources, anecdotal accounts, poor data quality (Tobias and Brightsmith 2007, p. 127), or differences in methodology. The most recent data suggest that this species occurs at a conservative density of one mature individual per 10–50 km^2 (3.0–19.3 mi^2); using the calculated 460,000 km^2 extent of occurrence, Tobias and Brightsmith (2007, p. 126) estimate the population to be 9,200–46,000 mature individuals and 11,500–57,500 individuals if immature birds are included (Tobias and Brightsmith 2007, p. 133). Most of the 61 localities where this species has been recorded are easily accessible by road or river, potentially causing a bias towards areas affected by trapping and underestimating abundance. Furthermore, much of the global range has yet to be surveyed (Tobias and Brightsmith 2007, pp. 132–133).

BLI (2011a, unpaginated), based on Tobias and Brightsmith (2007, pp. 126–138), reports that the population is declining at a slow-to-moderate and ongoing pace. However, Brightsmith (2009, pers. comm.) notes that this conclusion is not based on real evidence from wild populations. In fact, Tobias and Brightsmith (2007, p. 134) and Brightsmith (2009, pers. comm.) note that based on sightings data, there is no evidence of a decline in range or numbers of blue-headed macaws in the wild and that the possibility that the blue-headed macaw is increasing with the spread of degraded forests along rivers cannot be discounted (Tobias and Brightsmith 2007, pp. 132–133). Hennessey (2011, per. comm.) also notes that populations in Peru and Bolivia have remained healthy. There is no place within its range where this species has been searched intensively and does not occur (Brightsmith 2009, pers. comm.). At the Tambopata Research Center, blue-headed macaws have been steadily increasing since the year 2000 (Brightsmith 2009, pers. comm.). Sightings of the blue-headed macaw in Peru have also increased in the past 10 years (Brightsmith 2009, pers. comm.). Additionally, the lowlands of southeastern Peru, the core of the species' range, are the home of a wide variety of international research stations; parrot populations are monitored annually, so if the blue-headed macaw begins to decline, the research community would note this and begin specific protection and recovery actions (Brightsmith 2009, pers. comm.).

The diet of the blue-headed macaw has not been observed; however, parrots generally feed on seeds, ripe and unripe fruit, and flowers, but may also utilize other plant parts, such as nectar, leaves, and bark (Lee 2010, p. 6; Brightsmith 2006, p. 2; Cowen no date (n.d.), pp. 5, 17). Cowen (n.d., p. 16) found that a psittacine community, which included the blue-headed macaw, mainly fed on three tree species: *Ochroma pyramidale* (balsa), *Euterpe precatoria* (a species of palm), and *Cecropia peltata* (trumpet tree). This species may undergo some form of nomadism to track food across the landscape (Tobias and Brightsmith 2007, p. 132). Parrots may travel a few kilometers to hundreds of kilometers in search of food resources (Lee 2010, p. 8). Because parrots feed primarily on fruits and flowers, they are linked to the

fruiting and flowering patterns of trees; fluctuations in abundance and availability of these food sources may change diets, result in movements to areas with greater food availability, and influence local seasonal patterns of bird abundance (BLI 2011a, unpaginated; Lee 2010, p. 7; Tobias and Brightsmith 2007, p. 132; Brightsmith 2006, p. 2; Renton 2002, p. 17; Cowen n.d., pp. 5, 23). In some locations within its range, the blue-headed macaw is not considered uncommon and is recorded throughout the year, but appears scarce in others or varies seasonally in response to food availability (BLI 2011a, unpaginated).

Geophagy, the intentional consumption of soil, is known for parrots (Brightsmith 2004a, p. 534). In South America, parrots, including the blue-headed macaw, gather at riverbanks to consume soil; these sites are referred to as ''clay licks'' (Brightsmith 2004c, pp. 134, 137; Brightsmith 2004b, p. 5; Brightsmith 2004a, p. 535). Clay lick usage by blue-headed macaws is regular at several sites, and occurs year-round at Tambopata, Peru (Tobias and Brightsmith 2007, p. 131). There have been many theories proposed to explain why birds consume soil, including mineral supplementation, mechanical aid to digestion, pH buffering, treatment for endoparasites, and adsorption of dietary toxins (Brightsmith 2004c, p. 143; Brightsmith 2004b, p. 1; Brightsmith 2004a, p. 534–535). The reasons for soil selection may vary, with sites depending on the needs of the birds and the characteristics of the soils present (Brightsmith 2004a, p. 542). Research in Peru has shown that parrots consume soil to obtain sodium (mineral supplementation) and assist in the adsorption of dietary toxins (Brightsmith 2004c, p. 134; Brightsmith 2004b, pp. 3–4; Brightsmith 2004a, pp. 541–542). Furthermore, research conducted at the Tambopata Research Center in Peru found that local clay lick use by parrots varied seasonally, with low use occurring at a time when parrots appear to leave the area due to low fruit availability and peaks occurring during the breeding season (Brightsmith 2004b, p. 3). Peak clay lick use coincided with the breeding season when adults feed clay to young chicks during the period of maximum growth and least resistance to natural toxins found in their diet (Brightsmith 2004b, p. 4).

The blue-headed macaw is reported to occur in pairs or groups of three. However, groups of 4 or more are routinely reported throughout the range, groups of 10 or more have been reported from 13 localities, and 2 groups were reported to have 53 and 60 individuals, respectively (Tobias and Brightsmith 2007, p. 131–132). Few courtship displays have been described for parrots, but are assumed to be simple and include actions such as bowing, wing-drooping, wing-flicking, tail-wagging, and foot raising (Austin 1961, p. 33). Most parrot species are monogamous and remain paired for long periods of time, even for life. The age at which parrots reach sexual maturity varies but, in general, is between 3 and 4 years in larger species and 1 to 2 years in smaller species (Austin 1961, p. 32). In captivity, the age in which the species is able to breed ranges from 2.5 to 5 years (Tobias and Brightsmith 2007, p. 132). The nesting season of the blue-headed macaw is not known, but for other species of parrots and macaws found at the same site, the nesting season runs from June to November and November to March, respectively (Brightsmith 2006, pp. 7, 9). Although nesting has not been recorded for the blue-headed macaw, most parrots use natural tree cavities or cavities within cliffs (Lee 2010, p. 4). This species is reported to have low reproductive output in the wild (CITES 2002, p. 1), but this may be based on little data (Tobias and Brightsmith 2007, p. 32). In captivity, the clutch size for blue-headed macaws is reported to be 2–4 eggs (Vit 1997, as reported in Tobias and Brightsmith 2007, p. 132). Female parrots generally incubate the eggs and rely on the male for food, although in some species the males contribute to incubation (Lee 2010, p. 5; Austin 1961, p. 33). Parrot chicks are born blind and naked or with sparse down, which is white in most species. The young of small parrots develop slowly and remain in the nest for 3–4 weeks (Austin 1961, p. 33). Adult longevity in the wild is unknown for the blue-headed macaw, but a congeneric (a species belonging to the same taxonomic genus as another species), the blue-winged macaw (*Primolius maracana*), is reported to live at least 31 years in captivity (Tobias and Brightsmith 2007, p. 132).

Conservation Status

The blue-headed macaw is currently classified as ''vulnerable'' by the International Union for the Conservation of Nature and listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Species included in CITES Appendix I are the most endangered CITES-listed species. They are considered threatened with extinction, and international trade is permitted only under exceptional circumstances, which generally precludes commercial trade.

Summary of Factors Affecting the Blue-Headed Parrot

A. Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

One of the main threats to neotropical parrot species, in general, is deforestation (Snyder *et al.* 2000, p. 98). The Amazon region has the world's highest absolute rate of deforestation (Laurance *et al.* 2002, p. 738) and is currently threatened by increasing legal and illegal logging, road projects, conversion of forests to agriculture, cattle ranching, oil and gas extraction, and mining (Lee 2010, p. 2; MacLeod 2009, p. 6; Cowen 2007, p. 9; Magrin *et al.* 2007, p. 590; Tobias and Brightsmith 2007, p. 134; Hume *et al.* 2006, p. 10; Asner *et al.* 2005, p. 480; Alverson *et al.* 2001, p. 113; Laurance *et al.* 2001, p. 309; Snyder *et al.* 2000, p. 98; Nepstad *et al.* 1999, p. 505). However, in western Amazonia, especially in Peru and Bolivia where this species occurs, the proportion of forest cover is still high and large tracts of intact forests continue to exist even though some forests have been cleared around some major towns (Finer *et al.* 2008, pp. 1, 6; Tobias and Brightsmith 2007, p. 134; Kometter *et al.* 2004, p. 6). Information on the extent of deforestation within the States or departments where the blue-headed macaw occurs is limited; most information is at the national level and may not necessarily apply to this species, especially in Bolivia and Brazil where it occurs just inside the borders of these countries.

Logging

Tropical forests, especially the Amazon, have experienced increasing rates of deforestation for the past few decades, largely for the conversion of land to food crops or pastures, and selective harvesting of timber has increased in rate and extent (Granoff 2008, p. 553; Asner *et al.* 2005, p. 480; Laurance 1999, p. 112; Laurence 1998, p. 411).

Selective logging targets older, larger trees that parrot species depend on for nesting and food (Cowen 2007, p. 9; Hume *et al.* 2006, p. 11). The loss of these keystone trees may pose a threat to parrot populations by creating a shortage of suitable nesting sites, increasing competition, and causing the loss of current generations through an increase in infanticide and egg destruction (Lee 2010, pp. 2, 12). If not managed correctly, selective logging may also cause widespread collateral

damage to remaining trees, subcanopy vegetation, and soils (Asner *et al.* 2005, p. 480). An additional 10 to 40 percent of the living biomass of a forest may be damaged by a poorly managed logging harvest process (Nepstad *et al.* 1999, p. 505) and can double the total amount of forest degraded by human activities (Asner *et al.* 2005, p. 481). The loss of trees may influence the availability and abundance of food sources for the blue-headed macaw and may result in changes in diet or movement to areas with greater food availability. Although individual blue-headed macaws, nests, or eggs may be affected by logging activities, we have no information to indicate impacts are occurring at a level affecting the status of the species.

Typically, logging involves a low rate of extraction (less than 3 cubic meters (m^3) per ha (106 cubic feet (ft^3) per ac) and, if implemented correctly, only removes as many trees as the forest can regenerate (Colitt 2010, unpaginated; Rodríguez and Cubas 2010, p. 78). Because the valuable timber removed is often very old, long intervals are needed for timber stands to recover from harvest (Laurance 1999, p. 114), and if provisions are made for the regeneration of these commercial trees, the effects of logging on tree diversity and species composition may be short-lived (Fredericksen 2003, p. 10). In fact, if well managed, selective logging can mimic natural disturbances, and if hunting pressure is low, most wildlife species can persist in logged forests or recolonize harvested areas from nearby unlogged patches (Laurance 1999, p. 114). Studies have indicated a relatively minor impact on some wildlife species from logging, and among those that may actually benefit are frugivorous birds, such as the blue-headed macaw, due to the positive impact on fruit abundance (Fredericksen 2003, p. 11). Additionally, frugivores usually tolerate fragmentation better and are capable of using deforested areas (Sekercioglu 2007, p. 285). Many parrots are not habitat specialists and thrive in mosaics of different successional habitats (Snyder *et al.* 2000, p. 99). Many species of lowland forest habitat seem to do relatively well in modified human environments, as long as a mosaic of habitats in different successional stages is maintained and poaching and trapping are controlled (Snyder *et al.* 2000, p. 99). Although the blue-headed macaw could potentially benefit from some logging activities, we found no information to what extent, if any, this species benefits from these activities. However, species experts have stated that the possibility of the species increasing with the spread of degraded forests along rivers cannot be discounted (Tobias and Brightsmith 2007, pp. 132–133) and Hennessey (2011, pers. comm.) has stated that the blue-headed macaw populations in Peru and Bolivia have remained healthy.

Peru

With approximately 68 million forested hectares (ha) (168 million acres (ac)) covering 53 percent of its land area, Peru has the second most extensive forests in Latin America, after Brazil (FAO 2011, p. 118; Salo and Toivonen 2009, p. 610). In the early 2000s, Peruvian Amazonia experienced a series of forestry reforms, including the implementation of forest concessions (forest leases), which led to a rush for newly allocated timber resources (Salo and Toivonen 2009, p. 609; Oliveira *et al.* 2007, p. 2). More than 7 million ha (17.2 million acres; approximately 10 percent of the country's forest) are now designated as forest concessions in the regions of Ucayali, Loreto, Madre de Dios, San Martin, and Huanco; another 18 million ha (44.5 million ac; nearly a quarter of Peruvian forests) are still potentially available for concession designation in the near future (Rodríguez and Cubas 2010, p. 79; Salo and Toivonen 2009, pp. 609–610).

The aim of the forestry reform was to target issues such as control and enforcement of forestry activities, as well as illegal forestry activities (Salo and Toivonen 2009, p. 610). Part of the new forestry reform included a new forestry law (See Factor D) which classified Peru's forests into 6 categories, including permanent production forests. This category includes those forests in which forest concession contracts can be assigned. A concession contract gives the holder the right to exploit the resources within a given area, but also gives the holder responsibility to manage the resources (Salo and Toivonen 2009, p. 611). Studies have shown that forest concessions in Peru have provided forests with protection from deforestation (Salo and Toivonen 2009, p. 620; Oliveira *et al.* 2007, pp. 2–3). Although we do not know the exact location of the recently designated 7 million ha (17.2 million acres) of forest concessions, they do not appear to have impacted the blue-headed macaw, given that the range has remained 90 percent forested and there is no evidence in a decline in the range or population of this species. We do not know where the 18 million ha (44.5 million ac) of potential forest concessions are located in regards to locations of blue-headed macaw; however, if located within the range of this species, data suggest that these concessions could provide forests with protection against deforestation.

To date, the forests of Peru, including large areas within the range of the blue-headed macaw, have mainly been subjected to selective logging (Salo and Toivonen 2009, p. 610; Tobias and Brightsmith 2007, p. 134; Fredericksen 2003, p. 10), which has contributed to only 2.5 percent of Peru's overall deforestation (Salo and Toivonen 2009, p. 610). Nonetheless, there are reports of illegal logging in Peru, including one study that found evidence of illegal logging within the Muruanahua Reserve and Alto Purús National Park in Peru, which is a known location for the blue-headed macaw (Upper Amazon Conservancy 2010, unpaginated; World Wildlife Fund in Indian Country Today 2007, unpaginated). However, there is no evidence that selective logging removes habitat for this species (Tobias and Brightsmith 2007, p. 134). Furthermore, it is possible that the blue-headed macaw could benefit from logging given that frugivores tend to benefit from logging due to the increase in fruit availability, and lowland habitat species, such as the blue-headed macaw, do well in modified human environments if successional forests are left intact and poaching is controlled. In addition, species experts have stated that the possibility that the species is increasing with the spread of degraded forests along rivers cannot be discounted (Tobias and Brightsmith 2007, pp. 132–133). Because the range of the blue-headed macaw has remained 90 percent forested and there is no evidence of a decline in either the range or population, we have no indication that selective logging or illegal logging has impacted the blue-headed macaw. Large areas within the range of the blue-headed macaw are slated for selective logging (Tobias and Brightsmith 2007, p. 134); however, because there is no evidence that selective logging removes habitat, and in fact the species may benefit from selective logging, we have no reason to believe that future selective logging activities in Peru will be a threat to this species.

In summary, we find that deforestation via current forest concessions and selective logging have not impacted the status of the blue-headed macaw based on the fact that the range has remained 90 percent forested and there is no evidence of a decline in the range or population of this species. Although we do not know the locations of the forest concessions that may be designated in the future, if they are located within the range of the blue-headed macaw, they may provide

protection to blue-headed macaw habitat from deforestation. Furthermore, we found no information indicating that the known areas of the blue-headed macaw's range that are slated for selective logging will impact the status of the species; in fact, it is possible that the species could benefit. Additionally, there are several conservation programs being implemented in Peru to address deforestation (see *Conservation Programs* below). Therefore, we have reason to believe that future deforestation will not impact the status of this species in Peru.

Bolivia

Approximately 57.2 million ha (141.3 million ac) (53 percent) of Bolivia's total area is forested (FAO 2011, p. 118); of this forested area, 38.9 million ha (96.1 million ac) are within the Bolivian Amazon and constitute 5 percent of the total Amazon forest (Locklin and Haack 2003, p. 774). Large tracts of primary forest remain in Bolivia, but it is likely that some of these will be subjected to logging (Fredericksen 2003, p. 13) as forest products contribute to Bolivia's national exports (Byers and Israel 2008, p. vi). As of 2006, 89 timber companies held the rights to 5.8 million ha (14.3 million ac) of logging concessions (Pacheco 2006, p. 208). The forests of Bolivia have mainly been subjected to selective logging (Salo and Toivonen 2009, p. 610; Fredericksen 2003, p. 10), which has been done at very low levels and with low human pressure, allowing them to remain largely intact (Fredericksen 2003, p. 10). There are management issues that still need to be addressed, including sufficient regeneration time for commercial species (Fredericksen 2003, p. 10). However, given that Bolivia constitutes only a small part of this species' range, and the fact that we found no information indicating that logging has impacted the blue-headed macaw range or population in any of its range countries, we have no reason to believe that logging is a threat to the species in Bolivia. Furthermore, we have no information indicating any future logging activities will impact the blue-headed macaw.

Brazil

Brazil contains 519.5 million ha (1.2 billion ac) of forested area, 62 percent of the total land area (FAO 2011, p. 118). Logging concessions total only 150,000 ha (370,658 ac) (Colitt 2010, unpaginated). However, by the end of 2010, Brazil was to have auctioned off an additional 1 million ha (2.5 million ac) of forest concessions to private companies in an effort to reduce the demand for illegal logging. Concessions help establish control over public areas usually occupied illegally (Colitt 2010, unpaginated).

Logging is occurring in blue-headed macaw habitat in extreme western Brazil, but this species is a generalist and can exist within degraded habitats. Rondônia and Acre are among Brazil's major timber-production states (Asner *et al.* 2005, p. 480); however, this species occurs just inside the border of western Brazil and we found no information suggesting that the range or population of the blue-headed macaw have been impacted by logging in Brazil and no information indicating logging may affect this species in the future.

Large areas within the range of the blue-headed macaw have experienced, or are slated for, selective logging (Tobias and Brightsmith 2007, p. 134), and designation of forest concessions could potentially cause changes in land-use practices, perhaps affecting plant and wildlife species composition and diversity of an assigned area (Salo and Toivonen 2009, p. 610; Fredericksen 2003, p. 10). However, BLI (2011a, unpaginated) reports that ''much of the forest within the species' range is still intact, and although the Bolivian forest is threatened by expansion of the logging industry, this species may benefit from the consequent patchwork clearance.''

Ninety percent of the range of the blue-headed macaw remains forested, and there is no evidence of a decline in either the range or the population. Logging could affect individual blue-headed macaws though the loss of food or nesting resources; however, considering the extent of intact forests within the range of this macaw and no evidence of a decline in the population (Tobias and Brightsmith 2007, p. 134), as well as the possibility that the blue-headed macaw is increasing with the spread of degraded forests along rivers (Tobias and Brightsmith 2007, pp. 132–133), we have no evidence to suggest that logging is affecting the blue-headed macaw to a degree that it is affecting the status of the species. Additionally, we have no information to suggest that logging may become a threat to the status of the blue-headed macaw in the future.

Roads and Infrastructure

Oliveira *et al.* (2007, p. 2) estimated that 75 percent of the total Peruvian Amazon forest damage was within 20 km (12.4 mi) of the nearest road. In Bolivia, studies have detected small-scale roadside deforestation extending over 30 km (18.6 mi) from major roads (Steininger *et al.* 2001, p. 132). Studies on the effects of roads on deforestation in the Brazilian Amazon have shown a 30 percent forest loss within 10 km (6.2 mi) of roads and highways, with highways causing an additional 20 percent forest loss within 11–25 km (6.8–15.5 mi), and 15 percent loss within 26–50 km (16–31 mi) (Zambrano *et al.* 2010, p. 158). Despite the deforestation occurring along roads and highways, the range of the blue-headed macaw is 90 percent forested, and we found no information indicating that the species has been impacted by roads or any subsequent deforestation. In fact, species experts (Hennessey 2011, pers. comm. and Tobias and Brightsmith 2007, p. 134) indicate that this species is doing well, despite some localized impacts from infrastructure and roads.

The Initiative of the Integration of the Regional Infrastructure of South America (IIRSA) is a plan endorsed by the South American presidents, which includes around 350 infrastructure projects, such as highways, bridges, railways, ports, airports, and transmission corridors, to accomplish regional economic integration and facilitate trade (Babbitt 2009, pp. 28–29). At the center of this plan is the nearly complete Transoceanic Highway, a 1,000-km (621.3-mi) highway that connects the Brazilian State of Acre to the Peruvian coast, passing through Puerto Maldonado (Garcia-Navarro 2009, unpaginated; Babbitt 2009, p. 28; Tobias and Brightsmith 2007, p. 134) and near several other locations in which the blue-headed macaw has been recorded, bisecting its range (Tobias and Brightsmith 2007, p. 134). The blue-headed macaw occurs within the immediate outskirts of Puerto Maldonado, one of the areas with significant disturbance, suggesting that this species is not greatly affected by anthropogenic pressures (Brightsmith 2009, pers. comm.; Tobias and Brightsmith 2007, p. 129).

Future urban expansion in Puerto Maldonado resulting from the highway may put pressure on the protected area of Tambopata (Delgado 2008, p. 27), where the blue-headed macaw has been recorded. Although the Transoceanic Highway is not located within Bolivia, the connection between Cobija, Bolivia, and Brasiléia, Brazil, allows Cobija, a recorded location for the blue-headed macaw, to benefit from the road project and potentially grow in the future (Delgado 2008, p. 31). Additionally, IIRSA plans to build another highway that would branch of from the Transoceanic Highway in Rio Branco, the capital of Acre. If completed, this highway will run through the forests of Serra do Divisor National Park, a known

location for the blue-headed macaw (Babbitt 2009, p. 31). In spite of this information, we found no indication that the range, habitat, or population of the blue-headed macaw has been impacted by the Transoceanic Highway. Given that the species has not been adversely affected by road construction or other infrastructure, we have no information suggesting that the status of this species may be impacted in the future by the Transoceanic Highway.

Although there has been road development within Peru, Bolivia, and Brazil, and individual blue-headed macaws could potentially be affected by road development through the loss of food and nesting resources, we have no information indicating that the status of the species has been adversely impacted by this development in the past. The range remains 90 percent forested and there is no evidence that the range or population has declined. Furthermore, Brightsmith (2009, pers. comm.) notes that although road construction and related deforestation may affect part of the blue-headed macaw's range, habitat analyses to date show no evidence that deforestation will adversely affect the species in the future.

Agriculture and Ranching

Logging and modern roads facilitate infiltration into pristine forests by migrant settlers who use slash-and-burn methods for agriculture and cattle pastures (Laurance 1998, p. 411). Slash-and-burn agriculture involves the clearing of land and burning of debris (Locklin and Haack 2003, p. 775; Nepstad *et al.* 1999, p. 505). Often, plots are abandoned after only two or three cycles, and then more forests are cleared to establish new plots (Reyes-García *et al.* 2007, p. 406; Duery and Vlosky 2005, p. 10). Production may be limited to subsistence farming if roads are in poor condition or if the cost of transportation is high. However, if roads are in good condition and provide access to international and national markets, production may expand to cash crops (Zambrano *et al.* 2010, p. 158; Locklin and Haack 2003, p. 780).

Agriculture is considered the main cause of deforestation in the lowlands of Bolivia (Pacheco 2006, p. 215). With pressures for agriculture expansion, large areas are being cleared for both soybean farms and cattle ranches (Pacheco 2006, pp. 213, 216; Duery and Vlosky 2005, p. 10; TNC 2001, unpaginated: Laurance 1998, p. 411). The San Buenaventura-Puerto Heath road runs through the Madidi National Park, a known location of the blue-headed macaw. The greatest human-caused impact along this road was the conversion of forest via slash-and-burn agriculture, although rates of deforestation were relatively low (Locklin and Haak 2003, pp. 775, 778). Forest clearance patterns of indigenous communities practicing shifting cultivation have been observed, particularly along rivers, throughout Beni, Pando, and La Paz (Steininger *et al.* 2001, p. 131). Reyes-García *et al.* (2007, p. 406) found that the Tsimane', a native Amazonian society within Beni, practice slash-and-burn agriculture and abandon their plots after one or two cultivation cycles to establish new plots. This society is also moving from subsistence farming towards cash crops, which requires additional forest clearing and contributes to further deforestation (Reyes-García *et al.* 2007, p. 407). We have no information indicating that the blue-headed macaw has been or will be impacted by agriculture in Bolivia, and given that Bolivia is such a small portion of the species' range, we have no reason to believe agricultural expansion is affecting or will affect this species at the population level.

Current expansion of deforestation in Bolivia Amazonia is also associated with cattle ranching (Pacheco 2006, p. 216). Its contribution to deforestation is expected to increase in the future due to topographical limitations of mechanized agriculture. In Beni, the impacts of cattle ranching may be a greater concern, as 65 percent of all the cattle herds in Bolivia are located here (Pacheco 2006, pp. 215–216). However, the species' range in Bolivia is limited to just inside the border and we have no information indicating that the blue-headed macaw has been impacted, or could be impacted, by cattle ranching in that area of its range.

In Brazilian Amazonia, cattle production is the dominate land use in deforested areas and is the main factor driving deforestation (Pacheco 2006, p. 223; Laurance 1999, p. 113; Fearnside 1996, p. 21). Large-scale ranchers (those that own over 100 ha (247 ac)) are thought to be responsible for 70–75 percent of all the deforestation in this region (Laurance 1999, p. 113). Furthermore, illegal slash-and-burn practices have already destroyed 20 percent of the Brazilian Amazon (Colitt 2010, unpaginated). The States of Rondônia and Acre, where the blue-headed macaw occurs, are currently experiencing conversions of forest for agriculture and cattle ranching (Tobias and Brightsmith 2007, p. 134). However, given this species' limited range just inside the border of Brazil and its ability to thrive in altered habitat, coupled with no information indicating that cattle ranching has impacted, or will impact, the blue-headed macaw within its limited range in Brazil, we do not believe that cattle production is currently, or will be a threat to this species, now or in the future.

Although the migration of settlers, and the subsequent farming, has been named by some as a contributing factor to deforestation in Peru (Painter 2008, unpaginated; Hume *et al.* 2006, p. 3), we found little information on the extent of deforestation due to agriculture. In Manú National Park, 63,500 ha (156,911 ac) of 1.7 million ha (4.2 million ac) were deforested up to the year 2005 for agricultural activities (Cabieses 2009, p. 26). However, since 2006, the Integrated Programme to Strengthen the Local Capacity of Small Farmers of the Manú Biosphere Reserve Buffer Zone of Peru has worked with families within the park to foster activities compatible with organic farming and incorporate natural resource management into agricultural activities. By 2008, 530 families helped reforest 151 ha (373 ac) with mostly native species (Cabieses 2008, pp. 26–27). In the area surrounding Cordillera Azul National Park (a recorded location for the blue-headed macaw), the rate of deforestation due to the coffee and tea plantations and cereal grain farms (Chatterjee 2009, p. 557) has increased. The core zone of the Park is largely free of human inhabitants, with the exception of one rancher with 220 ha (543.6 ac) of pasture and some reports of indigenous people in the southeastern part of the Park. In 2008, the Peruvian government granted a 20-year contract to the Peruvian NGO Centro de Conservación, Investigación y Manejo de Areas Naturales Cordillera Azue (CIMA) that allows CIMA to manage the park under the supervision of the State and according to clearly defined guidelines. (Ostoic n.d., p. 1). In addition, we found no information indicating agriculture in any of the range states has impacted, or will impact, the blue-headed macaw, thus we do not believe it will impact the species in Peru, especially given the limited and localized nature of agriculture activities.

Agriculture and cattle ranching activities are currently taking place within the range of the blue-headed macaw, especially within Bolivia and Brazil. However, given that these two countries make up a minimal part of the species range, it is unlikely to have any effect on the species. Although it is possible that individual blue-headed macaws could be affected by these activities through the loss of food or nesting resources, we have no information indicating the species has been adversely impacted by either

activity; in fact, the blue-headed macaw seems to benefit from some fragmented habitat. There is no evidence of a decline in the range or population of the blue-headed macaw and 90 percent of the species' range remains forested. Both agriculture and cattle ranching are expected to expand in the future; however, we have no information on the extent of this expansion and no information indicating either activity will be a threat to the species in the future.

Oil and Gas

The western Amazon contains large reserves of oil and gas, many that are yet untapped (Finer *et al.* 2008, p. 1). Global demand for energy and record oil prices have launched unprecedented levels of oil and gas exploration and extraction in western Amazonia, with some of the most intense activity occurring in Peru (Kolowski and Alonso 2010, p. 917; Babbitt 2009, p. 31; Finer *et al.* 2008, p. 1).

National governments have delineated specific areas, or blocks, that are zoned for hydrocarbon (e.g., natural gas and petroleum) activities; these blocks may be leased to state and multinational energy companies for exploration and production (Finer *et al.* 2008, p. 1). In western Amazonia, there are approximately 180 oil and gas blocks covering about 688,000 km^2 (265,638 mi^2), which are operated by at least 35 multinational companies (Finer *et al.* 2008, p. 2). These oil and gas blocks may bring new access routes throughout the area, contributing to deforestation, as it did in eastern Amazonia and the southern Brazilian Amazon (Finer *et al.* 2008, p. 6).

In 2003, Peru reduced royalties to encourage investment and sparked an exploration boom. As of 2008, 72 percent of the Peruvian Amazon was zoned for oil and gas by the government into 64 separate blocks; 48 of these blocks are currently active, the others may be subjected to active exploration in the near future (Kolowski and Alonso 2010, p. 917; Finer *et al.* 2008, pp. 2, 5). The only areas fully protected from oil and gas activities are national parks and national and historic sanctuaries, which cover approximately 12 percent of the Peruvian Amazon. However, 20 blocks overlap with 11 less strictly protected areas, such as communal reserves and reserved zones (Finer *et al.* 2008, p. 2). Although oil and gas exploration and production are occurring in Peru, we have no information indicating that the blue-headed macaw has been impacted, or will be impacted, by oil and gas activities in Peru.

In Bolivia and Brazil, areas open to oil and gas explorations are increasing rapidly (Finer *et al.* 2008, p. 2). In Bolivia, two leased blocks, covering 15,000 km^2 (5,791 mi^2), include large parts of Madidi National Park, a recorded location for the blue-headed macaw, as well as other parks where the blue-headed macaw has not been recorded; exploration in this region is imminent. The primary task of a newly created oil company, comprised of the State oil companies of Bolivia and Venezuela, is to explore for oil in newly created blocks surrounding Madidi National Park. Many other blocks in Bolivia overlap with protected areas (Finer *et al.* 2008, p. 5). We have no information indicating that the blue-headed macaw has been adversely impacted by oil and gas exploration in Bolivia; species experts have indicated that there is no evidence of a decline in the range or population of the blue-headed macaw (Tobias and Brightsmith 2007, p. 134) . Furthermore, we do not have information to indicate that the species will be impacted by future oil and gas exploration in Bolivia.

In Brazil, a 400-km (248.5-mi) gas pipeline was completed in 2009, running from Urucus gas field (State of Rondônia) to Manaus (State of Amazonas). Another 500-km (310.6-mi) pipeline has been proposed to carry gas to Porto Velho in Rondônia. Additionally, Brazil's National Petroleum Agency has announced plans to look for oil and gas in the State of Acre, on the border with Peru and Bolivia (Finer *et al.* 2008, p. 5), an area that contains known locations for the blue-headed macaw. Oil and gas exploration and production do not necessarily impact parrots. Drilling operations often have a smaller footprint than other extractive activities, and this is further reduced once the well is installed. Further, we found no information that existing oil and gas operations have impacted any parrot populations in any of the range countries. Because there is no evidence of a decline in the range or population of the blue-headed macaw in Brazil, we have no information indicating that the blue-headed macaw has been impacted by oil and gas exploration in Brazil. Furthermore, we do not have information to indicate that the species will be impacted by future oil and gas exploration in Bolivia.

Pending oil and gas projects are the primary threats to Peru's Camisea region and Bolivia's Madidi region (Finer *et al.* 2008, p. 6). Although individual blue-headed macaws could potentially be affected by oil and gas explorations through the loss of food or nesting resources, there is no evidence of a decline in the range or population of the blue-headed macaw, and we have no information indicating that the species has been adversely impacted by oil and gas exploration. Furthermore, we have no information to indicate that the species will be impacted by future oil and gas exploration.

Mining

Over the last decade, the price of gold has increased 360 percent, with an annual rate of increase of approximately 18 percent; subsequently, the number of non-industrial gold mining operations in developing countries has risen (Swenson *et al.* 2011, p. 1). Many of these operations are illegal, as they are set up by residents without permits or formal title to the land, and without an environmental impact analysis or miner education (Swenson *et al.* 2011, p. 1).

In Peru, the expansion of gold mining has been encouraged by the Transoceanic Highway, which has drawn impoverished Peruvians into the lowlands in search of a livelihood and hoping to strike it rich (Garcia-Navarro 2009, unpaginated). Madre de Dios is currently undergoing a new gold rush due to the high price of gold, increased oil and gas activities, and the completion of infrastructure projects (Hajek *et al.* 2011, *in press*). This region is Peru's third largest producer of gold and accounts for 70 percent of Peru's artisanal (small-scale or subsistence miner) gold production (Swenson *et al.* 2011, p. 2). Concurrent with increasing annual gold prices, mining deforestation has been increasing since 2003. From 2003 to 2006, annual mining deforestation was approximately 292 ha (721.5 ac) per year. From 2006 to 2009 this rate increased to 1,915 ha (4,732 ac) per year, a six-fold increase (Swenson *et al.* 2011, p. 4). Furthermore, Swenson *et al.* (2011, pp. 4–5) found that mining deforestation in this area is outpacing deforestation due to settlements, although this scenario might be different for areas with more secondary roads, which tend to correlate with higher rates of deforestation. One study found that forest recovery following small-scale gold mining was extremely slow and qualitatively inferior to regeneration following other human-caused disturbances (Mol and Ouboter 2003, p. 202). However, these operations are typically small and require very little land-clearing. Given the relatively small amount of land conversion for gold mining, we found no information indicating that deforestation via mining has impacted the blue-headed macaw, nor did we find any information

indicating this species will be impacted by mining in the future.

In addition to deforestation, impacts to the environment from gold mining stem from acid mine drainage and air and water pollution from contaminants, such as mercury. During gold processing, mercury is released into sediments, waterways and the atmosphere. As parrots are known to use riverside clay licks, they may be at risk of mercury entering their systems when they ingest soil particles. Many developing countries have reached agreements with large gold mining companies that do not use mercury, but regulating small-scale, artisanal mines continues to be a struggle (Swenson *et al.* 2011, pp. 1, 5). Furthermore, gold miners might actively erode riverbanks, which may include essential clay licks used by parrots (Lee 2010, p. 12). However, we have no information indicating that mining has affected the blue-headed macaw.

Permits for mining require an environmental impact report. Madre de Dios has the highest number of unapproved mining permits in Peru; moreover, there is little effective enforcement of unapproved permits or illegal miners, and therefore, little incentive to apply for a permit (Swenson *et al.* 2011, p. 2). Miners are able to use waterways for transportation and are capable of invading far reaches of communities and protected areas. Lack of funding, staff, and staff training makes patrolling these remote areas difficult (Swenson *et al.* 2011, p. 5). Two of the three mining sites studied by Swenson *et al.* (2011, p. 4) are located less than 7 km (4.3 mi) from the Amarakaeri Communal Reserve and less than 70 km (43.5 mi) from Manu National Park. In a study of 54 national parks in Latin America, mining was considered a threat in approximately 20 (37 percent) of the parks, of which 11 (55 percent) were located in Peru (Swenson *et al.* 2011, p. 4). Peru's newly created Ministry of Environment is working to control illegal mining, and a recent effort was made through a moratorium on new mining concessions (Swenson *et al.* 2011, p. 5).

In addition to the major mining growth centers, there are many small expanding areas of mining scattered across Madre de Dios, which are harder to detect (Swenson *et al.* 2011, p. 5). Rising annual gold prices and an increasing number of miners setting up illegal mines may fragment once large areas of pristine forests. Although individual blue-headed macaws could potentially be affected by mining through the loss of food or nesting resources, we have no information that the species has been adversely impacted by mining. In fact, this species tends to benefit from patchwork clearance of forests (BLI 2011a, unpaginated). Furthermore, we do not have any information indicating the species may be impacted by future mining operations.

Conservation Programs

A new mechanism is emerging that may raise funds to protect forests from deforestation, as well as mitigate climate change. This mechanism is known as ''reduced emissions from deforestation and forest degradation'' (REDD). As forests are destroyed for logging, mining, or oil and gas, the carbon stored in the trees is released as carbon dioxide, which adds to the concentration of greenhouse gases; 20 percent of global greenhouse gas emissions are thought to be from deforestation (Chatterjee 2009, p. 557). Lawmakers and businesspeople around the world are beginning to consider investing in REDD programs as a way to mitigate climate change. Under this type of program, developing countries would be paid to protect their forests and reduce emissions associated with deforestation. Funds would come from foundations, governments, or financial agencies such as World Bank; industries in developed countries would receive credits for saving trees in developing countries (Chatterjee 2009, p. 557). If REDD projects are able to generate revenue comparable to those of activities such as logging and agriculture, and revenues are distributed equally among stakeholders, this would give standing forests value and an incentive for forest conservation (Hajek *et al.* 2011, in press). REDD projects are emerging in many regions (Hajek *et al.* 2011, in press); however, we do not yet know the occurrence of these projects within the range of the blue-headed macaw and how successful these projects will be.

Another program being implemented is certification of forests. The basis for certification is for consumers to be assured by a neutral third party that forest companies are employing sound practices that will ensure sustainable forest management. By being certified, a company can differentiate their products and potentially acquire a larger share of the market (Duery and Vlosky 2005, p. 12). To be certified, companies must follow standards set by the Forest Stewardship Council (FSC). Certification companies not only certify forests, but also forest products that come from well managed forests and may also provide a means to track logs and remove illegally logged trees from the market (Duery and Vlosky 2005, pp. 13–14; Kometter *et al.* 2004, p. 9). To date, more than 670,000 ha (1.6 million ac) of Peru's forest have achieved FSC certification (Rodriguez and Cubas 2010, p. 78). Bolivia has the largest area of FSC-certified tropical forests in the world; by the mid-2000s, Bolivia announced that 2.2 million ha (5.4 million ac) of humid tropical forests were certified (Killeen *et al.* 2007, p. 600; Duery and Vlosky 2005, p. 14). In 2004, Brazil announced that 1.2 million ha (2.9 million ac) of native Amazon forests and 1.0 million ha (2.4 million ac) of plantations were certified (WWF 2004, unpaginated). The FSC promotes ''the equitable incorporation of social and environmental considerations when decisions are taken to manage forests. Under FSC certification, civil and indigenous rights are respected, areas of high social and environmental conservation value are maintained or enhanced, natural forests are not converted, highly hazardous pesticides and genetically modified trees are prohibited, and harvesting must meet national laws and international treaties.'' Furthermore, forests that are ''*FSC certified* forest products'' are verified from the forest of origin through the supply chain. The FSC label ensures that the forest products used are from responsibly harvested and verified sources (FSC n.d., unpaginated).

In 2008, Peru announced its intention to reach zero deforestation within just 10 years. The Peruvian government stated that more than 80 percent of the country's primary forests could be saved or protected with about $20 million U.S. dollars (USD) a year from the international community. However, there are major obstacles to achieving this goal. Additionally, Peru launched in 2010 its National Program for the Conservation of Forests and Mitigation of Climate Changes. This program aims to preserve 54 million hectares (133 million acres) of the 72 million hectares (178 million acres) of tropical forest in the Peruvian Amazon, although it is expected that the entire area consisting of 72 million hectares will be included (La Cruz 2010, unpaginated). Similarly, Brazil announced a plan to cut deforestation rates by 70 percent over the next 10 years with the help of international funding. Brazil's plan calls on foreign countries to find $20 billion USD by 2021 (Painter 2008, unpaginated). All three countries have committed to protecting their forest resources in the future and have moved towards their goals to reach zero deforestation by certifying nearly 4 million ha (10 million ac) of forests.

There are many obstacles to overcome to reach these goals, including annual funding. If these programs are implemented and goals reached, deforestation in the Amazon will be significantly reduced.

Summary of Factor A

It is clear that the forests of the Amazon are being deforested for various economic activities, and deforestation rates have been increasing for several decades. How a species responds to this type and level of habitat disturbance depends on the preferences of the individual species, and the distance of undisturbed rainforest near disturbed areas. Many parrots are not habitat specialists and thrive in mosaics of different successional habitats. Many species of lowland forest habitat seem to do relatively well in modified human environments, as long as a mosaic of habitats in different successional stages is maintained and poaching and trapping are controlled (Snyder *et al.* 2000, p. 99).

Although we do not know the exact extent of current deforestation within the specific areas occupied by the blue-headed macaw, especially within Bolivia and Brazil where the species occurs just inside the countries' borders, there is no evidence that deforestation has impacted the blue-headed macaw. Ninety percent of this species' range is still forested. There is no evidence of a decline in the range or population and populations within Peru and Bolivia have remained healthy. At a minimum, the population numbers 11,500 individuals (including immature individuals), and this may be an underestimate as the entire global range has not been surveyed. Furthermore, blue-headed macaws at the Tambopata Research Center have been increasing since 2000, and sightings of the blue-headed macaw in Peru have increased over the last 10 years. Additionally, it has been found in a wide range of habitats, and is slightly more common in degraded habitats than pristine forests. The blue-headed macaw still occurs on the outskirts of Puerto Maldonado, Peru, one of the areas with significant disturbance, suggesting that this species is not greatly affected by anthropogenic pressures. Species experts have even suggested that the blue-headed macaw may increase with the spread of degraded forests along rivers.

Although there is evidence that forest habitat within the species range is subject to selective logging, the patchwork clearance as a consequence of logging may benefit the species. Furthermore, we found no information that selective logging has adversely impacted the species. Additionally, road construction and related deforestation that are likely to affect the region in which the blue-headed macaw occurs is not likely to adversely affect the species. It is possible that individual blue-headed macaws may be affected by economic activities involving deforestation, such as logging, road development, agriculture and cattle ranching, oil and gas exploration, and mining, through the loss of food or nesting resources; however, we have no evidence to suggest that deforestation is affecting the blue-headed macaw to a degree that it is affecting the status of the species. Based on the best scientific and commercial information available, we find that deforestation from various economic activities, as discussed above, is not adversely impacting the blue-headed macaw and has not affected the range or status of the species. Additionally, we do not anticipate significant modification to the blue-headed macaw's habitat or curtailment of its range due to deforestation in the foreseeable future. A vast amount of the species' range has remained forested through current rates of deforestation. Significant amounts of the forests within Peru, Bolivia, and Brazil have been FSC-certified, indicating they are subject to sustainable harvesting, which may improve its habitat. Furthermore, all three countries have noted their commitment to protecting their forests, ensuring that harvest is done sustainably, and each has a goal of reaching zero deforestation within ten years. Some of the operations within the range of the blue-headed macaw that contribute to deforestation have smaller footprints than other extractive activities and require little land clearing (e.g., oil and gas operations and mining). Although increased deforestation is anticipated in Bolivia and Brazil, these areas represent only a small portion of the species' range. Therefore, based on the best scientific and commercial information available, we find that future deforestation from various economic activities, as discussed above, is not a threat to the status of the blue-headed macaw at this time.

We found no information suggesting that habitat loss is a current threat to this species or may become a threat to this species in the future such that it may contribute to the risk of extinction of this species. Therefore, based on the best available scientific and commercial information, we find that the present or threatened destruction, modification, or curtailment of habitat or range is not a threat to the blue-headed macaw in any portion of its range now or in the foreseeable future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Parrots, in general, are long-lived with low reproductive rates, traits that make them particularly sensitive to increased mortality (Lee 2010, p. 3; Thiollay 2005, p. 1121; Wright *et al.* 2001, p. 711). Hunting of parrots is widespread, and locals are known to hunt macaws at clay licks, which provide easy wait and shoot opportunities, for food and ornamental feathers (Tobias or Brightsmith 2007, p. 134). Logging operations are known to contribute to increased hunting in areas opened by the logging roads and subsequent settlements (Lee 2010, p. 3; Hume *et al.* 2006, p. 11; Fredericksen 2003, p. 11). However, there are no direct reports of hunters targeting the blue-headed macaw. Furthermore, hunters generally target larger species of macaw for food; since the blue-headed macaw is a small species, it is unlikely that it is targeted as a food source. Additionally, the feathers of this species have not been observed in local handicrafts, and therefore, it is likely not targeted for this purpose either (Tobias or Brightsmith 2007, p. 134).

Trapping parrots for the bird trade has occurred since pre-European times, as Amerindians valued macaws, parrots, and feather ornaments as ritualistic and trade objects (Snyder *et al.* 2000, pp. 98–99). Today, owning a wild parrot as a pet remains socially acceptable in most neotropical countries, even if it is illegal (Snyder *et al.* 2000, p. 99). Despite laws to protect wild parrots, the black market continues to supply a large part of the pet parrot trade in national and international markets. Illegal trade is thought to contribute to the threatened status of 66 parrot species worldwide, including 27 species in South America (Gastañaga *et al.* 2010, p. 1).

In 1981, the blue-headed macaw was listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES is an international agreement between governments to ensure that the international trade of CITES-listed plant and animal species does not threaten species' survival in the wild. There are currently 175 CITES Parties (member countries or signatories to the Convention). Under this treaty, CITES Parties regulate the import, export, and reexport of specimens, parts, and products of CITES-listed plants and animal species (also see Factor D). Trade must be authorized through a system of permits and

certificates that are provided by the designated CITES Scientific and Management Authorities of each CITES Party (CITES 2010a, unpaginated).

In 2002, a CITES document proposed an uplisting of blue-headed macaw from Appendix II to Appendix I based on increasing numbers of blue-headed macaws in legal and illegal trade and the effects of trade on a species with low reproductive output (CITES 2002, pp. 1, 4–5). Sources cited in the document stated that the blue-headed macaw was offered in Brazilian markets by the hundreds, possibly originating from Peru, and was well known in Bolivian markets. Sources also stated that traders showed interest in buying more blue-headed macaws and for higher prices (CITES 2002, p. 4). Prices for blue-headed macaws were found to be very high, ranging from $300 to 12,500 USD. Prices are set according to demand and may be influenced by the species' rarity. Wright *et al.* (2001 in CITES 2002, p. 3) found that prices above $500 USD were significantly related to high poaching rates. In view of the significant interest in blue-headed macaws by aviculturist and commercial breeders, increased numbers of birds kept illegally, and the assumed high demand based on prices, capture pressure was believed to likely increase and have detrimental impacts to the species' survival due to the species rarity, low reproductive rate, and limited distribution (CITES 2002, pp. 5–6).

In January 2003, the blue-headed macaw was uplisted to Appendix I of CITES. An Appendix-I listing includes species threatened with extinction whose trade is permitted only under exceptional circumstances, which generally precludes commercial trade. The import of an Appendix-I species requires the issuance of both an import and export permit. Import permits for Appendix-I species are issued only if findings are made that the import would be for purposes that are not detrimental to the survival of the species in the wild and that the specimen will not be used for primarily commercial purposes (CITES Article III(3)). Export permits for Appendix-I species are issued only if findings are made that the specimen was legally acquired and trade is not detrimental to the survival of the species in the wild, and if the issuing authority is satisfied that an import permit has been granted for the specimen (CITES Article III(2)). On the same day the blue-headed macaw was uplisted to Appendix I, the Philippines entered a reservation stating that it would not be bound by the provisions of CITES relating to trade of blue-headed macaws (CITES 2011, unpaginated). A reservation means that the Philippines is treated as a non-CITES party with respect to the species concerned. Countries with CITES reservations may only trade with other countries that have the same reservation on the same species at the next level lower, in this case Appendix II. If both countries do not have a reservation on that species, then the animal remains on Appendix I.

Based on data obtained from United Nations Environment Programme–World Conservation Monitoring Center (UNEP–WCMC) CITES Trade Database, from the time the blue-headed macaw was uplisted to CITES Appendix I in January 2003 through 2009, 338 specimens of this species were reported in international trade. Of this total, 276 were live birds, 61 scientific specimens, and 1 body. In analyzing these reported data, several records appear to be over counts due to slight differences in the manner in which the importing and exporting countries reported their trade, and it is likely that the actual number of specimens of blue-headed macaws reported in international trade to UNEP–WCMC from 2003 through 2009 was 312, including 252 live birds, 59 scientific specimens, and 1 body. Of these specimens, 58 (19 percent) were reportedly exported into Mexico, Belgium, and South Africa from Peru (UNEP–WCMC 2011, unpaginated). With the information given in the UNEP–WCMC database, from 2003 through 2009 only 26 wild specimens of blue-headed macaws were reported in trade, and these were non-living specimens traded for scientific purposes; the other 286 specimens reported in trade (252 live birds, 33 scientific specimens, and 1 body) were captive-bred or captive-born specimens.

Through Resolution Conf. 8.4 (Rev. CoP15), the Parties to CITES adopted a process, termed the National Legislation Project, to evaluate whether Parties have adequate domestic legislation to successfully implement the Treaty (CITES 2010b, pp. 1–5). In reviewing a country's national legislation, the CITES Secretariat evaluates factors such as whether a Party's domestic laws designate the responsible Scientific and Management Authorities, prohibit trade contrary to the requirements of the Convention, have penalty provisions in place for illegal trade, and provide for seizure of specimens that are illegally traded or possessed. The Governments of Peru and Brazil were determined to be in Category 1, which means they meet all the requirements to implement CITES. Bolivia was determined to be in Category 2, meaning legislation does not meet the requirements to implement CITES; however, Bolivia has submitted a CITES Legislation Plan and draft legislation to the Secretariat for comments (*www.cites.org,* SC59 Document 11, Annex p. 1). Generally this means that Bolivia has not completed all the requirements to effectively implement CITES. However, since the blue-headed macaw is listed as an Appendix-I species under CITES, commercial legal international trade is very limited. Because the majority of the specimens of this species reported in international trade (81 percent) are captive-bred or captive-born and the few wild specimens reported in trade were scientific specimens traded for scientific purposes, we believe that international trade controlled via valid CITES permits is not a threat to the species. In addition, Bolivia's category 2 status under the National Legislation Project does not appear to be impacting the blue-headed macaw.

There is evidence of a large market for national and international parrot trade, much of which involves illegally traded birds in Peru, Bolivia, and Brazil (Gastañaga *et al.* 2010, p. 5; Lee 2010, p. 12; Herrera and Hennessey 2007, pp. 296–297; Tobias and Brightsmith 2007, p. 134; CITES 2002, p. 4). One study found illegal trade of CITES Appendix-I and Appendix-II listed species, although the blue-headed macaw was not recorded (Herrera and Hennessey 2007, p. 298). In Peru, there are reports of trappers working unprotected clay licks the blue-headed macaw is known to use; however, it is not known whether the species was targeted or if it was actually caught (Tobias and Brightsmith 2007, p. 134). It was thought that foreign traders purchased blue-headed macaws in and around towns in Peru, Bolivia, and Brazil with an unverified report of ''hundreds'' passing through some Brazilian markets (CITES 2002 in Tobias and Brightsmith 2007, p. 134), but this report is from before the species was listed in CITES Appendix I in 2003. Three recent studies on domestic parrot trade found little to no evidence of blue-headed macaws being traded, and certainly not by the hundreds; one study found one report of two birds being present in a single market (Gastañaga *et al.* 2010, pp. 5–6; Brightsmith 2009, pers. comm.; Herrera and Hennessey 2007, pp. 298–299). It appears that although there may be some evidence of blue-headed macaws in the illegal pet bird trade, these numbers are likely low, as there is no solid supporting data that this species occurs in local markets in large quantities (Brightsmith 2009, pers. comm.), and furthermore, the report of

''hundreds'' of blue-headed macaws in Brazilian markets referred to above occurred prior to the listing of the species in CITES Appendix I. What little illegal international trade may be occurring does not appear to have a significant impact on the blue-headed macaw, given a population ranging from 11,500 to 57,500 (Brightsmith 2009, pers. comm.).

Summary of Factor B

We found no evidence indicating that the blue-headed macaw is hunted as a food source or for ornamental feathers. Although trapping for the pet bird trade may have occurred in large numbers, we have no evidence that this is currently occurring. Since the CITES Appendix-I listing, legal commercial international trade has been very limited. Furthermore, recent studies of the parrot trade in Peru, Bolivia, and Brazil found no evidence of this species in markets, suggesting that illegal trade may only be occurring in small numbers, if at all, or is very well hidden. In addition, we are not aware of any information currently available that indicates the use of this species for any recreational or educational purpose. According to the WCMC Trade Database, from 2003 through 2009, 26 specimens were traded for scientific purposes. Given the estimated population size of 11,500–57,500 individuals, we find that trade for scientific purposes is insignificant. Based on the best available scientific and commercial information, we find that overutilization for commercial, recreational, scientific, or educational purposes is not a threat to the blue-headed macaw in any portion of its range now or in the foreseeable future.

C. Disease or Predation

Infectious diseases can pose many direct threats to individual birds, as well as entire flocks (Abramson *et al.* 1995, p. 287). Research on diseases affecting the blue-headed macaw specifically, either in captivity or in the wild, is lacking. Most of the available research on diseases in macaws and parrots address captive-held birds; information on the health of macaws in the wild is scarce (Karesh *et al.* 1997, p. 368). It is not clear how prevalent diseases which are common in birds held in captivity affect this species in the wild. Some of the common diseases in macaws are discussed below.

Proventricular Dilatation Disease

One serious disease that has been reported to infect psittacines is Proventricular dilatation disease (PDD), which is also known as avian bornavirus (ABV) or macaw wasting disease. It is a fatal disease that poses a serious threat to domesticated and wild parrots worldwide, particularly those with very small populations (Kistler *et al.* 2008, p. 1; Abramson *et al.* 1995, p. 288). This contagious disease causes damage to the nerves of the upper digestive tract, so that food digestion and absorption are negatively affected. The disease has a 100-percent mortality rate in affected birds, although the exact manner of transmission between birds is unclear. In 2008, researchers discovered a genetically diverse set of novel ABVs that are thought to be the cause (Kistler *et al.* 2008, p. 1). The researchers developed diagnostic tests, methods of treating or preventing bornavirus infection, and methods for screening for the anti-bornaviral compounds (Kistler *et al.* 2008, pp. 1–15).

Psittacine Beak and Feather Disease

Psittacine beak and feather disease (PBFD) has been documented in over 35 psittacine species, but all psittacines should be regarded as potentially susceptible (Abramson *et al.* 1995, p. 296). This viral disease, which originated in Australia, affects both wild and captive birds, causing chronic infections resulting in either feather loss or deformities of beak and feathers (Cameron 2007, p. 82). PBFD causes immunodeficiency and affects organs such as feathers, the liver, and brain. Suppression of the immune system can result in secondary infections due to other viruses, bacteria, or fungi. The disease can occur without obvious signs (de Kloet and de Kloet 2004, p. 2,394). Birds usually become infected in the nest by ingesting or inhaling viral particles. Infected birds develop immunity, die within a couple of weeks, or become chronically infected. No vaccine exists to immunize populations (Cameron 2007, p. 82).

Newcastle's Disease

Newcastle's disease (ND) is a contagious and fatal viral disease that affects all species of birds, both domestic and wild (South Dakota Animal Industry Board (SD AIB) 2010, p. 2). Introduction of this disease to wild populations may come from infected birds in aviaries, although this is a low likelihood; exposure is more likely to come from infected domestic chickens or people carrying the disease on clothing and footwear (Styles *et al.* 2008, p. 93). ND affects the respiratory, nervous, and digestive systems. Symptoms include sneezing, gasping for air, nasal discharge, coughing, diarrhea, depression, tremors, dropping wings, paralysis, partial to complete drop in egg production, thin shelled eggs, swelling of tissue around the eyes and in the neck, and sudden death (SD AIB 2010, p. 2; Abramson *et al.* 1995, p. 300). Once in a population, this disease can cause severe mortality (Styles *et al.* 2008, p. 93). This disease is classified as a Foreign Animal Disease in the United States. The U.S. Department of Agriculture, Animal and Plant Health Inspection Service requires that all imported birds be tested and quarantined for disease before entering the country. Birds illegally smuggled into the United States are not quarantined and, therefore, may introduce this disease to captive birds (SD AIB 2010, p. 4). There is no treatment for this disease (Abramson *et al.* 1995, p. 300).

Psittacosis

Psittacosis, also known as Parrot Fever, is an infection caused by the bacteria *Chlamydophilia psittaci.* An estimated 1 percent of all birds in the wild are infected and act as carriers. Those that live in a stable environment appear to have little complications from the disease; however, stress, due to the loss of food source or habitat, will invoke the disease (Jones 2007, unpaginated). In pet birds, psittacosis can cause ruffled feathers, depression, diarrhea, respiratory problems, loss of appetite, weight loss, and even death. This disease can be transferred to humans and cause mild flu-like infections or serious pneumonia. Psittacosis can be treated with antibiotics (Michigan Department of Agriculture 2002, pp. 1–2).

Although there are many diseases that could negatively affect macaws in captivity and in the wild, we are unaware of any information indicating that any of those diseases are impacting the blue-headed macaw at a level that may affect the status of the species as a whole and to the extent that it is considered a threat to the species (Brightsmith 2009, pers. comm.; World Parrot Trust 2009, pers. comm.).

Predation

Although the blue-headed macaw has not been recorded as the prey of other predators, there are various bird and mammal species found in the lowland forests of the Amazon that could potentially prey on macaws (CITES 202, p. 3). While feeding at clay licks, parrots are particularly vulnerable to raptors, especially those that can catch them in flight; eagles may be a potential predator, as other macaws have been observed leaving clay licks when an eagle approaches (Burger and Gochfeld 2003, pp. 33; CITES 2002, p. 3). Additionally, jaguars (*Panthera onca*)

could also prey on macaws, given the chance (Burger and Gochfeld 2003, pp. 33). In one study that found evidence of nest predation in tree cavities in Peru, the author suggested birds, such as toucans, arboreal mammals, such as monkeys, and possibly snakes are significant nest predators (Brightsmith 2005, p. 79). Although blue-headed macaws may be subject to predation, there is no evidence that this is occurring at a level that poses a threat to the species (Brightsmith 2009, pers. comm.; World Parrot Trust 2009, pers. comm.).

Summary of Factor C

We are not aware of any scientific or commercial information that indicates disease or predation poses a threat to this species. As a result, we find that disease and predation are not threats to the blue-headed macaw in any portion of its range now or in the future.

D. Inadequacy of Existing Regulatory Mechanisms

Peru

The blue-headed macaw is considered ''vulnerable'' by the Peruvian Government under Supreme Decree No. 034–2004–AG (2004, p. 276855). This Decree prohibits hunting, take, transport, and trade of protected species, except as permitted by regulation. We found that hunting and trade are not threats to the blue-headed macaw at this time (Factor B), possibly because this species may not be hunted due to its smaller size. In addition, this species has not been recently found in the domestic trade markets within its range, therefore, this regulation appears to be contributing to adequate protection against hunting and trade.

In 2000, Peru created a new Forest and Wildlife Law (Ley Forestal y de Fauna Silvestre No 27308) to govern the forestland and improve control of wildlife trade (Gastañaga *et al.* 2010, p. 2; Granoff 2008, p. 533). This law provides a regime for effective regulation of efficient and productive commercial forestry. Most notably, the law requires management plans for all forestry-related harvesting activities, including long-term plans and annual operating plans, which are submitted to Instituto Nacional de Recursos Naturales (INRENA), the Peruvian government organization in charge of the protection of flora and fauna of the country (Granoff 2008, p. 552; WWF 2006b, unpaginated). However, implementation is limited by the scarce resources of INRENA (Indian Country Today, 2007, unpaginated).

The Forest and Wildlife Law also regulates the commercialization of wild species, provides minimum requirements for their harvest, collection, and transportation, and establishes a maximum collection quota for each species from their natural environment (Gastañaga *et al.* 2010, p. 2). INRENA annually sets a quota for certain species, which is published in the government newspaper. In 2007 and 2008, there were seven parrot species listed for legal wildlife trade; however, trade in the blue-headed macaw was not permitted (Gastañaga *et al.* 2010, p. 2). As trade is not currently a threat to this species (Factor B), this regulation may contribute to adequate regulation of trade in this species.

Recent studies by the Peruvian Society for Environmental Law (SPDA) have concluded that there are approximately 5,000 laws and regulations directly or indirectly related to environmental protection and natural resource conservation in Peru. However, many of these are hindered by lack of resources and enforcement capabilities (Muller 2001, pp. 1–2). The forests of the Amazon, including forests in Peru, are being deforested for various economic activities, and deforestation rates have been increasing for several decades. In spite of this, we found that habitat loss as a result of deforestation has not been a threat to this species; therefore, it appears that although existing forest regulatory mechanisms are inadequate, the inadequacy of these mechanisms in Peru is not affecting the blue-headed macaw.

Bolivia

The 1975 Law on Wildlife, National Parks, Hunting and Fishing (Decree Law No. 12,301 1975, pp. 1–34) has the fundamental objective of protecting the country's natural resources. This law governs the protection, management, utilization, transportation, and selling of wildlife and their products; the protection of endangered species; habitat conservation of fauna and flora; and the declaration of national parks, biological reserves, refuges, and wildlife sanctuaries, tending to the preservation, promotion, and rational use of these resources (Decree Law No. 12,301 1975, pp. 1–34; Environmental Law Alliance 2003, p. 2). Although this law designates national protection for all wildlife, there is no information as to the actual protections this confers to the blue-headed macaw. Law No. 12,301 (1975, pp. 1–34) also placed into public trust all national parks, reserves, refuges, and wildlife sanctuaries. However, there is no specific information as to the governmental protections afforded within the protected areas to either the blue-headed macaw or its habitat. Additionally, this regulation is very weak as it is 36 years old and the institutional framework has changed completely (Environmental Law Alliance 2003, p. 2). We found that hunting and trade are not threats to the blue-headed macaw at this time (Factor B); therefore, this regulation may contribute to adequate protection against unsustainable trade of the species.

Bolivia passed an overarching environmental law in 1992 (Law No. 1,333 1992), with the intent of protecting and conserving the environment and natural resources and promoting sustainable development (Environmental Law Alliance 2003, p. 1). Article 111 of this law states that all persons involved in unauthorized trade, capture, and transportation of wild animals are subject to a 2-year prison sentence and a fine equivalent to 100 percent of the value of the animal (Herrera and Hennessey 2007, pp. 295–296). However, there is no specific legislation to implement this law (Environmental Law Alliance 2003, p. 1). Nevertheless, we found that trade is not a threat to the blue-headed macaw at this time (Factor B); therefore, existing regulations may contribute to adequate protection against unsustainable trade.

Before 1996, timber companies were not required to write or use management plans and based their harvesting on selective extraction; this resulted in poor forest management, resource degradation, and a steep reduction in timber values (Duery and Vlosky 2005, p. 10). In 1996, Bolivia implemented a new Forestry Law (Ley Forestal No. 1700) to regulate the protection and sustainable use of forests and balance the interests of society and the economic and ecological health of the country (Duery and Vlosky 2005, p. 10). This law requires approved management plans and compliance with best management practices, including a 5-year forest management plan that incorporates forestry inventory data, timber stocking maps, and annual operation plans (Duery and Vlosky 2005, p. 10; Fredericksen 2003, p. 10). A typical forestry management plan subdivides the forest into parcels; one is used each year in a rotational system, typically providing for a 19-year regeneration period (Duery and Vlosky 2005, p. 10). Additionally, the Deforestation and Slash-and-Burn Plan that is part of this Forestry Law requires a payment to the forestry office for

slash-and-burn activities (Locklin and Haak 2003, p. 780).

In Bolivia, selective logging has been done at very low levels and with low human pressure, allowing them to remain largely intact (Fredericksen 2003, p. 10). Given that the species occurs just inside the border of Bolivia, and we found that habitat loss as a result of deforestation is not a threat to this species, it appears that the existing forest regulatory mechanisms in Bolivia may provide adequate protection for the blue-headed macaw.

Brazil

In 1998, Brazil passed the Environmental Crimes Law (Law No. 9605/98). Section I of this law details crimes against wild fauna, which include: the killing, harassment, hunting, capturing, or use of any fauna species without authorization (Clayton 2011, p. 4; UNEP, n.d., unpaginated). Additionally, except for the State of Rio Grande do Sul, commercial, sport, and recreational hunting are prohibited in Brazil. Penalties include a jail sentence of 6 months to 1 year, and/or a fine; the penalty is increased by half if the crime is committed under certain circumstances, including against rare species or those considered endangered, or within a protected area. However, it is not considered a crime to kill an animal when it is to satisfy hunger; to protect agriculture, orchards, and herds if authorized; or if the animal has been characterized as dangerous. This law also protects against other crimes involving the fauna species of Brazil. With respect to bird species, this law prohibits inhibiting reproduction without authorization; modifying or destroying nests or shelters; selling, offering, exporting, purchasing, keeping, utilizing, or transporting eggs, as well as products derived from fauna species without authorization; and introducing species into the country without license. Although this law provides protection to the fauna species of Brazil, it is more permissive than the prior law, the Fauna Protection Act (Law No. 5.197/1967), which provided more severe punishments (Clayton 2011, p. 4). We found that hunting and trade are not threats to the blue-headed macaw at this time (Factor B); therefore, this regulation may contribute to adequate protection against trade.

Section II of the Environmental Crimes Law details the crimes against flora, which include the destruction and damaging of forest reserves; cutting trees in forest reserves, causing fire in forests; extracting minerals from public forests or reserves without authorization; receipt of wood or vegetable products for commercial or industrial purposes without requesting a copy of the supplier's license; polluting the environment at levels which may cause damages to the health of human beings, or death of animals or significant destruction of plants; and research or extraction of mineral resources without authorization. Penalties vary according to the crime and may be increased under certain circumstances; for example, the penalty may be increased by one sixth to one third if the crime results in a decrease of natural waters, soil erosion, or modification of climatic regime (Clayton 2011, p. 5; UNEP, n.d., unpaginated).

The Public Forests Management Law (Law No. 11284, 2006) was passed to protect and preserve forests that belong to the Federal, State, or local governments, with environmental, economic, and social benefits. This law is expected to help end illegal land occupation by delineating public forests (WWF 2006a, unpaginated); three management models are provided: creating conservation units (e.g., national forests), allocating forest areas for community use free of charge (e.g., forest settlements), and signing forest concession contracts (Patriota 2009, p. 615). The Brazilian government will open some forest areas under 40-year contracts to allow logging under a sustainable development plan. Logging is banned in nature reserves and indigenous lands (WWF 2006a, unpaginated).

In Brazil, there have been improvements in environmental legislation and public awareness; however, enforcement capabilities are lacking (Laurance *et al.* 2001, p. 309). The forests of the Amazon, including Brazil, are being deforested for various economic activities, and deforestation rates have been increasing for several decades. However, this species occurs just inside the border of Brazil and we found that habitat loss as a result of deforestation is not a threat to this species; therefore it appears that the inadequacy of existing forest regulatory mechanisms in Brazil is not affecting the blue-headed macaw.

Protected Areas

The Peruvian national protected area system includes several categories of habitat protection. Habitat may be designated as any of the following: (1) Parque Nacional (National Park, an area managed mainly for ecosystem conservation and recreation); (2) Santuario (Sanctuary, for the preservation of sites of notable natural or historical importance); (3) Reserva Nacional (National Reserve, for sustainable extraction of certain biological resources); (4) Bosque de Protección (Protection Forest, to safeguard soils and forests, especially for watershed conservation); (5) Zona Reservada (Reserved Zone, for temporary protection while further study is under way to determine their importance); (6) Bosque Nacional (National Forest, to be managed for utilization); (7) Reserva Comunal (Communal Reserve, for local area use and management, with national oversight); and (8) Cotos de Caza (Hunting Reserve, for local use and management, with national oversight) (Rodríguez and Young 2000, p. 330). National reserves, national forests, communal reserves, and hunting reserves are managed for the sustainable use of resources (IUCN 1994, p. 2). The designations of National Parks, Sanctuaries, and Protection Forests, are established by supreme decree that supersedes all other legal claim to the land and, thus, these areas tend to provide more habitat protection. All other protected areas are established by supreme resolution, which is viewed as a less powerful form of protection (Rodríguez and Young 2000, p. 330).

Peru has 8 national parks and 41 additional protected areas (Chatterjee 2009, p. 558). The blue-headed macaw has been recorded in at least 6 of these areas: Cordillera Azul National Park (Loreto, Huanco, and Ucayali); Manu National Park (Madre de Dios and Cuzco); Alto Purús Communal Reserve and National Park (Madre de Dios); Los Amigos Conservation Concession (Madre de Dios); Tambopata National Reserve (Madre de Dios); and Bahuaja-Sonene National Park (Madre de Dios) (Tobias and Brightsmith 2007, p. 134).

In Bolivia, habitat is protected either on the national or departmental level through the following designations: (1) Parque (Park, for strict and permanent protection of representative of ecosystems and provincial habitats, as well as plant and animal resources, along with the geographical, scenic and natural landscapes that contain them); (2) Santuario (Sanctuary, for the strict and permanent protection of sites that house endemic plants and animals that are threatened or in danger of extinction); (3) Monumento Natural (Natural Monument, to preserve areas such as those with distinctive natural landscapes or geologic formations, and to conserve the biological diversity contained therein); (4) Reserva de Vida Silvestre (Wildlife Reserve, for protection, management, sustainable use and monitoring of wildlife); (5) Area Natural de Manejo Integrado (Natural Area of Integrated Management, where

conservation of biological diversity is balanced with sustainable development of the local population; and (6) Reserva Natural de Inmovilización (''Immobilized'' Natural Reserve, a temporary (5-year) designation for an area that requires further research before any official designations can be made and during which time no natural resource concessions can be made within the area) (Supreme Decree No. 24,781 1997, p. 3). Within parks, sanctuaries and natural monuments, extraction or consumption of all resources are prohibited, except for ''scientific research, eco-tourism, environmental education, and activities of subsistence of original towns, properly described and authorized.'' National protected areas are under the management of the national government, while departmental protected areas are managed at the department level (eLAW 2003, p. 3; Supreme Decree No. 24,781 1997, p. 3).

There are 22 protected areas in Bolivia covering 24 percent of its territory (Byers and Israel 2008, p. vi; Fredericksen 2003, p. 10). The blue-headed macaw has been recorded in at least two of these areas: Madidi National Park (La Paz) and Reserva Nacional Amazonica Manuripi-Heath (Pando) (Tobias and Brightsmith 2007, p. 134).

There are various regulatory mechanisms (Law No. 11.516, Act No. 7.735, Decree No. 78, Order No. 1, Act No. 6.938) in Brazil that direct Federal and State agencies to promote the protection of lands and that govern the formal establishment and management of protected areas to promote conservation of the country's natural resources (ECOLEX 2007, pp. 5–7). These mechanisms generally aim to protect endangered wildlife and plant species, genetic resources, overall biodiversity, and native ecosystems on Federal, State, and privately owned lands (e.g., Law No. 9.985, Law No. 11.132, Resolution No. 4, Decree No. 1.922). Brazil's formally established protection areas were developed in 2000 and are categorized based on their overall management objectives. These include national parks, biological reserves, ecological reserves, ecological stations, environmental protection areas, and national forests (Rylands and Brandon 2005, pp. 612–618). These areas allow varying uses and provide varying levels of protection for specific resources (Costa 2007, pp. 5–19). For example, Biological Reserves are restricted to a greater extent than the National Parks. Official uses of reserves include scientific study, environmental monitoring, and scientific education (Costa 2007, p. 9).

There are 84 decreed protected areas within Rondônia, Brazil alone, covering 45 percent of the territory (Ribeiro *et al.* 2005, p. 1). The blue-headed macaw has been recorded in one protected area, the Serra do Divisor National Park, in Acre (Tobias and Brightsmith 2007, p. 134).

In summary, the blue-headed macaw occurs in at least 10 major protected areas, covering a combined 110,216 km^2 (42,554 mi^2), or 18.7 percent of its global range, although this does include large areas of unsuitable habitat within three of the protected areas (Tobias and Brightsmith 2007, p. 134). In Peru, the Alto Purús Communal Reserve and National Park is surrounded by other important protected areas, including Manu National Park and the Tambopata Reserve and Bahuaja Sonene National Park; combined with Brazil's and Bolivia's important natural protected areas close to the border with Peru, these areas constitute an important protected corridor in South America (ParksWatch 2003, p. 17).

Studies have shown that protected areas have been successful in providing protection from poaching, logging, and other forest damage, especially when compared to unprotected areas (Lee 2010, p. 3; Killeen *et al.* 2007, p. 603; Oliveira *et al.* 2007, p. 1234; Asner 2005, p. 480; Ribeiro *et al.* 2005, p. 2; Gilardi and Munn 1998, p. 641). There is evidence of some habitat destruction within protected areas, including resource extraction, and information to suggest habitat destruction within protected areas is a potential future threat, especially when in close proximity to roads and subsequent settlements and agriculture and pasture conversion (Upper Amazon Conservancy 2010, unpaginated; Chatterjee 2009, p. 557; Cabieses 2009, p. 26; Killeen *et al.* 2007, p. 603; Oliveira *et al.* 2007, p. 1233; Ribeiro *et al.* 2005, pp. 1–2; ParksWatch 2005a, unpaginated; Fredericksen 2003, p. 10; CITES 2002, p. 7).

A number of conservation organizations have developed programs to support the protected areas of Peru. The Wildlife Conservation Society is executing a wide range of projects aimed at strengthening the management of Madidi National Park. This program is based on three main actions: (1) Park management, (2) natural resources management, and (3) scientific research (ParksWatch 2005a, p. 35). CARE-Bolivia has also implemented projects to raise local awareness on the importance of watershed protection and sustainable agricultural practices. Additionally, CARE-Bolivia and the Wildlife Conservation Society collaborated on the park's management plan, organized specific training courses for park rangers, and donated basic management equipment (ParksWatch 2005a, p. 38). Also, since the Tambopata Reserve and Bahuaja Sonene National Park was created, a series of conservation and research projects have been developed, including, among others, Rainforest Expeditions' Macaw Ecological Research Project (ParksWatch 2002, p. 7). The projects carried out by these organizations will help conserve the habitat of the park and will ultimately benefit the blue-headed macaw.

We found no evidence that habitat destruction within protected areas is a threat to this species now or in the foreseeable future; therefore, it appears that the inadequacy of existing regulatory mechanisms for protected areas in Peru, Bolivia, and Brazil are not adversely affecting the blue-headed macaw.

International Wildlife Trade

The European Union (EU) Wildlife Trade Regulation (Council Regulation No. 338/97) went into effect in 1997. The purpose of this regulation is to protect wild animals and plants currently or likely to become threatened by international trade by regulating trade in these species (UNEP–WCMC n.d., unpaginated). The blue-headed macaw is listed under Appendix A (Council Regulation No. 709/2010 amending No. 338/97). Appendix A includes species listed under CITES Appendix I or species that may be in demand for utilization in the EU or for international trade, and which is either threatened with extinction or so rare that any level of trade would imperil the survival of the species (Article 3(1)(a), (b)). Additionally, there has been an EU import suspension for the blue-headed macaw from Bolivia since 1986 and from Brazil since 1988 (Article 4.6(b) (CITES 2002, p. 3; UNEP–WCMC n.d., unpaginated). As discussed under Factor B, we do not consider international trade to be a threat impacting this species. Therefore, protection under this Regulation is an adequate regulatory mechanism.

The blue-headed macaw is listed in Appendix I of CITES. CITES is an international treaty among 175 nations, including Peru, Bolivia, Brazil, and the United States, entered into force in 1975. In the United States, CITES is implemented through the U.S. Endangered Species Act of 1973, as amended. The Secretary of the Interior has delegated the Department's responsibility for CITES to the Director of the Service and established the CITES Scientific and Management Authorities to implement the treaty. Under this

treaty, member countries work together to ensure that international trade in animal and plant species is not detrimental to the survival of wild populations by regulating the import, export, and reexport of CITES-listed animal and plant species. As discussed under Factor B, we do not consider international trade to be a threat impacting this species. Therefore, protection under this Treaty is an adequate regulatory mechanism.

The import of blue-headed macaws into the United States is also regulated by the Wild Bird Conservation Act (WBCA) (16 U.S.C. 4901 *et seq.*), which was enacted on October 23, 1992. The purpose of the WBCA is to promote the conservation of exotic birds by ensuring that all imports to the United States of exotic birds is biologically sustainable and is not detrimental to the species. The WBCA generally restricts the importation of most CITES-listed live or dead exotic birds except for certain limited purposes, such as zoological display or cooperative breeding programs. Import of dead specimens is allowed for scientific specimens and museum specimens. The Service may approve cooperative breeding programs and subsequently issue import permits under such programs. Wild-caught birds may be imported into the United States if they are subject to Service-approved management plans for sustainable use. At this time, the blue-headed macaw is not part of a Service-approved cooperative breeding program and does not have an approved management plan for wild-caught birds.

International trade was significantly reduced during the 1990s as a result of tighter enforcement of CITES regulations, stricter measures under EU legislation, and adoption of the WBCA, along with adoption of national legislation (Snyder *et al.* 2000, p. 99). As discussed under Factor B, we found that commercial legal international trade has been very limited and illegal trade currently occurs in small numbers, or is very well hidden. Taking into consideration the restrictions under the EU Wildlife Trade Regulation, CITES, and WBCA, and the lack of evidence for this species occurring in substantial numbers in the illegal pet bird trade, we believe that these regulation are adequately protecting the species from international trade.

Summary of Factor D

We found no evidence that hunting or trade poses threats to the blue-headed macaw; therefore, existing regulatory mechanisms addressing these activities may be providing adequate protection for this species. As discussed under Factor A, some deforestation, oil and gas exploration and extraction, mining, and infrastructure plans may occur in forests in Peru, and perhaps within the limited range of this species in Bolivia and Brazil. However, we found that habitat loss as a result of any of those activities is not a threat to this species in any portion of its range now or in the foreseeable future; therefore, it appears that the existing forest regulatory mechanisms throughout the range of this species is not adversely affecting the blue-headed macaw.

E. Other Natural or Man-Made Factors Affecting the Species' Continued Existence

We are not aware of any scientific or commercial information that indicate other natural or man-made factors pose a threat to this species. As a result, we find that other natural or man-made factors are not threats to the blue-headed macaw in any portion of its range now or in the future.

Finding

As required by the Act, we conducted a review of the status of the species and considered the five factors in assessing whether the blue-headed macaw is endangered or threatened throughout all or a significant portion of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the blue-headed macaw. We reviewed the petition, information available in our files, and other available published and unpublished information.

In considering whether a species may warrant listing under any of the five factors, we look beyond the species' exposure to a potential threat or aggregation of threats under any of the factors, and evaluate whether the species responds to those potential threats in a way that causes an actual impact to the species. The identification of threats that might impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence indicating that the threats are operative and, either singly or in aggregation, affect the status of the species. Threats are significant if they drive, or contribute 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.

We evaluated the potential threats to the blue-headed macaw, including habitat loss, national and international trade, disease and predation, inadequate regulatory mechanisms, and other natural or manmade factors such as climate change. We found no evidence that this species is being hunted. Legal international trade of this species has been very limited and most of the birds involved were captive-bred. We also found that illegal trade, disease, and predation were not threats to this species. We had no information on other natural or man-made factors on which to evaluate the effects on the blue-headed macaw.

As discussed under Factor A, logging, illegal logging, agriculture, ranching, slash-and-burn activities, oil and gas exploration and extraction, and illegal mining are occurring in Peru, and potentially in the area just inside the borders of Bolivia and Brazil, and deforestation rates have continued to increase in those countries. The best available scientific and commercial information indicates that although these activities could affect individuals of this species, it does not appear that these activities are affecting the species at the population level. We did not find information that the extent of future deforestation or the potential impacts to this species will occur at a level that will elicit a species-level response and contribute to the risk of extinction of the species. All of the range countries of the blue-headed macaw have laws and regulations to protect the species, or wildlife in general, and habitat. Existing regulatory mechanisms have not impacted the species such that it rises to a level that it would be considered a threat to the continued existence of the species.

Based on the lack of threats of sufficient imminence, intensity, or magnitude acting on this species, we find that the blue-headed macaw is not in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened), throughout all of its range. Therefore, we find that listing the blue-headed macaw as a threatened or endangered species is not warranted throughout all of its range.

We request that you submit any new information concerning the status of, or threats to, the blue-headed macaw or its habitat to our Branch of Foreign Species (see **ADDRESSES**) whenever it becomes available. New information will help us monitor this species and encourage its conservation.

Significant Portion of the Range

Having determined that the blue-headed macaw is not in danger of extinction or likely to become so within the foreseeable future throughout all of its range, we must next consider whether there are any significant

portions of the range where the blue-headed macaw is in danger of extinction or is likely to become endangered in the foreseeable future.

The Act defines an endangered species as one ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as one ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The term ''significant portion of its range'' is not defined by the statute. For the purposes of this finding, a portion of a species' range is ''significant'' if it is part of the current range of the species and it provides a crucial contribution to the representation, resiliency, or redundancy of the species. For the contribution to be crucial it must be at a level such that, without that portion, the species would be in danger of extinction or likely to become so in the foreseeable future.

In determining whether a species is threatened or endangered in a significant portion of its range, we first identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and 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. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the species' range that clearly would not meet the biologically based definition of ''significant'' (*i.e.,* the loss of that portion clearly would not reasonably be expected to increase the vulnerability to extinction of the entire species to the point that the species would then be in danger of extinction or likely to become endangered in the foreseeable future), such portions will not warrant further consideration.

If we identify portions that warrant further consideration, we then determine their status (*i.e.,* whether in fact the species is endangered or threatened in a significant portion of its range). Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address either the ''significant'' 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.''

Applying the process described above for determining whether a species is threatened in a significant portion of its range, we considered status first to determine if any threats or potential threats acting individually or collectively threaten or endanger the species in a portion of its range. We have analyzed the potential threats to the blue-headed macaw throughout its range and found that they occur at such a low level that there is no effect to the species.

Conclusion of 12-Month Finding

We do not find that the blue-headed macaw is in danger of extinction now, nor is it likely to become endangered within the foreseeable future, throughout all or a significant portion of its range. Therefore, listing the species 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 grey-cheeked parakeet to our Endangered Species Program, Branch of Foreign Species (see **ADDRESSES**) whenever it becomes available. New information will help us monitor this species and encourage its conservation. If an emergency situation develops for the grey-cheeked parakeet or any other species, we will act to provide immediate protection.

II. Grey-Cheeked Parakeet (*Brotogeris pyrrhoptera*)

A. Species Description

The grey-cheeked parakeet (*Brotogeris pyrrhopterus* synonym *Psittacus pyrrhopterus*) belongs to the family Psittacidae, and is one of 8 recognized species within its genus, with 17 recognized subspecies (Ribas *et al.* 2009, p. 1713; Juniper and Parr 1998, p. 490; Collar 1997; Forshaw 1989).

This species is characteristically recognized by its distinctive grey-cheeks. It is also known as a pocket parrot. Adults primarily have green plumage with pale yellow on their under parts. The forehead is grey with a blue-green crown. The side of its head and chin is pale grey and it has a slight brown tinge on lesser and median wing-coverts. Its primary covert feathers are dark blue; under wing coverts and axillaries are orange. Its interior feathers are narrowly edged with yellow, and the legs are pale pink (Forshaw 1989).

The grey-cheeked parakeet is endemic to southwestern Ecuador and northwestern Peru (Nores 2004, p. 1; Best *et al.* 1993). It occurs primarily in forests in a narrow dry band of habitat known as the Tumbesian (also known as Tumbesan) Region (Best *et al.* 1996 p. 69; Best and Kessler 1995, p. 8, 155; Parker *et al.* 1995, p. 202). This region has distinct ecological characteristics (Nores 2004, p. 149) based on drier climate and local terrain. The grey-cheeked parakeet prefers dry, deciduous forests dominated by *Ceiba trichistandra* (Kapok or Ceibo tree) (Williams and Tobias 1994 in Best *et al.* 1995, p. 237; IUCN 2008g). Smaller numbers have been seen in semihumid forest as well as fragmented forests, arid scrubland, and semi-open agricultural land where remnant stands of larger trees that are suitable for nesting are present (Forshaw 1989, p. 531). This area is unique because it is at the equator; its climate is influenced by the Humboldt current, and its natural boundary is defined by the Pacific Coast and the Andes mountains (ParksWatch 2005b, p. 3). To the north and south of this climate zone are the Chocó wet forest and the Peruvian coastal desert. Three to nine months of the year are arid (Best and Kessler 1995, p. 27). In El Niño years, which occur at 3–16-year intervals, rainfall may be 200 times as high as a very dry year (World Wildlife Fund (WWF) 2007). The significant biodiversity in this region has been recognized for many years (ParksWatch 2005b, p. 3). Conservation International, WWF, and BLI all consider this region to be globally important due to the high level of endemic species that exist here.

Although this species' potential range is estimated to be 9,300 km^2 (3,591 mi^2) (BLI 2011b, p. 1), it does not occur throughout its potential extent of occurrence. Within this area, its actual area of occurrence is confined to suitable habitat, which contains areas for nesting, breeding, and feeding. It occurs in the lowlands, generally from sea level to 300 meters (984 ft), but has been observed as high as 1,550 m (5,085 ft) in the southern part of its range (Best *et al.* 1992 in Best *et al.* 1995, p. 241). In 1964, Brosset (1964, pp. 112–134) reported it as being very common in southwestern Ecuador; he described large flocks that were seen in the vicinity of banana plantations.

In Ecuador, this species has been documented west of the Andes in the

Chone River district (Forshaw 1989, p. 531). In the early 2000s, it was observed in the areas of Achiotes, El Faique, Mangaurquillo, Manabi, Progreso, Guayas, Los Rios, and El Oro, and in the Sozoranga area of Loja (Bonaccorso *et al.* 2006, p. 63; Freile *et al.* 2004, pp. 18–19; Ridgely and Greenfield 2001, p. 67). In addition to its native habitat, this species has also been observed in urbanized areas (Ridgely and Greenfield 2001, p. 67). It is found in El Canclón Lagoon, which was declared a Ramsar site in 1996, and which is one of the 32 identified wetlands in Ecuador's coastal region (Alava *et al.* 2007, p. 224). It has also been observed in three protected areas in southwestern Ecuador: the Cerro Blanco Protected Forest (Sheets 2005, personal observation; Pople *et al.* 1996, p. 3), Manglares Churute Ecological Reserve (MCER), and Arenillas Military Reserve (Best *et al.* 1995, p. 241), which shares a small portion of its border with Peru. MCER, within Guayas Province, was created in 1979 and consists of 35,000 ha (86,487 acres (ac)) 40 km (25 mi) south of Guayaquil (Pobles *et al.* 1996, p. 3). MCER consists of mangrove stands, a salt-flat area, and a forested section. Cerro Blanco Reserve, within Guayas Province, is 2,000 ha (4,942 ac). In 1995, it was described as a small area of semi-evergreen forest on a ridge. It is managed by Fundación Natura and Fundación Pro-Bosque. The Arenillas Military Reserve is 17,083 ha (42,213 ac) in area and has limited access. It is managed by military personnel and requires prior authorization from the Ministry of Defense to enter (*http://www.ambiente.gov.ec,* accessed June 14, 2011).

In northwest Peru, this species is reported to be locally common in lowland dry deciduous forest (Walker 2001, p. 6; Parker *et al.* 1995, p. 212; Parker *et al.,* 1982). In 1995, this species was described as being scarce at Campo Verde and Cotrina, Peru (Parker *et al.* 1995, p. 212). This species has been observed in the Tumbes Reserved Zone (TRZ), specifically at El Caucho and Quebrada Faical, with daily counts of between 50 and 120 individuals (Best *et al.* 1995, pp. 241, 242; Parker *et al.* 1995, p. 212). TRZ is a part of the Northeast Biosphere Reserve (NBR) which covers 231,402 ha (571,807 ac), and includes the Cerros de Amotape National Park and El Angulo Hunting Preserve (Walker 2001, p. 1). In the late 1980s and historically, this species was documented as common in the NBR, Tumbes Department (Best *et al.* 1995, p. 242; Wiedenfeld *et al.* 1985, p. 313). The TRZ was formerly designated as the Tumbes National Forest (ParksWatch 2005b, p. 6), and was established in 1957 to protect against overharvest of forest products (ParksWatch 2005b, p. 12). It is somewhat more protected than it was in the past due to changes at the border that have resulted from the Peace Agreement between Peru and Ecuador, and the subsequent decrease in the pressures on the TRZ for natural resources due to fewer human inhabitants in the area (Walker 2001, p. 2).

The most recent population estimate is prior to 1995, when it was estimated that there were 15,000 mature individuals of this species remaining in the wild, principally in Ecuador (BLI 2011b, p. 1; Best *et al.* 1995, p. 242). At that time, the population was estimated to have experienced approximately a 70 percent population decline over 10 years (BLI 2011b, p. 1). This is significant for two reasons: this estimate was made only shortly after the enactment of regulatory mechanisms such as the implementation of trade bans, and the estimate was also done only a few years after trade restrictions were put in place through the WBCA. The population information prior to 1995 does not likely represent the current status because regulatory measures, particularly the implementation of CITES and WBCA, are currently in place which have mitigated international trade, the major threat to this species. Additionally, in 1991, the European Union banned the import of this species (Best *et al.* 1995, p. 234). International trade data indicates that trade has dramatically decreased.

There are several recent reports that describe this species as common; large flocks have recently been observed in many areas within its range (WorldLand Trust 2011, p. 2; Woods 2010, p. 34; Van den Schoor 2007, p. 12; Elwonger *et al.* 2004, pp. 3, 20). A local report (2007) documented this species in Guayas in the Reserva Ecologica Manglares-Churute (*http://www.xeno-canto.org,* Accessed September 28, 2011). It is consistently seen in flocks on birding trips (Denton 2009; Coopmans et al., 2006; Coopmans 2005) in Southern Ecuador. In Cerro Blanco Protected Forest (BPCB), which is 14 km (8.7 mi) west of Guayaquil, Ecuador, this species was described as abundant in 1996, with flocks of up to 40 observed (Pople *et al.* 1996, p. 2). This area is owned by La Cemento Nacional, Ecuador's national cement company, but the reserve has been managed by the NGO Fundación Pro-Bosque since 1993 (Pople 1996, p. 1). In 1996, this species was also observed in another area 25 km (15.5 mi) northwest of BPCB consisting of 600 ha (1,483 ac) known as Hacienda Gonzalez, also owned by La Cemento Nacional, that was established as a forest reserve. This species was described as not as abundant in this reserve as in BPCB (Pople 1996, p. 2). However, as of 2000, it was reported to be still locally common in suitable habitat remnants within its range (Juniper and Parr 1998 in BLI 2011b, p. 1).

Additionally, various bird surveys are conducted periodically in Peru and Ecuador to determine presence and absence in areas, and to conduct counts of birds observed (Van den Schoor 2007, p. 12; Elwonger *et al.* 2004, p. 20; Walker 2001, p. 5). In 2001, a birding trip to the TRZ encountered groups of between 5 and 30 of this species and described the occurrence of this species as being common (Walker 2001, p. 5). This species was also described as being fairly common during a birding trip in the Quebrada Faical area of the TRZ in November and December 2004 (Elwonger *et al.* 2004, pp. 3, 20). In 2006, over 60 birds were observed in the wild (Van den Schoor 2007, p. 12). Although there is no current estimate of this species' population size, there are several recent reports describing this species as common; large flocks have recently been observed in many areas within its range (WorldLand Trust 2011, p. 2; Woods 2010, p. 34; Van den Schoor 2007, p. 12; Elwonger *et al.* 2004, pp. 3, 20; Denton 2009; Coopmans et al., 2006; Coopmans 2005). It is commonly found in at least four reserves in Ecuador, and one in Peru. In 2003 and 2007, it was documented in Loja, Ecuador, where it had been described as scarce during 1990–1991 surveys (Spencer, pers. comm.; Williams and Tobias 1994 in Best et al 1995, p. 242). An additional consideration in their population is their larger clutch size. Because they generally lay between 4–6 eggs (*http://www.greycheekparakeet.com/Genus_brotogeris.html,* accessed August 22, 2011), they have a higher reproductive potential than those species that have a clutch size of 1–2 eggs.

Unlike other species within the *Brotogeris* genus, the grey-cheeked Parakeet does not generally congregate in large flocks. Flocks of 4 to 10 birds normally are observed (Freile *et al.* 2004), and they will sometimes flock with other species (Best *et al.* 1995, p. 243). *Brotogeris* species primarily nest higher in the canopy (Brightsmith 2000, p. 529). They lay between 4 and 6 eggs, with 5 eggs usually observed (Arndt 1986 in Best *et al.* 1986, p. 243). Their average life span is thought to be

approximately 15 years (Brouwer *et al.* 2000, pp. 299–316).

Because parrots feed primarily on fruits and flowers, they are linked to the fruiting and flowering patterns of trees. It is thought to be a seasonal migrant, based on food availability (Parker *et al.* 1995, p. 212). This species is a food generalist, consuming petals, seeds, flowers, and fruits, particularly bananas (Juniper and Parr 1998, p. 490). Fluctuations in abundance and availability of food sources may change this species' diet, resulting in movements to areas with greater food availability, and influencing local seasonal patterns of bird abundance (Lee 2010, p. 7; Brightsmith 2006, p. 2; Renton 2002, p. 17; Cowen undated, pp. 5, 23).

This species exhibits preference for a variety of nesting substrates, but primarily nests in tree cavities (Juniper and Parr 1998, p. 490; Forshaw 1989, p. 532; Berg *in litt.* in Best *et al.* 1985, p. 243). It prefers larger trees with larger potential cavity size for its nests. The grey-cheeked parakeet is known to form nests in arboreal termite nests (termateria) (Brightsmith 2000, p. 530). Termites do not seem to be disturbed by avian nesting behavior (Brightsmith 2000, p. 531; Harris 1985 in Best *et al.* 1985, p. 243). The species has also been observed laying eggs on decaying wood and moist moss in hollow tree limbs and trunks (Harris 1985 in Best *et al.* 1985, p. 243). It shows preference for particular tree species, such as: *Erythrina* (coral erythrina), *Bombax* (cotton tree), *Chorisa* or *Ceiba* (silk-floss), *Cavanillesia platanifolia* (macondo, cuipo, or hamelí), *Ficus* (fig), and *Cecropia* (trumpet tree) (Parker *et al.* 1995, p. 212; Best *et al.* 1985, p. 243).

Conservation Status

This species is listed as endangered by the IUCN. This categorization was primarily based on rapid rates of population decline caused by past trapping for the pet trade (IUCN 2011, p. 1). IUCN's website states that ''this species qualifies as endangered because it [was] affected by very rapid rates of population decline caused by trapping for the cagebird trade, plus habitat loss. Future population declines are projected to be slower, but still a serious cause for concern.'' However, this is primarily based on information compiled by Birdlife International, which relies heaviliy on information from before 1995. Note that IUCN rankings do not confer any actual protection or management. This species has been listed in Appendix II of CITES since 1981; it is listed on Appendix I of the Convention on Migratory Species (CMS or Bonn Convention); and it is protected by the WBCA. It is listed as vulnerable in Peru (Peru Lista oficial del Instituto Nacional de Recursos Naturales 2011, p. 2; Supreme Decree No. 034–2004–AG 2004, p. 276855), and it is also considered vulnerable by the Ecuador Government (Decree No. 3,516 of 2003; Unified Text of the Secondary Legislation of the Ministry of Environment (EcoLex 2003b, pp. 1–2 and 34). Additionally, in 1991, the European Union (EU) banned the import of *B. pyrrhopterus* from Peru (Best *et al.* 1995, p. 234). The EU ban and the implementation of the WBCA effectively halted the international trade in this species, which was the largest driver of its population decline (BLI 2011, p. 1 ; Best *et al.* 1995, pp. 234–235).

Summary of Factors Affecting the Grey-Cheeked Parakeet

Potential factors that were suggested to affect the species or its habitat or range are evaluated in this section, including: (1) Trapping for the pet trade; (2) habitat destruction, primarily through logging, conversion to agricultural areas, and gravel extraction; (3) disease or predation; and (4) El Niño events. Information pertaining to the grey-cheeked parakeet in relation to the five factors provided in section 4(a)(1) of the Act is discussed below. In making these findings, information pertaining to each species 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 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 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.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat loss was indicated to be a factor affecting this species (BLI 2011, p. 1). Although habitat loss can be one of the most significant threats to wildlife, particularly in developing countries, the best available information does not indicate that habitat loss is negatively affecting this species as discussed below. This species exists primarily in southwest Ecuador and northwest Peru (Gastañaga *et al.* 2011, p. 1; BLI 2011, p. 1; Alava *et al.* 2007; p. 1; Bonaccorso *et al.* 2007, p. 61). In Peru, at the border of Peru and Ecuador, this species exists primarily in a protected area, the Tumbes Reserved Zone (TRZ). Forms of deforestation occur in and around the TRZ and include timber extraction, gravel extraction, encroachment, honey harvest, and roads (ParksWatch 2005b, pp. 8–9, 12). In addition, the park boundaries have not been clearly described or effectively protected, and people have established crops in the park. Land titles and ownership have also been disputed (ParksWatch 2005b, p. 10).

The activities described above have occurred in the Tumbesian Region since Peru and Ecuador were colonized; and the region has undergone many changes. In 1957, a total of 75,102 ha (185,581 ac) were designated as a national forest (now known as the TRZ) in order to provide some protections to the resources in this area. Significant changes occurred particularly in the 1980s when both Peru and Ecuador experienced economic problems. The transfer of the presidency in 1985 was Peru's first transfer of power from one democratically elected leader to another in 40 years. During the early 1980s, Peru experienced inflation, economic hardship, and terrorism (U.S. State Department 2011, p. 3), all of which had significant implications with respect to habitat degradation and deforestation. Overall, however, the TRZ has for the most part remained unaltered (ParksWatch 2005, p. 3).

Species respond differently to habitat fragmentation (Blanchet *et al.* 2010, p. 8). Deforestation is generally a process of conversion of forests into a matrix consisting of patches of remaining forest at various stages of degradation and remaining timber, agricultural lands, urban areas, and pastures for grazing (Turner 1996, p. 200). Various studies have been conducted in order to try to quantify effects of habitat loss and fragmentation (Lees and Perez 2006, p. 206; Fahrig 2003, p. 487; Debinski and Holt 2000, p. 342; Brooks *et al.* 1999a,

p. 211; Fahrig 1997, p. 603; Turner 1996, p. 200). However, if selective logging is well managed, this practice can mimic natural disturbances, and many species can persist in logged forests or they can recolonize harvested areas from nearby unlogged patches (Putz *et al.* 2008, p. 1427; Peña-Carlos *et al.* 2008, p. 1458; Laurance 1999, p. 114). Some studies have found that the impact on certain wildlife species from logging is minimal (Fredericksen and Putz 2003, p. 1445). Some generalist species, such as the grey-cheeked parakeet, can successfully adapt to changes in habitat particularly if they have varied diets. Although this species is endemic to Peru and Ecuador, it has shown it can persist in altered habitats and is common within several reserves throughout its range. Not only does this species exhibit success in using altered habitats, its population appears to be increasing in some parts of its range (WorldLand Trust (WLT) 2011, p. 2). WLT reports that it is increasing locally in a new reserve, Buenaventura, which is in the foothills of the Andes in El Oro province, southwestern Ecuador (2011, pp. 1–2).

Peru

Although a permanent logging ban was enacted in the TRZ in 1974, it was reported that wood was being illegally harvested from the TRZ, processed at a hardwood floor factory in Zarumilla Department, and being exported to Ecuador (ParksWatch 2005b, pp. 12, 14). ParksWatch (2005, p. 15) reported that people come from the cities of Tumbes, Cerro Blanco, and Zarumilla to harvest wood such as trumpet trees (*Tabebuia* sp.), which is a species used for parquet floors. Frequently these illegal harvesters cross the border from Ecuador (ParksWatch 2005b, p. 4). Most of these trucks come through El Tutumo, allegedly because the Instituto Nacional de Recursos Naturales (INRENA, translated as the National Institute of Natural Resources) control posts were often not staffed, and the illegal timber harvesters took advantage of their absence (ParksWatch 2005b, p. 14). These problems were intensified by lack of security and coordination (ParksWatch 2005, p. 3). Despite these problems this species is described in its range as being common. Current birding trips to the TRZ encounter this species frequently (Elwonger 2004, p. 6), and there is no indication that logging affects this species such that it is a threat to the species overall.

Gravel extraction

ParksWatch reported that, as of 2003, construction materials such as sand, rocks, and gravel were regularly extracted from La Angostura Creek which is part of the buffer zone of TRZ (ParksWatch 2005b, p. 16). The heavy machinery associated with the gravel pits also has secondary impacts (ParksWatch 2005b, p. 16). These impacts include compaction of soil by the trucks, which can cause hydrologic changes, damage to wildlife and plants, erosion, and increased recovery time for vegetation communities. However, there is no indication that this activity affects this species.

Roads

Illegal activities can increase with the construction of roads, leading to increased access by humans (Fimbel *et al.* 2001 in Lee 2010, p. 3). Roads are planned by all levels of government and may encourage legal and illegal activities such as agriculture, cattle ranching, poaching, or logging (Nature and Culture International (NCI 2011, p. 1)). However, roads in the TRZ were destroyed during the El Niño event of 1997–1998, and as of 2001, there were no plans to rebuild them (Walker 2001, p. 2). This lack of road access minimizes human entry into the species' habitat. In addition, the human population density in this area is low—there are two communities consisting of approximately 330 people (ParksWatch 2005, p. 9), and there is no evidence to suggest that roads used for gravel extraction are negatively affecting the species.

Honey Harvest

Within the TRZ, detrimental practices of honey harvesting occur (ParksWatch 2005b, p. 18), which can further degrade habitat. Bees generally have positive ecosystem effects—they pollinate native species and they contribute to the biodiversity of ecosystems such as the TRZ (Kearns *et al.* 1998, pp. 83, 90; Pearson and Dressler 1985, p. 38). However, due to the demand for honey, non-native bee colonies (which are aggressive—*Apis melifera* for example) are being established (ParksWatch 2005b, p. 18). Non-native bees often outcompete native bees (Kearns *et al.* 1998, p. 93), which have a vital role in ecosystems. Some bees within the *Centris* genus (which are likely native to this region) use decaying wood as habitat (Kearns *et al.* 1998, p. 90). Decaying wood is also used by the grey-cheeked parakeet as nesting substrate. The use of decayed wood by bees may discourage the grey-cheeked parakeet from using it as nesting substrate. Additionally, in order to obtain honey, some harvesters may chop down grey-cheeked parakeet nesting trees, which contributes to habitat degradation. The practice of honey harvesting may affect individual birds; however, there is no evidence that this practice occurs to an extent that it is a threat to the species or is likely to occur in the future.

Ecuador

There is less information available with respect to the present or threatened destruction, modification, or curtailment of the grey-cheeked parakeet's habitat or range in Ecuador. We know that this species is observed regularly in southwest Ecuador (Woods 2010, p. 34; Bonaccorso *et al.* 2007, p. 64, Van den Schoor 2007, p. 12). It has been documented in the areas of Achiotes, El Faique, and Progreso and Jorupe reserve, Macará, Loja province, Buenaventura Reserve, El Oro Province, and Cerro Blanco Reserva, Guayas. There are several accounts of this species being documented between the early 2000s and 2011 (Bonaccorso 2007, p. 64; *http://www.xeno-canto.org, www.avesecuador.com, http://ibc.lynxeds.com/species/grey-cheeked-parakeet-brotogeris-pyrrhopterus,* all accessed August 22, 2011). Flocks of up to 12 birds have been observed recently; one group of 60 was observed in 2006 (Van den Schoor 2007, p. 12). A recent report indicated that in El Canclón Lagoon, Ecuador, cattle ranching, deforestation, agriculture development (rice crops and farms) may be affecting the species' habitat (Alava *et al.* 2007, p. 224). However, this species is a habitat generalist that seems to persist in altered habitat, and it is frequently observed on birding trips in Ecuador (Greenfield 2011, p. 1; Woods 2010, p. 34; Van den Schoor 2007, p. 12).

Additionally, there is no recent information on forest cover (Food and Agriculture Organization 2011, accessed June 17, 2011). Various estimates indicate that around 50 percent of Ecuador's land area is covered with forests (about 12 million ha (29.6 million ac)) (Sierra *et al.* 1999, p. 135; STCP Engenharia de Projetos Ltda. (STCP) 2006, unpaginated). However, in Ecuador's Tumbesian Region, 5,600 km^2 (2,162 mi^2) are designated as protected forests. Of these, 25 percent of this area retains the original composition of species (Bonaccorso *et al.* 2007, p. 64). Bonaccorso *et al.* (2007, p. 64) also concluded that all of the areas where the grey-cheeked parakeet was observed had relatively extensive forest based on satellite imagery. Although southwestern Ecuador is densely populated, habitat has been reserved for wildlife (such as Jorupe Reserve, Buenaventura Reserve, and Cerro Blanco Reserve), and this species

appears to remain common in these protected areas.

The Ecuadorian government recognizes 31 different legal categories of protected lands (e.g., national parks, biological reserves, geo-botanical reserves, bird reserves, wildlife reserves, etc.) (see Factor D). As of 2006, the amount of protected land (both forested and non-forested) in Ecuador totals approximately 4.67 million ha (11.5 million ac) (ITTO 2006, p. 228). As of 2006, 38 percent of these lands had appropriate conservation measures in place to be considered protected areas according to international standards (i.e., areas that are managed for scientific study or wilderness protection, for ecosystem protection and recreation, for conservation of specific natural features, or for conservation through management intervention). At that time, 11 percent had management plans (ITTO 2006, p. 228).

Additionally, since 2006, other factors have occurred that are improving the quality of the habitat in this species' range. Ecotourism is occurring in areas where this species occurs, which is bringing awareness and funding for conservation projects. The success of ecotourism and land protection has been demonstrated in the past, particularly in Ecuador (Wunder 1999, p. 18). Ecotourism is characterized by small groups working in remote locations that have not yet been largely affected by commercialization (Lindsay 2003, p. 2) Ecotourism is an opportunity to preserve ecosystems and biological diversity by generating income to support conservation and research efforts. Ecotourism fees provide a mechanism for long-term protection of the land and its resources. In addition, NGOs are involved in working with Ecuador's protected areas. Fundación Jocotoco is a key player in Ecuadorian conservation and ecotourism; it was established to protect areas that are important for the conservation of endangered birds and their habitats. Some NGOs such as Fundación Jocotoco are buying additional land that will be protected in southern Ecuador (www.worldlandtrust.org/projects/ecuador-reserves, accessed September 14, 2011).

Although within this species' existing range some habitat has decreased in the past, since that time both the Ecuador and Peruvian have formally protected this species' habitat (Bonaccorso *et al.* 2006, p. 61). Some habitat loss, conversion to other uses, and degradation within some parts of the grey-cheeked parakeet's range occurs, but we do not have information as to the extent of degradation (ParksWatch 2005b, pp. 9, 12). Studies have found that conditions inside the parks compared with the surrounding areas were in significantly better condition than their surrounding areas (Bruner *et al.* 2001, p. 125). In 40 percent of parks, land that had formerly been under cultivation and that was incorporated into park boundaries had recovered. This subsequently led to an actual increase in vegetative cover. The study found that 83 percent of parks were successful at mitigating encroachment (Bruner *et al.* 2001, p. 125). This was confirmed in a more recent study that found that forests in conservation units were four times better at protecting against deforestation than unprotected areas (Oliveira *et al.* 2007, p. 1235). In further support, ParksWatch (2005, p. 3) reports that the forests of TRZ have remained unaltered for centuries and have become a wildlife refuge. Additionally, both Ecuador and Peru are implementing policies and actions to combat deforestation and habitat degradation (refer to Factor D) and this will continue into the future.

Since the Peace Accord between Peru and Ecuador was signed in 1998, the habitat has experienced dramatic changes in the TRZ (Walker 2001, p. 2). The Peace Accord between Peru and Ecuador was to resolve border differences that had sparked violent confrontations. Prior to 1988, military troops were based at El Caucho near Quebrada Faical, Peru. Apparently, hunting supplemented the diet of the troops, and since the Peace Accord, many game species have returned and have become more prevalent according to local communities (Walker 2001, p. 2). These species likely play a significant role in the grey-cheeked parakeet's ecosystem; they may serve to distribute seeds, contribute to the quality of leaf fodder, or other roles that are not as evident (Estes *et al.* 2011, p. 301). As of 2001, the former military posts are only manned by two Peruvian border police, and although the guards continue to supplement their diets with hunting, the pressure is less severe on typical game species (Walker 2001, p. 2). In 2001, the quality of habitat on the Peruvian side of this border was characterized as excellent and improving. On the Ecuadorian side, habitat was described as more inhabited by humans and having limited suitable habitat—cattle and towns had replaced forested areas (Walker 2001, p. 2). Despite the increase in human inhabitants in this area, this species exhibit success in using altered habitat and it exists in protected areas where ecotourism and environmental education is prevalent. The grey-cheeked parakeet is commonly seen in reserves and protected areas, and in some cases there are anecdotal reports that it is actually increasing in population (WLT 2011, p. 2).

Conservation Programs

The biodiversity of the southern Ecuadorian area is recognized by the government; and the link between ecotourism and conservation has strengthened in the past decade. In 1999, a case study about ecotourism focusing on Ecuador was published that highlighted the link between income from ecotourism and forest conservation (Wunder 1999, p. 1). Since 2001, many efforts have been initiated to protect, conserve, and improve habitat in this species' range. These activities are achieved through ecotourism, environmental education, and other projects. Land is being purchased to designate formally as reserves (*http://www.wanconservancy.org,* accessed September 14, 2011). Additionally, the United States pledged $40 million for the Peru-Ecuador border integration project (U.S. State Department 2011b, p. 7) and another $4 million to support Peruvian and Ecuadorian de-mining efforts along their common border (*http://www.state.gov/r/pa/ei/bgn/35762.htm,* accessed June 10, 2011). The presence of fewer military troops is alleviating pressure on the TRZ. All of these activities are likely to reduce any impacts to species and habitat along the border.

Many collaborative and innovative conservation projects to conserve land have occurred recently. Several NGOs such as Birdlife International, WorldLand Trust, Nature and Culture International, and local organizations such as Fundación EcoCiencia, Loro Parque Fundacion, ProNaturaleza, and Fundación Pro-Bosque, are working to protect areas in Tumbesian Ecuador. Fundación EcoCiencia's mission is to conserve biological diversity through scientific research, recovery of traditional knowledge, and environmental education. The Foundation was created in 1989 and has six program areas: Biodiversity Research and Monitoring; Environmental and Conservation Training Capacity; Natural Resources Management, Environmental Policies; and Information and Environmental Economy. This NGO has contributed towards research of the grey-cheeked parakeet. The Loro Parque Fundación (LPF) is headquartered in Loro Parque, Tenerife, Spain, and works to conserve threatened parrot species and their habitats, through education, applied research, responsible breeding

programs, and community-based conservation activities that use these species as ambassadors for nature. LPF has also contributed funding towards projects that involved the grey-cheeked parakeet. ProNaturaleza (Peruvian Foundation for the Nature Conservancy) was created in 1984. It is dedicated to the conservation and preservation of Peru's environment, particularly sustainable use of the natural resources. ProNaturaleza has been involved in the protection of the TRZ by promoting local involvement, establishment of agreements between national and international organizations, restoration of mangrove ecosystems, regulation of extractive activities, and environmental education since 1988 (ParksWatch 2005b, p. 7). In addition to habitat protections in place for this species, it also benefits through conservation efforts by these NGOs.

The World Land Trust and Fundación Pro-Bosque are working in the Cerro Blanco Reserve area with local communities, focusing on Puerto Hondo, where young local people, with guidance and training from Foundation staff, lead tourists on guided canoe trips through a rich mangrove estuary (*http://www.wlt.org,* accessed June 15, 2011). Between 2006 and 2010 some 235 hectares (581 ac) of degraded lands have been reforested with over 250,000 saplings of 30 native species. In 2004 an environment education centre was constructed for use by the local community, and a children's ecology club runs weekly activities. A community park warden program is building local awareness for this unique reserve and its wildlife. WLT and Fundación Pro-Bosque are seeking to expand the Cerro Blanco Reserve through additional land purchase. This includes both unprotected and critically threatened forest habitat near the existing reserve, as well as land that has been deforested but can be replanted.

International and local NGOs are also actively involved in working towards forest protection. Several reserves have been established. Fundación Jocotoco, an Ecuadorian organization established to protect land for the conservation of Ecuador's endangered birds such as the grey-cheeked parakeet, buys lands and manages them as private ecological reserves. Ecotourism activities, particularly focusing on birding expeditions, in the Tumbesian region are abundant. Many of the ecotourism companies advertise the grey-cheeked parakeet as an ecotourism draw (Woods 2010, p. 34; Van den Schoor 2007, p. 13; Elwonger *et al.* 2004, pp. 3, 20). All of these efforts are likely to have a significant positive effect on grey-cheeked parakeet habitat, particularly in the absence of the international pet trade, which was the greatest threat to the species prior to the 1990s. New reserves are being created within this species range (WLT 2011, p. 1), and its population has increased in at least one reserve, Buenaventura (WLT 2011, p. 2). Ecotourism generates income in local communities, environmental education programs conducted by NGOs increase awareness.

These and other NGOs have been involved in some form of protection of this species' habitat for many years and are likely to be involved in the future. Although these partnerships and conservation activities are discretionary and not regulatory mechanisms; they are having positive effects on this species and its habitat by providing data through scientific research, environmental education, and community-based conservation programs; and they partner with both the governments of Peru and Ecuador in carrying out their activities.

The governments of Ecuador and Peru are also investing in reforestation efforts. Despite no laws existing in Peru that require reforestation activities, Peru is implementing reforestation projects, in part through carbon credits. Peru recently implemented its National Reforestation Plan. One aspect of this plan is to convert degraded lands back to natural habitat by planting native species. Although there is some indication that there may be insufficient funds for full implementation (Climate, Community and Biodiversity Alliance (CCBA) 2010, p. 7), this type of reforestation is a priority activity in the plan, especially in rural areas (National Reforestation Plan 2005, p. 2). In 2008, Ecuador also implemented a national forest conservation plan, called Programa Socio Bosque, in order to conserve over 5 million ha (12.4 million ac) of forest (Conservation International 2008, p. 1).

Reducing Emissions From Deforestation and Forest Degradation (REDD)

In connection with the National Reforestation Project, Ecuador and Peru are working towards reducing emissions from deforestation and forest degradation by using a concept of reducing emissions from deforestation and forest degradation (termed REDD) to protect forested areas (CarbonTree.org, *http://www.climate-standards.org; http://www.un-redd.org/AboutREDD,* accessed May 16, 2011). REDD creates incentives through carbon credits which promote reforestation.

The Government of Ecuador implemented the REDD program through the Ministry of Environment to stem the current rate of deforestation in Ecuador (1.46 percent per year), thereby reducing deforestation (*http://www.un-redd.org,* accessed June 17, 2011). In 2008, the Socio Bosque Program (PSB) was launched, providing economic incentives to land owners such as indigenous communities, who voluntarily protect their forests. Goals of Socio Bosque include decreasing deforestation and the resulting production of greenhouse gases, and preserving native forests and native ecosystems in part by providing needed financial resources to people in rural areas. Though the program is still in its early stages, its inception implies a commitment by the Ecuadorian government to protect its natural resources, initiate reforestation programs, and protect habitat for species such as the grey-cheeked parakeet.

Additionally, in March 2011, the 8,795 ha (21,730 ac) Angostura-Faical Regional Conservation Area, in the Tumbes Department, was protected by presidential decree as a carbon offset project. This was in cooperation with the Regional Government of Tumbes and two nongovernmental organizations: The Carbon Tree Conservation Fund, and Nature and Culture International (NCI). The park, which is approximately 20 km (12 mi) north of the TRZ, had been primarily threatened by an advancing agricultural frontier and degradation by selective illegal logging. Approximately 65 percent of Ecuador's native forests are owned by indigenous communities (Palacios 2005 in Hübenthal *et al.* 2010, p. 4). Because one aspect is to create sustainable livelihoods (alternatives to unsustainable use of forested areas) for indigenous communities and is within this species' range, this project is likely to have a positive impact on this species' habitat.

Summary of Factor A

The grey-cheeked parakeet, although native to a relatively small area, has been documented in a wide range of habitat types such as disturbed humid forest, evergreen forest, deciduous *Ceiba trichistandra* forest and scrub, arid scrubland, and semi-open agricultural land (Best *et al* 1995, p. 243). Land use changes have the potential to cause forest fragmentation and studies have shown that over time that some resident bird diversity declines within forest fragments (Turner 1996, p. 202). However, other studies have indicated that some species, particularly smaller species such as the grey-cheeked parakeet, are able to adapt to habitat changes (Ibarra-Macias *et al.* 2011, p.

703; Moore *et al.* 2008, p. 961). Timber extraction, gravel extraction, encroachment, honey harvest, roads, or other forms of deforestation occur in some areas of grey-cheeked parakeet range; however, there is no indication that it is impacting this species at the population level. The range countries are working to combat deforestation. Recent commitments by both countries to stem deforestation under the REDD program indicate a continued commitment to protect forest habitat, including that utilized by the grey-cheeked parakeet. Both governments' economies are fairly strong, which has a positive correlation with wildlife conservation (Davies *et al.* 2006, p. 2130). The protected areas in which this species occurs both in Peru and Ecuador offer safeguards from development to populations of grey-cheeked parakeet in addition to the species persisting in altered habitat.

This species is commonly seen throughout its range, in groups of 12–60 birds (Woods 2010, p. 12; Van den Schoor 2007, p. 12). Although some of its habitat may be affected by deforestation, this species appears not to be adversely affected and it can persist in altered habitats (Best *et al* 1995, p. 243), including urban environments. This species occurs in several protected areas. Of these, Cerro Blanco Protection Forest, Ecuador, and Tumbes Reserved Zone, Peru, are particularly important, with recent daily counts of over 50 individuals having been observed. This species is observed regularly on birding trips; and it appears to be common within its range in Ecuador's protected reserves. The governments of Ecuador and Peru are both working on reforestation initiatives and this is likely to continue into the future. NGOs are purchasing and preserving lands. Local ecotourism companies promote conservation of the species and its habitat. They advertise this charismatic species to draw people to these areas. Additionally, since the pressure of poaching for the international pet trade has been alleviated due to restrictions put in place in the 1980s and 1990s, grey-cheeked parakeets are commonly observed in the wild and populations appear to be increasing (WLT 2011, pp. 1–2). Though individual grey-cheeked parakeets may be affected by some of these activities, there is no evidence to indicate that the grey-cheeked parakeet is negatively impacted at the population level. Therefore, based on the best available scientific and commercial information, we find that the present or threatened destruction, modification, or curtailment of habitat or range is not a threat to the grey-cheeked parakeet in any portion of its range now or in the future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Pet Trade

The grey-cheeked parakeet has always been a popular pet in part because of its ability to mimic human voices (Feigelstock 2009, p. 3). In Peru and Ecuador, it is common to have a parrot as a pet (Bergman 2009, p. 2; Williams and Tobias 1994 in Best *et al.* 1995, p. 244). Illegal bird trade (the uncontrolled selling of bird species) is common in markets and street vendors in both countries (Bergman 2009, pp. 1–5; Alava *et al.* 2007, p. 230; Gonzalez 2003, p. 438; Best *et al.* 1995, pp. 233–250). Unlike in the United States and the European Union, the origin of many pet birds in Latin America is from the wild, and the practice of poaching for the domestic pet trade, while it is less common, continues in Peru and Ecuador (Gastañaga *et al.* 2010, pp. 79–80; Weston and Memon 2009, pp. 77, 79, 82; Gonzalez 2003, p. 438). Several studies have investigated the harvesting, local trade, and conservation of parrots in northeastern Peru and Ecuador. Despite the local trade in this species, discussed below, the primary factor contributing to its decline was the massive international trade in this species, which has been effectively halted through regulatory mechanisms.

In the early 1970s, Ecuador and Peru banned the export of wildlife. In the late 1970s, Peru lifted the moratorium (Fuller *et al.* 1987 in Best *et al.* 1995, p. 234). By 1983, Ecuador had restricted exports of wildlife and Peru had implemented quotas for wildlife exports (Fuller *et al.* 1987, p. 289). However, even in 1987, this species was found in markets in Lima, Peru, and sold for $10–$12 USD each (Plowden 1987 in Best *et al.* 1995, p. 244). Between 1984 and 1988 (prior to the enactment of the WBCA in 1992), approximately 42,000 live grey-cheeked parakeets were reported to have been imported into the United States (UNEP–WCMC, accessed May 3, 2011; Mulliken and Thomsen 1990 in Parker *et al.* 1995, p. 213). In 1989, the trade decreased, but rose again in 1990–1991 (Mulliken *in litt.* 1995 in Best *et al.* 1995, p. 245). Best *et al.* (1995, p. 246) indicated that trade data may have been exaggerated by misdeclaring other parrot species as this species. In 1993, Peru again implemented a moratorium on exports of this species, after a recommendation by the CITES Animal Committee (Best *et al.* 1995, p. 246).

Prior to this species being protected by various regulatory mechanisms (refer to Factor D) in the early 1990s, this species had been heavily traded (Collar and Juniper 1998, p. 14; Best *et al.* 1995, pp. 245). Trade in parrots was extremely common in the 1980s due to huge demand from developed countries (Rosales *et al.* 2007; Best *et al.,* 1995, pp. 234–235). The UNEP–WCMC Trade Database reported 96,018 live grey-cheeked parakeets were imported by reporting countries between 1981 and 1990 (accessed September 14, 2011). This is an average of 10,668 birds per year. Exports of over 5,000 live grey-cheeked parakeets per shipment occurred in the 1980s. Between 1981 and 1985 it was the fifth most common Neotropical psittacine species imported into the U.S.A (Best *et al.* 1995, p. 244). Between 1983 and 1988, it constituted 34 percent of Peru's parrot trade (p. 244). In 1984, Peru exported in excess of 20,000 grey-cheeked parakeets; and the U.S.A. was the principal consumer (Best *et al.* 1995, p. 245). Since 2000, only 12 live grey-cheeked parakeets were reported to have been in international trade (UNEP–WCMC CITES Trade database, accessed May 12, 2011), and only one of those was from Peru or Ecuador. International trade in this species, which was the primary factor impacting the population decline of this species, is now negligible.

Although poaching still occurs, public sentiment is changing due to educational awareness programs in Peru and Ecuador (Fundación Jocotoco 2011). In the late 1990s, income from the sale of young parrots in Peru could yield between $10 and $30 USD per day, while other sources of income such as agriculture and day labor would only yield $5 per day (Kvist *et al.* 2001 in Lee 2010, p. 3; Gonzalez 2003, pp. 437–446). In 1998, in the United States, this species sold for between $175 and $400 (Marsh 1998, p. 2). Prior to the implementation of many regulatory protections that were initiated in the 1990s, an entire brood of parrot chicks would often be taken from nests and sold locally (Best *et al.* 1995, p. 244). Poaching was occurring in the late 1990s even in areas designated as protected. A study by Gastañaga *et al.* examined nest poaching and illegal trade of parrots, including the reasons for poaching, methods, seasons, and locations where the sale and actual poaching of parrots occurred. This study found that this species is still being poached in the wild (Gastañaga *et al.* 2011, pp. 79–80), even in protected areas and despite national protections in

place. Although during the study in 2007 and 2008, 385 specimens of grey-cheeked parakeet were found in 5 markets for sale in Peru, the study also found that where protections and enforcement have been implemented, such as in Cusco, there were no parrots for sale in markets. This study was over a 12-month period between 2007 and 2008. In the 20 markets in eight cities visited, the grey-cheeked parakeet was found in five of those eight cities; but significantly, not in Lima. The study indicated that wildlife markets are well known, and they believed that they had identified all the wildlife markets in seven out of the eight cities (Gastañaga *et al.,* p. 78). The survey was conducted over four quarterly periods in these 20 markets in eight cities. This species is commonly found distributed throughout its historic range within an area of 9,300 km^2 (3,591 mi^2). Compared with an average of 10,668 birds per year, 385 specimens of grey-cheeked parakeet found in 5 markets for sale in Peru is minimal.

Poaching has been found to be significantly lower at protected sites (Pain *et al.* 2006, p. 322; Wright *et al.* 2002, p. 719). For example, Gonzalez (2003, pp. 437–446) found evidence of poaching, particularly during nesting seasons, in the Pacaya-Samiria National Reserve, a protected area in the Loreto Department, Peru, during his 1996–1999 study. However, he also found that poaching decreased during the 1998 harvest season (Gonzalez 2003, p. 444), which he attributed to increased numbers of birds confiscated by regional authorities, which subsequently discouraged poaching (also see Factor D). An additional factor is that this species may be less accessible than other parrot species, due to its preference for forested habitat that consists of complex canopy layers.

In the U.S., this species is no longer common (Feigelstock 2009, p. 3; Low 2003, p. 2) possibly due to its relatively short lifespan, the difficulty of breeding this species in captivity, and susceptibility of this species in captivity to a wide range of diseases (see Factor C). The best available information indicates that poaching is becoming less frequent due to involvement by NGOs, minimal international demand for the species, and improved enforcement by authorities (Gastañaga *et al.* 2011, p. 82; UNEP–WCMC Trade Database). Recently, this species has been the focus of many conservation, public awareness and ecotourism projects. This species attracts birders, and it is advertised on many ecotourism internet sites for Tumbesian Ecuador and Peru. Conservation programs, particularly with a focus on endemic bird species, involve local communities, and many NGOs conduct local educational awareness of the species' value in the wild (Fundación Jocotoco 2011).

Summary of Factor B

Although overutilization for the pet trade was a threat to this species in the past, we have no information indicating that the grey-cheeked parakeet is currently being overutilized and we have no reason to believe the levels of trade that occurred in the past will become a threat to the species in the future. The protections in place are becoming more effective, and international trade is now negligible. This species exists in several protected habitats, and there is no evidence the species is decreasing in population (Woods 2010, p. 34, Elwonger *et al.* 2004, p. 3; Van den Schoor, 2007). In some cases it appears to be increasing (WLT 2011, p. 2). It is observed regularly in three of Ecuador's protected reserves (Jorupe, Buenaventura, and Cerro Blanco Reserve), in El Canclón Lagoon, and in Peru's TRZ. We acknowledge that poaching continues to occur, but the primary impact to the species that contributed to its several population decline, the international pet trade, essentially no longer exists. The primary impact to the species, removal of the wild for the international pet trade, has been reduced to the point where it is no longer a threat. Since 2000, only one live grey-cheeked parakeet was reported to have been exported from either Peru or Ecuador by CITES-reporting countries. Poaching may occur in a limited number of areas, but to the best of our knowledge, it is not occurring in all locations where this species occurs. Additionally, environmental awareness campaigns by local NGOs are decreasing the levels of poaching. Based on the best available scientific and commercial information, we find that overutilization for commercial, recreational, scientific, or educational purposes is not a threat to the grey-cheeked parakeet now or in the future.

C. Disease or Predation

This species is susceptible to many diseases (Pesaro *et al.* 2005 pp. 321, 325; USGS 1999, pp. 93–99; Butcher *et al.* 1990, p. 1025; Panigrahy *et al.* 1983, p. 1166). However, most of the available research addresses captive-held birds which may have a higher incidence of disease than wild birds due to their exposure to sick birds, unsanitary conditions, improper husbandry methods, etc. It is not clear how prevalent disease factors into wild populations of this species. A discussion of diseases that are known to affect this species follows.

Avian polyomavirus (APV) is one of the most significant viral pathogens of cage birds (Pesaro *et al.* 2005, p. 321). This species is susceptible to APV infection, which appears in birds up to approximately 14 weeks of age, after which infection is asymptomatic. The mortality peak in some Psittacine species occurs between 4 and 8 weeks of age (Pesaro *et al.* 2005 pp. 321, 325). Most birds infected with APV are mildly affected (Gonzalez *et al.* n. d., p. 2). The extent to which this disease and others addressed below occur in wild populations is unclear, but these diseases have been found to occur in the wild (USGS 1999, p. 94). USGS indicates that disease is more likely to exist where there are major bird concentrations. APV is likely to affect this species more frequently if this species is exposed to humans through an increase of activities such as ecotourism (Factor E) or logging (Factor A), or other disease vectors such as cattle.

Avian tuberculosis (also known as avian mycobacteriosis (*Mycobacterium avium*) is known to occur in both wild and captive-held *Brotogeris* species (USGS 1999, p. 96; Butcher *et al.* 1990, p. 1025; Rosskopf *et al.* 1986, p. 219; Panigrahy *et al.* 1983, p. 1166). There are 20 types of *M. avium.* Mycobacteriosis is seen fairly frequently among parakeets and other parrots in captivity (USGS 1999, Chapter 8, p. 96), and can cause die-offs in captive flocks. In captivity, parakeets such as the grey-cheeked parakeet are likely to be exposed to mycobacterium; however, cases of tuberculosis have become less frequent (Butcher *et al.* 1990, p. 1023). Birds are more susceptible if their diet is inadequate, and if they are subjected to stressful conditions such as crowded or unsanitary conditions in cages or cold temperatures (USGS 1999, p. 95); fecal exposure is the main route of transmission. This disease causes chronic wasting characterized by weight loss, diarrhea, difficulty breathing, and tumors of the skin and eyes (Butcher *et al.* 1990, p. 1023; USGS 1999, Chapter 8, pp. 93–97). Tumors may also affect the spleen, liver, lungs, air sacs, skin, and bone marrow. It is spread through inhalation, direct contact with infected birds, and ingestion of contaminated food or water. Parrots can obtain also tuberculosis from pigs (USGS 1999, p. 1); however, it is unclear if humans can transmit *M. avium* to parakeets (USGS 1999, p. 93). *M. avium* has been found to persist outside of a host for over 40 months (USGS 1999, p. 97). It persists

longest in poultry litter, and can also occur in wastewater, sewage effluent, and fertilizers (USGS 1999, p. 97). It is unclear the extent to which tuberculosis affects this species in the wild; however USGS reported in 1999 (p. 96) that tuberculosis has rarely been found to be the cause of a major die-off.

Although captive birds may be more susceptible to diseases in captivity, in most areas where this species occurs, the habitat is relatively undisturbed and exposure to disease is likely minimal. Variation in spatial distribution affects patterns of disease. In captivity, this species may be in close quarters, under stress, and potentially exposed to diseases that it does not encounter in its natural, wild environment. Research has indicated that populations that exist in separate, smaller, more isolated patches slows the dispersal rate and increases the probability of local extinction of pathogens (Carlsson-Graner and Thrall 2002, p. 97). This species prefers forested habitat with complex canopy layers, in areas that are fairly distant from human establishments. The species exists in fairly small groups with large home ranges. Without clear evidence that these diseases negatively affect this species in the wild, we do not consider diseases discussed above to occur at a level such that we consider them to be a threat to the species.

Ectoparasites

We examined whether ectoparasitism by lice and mites is a threat to this species. Many mites have evolved symbiotic relationship with avian species (Atyeo 1989, p. 101). Not all bird-mite relationships are parasitic; some might be benign or beneficial (Proctor and Owens 2000, pp. 358, 362). Many mites are nonparasitic scavengers and use nests or bird feathers as habitat. Despite the presence of mites found in nests of this species, there is no evidence that mites cause mortality or disease, or that they have a negative effect on this species (Atyeo 1989, p. 101). We conducted a search of available information, and there is no other information indicating that lice and mites negatively affect the species.

Predation

In 2005, a study of nest competition, which examined preference of substrate material, age of nesting cavity, and depredation of several bird species, indicated that eggs are heavily predated in Peru (Brightsmith 2005, entire). Although this study concluded that nests are heavily predated in Peru, the study did not include *B. pyrrhoptera.* Predators included birds, marsupials, termites, monkeys, and rodents (Brightsmith 2005, p. 78). This researcher found that of 47 nests, including 23 nests in termitarium (termite mounds), 12 primary cavity nests, and 13 secondary cavity nests, between 4 and 17 percent of the nests in termitarium were preyed upon, and 77 percent of the secondary nests were preyed upon (Brightsmith 2005, p. 78). Secondary nests are previously used tree cavities, and primary nests are newly excavated tree cavities. The study found that newly excavated nests had lower rates of predation.

Over time, bird species such as the grey-cheeked parakeet develop mechanisms in order to counter the effects of predation. All of the predators in the study described above are native to Peru and Ecuador; so a natural predator-prey balance has likely developed over time. This species lays between 4 and 6 eggs, usually 5 eggs. This behavior may be a mechanism that has developed in order to combat pressures such as predation. While predation may be a source of mortality, there is no evidence that it is a limiting factor for population growth for this species. Another response mechanism to predation is building nests in new sites; the research above found that these nests were less affected by predation. Although predation occurs on this species, predation is a normal ecological interaction in the wild. The best available information does not indicate that predation is a threat to the species.

Ants

There is only one report of ant predation on *Brotogeris* species. Research in Peru found that termateria inhabited by two other species of *Brotogeris* (*B. sanctithomae* and *B. cyanoptera)* were coinhabited by *Dolichoderus* ants (Brightsmith 2000, p. 536). In another study, ants (species unknown) had drilled a hole in an egg and had consumed the contents (Brightsmith 2005, p. 76). The 2005 study did not include predation by ants or termites in its results, but ants and termites also were found to depredate nests (Brightsmith 2005, p. 77). At this time, it is unclear why the study did not include predation by ants and termites. It may be that predation by ants and termites was minimal compared with the mutualistic benefit of sharing termateria between ants, termites, and avian species. Observations suggest that ants consume the feces of bird species, thereby keeping the nests clean (Brightsmith 2000, p. 537). Although it is unclear which species of ant had depredated this nest, overall, it appears that there is a mutualistic relationship between some species of ants and *Brotogeris* parakeets (Brightsmith 2005, p. 77; Brightsmith 2000, p. 536). Although ants have the potential of being a localized threat, the best available information does not indicate that this factor affects the species such that it is a threat to the species throughout all or a significant part of its range.

Summary of Factor C

We have no evidence of adverse impacts to wild-populations of grey-cheeked parakeet from disease or predation. Disease and predation are normal occurrences within wild populations. With respect to the grey-cheeked parakeet, there is no indication that these are occurring to an extent that they are threats. We conclude, based on the best available scientific and commercial information, that neither disease nor predation is a threat to the grey-cheeked parakeet in any portion of its range now or in the future.

D. The Inadequacy of Existing Regulatory Mechanisms

Each range country manages this species differently. Within each country, not only is there a wide variability in the amount of information available about the species, but also about the level of management and monitoring of the species. Existing regulatory mechanisms that could have an effect on potential threats to the grey-cheeked parakeet include (1) local land use laws, processes, and ordinances; (2) Federal laws and regulations; and (3) international treaties. Because most of the available information addresses the grey-cheeked parakeet in protected reserves, the discussion below focuses on national laws.

Ecuador

Laws

Ecuador has numerous laws and regulations pertaining to conservation of its species, forests, and forestry management (also refer to Factor B). These include its Forestry Act (comprised of Law No. 74 of 1981–Forest Act and conservation of natural areas and wildlife (Faolex 1981, pp. 1–54)—and Law No. 17 of 2004—Consolidation of the Forest Act and conservation of natural areas and wildlife (Faolex 2004, pp. 1–29)); the Ecuadorian Strategy for Forest Sustainable Development of 2000 (Estrategia para el Desarrollo Forestal Sostenible); and Decree 346, which recognizes that natural forests are highly vulnerable (ITTO 2006, p. 225). The Ecuadorian government recognizes different legal categories of protected

lands. As of 2006, the amount of protected land (both forested and non-forested) in Ecuador was approximately 4.67 million ha (11.5 million ac) (ITTO 2006, p. 228). Ecuador's National System of Protected Areas (Sistema Nacional de Áreas Protegidas or SNAP) is a network of lands held by various entities including national, privately owned, and community-owned lands (Hübenthal *et al.* 2010, p. 5).

Additionally, the grey-cheeked parakeet is protected under Ecuadorian law by Decree No. 3,516 of 2003 as vulnerable (Unified Text of the Secondary Legislation of the Ministry of Environment (EcoLex 2003b, pp. 1–2, 34) (also see discussion under Factor B). This decree summarizes the laws governing environmental policy in Ecuador and mandates that the country's biodiversity is protected and used primarily in a sustainable manner. Appendix 1 of this Decree lists the Ecuadorian fauna and flora that are categorized as critically endangered (En peligro critico), endangered (En peligro), or vulnerable (Vulnerable) (EcoLex 2003a, p. 16). The grey-cheeked parakeet's status confers protections to the species under Resolution No. 105 of 2000 and Agreement No. 143 of 2003 (Standards for the control of hunting seasons and licenses for hunting of wildlife). Resolution No. 105 and Agreement No. 143 regulate and prohibit commercial and sport hunting of all wild bird species, except those specifically identified by the Ministry of the Environment or otherwise permitted (EcoLex 2003a, p. 1; EcoLex 2000, p. 1). Under this law, the Ministry of the Environment does not permit commercial or sport hunting of the grey-cheeked parakeet (EcoLex 2003b, p. 17). Although Ecuador allows hunting, and removal of this species from the wild by indigenous people is legal for subsistence purposes (Bergman 2009; pp. 1–5), there is no evidence that this practice occurs at an unsustainable level.

Protected Areas

There are at least 30 protected areas throughout the country. These protected areas include national parks, biological reserves (one is a marine reserve), ecological reserves, wildlife production reserves, wildlife sanctuaries, national recreational areas, and a bi-national park, El Cóndor, through the Peace Agreement signed with Peru (www.ambiente.gov.ec; www.parks.it, accessed June 10, 2011). A study in 2001 found that tropical parks have been surprisingly effective at protecting ecosystems and species within boundaries designated as parks or other protected status despite underfunding and pressures for resources (Bruner *et al.* 2001, p. 126). The study found that protected areas are especially effective in preventing land clearing. It also found that in 40 percent of parks, land that had formerly been under cultivation and that was incorporated into park boundaries had recovered. This subsequently led to an increase in vegetative cover. The study found that 83 percent of parks were successful at mitigating encroachment (Bruner *et al.* 2001, p. 125). The study concluded that the conditions inside the parks compared with the surrounding areas were in significantly better condition than their surrounding areas (Bruner *et al.* 2001, p. 125). A later study supported this finding; it found that forests in conservation units were four times better at protecting against deforestation than unprotected areas (Oliveira *et al.* 2007, p. 1235).

Government Incentives

In the past few years, many advances have been made in protections for this species; such as incentives initiated by the government for communities to conserve this species. In 2006, some researchers indicated that despite official protections in place, there were few actual effective local protections in Ecuador (Bonaccorso *et al.* 2006, p. 61). NGOs had also expressed concern that Ecuador was not effectively managing its wildlife and resources. In 2006, the International Tropical Timber Organization considered ecosystem management and conservation in Ecuador, including effective implementation of mechanisms that would protect grey-cheeked parakeet habitat, to be lacking (ITTO 2006, p. 229). In 2007, another organization indicated that the Forestry and Wildlife Service, Office of the Ecuadorian Ministry of Environment, was not adequately implementing conservation measures for the Manglares Churute Ecological Reserve (MCER), where this species was recently observed. The NGO indicated that the management plan in MCER had not been fully applied (Alava *et al.* 2007, p. 231). However, since that time, the government of Ecuador has adopted a national forest plan. In 2008, Ecuador implemented this forest conservation plan, called *Programa Socio Bosque* (''Forest Partners'') in order to conserve over 5 million ha (12.4 million ac) of forest (Conservation International 2008, p. 1). This program, which is administered through the Minister of the Environment, offers incentives to landowners and indigenous communities willing to conserve their forests. Goals are to reduce carbon emissions by 13.5 million tons per year and to reduce poverty by providing additional income to more than two million people in Ecuador. This program has the support and involvement of many NGOs, both local and international. In the range of this species, many areas are receiving more protection now, and this species is being used as an ecotourism magnet. Additionally, many NGOS are involved in land conservation and species protection in Ecuador (refer to discussion under factor A), and we expect these activities to continue into the future.

Although the governmental institutions responsible for natural resource oversight in Ecuador may be under-resourced and there is a lack of law enforcement on the ground, the country is making progress in its conservation. Ecuador's Ministry of Environment's *Socio Bosque* subsidy program has encouraged many large forest owners to participate in this program. Many NGOs are actively involved in conservation programs in Ecuador, particularly in southern Ecuador, where this species resides. Ten percent of all of Ecuador falls under some form of environmental protection or special status. As of 2006, 500,000 hectares (1,235,527 ac) are covered by management plans, and management plans have been prepared for two other reserves 13,000 ha (32,125 ac) in size (ITTO 2006, p. 228). The grey-cheeked parakeet exists in several protected areas such as El Canclón Lagoon, which was declared a Ramsar site in 1996, and is one of the 32 identified wetlands in Ecuador's coastal region (Alava *et al.* 2007, p. 224).

NGOs

As discussed under factor A, many collaborative and innovative conservation projects to conserve land have occurred recently. Several NGOs such as Birdlife International, WorldLand Trust, Nature and Culture International, and local organizations such as Fundación EcoCiencia, Loro Parque Fundación, ProNaturaleza, and Fundación Pro-Bosque, are working to protect areas in Tumbesian Ecuador. The World Land Trust and Fundación Pro-Bosque are working in the Cerro Blanco Reserve area with local communities, focusing on Puerto Hondo, where young local people, with guidance and training from Foundation staff, lead tourists on guided canoe trips through a rich mangrove estuary (*http://www.wlt.org,* accessed June 15, 2011). Between 2006 and 2010 some 235 hectares (581 ac) of degraded lands have been reforested with over 250,000

saplings of 30 native species. In 2004 an environment education centre was constructed for use by the local community, and a children's ecology club runs weekly activities. A community park warden program is building local awareness for this unique reserve and its wildlife. WLT and Fundación Pro-Bosque are seeking to expand the Cerro Blanco Reserve through additional land purchase. This includes both unprotected and critically threatened forest habitat near the existing reserve, as well as land that has been deforested but can be replanted. In addition to habitat protections in place for this species, it also benefits through conservation efforts by these NGOs.

Trade

Ecuador continues to strengthen its regulatory mechanisms. The decline in population numbers of this species primarily occurred in the 1980s due to significant trade that occurred of this species (UNEP–WCMC CITES trade database, accessed September 14, 2011). Between 1984 and 1988 (prior to the enactment of the WBCA in 1992), approximately 42,000 live grey-cheeked parakeets were reported to have been imported into the United States (UNEP–WCMC, accessed May 3, 2011). The WBCA effectively halted imports of wild-origin birds into the United States. Since 2000, only 12 live grey-cheeked parakeets were reported to have been in international trade (UNEP–WCMC, accessed May 12, 2011); and only one of those was reported to be from either Peru or Ecuador. Because of adequate regulatory mechanisms such as CITES and the WBCA, both at the domestic and international level, we believe that the primary threat to this species, poaching for the international pet trade, has been alleviated. In addition, Ecuador continues to design and implement new regulatory and conservation strategies to address issues such as poaching for the pet trade that affect this species. Based on the negligible amount of international trade (also refer to discussion in Factor B), we do not find that the international trade in this species is a threat to the species. Therefore, the best available information indicates that regulatory mechanisms are adequate in Ecuador to protect this species and its habitat.

Peru

Laws

This species is listed as vulnerable in Peru under Supreme Decree No. 034–2004–AG (2004, p. 276,855). This decree prohibits hunting, take, transport, and trade of protected species, except as permitted by regulation. Poaching for the domestic pet trade does occur; however, poaching does not appear to occur at a level such that it impacts the species. Other laws that Peru has enacted to protect parrot species such as the grey-cheeked parakeet have generally been effective (Gastañaga *et al.* 2011, p. 77), particularly since enactment of Ley Forestal y de Fauna Silvestre No 27308. This law regulates the commercialization of wild species, and the minimum requirements for their harvest and their collection and transportation; and it establishes a maximum collection quota for each species from their natural environment (Gastañaga *et al.* 2011, p. 77). INRENA annually sets a quota for certain species, trade in the grey-cheeked parakeet is not permitted (Gastañaga *et al.* 2011, p. 77).

Protected Areas

The Peruvian National Protected Area System includes several categories of habitat protection. Habitat may be designated as any of the following: (1) Parque Nacional (National Park, an area managed mainly for ecosystem conservation and recreation); (2) Santuario (Sanctuary, for the preservation of sites of notable natural or historical importance); (3) Reserva Nacional (National Reserve, for sustainable extraction of certain biological resources); (4) Bosque de Protección (Protection Forest, to safeguard soils and forests, especially for watershed conservation); (5) Zona Reservada (Reserved Zone, for temporary protection while further study is under way to determine their importance); (6) Bosque Nacional (National Forest, to be managed for utilization); (7) Reserva Comunal (Communal Reserve, for local area use and management, with national oversight); and (8) Cotos de Caza (Hunting Reserve, for local use and management, with national oversight) (Rodríguez and Young 2000, p. 330). National reserves, national forests, communal reserves, and hunting reserves are managed for the sustainable use of resources (IUCN 1994, p. 2). The designations of National Parks, Sanctuaries, and Protection Forests are established by supreme decree that supersedes all other legal claim to the land and, thus, these areas tend to provide more habitat protection than unprotected areas.

Progress has been made in establishing protected areas and implementing protections where this species occurs: the TRZ, the Cerros de Amotape National Park and El Angolo Game Preserve form the Noroeste Biosphere Reserve. During the process of establishing these protected areas, they were initially described as core zone, protected zone, and transition zone. The TRZ essentially encompassed El Caucho and Campo Verde, the buffer zone was essentially El Angolo Game Preserve, and the transition zone was the adjoining areas. The TRZ has had protected status since 1957, but it has always experienced pressures from timber harvest (ParksWatch 2005, p. 5). In 1970, a 10-year logging moratorium was implemented. In Tumbes, sawmills were closed, but some illegal timber harvest still occurred in the 1970s, despite government efforts (ParksWatch 2005, p. 5). There had been reports of some local Ecuadorians who crossed the border into the protected zone to hunt, cut wood, and sometimes establish lots for agriculture (Walker 2001, p. 2). However, the involvement of an NGO, ProNaturaleza, in 1988 increased the effectiveness of protections in this area. Their activities have included promoting local involvement, establishment of agreements between national and international organizations, restoration of mangrove ecosystems, regulation of extractive activities, and environmental education (ParksWatch 2005b, p. 7). The implementation of these additional protection measures are likely to also improve the habitat for the grey-cheeked parakeet.

Domestic Trade

Most of the parrots in the illegal trade come from the wild, where they have been harvested by small local communities and traded to other people who transport them to wildlife markets in major cities (Rosales *et al.* 2007 in Gastañaga *et al.* 2011, p. 77; Gonzales 2003, p. 438). Despite the illegal sale of this species in some Peruvian markets, efforts to curtail poaching and sale seem to be improving (note that Gonzales's study was conducted between 1996 and 1999). In 2007 and 2008, 385 grey-cheeked parakeets were found in five of the eight markets surveyed. The survey was conducted over four quarterly periods in these 20 markets in eight cities. However, in cities such as Cusco and Puerto Madonado, where INRENA and the ecological police have increased enforcement of wildlife protection laws, there were no grey-cheeked parakeets or other parrots found for sale (Gastañaga *et al.* 2011, p. 82). The illegal parrot trade has decreased in these areas; indicating that when enforcement is in place, protections are effective.

International Wildlife Trade

Removal of this species from the wild for the pet trade had the greatest impact

on this species. In 1981, the grey-cheeked parakeet was listed in Appendix II of CITES, and in 1992, this species was protected by the WBCA. The WBCA effectively shut down imports of this species into the United States; one of the largest importers of this species. CITES requires CITES Parties to have in place adequate legislation for its implementation. Through Resolution Conf. 8.4 (Rev. CoP15), the Parties to CITES adopted a process, termed the National Legislation Project, to evaluate whether Parties have adequate domestic legislation to successfully implement the Treaty (CITES 2010b, pp. 1–5). In reviewing a country's national legislation, the CITES Secretariat evaluates factors such as whether a Party's domestic laws designate the responsible Scientific and Management Authorities, prohibit trade contrary to the requirements of the Convention, have penalty provisions in place for illegal trade, and provide for seizure of specimens that are illegally traded or possessed. The Government of Peru was determined to be in Category 1, which means they meet all the requirements to implement CITES. Ecuador was determined to be in Category 2, with a draft plan, but not enacted (*http://www.cites.org,* SC59 Document 11, Annex p. 1). The international legal trade in this species has substantially decreased and is now negligible. As discussed under factor B, between 2000 and 2009, only 12 live specimens were reported in international trade (UNEP–WCMC); and only one was from a range country (Peru). With respect to international trade, the implementation of the WBCA and CITES, and the Governments of Peru and Ecuador have effectively controlled international trade of this species. Based on the best available information, the Governments of Ecuador and Peru are adequately enforcing their respective legal frameworks. Based on the decrease in reported trade, we believe that international trade has been adequately curtailed by regulatory mechanisms.

Summary of Factor D

We considered the adequacy of existing regulatory mechanisms to protect the grey-cheeked parakeet. Peru and Ecuador have enacted numerous laws and regulatory mechanisms to protect and manage wildlife and their habitats. Studies by the Peruvian Society for Environmental Law (SPDA) concluded that there are approximately 5,000 laws and regulations directly or indirectly related to environmental protection and natural resource conservation in Peru. In 2001, Muller (2001, pp. 1–2) indicated that many of these are not effective due to limited implementation and/or enforcement capability. However, one of the most significant threats to the species prior to the 1990s was the international pet trade, but this trade has been negligible since 2000. Both Ecuador and Peru's economies are improving, and both countries are implementing many projects and mechanisms that are having a positive impact on this species and its habitat.

The grey-cheeked parakeet is listed as ''vulnerable'' under both Ecuadorian and Peruvian law. It occurs within at least four protected areas in Peru and Ecuador. This species is commonly observed in both Ecuador and Peru in protected areas; and flocks of this species are frequently observed. Some habitat degradation continues, including within protected areas (see factor A). However, we find that the existing regulatory mechanisms are adequate to mitigate these activities throughout the grey-cheeked parakeet's range. The most significant threat, poaching for the international pet bird trade, has declined significantly, and the population has had time to recover. There is no indication that the population is currently declining; it appears to be thriving in protected areas based on numerous recent birding expeditions. The international pet trade that contributed to the species' past decline, is now negligible.

Other factors that influenced our decision are that these governments are both implementing reforestation efforts (see factor A) and forest conservation programs. Lands are being purchased and are converted to reserves. Ecotourism such as birding trips in these reserves, which in part provides funding, appears to be prevalent in the Tumbesian region. Although some limited poaching may continue to occur, there is no evidence to suggest that they are having significant population level effects. This species exists in several protected habitats and is commonly observed throughout its range. There is no evidence that its population is still declining (WLT 2011, p. 2; Woods 2010, p. 34, Elwonger *et al.* 2004, p. 3; Van den Schoor, 2007). It is observed regularly in three of Ecuador's protected reserves (Jorupe, Buenaventura, and Cerro Blanco Reserve), it was observed in El Canclón Lagoon (Alava *et al.* 2007) and in Campo Verde in 2006; and in Peru's TRZ. The grey-cheeked parakeet is also protected under CITES and the WBCA, which we find have been effective in mitigating the impact to this species from international trade. Because there have been so few individual live grey-cheeked parakeets in trade since 2000, we believe that international trade controlled via valid CITES permits is not a threat to the species. Based on the best available scientific and commercial information, we find that inadequate mechanisms are not a threat to the grey-cheeked parakeet in any portion of its range now or in the future.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

El Niño Events

The arid terrestrial ecosystem of northwest Peru, where the grey-cheeked parakeet occurs, is influenced by El Niño events (Rodriguez *et al.* 2005, p. 1), which has the potential to have profound and long-lasting effects (Mooers *et al.* 2007, p. 2; Holmgren *et al.* 2006a, p. 87). An El Niño weather phenomenon in 1982–1983, caused widespread flooding in some parts of the country and severe droughts in others (*http://www.state.gov/r/pa/ei/bgn/35762.htm,* accessed May 5, 2011). El Niño–southern oscillation (ENSO) cycles increase the risk of fire because these events are often followed by years of extremely dry weather (Block and Richter 2007, p. 1). Accumulated biomass dries and adds to the fuel load in the dry season (Power *et al.* 2007, p. 898; Block and Richter 2007, p. 1). Evidence suggests that the fire cycle in Peru has shortened, particularly in coastal Peru and west of the Andes (Power *et al.* 2007, pp. 897–898), which could have broad ecological consequences (Block and Richter 2007, p. 1; Power *et al.* 2007, p. 898), and ENSO cycles have increased in periodicity and severity (Richter 2005, pp. 24–25). However, research suggests that ENSO events can also have positive rather than negative effects. The amount of rainfall during an El Niño year can be more than 25 times greater than during normal years in northern Peru (Holmgren *et al.* 2006a, p. 90; Rodriguez *et al.* 2005, p. 2). El Niño events are important triggers for regeneration of plants in semiarid ecosystems, particularly in the dry forest of northwest Peru (Holmgren *et al.* 2006a, p. 88; Lopez *et al.* 2006, p. 903; Rodríguez *et al.* 2005, pp. 2–3). During El Niño events, plant communities and barren lands are transformed into lush vegetation, as seeds germinate and grow more quickly in response to increased rainfall (Holmgren *et al.* 2006a, p. 88; Holmgren *et al.* 2006b, pp. 2–8; Rodríguez *et al.* 2005, pp. 1–6). This species is a food generalist and exists in a climate zone that is fairly stable (it is in a narrow latitudinal band). Thus, we

find that the grey-cheeked parakeet is likely to be less affected by ecosystem changes due to El Niño events than other species.

Tourism

Tourism can have both positive and negative aspects. One form of tourism, ecotourism, has the potential to have a positive effect by providing economic incentives for communities to protect their natural areas. This in turn makes them less reliant on the resources within a protected area, and encourages sustainable practices. In many cases, local communities may contribute to the habitat degradation or remove the species from the wild. Ecotourism projects, by creating alternative sources of income, can be a way to create awareness of a species' plight, and also can attract conservation funding to an area. Community conservation projects have demonstrated that if local communities understand the benefit of conserving the resource and are provided alternative sources of income, they have incentive to protect the resource rather than overutilize the resource (Lee 2010, p. 13). There is increasing awareness to minimize environmental impacts of visitors. Ecotourism is being conducted in a manner that is not disturbing to the species. As of 2005, TRZ was attracting 500 tourists annually, and the tourists generally only visited particular areas (ParksWatch 2005b, p. 11). Based on the positive effects of low-impact ecotourism, and also the potential positive effects of ecotourism, we do not find that tourism has a significant impact on the species.

Summary of Factor E

We evaluated other natural or manmade factors that might affect the continued existence of the grey-cheeked parakeet. Neither El Niño events nor tourism were found to be threats to the species. The grey-cheeked parakeet exists in protected areas in both Ecuador and Peru that provide suitable habitat. Lowland bird species such as the grey-cheeked parakeet are adapted to El Niño events, and this climate zone is fairly stable in its weather patterns. Tourism occurs at low levels, and the tourism is likely very minimal in protected areas where this species exists. Based on the best available scientific and commercial information, we find that other natural or manmade factors are not a threat to the grey-cheeked parakeet in any portion of its range now or in the future.

Finding

As required by the Act, we considered the five factors in assessing whether the grey-cheeked parakeet is threatened or endangered throughout all of its range. Section 3 of the Act defines an ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range'' and a ''threatened species'' as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.''

We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the grey-cheeked parakeet. We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with experts. We believe the species does not warrant listing for the following reasons. There are no indications that the population of this species is currently declining. Both IUCN and BLI's population trend justification are from population studies conducted prior to 1995; and the categorization was primarily based on rapid rates of population decline caused by past trapping for the international pet trade. The EU ban and the implementation of the WBCA effectively halted the international trade in this species. International trade, which was the primary reason for its decline prior to the 1990s, is now negligible. Further, both Peru and Ecuador, the range countries for this species, categorize this species as vulnerable.

Additionally there has been significant NGO involvement in the protection of endemic bird areas in the range of grey-cheeked parakeet. The World Land Trust (WLT) indicated that in a recently purchased area near the Buenaventura Reserve, the grey-cheeked parakeet has increased locally, but did not give specific population estimates (WLT 2011, pp. 1–2). Habitat loss is often a threat to wildlife; however, in this case, both Peru and Ecuador are implementing reforestation programs, and this species exists in several protected areas, as well as areas outside of protected areas. The species appears to adapt to altered habitat (Best *et al.* 1995, p. 233). Several birding surveys have focused on the Tumbesian biome, which extends 130,000 km (80,778 mi) into southern Ecuador and northern Peru. Surveys in the early 2000s to determine biodiversity in the Loja Province observed this species fairly regularly in forested areas. The Tumbesian area still has primary and secondary forested areas that are protected—in Ecuador, this species exists in MCER, Jorupe Reserve, Buenaventura Reserve, and Cerro Blanco Reserve, and in Peru, the species exists in Tumbes Reserved Zone (TRZ), specifically at El Caucho and Quebrada Faical.

Habitat loss and degradation (Factor A) and poaching (Factor B) still occur in Peru and Ecuador. We acknowledge that these activities affect individuals, but there is no evidence that they are having significant impacts such that they are threats to the species. We find that these activities are not of sufficient imminence, intensity, or magnitude to indicate that the grey-cheeked parakeet is in danger of extinction (endangered) or likely to become endangered within the foreseeable future (threatened), throughout its range. The distribution of its population in many reserves in Ecuador and Peru helps contribute to the viability of the species overall; and its distribution is providing a margin of safety for the species to withstand catastrophic events, strengthening the redundancy of the species. This species exists in protected habitat in both countries, and legal international trade, formerly the most significant threat to this species, has been very limited since international trade has been regulated. Illegal domestic trade (Factor B), while occurring in some areas, is not having a significant impact such that it is a threat. Disease and predation (Factor C) are not impacting this species such that they are threats. Additionally, the involvement of NGOs in protecting more of this species' habitat is likely to positively impact the species. Based on the lack of threats to the grey-cheeked parakeet throughout its range, as described above, we determine that the grey-cheeked parakeet is not in danger of extinction or likely to become so within the foreseeable future. Therefore, we find that listing the grey-cheeked parakeet as a threatened or endangered species is not warranted.

We request that you submit any new information concerning the status of, or threats to, the grey-cheeked parakeet or its habitat to our Branch of Foreign Species (see **ADDRESSES**) whenever it becomes available. New information will help us monitor this species and encourage its conservation.

Significant Portion of the Range

Having determined that the grey-cheeked parakeet is not in danger of extinction or likely to become so within the foreseeable future throughout all of its range, we must next consider whether there are any significant portions of the range where the grey-cheeked parakeet is in danger of extinction or is likely to become endangered in the foreseeable future.

The Act defines an endangered species as one ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as one ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The term ''significant portion of its range'' is not defined by the statute. For the purposes of this finding, a portion of a species' range is ''significant'' if it is part of the current range of the species and it provides a crucial contribution to the representation, resiliency, or redundancy of the species. For the contribution to be crucial it must be at a level such that, without that portion, the species would be in danger of extinction or likely to become so in the foreseeable future.

In determining whether a species is threatened or endangered in a significant portion of its range, we first identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and 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. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the species' range that clearly would not meet the biologically based definition of ''significant'' (*i.e.,* the loss of that portion clearly would not reasonably be expected to increase the vulnerability to extinction of the entire species to the point that the species would then be in danger of extinction or likely to become endangered in the foreseeable future), such portions will not warrant further consideration.

If we identify portions that warrant further consideration, we then determine their status (*i.e.,* whether in fact the species is endangered or threatened in a significant portion of its range). Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address either the ''significant'' 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.''

Applying the process described above for determining whether a species is threatened in a significant portion of its range, we considered status first to determine if any threats or potential threats acting individually or collectively threaten or endanger the species in a portion of its range. We find that the potential threats evaluated are not of sufficient imminence, intensity, or magnitude to indicate that the grey-cheeked parakeet is in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened), throughout all of its range. Therefore, we find that listing the grey-cheeked parakeet as a threatened or endangered species is not warranted throughout all of its range.

Conclusion of 12-Month Finding

We do not find that the grey-cheeked parakeet is in danger of extinction now, nor is it likely to become endangered within the foreseeable future, throughout all or a significant portion of its range. Therefore, listing the species 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 grey-cheeked parakeet to our Endangered Species Program, Branch of Foreign Species (see **ADDRESSES**) whenever it becomes available. New information will help us monitor this species and encourage its conservation. If an emergency situation develops for the grey-cheeked parakeet or any other species, we will act to provide immediate protection.

References Cited

A list of all references cited in this document is available at *http://www.regulations.gov,* Docket No. FWS–R9–ES–2011–0071, or upon request from the U.S. Fish and Wildlife Service, Endangered Species Program, Branch of Foreign Species (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are staff members of the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 29, 2011.

Cynthia T. Martinez,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2011–25807 Filed 10–11–11; 8:45 am]

BILLING CODE 4310–55–P

FEDERAL REGISTER

Vol. 76 Wednesday,

No. 197 October 12, 2011

Part VI

Small Business Administration

13 CFR Part 121

Small Business Size Standards: Administrative and Support, Waste Management and Remediation Services; Proposed Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG27

Small Business Size Standards: Administrative and Support, Waste Management and Remediation Services

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to increase small business size standards for 37 industries in North American Industry Classification System (NAICS) Sector 56, Administrative and Support, Waste Management and Remediation Services. As part of its ongoing comprehensive review of all size standards, SBA has evaluated all receipts based standards in NAICS Sector 56 to determine whether the existing size standards should be retained or revised. This proposed rule is one of a series of proposals that will examine size standards of industries grouped by an NAICS Sector. SBA issued a White Paper entitled ''Size Standards Methodology'' and published a notice in the October 21, 2009 issue of the **Federal Register** that ''Size Standards Methodology'' is available on its Web site at *http://www.sba.gov/size* for public review and comments. The ''Size Standards Methodology'' White Paper explains how SBA establishes, reviews and modifies its receipts based and employee based small business size standards. In this proposed rule, SBA has applied its methodology that pertains to establishing, reviewing, and modifying a receipts based size standard.

DATES: SBA must receive comments to this proposed rule on or before December 12, 2011.

ADDRESSES: You may submit comments, identified by RIN 3245–AF27 by one of the following methods: (1) Federal eRulemaking Portal: *http://www.regulations.gov,* following the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, PhD, Chief, Size Standards Division, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416. SBA will not accept comments to this proposed rule submitted by e-mail.

SBA will post all comments to this proposed rule 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,* you must submit such information to U.S. Small Business Administration, Khem R. Sharma, PhD, Chief, Size Standards Division, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416, or send an e-mail to *sizestandards@sba.gov.* You should highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public or not.

FOR FURTHER INFORMATION CONTACT: Khem R. Sharma, PhD, Chief, Size Standards Division, (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION: To determine eligibility for Federal small business assistance, SBA establishes small business definitions (referred to as size standards) for private sector industries in the United States. SBA uses two primary measures of business size: average annual receipts and average number of employees. SBA uses financial assets, electric output, and refining capacity to measure the size of a few specialized industries. In addition, SBA's Small Business Investment Company (SBIC), Certified Development Company (504) and 7(a) Loan Programs use either the industry based size standards or net worth and net income based alternative size standards to determine eligibility for those programs. At the start of the current comprehensive size standards review, there were 41 different size standards, covering 1,141 NAICS industries and 18 sub-industry activities (''exceptions'' in SBA's table of size standards). Thirty-one of these size levels were based on average annual receipts, seven were based on average number of employees, and three were based on other measures. In addition, SBA has established 11 other size standards for its financial and procurement programs.

Over the years, SBA has received comments that its size standards have not kept up with changes in the economy, in particular the changes in the Federal contracting marketplace and industry structure. The last time SBA conducted a comprehensive review of all size standards was during the late 1970s and early 1980s. Since then, most reviews of size standards were limited to in-depth analyses of specific industries in response to requests from the public and Federal agencies. SBA also makes periodic inflation adjustments to its monetary based size standards. The SBA's latest inflation adjustment to size standards was published in the **Federal Register** on July 18, 2008 (73 FR 41237).

Because of changes in the Federal marketplace and industry structure since the last overall review, SBA recognizes that current data may no longer support some of its existing size standards. Accordingly, in 2007, SBA began a comprehensive review of all size standards to determine if they are consistent with current data and to adjust them when necessary. In addition, on September 27, 2010, the President of the United States signed the Small Business Jobs Act of 2010 (Jobs Act). The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment. In addition, the Jobs Act requires that SBA do a complete review of all size standards not less frequently than once every five years thereafter. Reviewing existing small business size standards and making appropriate adjustments based on current data are also consistent with Executive Order 13563 on improving regulation and regulatory review.

Rather than review all size standards at one time, SBA has adopted a more manageable approach of reviewing a group of industries within an NAICS Sector. An NAICS Sector generally consists of 25 to 75 industries, except for the manufacturing sector, which has considerably more. Once SBA completes its review of size standards for industries in an NAICS Sector, it will issue a proposed rule to revise size standards for those industries for which currently available data and other relevant factors support doing so.

Below is a discussion of SBA's size standards methodology for establishing receipts based size standards, which SBA applied to this proposed rule, including analyses of industry structure, Federal procurement trends and other factors for industries reviewed in this proposed rule, the impact of the proposed revisions to size standards on Federal small business assistance, and the evaluation of whether a revised size standard would exclude dominant firms from being considered small.

Size Standards Methodology

SBA has recently developed a ''Size Standards Methodology'' for developing, reviewing, and modifying size standards when necessary. SBA has published the document on its Web site at *http://www.sba.gov/size* for public

review and comments and included it, as a supporting document, in the electronic docket of this proposed rule at *http://www.regulations.gov*. SBA does not apply all features of its ''Size Standards Methodology'' to all industries because not all are appropriate. For example, since this proposed rule covers all industries with receipts based standards in NAICS Sector 56, the methodology described here applies to establishing receipts based standards. However, SBA makes the methodology available in its entirety for parties who have an interest in SBA's overall approach to establishing, evaluating and modifying small business size standards. SBA always explains its analysis in individual proposed and final rules relating to size standards for specific industries.

SBA welcomes comments from the public on a number of issues concerning its ''Size Standards Methodology,'' such as suggestions on alternative approaches to establishing and modifying size standards; whether there are alternative or additional factors that SBA should consider; whether SBA's approach to small business size standards makes sense in the current economic environment; whether SBA's use of anchor size standards is appropriate in the current economy; whether there are gaps in SBA's methodology because of the lack of comprehensive data; and whether there are other facts or issues that SBA should consider. Comments on the SBA's methodology should be submitted via (1) the Federal eRulemaking Portal: *http://www.regulations.gov;* the docket number is SBA–2009–0008, following the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Khem R. Sharma, Ph.D., Chief, Size Standards Division, 409 Third Street, SW, Mail Code 6530, Washington, DC 20416. As with comments received to this and other proposed rules, SBA will post all comments on its methodology on *http://www.regulations.gov.* As of October 12, 2011, SBA has received seven comments to its ''Size Standards Methodology.'' The comments are available to the public at *http://www.regulations.gov*. SBA continues to welcome comments on its methodology from interested parties.

Congress granted SBA's Administrator discretion to establish detailed small business size standards. 15 U.S.C. 632(a)(2). Section 3(a)(3) of the Small Business Act (15 U.S.C. 632(a)(3)) requires that ''* * * the [SBA] Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.'' Accordingly, the economic structure of an industry is the basis for developing and modifying small business size standards. SBA identifies the small business segment of an industry by examining data on the economic characteristics defining the industry structure itself (as described below). In addition to analyzing an industry's structure, SBA considers current economic conditions, together with its own mission, program objectives, and the Administration's current policies, suggestions from industry groups and Federal agencies, and public comments on the proposed rule, when it establishes small business size standards. SBA also examines whether a size standard based on industry and other relevant data successfully excludes businesses that are dominant in the industry.

This proposed rule includes information regarding the factors SBA evaluated and the criteria it used to propose any adjustments to size standards in NAICS Sector 56. The rule also explains why SBA has proposed to adjust some size standards in Sector 56 but not others. This proposed rule affords the public an opportunity to review and comment on SBA's proposals to revise size standards in NAICS Sector 56 as well as on the data and methodology it uses to evaluate and revise a size standard.

Industry Analysis

For the current comprehensive size standards review, SBA has established three ''base'' or ''anchor'' size standards: $7.0 million in average annual receipts for industries that have receipts based size standards, 500 employees for manufacturing and other industries that have employee based size standards (except for Wholesale Trade), and 100 employees for industries in the Wholesale Trade Sector. SBA established 500 employees as the anchor size standard for manufacturing industries at its inception in 1953. Shortly thereafter, SBA established $1 million in average annual receipts as the anchor size standard for nonmanufacturing industries. SBA has periodically increased the receipts based anchor size standard for inflation, and it stands today at $7 million. Since 1986, the size standard for all industries in the Wholesale Trade Sector for SBA financial assistance and for most Federal programs has been 100 employees. However, NAICS codes for Wholesale Trade Industries (NAICS Sector 42) and their 100 employee size standards do not apply to Federal procurement programs. Rather, for Federal procurement, the size standard for all industries in Wholesale Trade and for all industries in Retail Trade (NAICS Sector 44–45) is 500 employees under SBA's nonmanufacturer rule (13 CFR 121.406(b)).

These long-standing anchor size standards have stood the test of time and gained legitimacy through practice and general public acceptance. An anchor size standard is neither a minimum nor a maximum. It is a common size standard for a large number of industries that have similar economic characteristics and serves as a reference point in evaluating size standards for individual industries. SBA uses the anchor in lieu of trying to establish precise small business size standards for each industry. Otherwise, theoretically, the number of size standards might be as high as the number of industries for which SBA establishes size standards (1,141). Furthermore, the data SBA analyzes are static, but the U.S. economy is not. Hence, absolute precision is impossible. Therefore, SBA presumes an anchor size standard is appropriate for a particular industry unless that industry displays economic characteristics that are considerably different from others with the same anchor size standard.

When evaluating a size standard, SBA compares the economic characteristics of the specific industry under review to the average characteristics of industries with one of the three anchor size standards (referred to as the ''anchor comparison group''). This allows SBA to assess the industry structure and to determine whether the industry is appreciably different from the other industries in the anchor comparison group. If the characteristics of a specific industry under review are similar to the average characteristics of the anchor comparison group, the anchor size standard is considered appropriate for that industry. SBA may consider adopting a size standard below the anchor when (1) all or most of the industry characteristics are significantly smaller than the average characteristics of the anchor comparison group, or (2) other industry considerations strongly suggest that the anchor size standard would be an unreasonably high size standard for the industry.

If the specific industry's characteristics are significantly higher than are those of the anchor comparison group, then a size standard higher than the anchor size standard may be appropriate. The larger the differences are between the characteristics of the industry under review and those of the

anchor comparison group, the larger will be the difference between the appropriate industry size standard and the anchor size standard. To determine a size standard above the anchor size standard, SBA analyzes the characteristics of a second comparison group. For industries with receipts based size standards, including those in NAICS Sector 56 that are reviewed in this proposed rule, SBA has developed a second comparison group consisting of industries with the highest levels of receipts based size standards. To determine the level of a size standard above the anchor size standard, SBA analyzes the characteristics of this second comparison group. The size standards for this group of industries range from $23 million to $35.5 million in average annual receipts, with the weighted average size standard for the group being $29 million. SBA refers to this comparison group as the ''higher level receipts based size standard group.''

The primary factors that SBA evaluates when analyzing the structural characteristics of an industry include average firm size, startup costs and entry barriers, industry competition, and distribution of firms by size. SBA also evaluates, as an additional primary factor, the possible impact that revising size standards might have on Federal contracting assistance to small businesses. These are, generally, the five most important factors SBA examines when establishing or revising a size standard for an industry. However, SBA will also consider and evaluate other information that it believes is relevant to a particular industry (such as technological changes, growth trends, SBA financial assistance, other program factors, *etc.*). SBA also considers possible impacts of size standard revisions on eligibility for Federal small business assistance, current economic conditions, the Administration's policies, and suggestions from industry groups and Federal agencies. Public comments on a proposed rule also provide important additional information. SBA thoroughly reviews all public comments before making a final decision on its proposed size standard. Below are brief descriptions of each of the five primary factors that SBA has evaluated in each industry in NAICS Sector 56 being reviewed in this proposed rule. A more detailed description of this analysis is provided in the SBA ''SBA Size Standards Methodology,'' available at *http://www.sba.gov/size.*

1. *Average firm size.* SBA computes two measures of average firm size: simple average and weighted average. For industries with receipts based size standards, the simple average is the total receipts of the industry divided by the total number of firms in the industry. The weighted average firm size is the sum of weighted simple averages in different receipts size classes, where weights are the shares of total industry receipts for respective size classes. The simple average weighs all firms within an industry equally, regardless of their size. The weighted average overcomes that limitation by giving more weight to larger firms.

If the average firm size of an industry under review is significantly higher than the average firm size of industries in the anchor comparison industry group, this will generally support a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the anchor comparison industry group, it will be a basis to adopt the anchor size standard, or, in rare cases, a standard lower than the anchor.

2. *Startup costs and entry barriers.* Startup costs reflect a firm's initial size in an industry. New entrants to an industry must have sufficient capital and other assets to start and maintain a viable business. If new firms entering a particular industry have greater capital requirements than firms in industries in the anchor comparison group, this can be a basis for establishing a size standard higher than the anchor standard. In lieu of data on actual startup costs, SBA uses average assets as a proxy measure to assess the levels of capital requirements for new entrants to an industry.

To calculate average assets, SBA begins with the sales to total assets ratio for an industry from the Risk Management Association's Annual Statement Studies. SBA then applies these ratios to the average receipts of firms in that industry. An industry with a significantly higher level of average assets than that of the anchor comparison group is likely to have higher startup costs; this in turn will support a size standard higher than the anchor. Conversely, if the industry has a significantly smaller average assets compared to the anchor comparison group, the anchor size standard, or, in rare cases, one lower than the anchor, may be appropriate.

3. *Industry competition.* Industry competition is generally measured by the share of total industry receipts generated by the largest firms in an industry. SBA generally evaluates the share of industry receipts generated by the four largest firms in each industry. This is referred to as the ''four-firm concentration ratio,'' a commonly used economic measure of market competition. SBA compares the four-firm concentration ratio for an industry under review to the average four-firm concentration ratio for industries in the anchor comparison group. If a significant share of economic activity within the industry is concentrated among a few relatively large companies, all else being equal, SBA will establish a size standard higher than the anchor size standard. SBA does not consider the four-firm concentration ratio as an important factor in assessing a size standard if its value for an industry under review is less than 40 percent. For industries in which the four-firm concentration ratio is 40 percent or more, SBA examines the average size of the four largest firms in determining a size standard.

4. *Distribution of firms by size.* SBA examines the shares of industry total receipts accounted for by firms of different receipts and employment size classes in an industry. This is an additional factor SBA evaluates in assessing competition within an industry. If most of an industry's economic activity is attributable to smaller firms, this would indicate that small businesses are competitive in that industry. This would support adopting the anchor size standard. If most of an industry's economic activity is attributable to larger firms, this indicates that small businesses are not competitive in that industry. This would support adopting a size standard above the anchor.

Concentration among firms is a measure of inequality of distribution. To evaluate the degree of inequality of distribution within an industry, SBA computes the Gini coefficient by constructing the Lorenz curve. The Lorenz curve presents the cumulative percentages of units (firms) along the horizontal axis and the cumulative percentages of receipts (or other measures of size) along the vertical axis. (For further detail, please refer to SBA's ''Size Standards Methodology'' on its Web site at *http://www.sba.gov/size.*) Gini coefficient values vary from zero to one. If receipts are distributed equally among all the firms in an industry, the value of the Gini coefficient will equal zero. If an industry's total receipts are attributed to a single firm, the Gini coefficient will equal one.

SBA compares the Gini coefficient value for an industry under review with that for industries in the anchor comparison group. If an industry shows a higher Gini coefficient value than industries in the anchor comparison industry group, this may, all else being

equal, warrant a higher size standard than the anchor. Conversely, if an industry's Gini coefficient is similar or lower than that for the anchor group, the anchor standard, or in some cases a standard lower than the anchor, may be adopted.

5. *Impact on Federal contracting and SBA loan programs.* SBA examines the possible impact a size standard change may have on Federal small business assistance. This most often focuses on the share of Federal contracting dollars awarded to small businesses in the industry in question. In general, if the small business share of Federal contracting in an industry with significant Federal contracting is appreciably less than the small business share of the industry's total receipts, there is justification for considering a size standard higher than the existing size standard. The disparity between the small business Federal market share and industry-wide share may be due to various factors, such as extensive administrative and compliance requirements associated with Federal contracts, the different skill set required by Federal contracts as compared to typical commercial contracting work, and the size of Federal contracts. These, as well as other factors, are likely to influence the type of firms within an industry that compete for Federal contracts. By comparing the small business Federal contracting share with the industry-wide small business share, SBA includes in its size standards analysis the latest Federal contracting trends. This analysis may indicate a size standard larger than the current standard.

SBA considers Federal contracting trends in the size standards analysis only if (1) the small business share of Federal contracting dollars is at least 10 percent lower than the small business share of total industry receipts, and (2) the amount of total Federal contracting averages $100 million or more during the latest three fiscal years. These thresholds reflect a significant level of contracting where a revision to a size standard may have an impact on contracting opportunities to small businesses.

Besides the impact on small business Federal contracting, SBA evaluates the influence of a proposed size standard on SBA's loan programs. For this, SBA examines the volume and number of SBA guaranteed loans within an industry and the size of firms obtaining those loans. This allows SBA to assess whether the existing or proposed size standard for a particular industry may restrict the level of financial assistance to small firms. If the analysis shows that the current size standards have impeded financial assistance to small businesses, higher size standards may be supportable. However, if small businesses under current size standards have been receiving significant amounts of financial assistance through SBA's loan programs, or if the financial assistance has been provided mainly to businesses that are much smaller than the existing size standard, this factor is not considered for determining the size standard.

Sources of Industry and Program Data

SBA's primary source of industry data used in this proposed rule is a special tabulation of the data from the 2007 Economic Census (*see http://www.census.gov/econ/census07/*) prepared by the U.S. Bureau of the Census (Census Bureau) for SBA. The special tabulation provides SBA with industry-specific data on the number of firms, number of establishments, number of employees, and annual receipts of companies by the size of firm based on the 2007 Economic Census. The data reflect the size classes of the company's overall enterprise size; however, the data by NAICS industry within the particular size class represent the company's total values for a specific industry only. The special tabulation enables SBA to evaluate average firm size, the four-firm concentration ratio, and distribution of firms by various receipts and employment size classes.

In some cases, where data were not available due to disclosure prohibitions in the Census Bureau's tabulation, SBA either estimated missing values using available relevant data or examined data at a higher level of industry aggregation, such as at the NAICS 2-digit (Sector), 3-digit (Subsector), or 4-digit (Industry Group) level. In some instances, SBA had to base its analysis only on those factors for which data were available or on estimates of missing values were possible.

To calculate average assets SBA used sales to total assets ratios from the Risk Management Association's Annual Statement Studies, 2007–2009.

To evaluate Federal contracting trends, SBA examined data on Federal contract awards for fiscal years 2007 to 2009. These data are available from the U.S. General Service Administration's Federal Procurement Data System—Next Generation (FPDS–NG).

To assess the impact on financial assistance to small businesses, SBA examined data on its own guaranteed loan programs for fiscal years 2008 to 2010.

Data sources and estimation procedures SBA uses in its size standards analysis are documented in detail in the SBA's ''Size Standards Methodology'' White Paper, which is available at *http://www.sba.gov/size.*

Dominance in Field of Operation

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) defines a small business concern as one that is (1) independently owned and operated, (2) not dominant in its field of operation, and (3) within a specific small business definition or size standard established by the SBA Administrator. SBA considers as part of its evaluation whether a business concern at a proposed size standard would be dominant in its field of operation. For this, SBA generally examines the industry's market share of firms at the proposed standard. Market share and other factors may indicate whether a firm can exercise a major controlling influence on a national basis in an industry where a significant number of business concerns are engaged. If a contemplated size standard would include a dominant firm, SBA would consider a lower size standard to exclude the dominant firm from being defined as small.

Selection of Size Standards

To simplify size standards, for the ongoing comprehensive review of receipts based size standards, SBA has proposed to select size standards for industries from a limited number of levels. For many years, SBA has been concerned about the complexity of determining small business status caused by a large number of varying receipts based size standards (*see* 69 FR 13130 (March 4, 2004) and 57 FR 62515 (December 31, 1992)). At the start of the current comprehensive size standards review, there were 31 different levels of receipts based size standards. They ranged from $0.75 million to $35.5 million, and many of them applied to one or only a few industries. SBA believes that size standards with such a large number of small variations among them are both unnecessary and difficult to justify analytically. To simplify managing and using size standards, SBA proposes that there be fewer size standard levels. This will produce more common size standards for businesses operating in related industries. This will also result in greater consistency among the size standards for industries that have similar economic characteristics.

The SBA proposes, therefore, to apply one of eight receipts based size standards to each industry in NAICS Sector 56 that has a receipts based standard. In NAICS Sector 56, all size standards are based on annual receipts,

except for Environmental Remediation Services, which is an ''exception'' to NAICS 562910. In 1994, SBA established a 500 employee size standard for Federal contracts for Environmental Remediation Services, provided they meet certain specific criteria (*see* 59 FR 47236 (September 15, 1994)). In this proposed rule, SBA has not reviewed this employee based size standard for Environmental Remediation Services and the current standard will remain in effect until SBA reviews industries with employee based size standards. The eight ''fixed'' receipts based size standard levels are $5 million, $7 million, $10 million, $14 million, $19 million, $25.5 million, $30.0 million, and $35.5 million. To establish these eight receipts based size standard levels SBA considered the current minimum, the current maximum, and the most commonly used current receipts based size standards. At the start of this comprehensive size standards review, the most commonly used receipts based size standards clustered around the following: $2.5 million to $4.5 million, $7 million, $9.0 million to $10 million, $12.5 million to $14.0 million, $25.0 million to $25.5 million, and $33.5 million to $35.5 million. SBA selected $7 million as one of eight fixed levels of receipts based size standards because it is also an anchor standard for receipts based standards. The lowest or minimum receipts based size level will be $5 million. Other than the standards for agriculture and those based on commissions (such as real estate brokers and travel agents), $5 million include those industries with the lowest receipts based standards, which range from $2.0 million to $4.5 million, at the start of this comprehensive review. Among the higher level size clusters, SBA selected four fixed levels: $10 million, $14 million, $25.5 million, and $35.5 million. Because there are large intervals between the two of the fixed levels, SBA also established two intermediate levels: $19 million between $14 million and $25.5 million, and $30 million between $25.5 million and $35.5 million. These two intermediate levels reflect roughly the same proportional differences as between the other two successive levels.

To simplify size standards further, SBA may propose a common size standard for closely related industries. Although the size standard analysis may support a specific size standard level for each industry, SBA believes that establishing different size standards for closely related industries may not always be appropriate. For example, in cases where many of the same businesses operate in the same multiple industries, establishing a common size standard for those industries might better reflect the Federal marketplace. This might also make size standards among related industries more consistent than establishing separate size standards for each of those industries. This led SBA to establish a common size standard for the information technology (IT) services (NAICS 541511, NAICS 541112, NAICS 541513, and NAICS 541519), even though the industry data might support a distinct size standard for each industry (*see* 57 FR 27906 (June 23, 1992)). Within NAICS Sector 56, all industries in NAICS Industry Group 5614, Business Support Services, and all industries in NAICS Industry Group 5619, Other Support Services, have a common $7.0 million size standard. Similarly, eight industries in NAICS Subsector 562, Waste Management and Remediation Services, have a common $12.5 million size standard. In this rule, SBA proposes to retain common size standards for those industries and establish common size standards for similar industries in other NAICS Industry Groups as well. Whenever SBA proposes a common size standard for closely related industries, it will provide a justification for that in the proposed rule.

Evaluation of Industry Structure

SBA evaluated the structure of the 44 industries in NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services, to assess the appropriateness of the current receipts based size standards. As described above, SBA compared data on the economic characteristics of each industry (except for the Environmental Remediation Services exception to NAICS 562910) to the average characteristics of industries in two comparison groups. The first comparison group consists of all industries with $7.0 million size standards and is referred to as the ''receipts based anchor comparison group.'' Because the goal of SBA's size standards review is to assess whether a specific industry's size standard should be the same as or different from the anchor size standard, this is the most logical group of industries to analyze. In addition, this group includes a sufficient number of firms to provide a meaningful assessment and comparison of industry characteristics.

If the characteristics of an industry under review are similar to the average characteristics of industries in the anchor comparison group, the anchor size standard is generally considered appropriate for that industry. If an industry's structure is significantly different from industries in the anchor group, a size standard lower or higher than the anchor size standard might be appropriate. The level of the new size standard is based on the difference between the characteristics of the anchor comparison group and a second industry comparison group. As described above, the second comparison group for receipts based standards consists of industries with the highest receipts based size standards, ranging from $23 million to $35.5 million. The average size standard for this group is $29 million. SBA refers to this group of industries as the ''higher level receipts based size standard comparison group.'' SBA determines differences in industry structure between an industry under review and the industries in the two comparison groups by comparing data on each of the industry factors, including average firm size, average assets size, the four-firm concentration ratio, and the Gini coefficient of distribution of firms by size. Table 1 shows two measures of the average firm size (simple and weighted), average assets size, the four-firm concentration ratio, average receipts of the four largest firms, and the Gini coefficient for both anchor level and higher level comparison groups for receipts based size standards.

TABLE 1—AVERAGE CHARACTERISTICS OF RECEIPTS BASED COMPARISON GROUPS

Receipts based comparison group	Avg. Firm size ($ million)		Avg. Assets size ($ million)	Four-firm concentration ratio (%)	Avg. receipts of four largest firms ($ million) *	Gini coefficient
	Simple average	Weighted average				
Anchor Level	1.32	19.63	0.84	16.6	196.4	0.693

TABLE 1—AVERAGE CHARACTERISTICS OF RECEIPTS BASED COMPARISON GROUPS—Continued

Receipts based comparison group	Avg. Firm size ($ million)		Avg. Assets size ($ million)	Four-firm concentration ratio (%)	Avg. receipts of four largest firms ($ million) *	Gini coefficient
	Simple average	Weighted average				
Higher Level	5.07	116.84	3.20	32.1	1,376.0	0.830

* To be used for industries with a four-firm concentration ratio of 40% or greater.

Derivation of Size Standards Based on Industry Factors

For each industry factor in Table 1, SBA derives a separate size standard based on the differences between the values for an industry under review and the values for the two comparison groups. If the industry value for a particular factor is near the corresponding factor for the anchor comparison group, SBA will consider the $7.0 million anchor size standard appropriate for that factor.

An industry factor with a value significantly above or below the anchor comparison group will generally warrant, a size standard above or below the $7.0 million anchor. The new size standard in these cases is based on the proportional difference between the industry value and the values for the two comparison groups.

For example, if an industry's simple average receipts are $3.3 million, that would support a $19 million size standard. The $3.3 million level is 52.8 percent between the average firm size of $1.32 million for the anchor comparison group and $5.07 million for the higher level comparison group (($3.30 million–$1.32 million) ÷ ($5.07 million–$1.32 million) = 0.528 or 52.8%). This proportional difference is applied to the difference between the $7.0 million anchor size standard and average size standard of $29 million for the higher level size standard group and then added to $7.0 million to estimate a size standard of $18.616 million ({$29.0 million–$7.0 million} * 0.528] + $7.0 million = $18.616 million). The final step is to round the estimated $18.616 million size standard to the nearest fixed size standard level, which in this example is $19 million.

SBA applies the above calculation to derive a size standard for each industry factor. Detailed formulas involved in these calculations are presented in the SBA's ''Size Standards Methodology,'' which is available at *http://www.sba.gov/size.* (However, it should be noted that figures in the ''SBA Size Standards Methodology'' White Paper are based on 2002 Economic Census data and are different from those presented in this proposed rule. That is because when SBA prepared its ''Size Standards Methodology,'' the 2007 Economic Census data were not yet available). Table 2 (below) shows ranges of values for each industry factor and the levels of size standards supported by those values.

TABLE 2—VALUES OF INDUSTRY FACTORS AND SUPPORTED SIZE STANDARDS

If Simple avg. receipts size ($ million)	*Or if* Weighted avg. receipts size ($ million)	*Or if* avg. assets size ($ million)	*Or if* avg. receipts of largest four firms ($ million)	*Or if* gini coefficient	Then size standard is ($ million)
< 1.15	< 15.22	< 0.73	< 142.8	< 0.686	5.0
1.15 to 1.57	15.22 to 26.26	0.73 to 1.00	142.8 to 276.9	0.686 to 0.702	7.0
1.58 to 2.17	26.27 to 41.73	1.01 to 1.37	277.0 to 464.5	0.703 to 0.724	10.0
2.18 to 2.94	41.74 to 61.61	1.38 to 1.86	464.6 to 705.8	0.725 to 0.752	14.0
2.95 to 3.92	61.62 to 87.02	1.87 to 2.48	705.9 to 1,014.1	0.753 to 0.788	19.0
3.93 to 4.86	87.03 to 111.32	2.49 to 3.07	1,014.2 to 1,309.0	0.789 to 0.822	25.5
4.87 to 5.71	111.33 to 133.41	3.08 to 3.61	1,309.1 to 1,577.1	0.823 to 0.853	30.0
> 5.71	> 133.41	> 3.61	> 1,577.1	> 0.853	35.5

Derivation of Size Standard Based on Federal Contracting Factor

Besides industry structure, SBA also evaluates Federal contracting data to assess how successful small businesses are in getting Federal contracts under current size standards. For the current comprehensive size standards review, SBA has decided to designate a size standard at one level higher than the current size standard for industries where the small business share of total Federal contracting dollars is between 10 and 30 percentage points lower than the small business share of total industry receipts, and at two levels higher than the current size standard where the difference is more than 30 percentage points.

Because of the complex relationships among several variables affecting small business participation in the Federal marketplace, SBA has chosen not to designate a size standard for the Federal contracting factor alone that is higher than two levels above the current size standard. SBA believes that a larger adjustment to size standards based on Federal contracting activity should be based on a more detailed analysis of the impact of any subsequent revision to the current size standard. In limited situations, however, SBA may conduct a more extensive examination of Federal contracting experience. This may enable SBA to support a different size standard than indicated by this general rule and take into consideration significant and unique aspects of small business competitiveness in the Federal contract market. SBA welcomes comments on its methodology of incorporating the Federal contracting factor in the size standard analysis and suggestions for alternative methods and other relevant information on small business experience in the Federal contract market.

Of the 44 industries reviewed in this proposed rule, 15 industries averaged $100 million or more annually in Federal contracting during fiscal years 2007 to 2009. The Federal contracting factor was significant (*i.e.,* the difference between the small business share of total industry receipts and the small business share of Federal contracting

dollars was 10 percentage points or more) in six of those 15 industries, and a separate size standard was derived for that factor for each of them.

New Size Standards Based on Industry and Federal Contracting Factors

Table 3 shows the results of analyses of industry and Federal contracting factors for each industry covered by this proposed rule. Many of the NAICS industries in columns 2, 3, 4, 6, 7, and 8 show two numbers. The upper number is the value for the industry or federal contracting factor shown on the top of the column, and the lower number is the size standard supported by that factor. For the four-firm concentration ratio, SBA estimates a size standard if its value is 40 percent or more. If the four-firm concentration ratio for an industry is less than 40 percent, there is no estimated size standard for that factor. If the four-firm concentration ratio is more than 40 percent, SBA indicates in column 6 the average size of the industry's top four firms together with a size standard based on that average. Column 9 shows a calculated new size standard for each industry. This is the average of the size standards supported by each factor and rounded to the nearest fixed size level. Analytical details involved in the averaging procedure are described in the SBA's ''Size Standard Methodology.'' For comparison with the new standards, the current size standards are in column 10 of Table 3.

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY (MILLIONS OF DOLLARS)

(1) NAICS code/ NAICS industry title	(2) Simple average firm size ($ million)	(3) Weighted average firm size ($ million)	(4) Average assets size $ million)	(5) Four-firm ratio (%)	(6) Four-firm average size $ million)	(7) Gini Co-efficient	(8) Federal contract factor (%)	(9) Calculated size standard $ million)	(10) Current size standard $ million)
561110 Office Administrative Services	$1.4, 7.0	$7.0, 5.0	$0.6, 5.0	2.3	$225.8	0.694, $7.0	−10.1%, $10.0	$7.0	$7.0
561210 Facilities Support Services	13.8, 35.5	98.7, 25.5	4.5, 35.5	27.6	1,777.3	0.835, $30.0	−2.8%	30.0	35.5
561311 Employment Placement Agencies	1.5, 7.0	23.6, 7.0	.....	22.1	652.4	0.759, $19.0	.....	14.0	7.0
561312 Executive Search Services	1.0, 5.0	28.8, 10.0	.....	20.7	362.5	0.693, $7.0	.....	7.0	7.0
561320 Temporary Help Services	7.6, 35.5	152.6, 35.5	1.4, 10.0	15.6	4,122.2	0.857, $35.5	43.8%	25.5	13.5
561330 Professional Employer Organizations	21.4, 35.5	288.8, 35.5	3.0, 25.5	33.8	7,203.7	0.882, $35.5	.....	30.0	13.5
561410 Document Preparation Services	0.7, 5.0	10.0, 5.0	.....	22.3	189.7	0.697, $7.0	.....	7.0	7.0
561421 Telephone Answering Services	1.4, 7.0	9.1, 5.0	.....	15.1	86.6	0.690, $7.0	−35.5%, $14.0	10.0	7.0
561422 Telemarketing Bureaus and Other contact Centers	5.6, 30.0	35.5, 10.0	.....	24.8	910.6	0.807, $25.5	.....	25.5	7.0
561431 Private Mail Centers	0.4, 5.0	2.9, 5.0	.....	4.7	25.2	0.289, $5.0	.....	5.0	7.0
561439 Other Business Service Centers (including Copy Shops)	2.6, 14.0	95.9, 25.5	1.0, 10.0	54.5	1,119.2, 25.5	0.832, $30.0	.....	19.0	7.0
561440 Collection Agencies	2.7, 14.0	25.3, 7.0	1.0, 10.0	14.9	457.6	0.792, $25.5	.....	14.0	7.0
561450 Credit Bureaus	15.3, 35.5	379.2, 35.5	.....	64.3	1,316.5, 30.0	0.935, $35.5	.....	35.5	7.0
561491 Repossession Services	0.8, 5.0	4.3, 5.0	.....	10.0	18.0	0.520, $5.0	.....	5.0	7.0
561492 Court Reporting and Stenotype Services	0.7, 5.0	16.5, 7.0	.....	19.7	110.5	0.653, $5.0	.....	7.0	7.0
561499 All Other Business Support Services	2.5, 14.0	21.2, 7.0	1.0, 7.0	29.7	607.4	0.805, $25.5	−13.4%, $10.0	14.0	7.0
561510 Travel Agencies [1]	1.4, 7.0	109.9, 25.5	0.5, 5.0	48.7	2,105.8, 35.5	0.806, $25.5	.....	19.0	3.5
561520 Tour Operators	1.6, 7.0	18.1, 7.0	0.6, 5.0	16.2	178.6	0.735, $14.0	.....	10.0	7.0
561591 Convention and Visitors Bureaus	1.3, 7.0	8.3, 5.0	.....	13.2	49.6	0.674, $5.0	.....	7.0	7.0
561599 All Other Travel Arrangement and Reservation Services	9.9, 35.5	150.5, 35.5	6.9, 35.5	42.2	1,468.2, 30.0	0.898, $35.5	.....	35.5	7.0
561611 Investigation Services	0.8, 5.0	23.9, 7.0	.....	27.0	261.9	0.719, $10.0	−27.6%, $19.0	14.0	12.5
561612 Security Guards and Patrol Services	3.2, 19.0	88.4, 25.5	0.7, 5.0	30.6	1,439.8	0.865, $35.5	−6.3%	19.0	18.5
561613 Armored Car Services	16.7, 35.5	253.3, 35.5	.....	88.9	494.6, 14.0	0.906, $35.5	.....	30.0	12.5
561621 Security Systems Services (except Locksmiths)	2.6, 14.0	108.2, 25.5	1.0, 7.0	34.4	1,233.3	0.819, $25.5	7.8	19.0	12.5
561622 Locksmiths	0.4, 5.0	2.6, 5.0	.....	5.9	24.1	0.377, $5.0	.....	5.0	7.0
561710 Exterminating and Pest Control Services	0.8, 5.0	112.7, 30.0	0.2, 5.0	27.3	592.5	0.681, $5.0	.....	10.0	7.0
561720 Janitorial Services	0.6, 5.0	31.7, 10.0	0.2, 5.0	10.5	868.3	0.704, $10.0	−9.0	7.0	16.5
561730 Landscaping Services	0.6, 5.0	22.6, 7.0	0.2, 5.0	8.6	1,160.6	0.571, $5.0	0.7	5.0	7.0
561740 Carpet and Upholstery Cleaning Services	0.4, 5.0	9.4, 5.0	0.1, 5.0	10.4	76.9	0.419, $5.0	.....	5.0	4.5

TABLE 3—SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY (MILLIONS OF DOLLARS)—Continued

(1) NAICS code/ NAICS industry title	(2) Simple average firm size ($ million)	(3) Weighted average firm size ($ million)	(4) Average assets size $ million)	(5) Four-firm ratio (%)	(6) Four-firm average size $ million)	(7) Gini Co-efficient	(8) Federal contract factor (%)	(9) Calculated size standard $ million)	(10) Current size standard $ million)
561790 Other Services to Buildings and Dwellings	0.4, 5.0	5.4, 5.0	0.1, $5.0	11.2	133.7	0.479, 5.0	−38.5, $14.0	7.0	7.0
561910 Packaging and Labeling Services	2.8, 14.0	15.0, 5.0	1.2, 10.0	11.2	141.1	0.741, $14.0	.....	10.0	7.0
561920 Convention and Trade Show Organizers	2.6, 14.0	38.2, 10.0	.....	19.8	555.5	0.802, $25.5	.....	19.0	7.0
561990 All Other Support Services	1.6, 10.0	21.4, 7.0	0.7, 5.0	11.3	590.3	0.767, $19.0	−21.9, $10.0	10.0	7.0
562111 Solid Waste Collection	5.4, 30.0	307.3, 35.5	3.1, 25.5	50.0	4,628.5, 35.5	0.878, $35.5	36.3	35.5	12.5
562112 Hazardous Waste Collection	5.0, 30.0	37.7, 10.0	.....	45.8	212.8, 7.0	0.775, $19.0	.....	14.0	12.5
562119 Other Waste Collection	1.9, 10.0	40.4, 10.0	1.2, 10.0	39.7	159.4	0.776, $19.0	.....	14.0	12.5
562211 Hazardous Waste Treatment and Disposal	13.4, 35.5	101.9, 25.5	7.5, 35.5	44.6	653.6, 14.0	0.834, $30.0	−4.9%	25.5	12.5
562212 Solid Waste Landfill	6.6, 35.5	85.5, 19.0	4.6, 35.5	56.1	791.8, 19.0	0.854, $35.5	.....	30.0	12.5
562213 Solid Waste Combustors and Incinerators	36.5, 35.5	270.0, 35.5	.....	92.4	480.8, 14.0	0.856, $35.5	.....	30.0	12.5
562219 Other Nonhazardous Waste Treatment and Disposal	3.8, 19.0	15.8, 7.0	.....	34.7	58.2	0.689, $7.0	.....	10.0	12.5
562910 Remediation Services	4.1, 25.5	29.3, 10.0	1.7, 14.0	14.7	455.1	0.770, $19.0	−4.4%	19.0	14.0
562920 Materials Recovery Facilities	4.4, 25.5	26.7, 10.0	2.0, $19.0	33.3	338.8	0.749, $14.0	.....	19.0	12.5
562991 Septic Tank and Related Services	0.8, 5.0	8.9, 5.0	.....	13.2	84.3	0.556, $5.0	.....	5.0	7.0
562998 All Other Miscellaneous Waste Management Services	1.5, 7.0	14.2, 5.0	0.6, 5.0	27.8	98.3	0.679, $5.0	.....	5.0	7.0

Common Size Standards

When many of the same businesses operate in multiple industries, SBA believes that a common size standard can be appropriate for these industries even if the industry and relevant program data support different size standards. For instance, in past rules, SBA has established a common size standard for Computer Systems Design and Related Services industries (NAICS 541511, NAICS 541112, NAICS 541513, NAICS 541519 (excluding the ''exception''), and NAICS 811212). Another example is the common size standard for certain Architectural and Engineering (A&E) and Related Services industries. These include NAICS 541310, NAICS 541330 (excluding the ''exceptions''), Map Drafting (which is identified as ''exception'' under NAICS 541340), NAICS 541360, and NAICS 541370 (*see* 64 FR 28275 (May 25, 1999)). More recently, SBA established a common size standard for some of the industries in NAICS Sector 44–45, Retail Trade as well (*see* 75 FR 61597 (October 6, 2010)). Size standards for NAICS Sector 44–45 do not apply to Federal Government contracting, but they do apply to all other Federal Government programs that provide benefits for being a small business concern.

In this rule, SBA proposes, as an alternative to a separate size standard for each industry, common size standards for industries under several NAICS Industry Groups as shown in Table 4. SBA evaluated industry and Federal contracting factors and derived a common size standard for each Industry Group using the same method as described above. The results are in Table 5, which immediately follows Table 4, below.

TABLE 4—INDUSTRY GROUPS FOR COMMON SIZE STANDARDS

Industry group: NAICS codes	Industry group title	Industries: 6-digit NAICS codes
5613	Employment Services	561311, 561312, 561320, 561330
5614	Business Support Services	561410, 561421, 561422, 561431, 561439, 561440, 561450, 561491, 561492, 561499
5615	Travel Arrangement and Reservation Services	561510, 561520, 561591, 561599
5616	Investigation and Security Services	561611, 561612, 561613, 561621, 561622
5619	Other Support Services	561910, 561920, 591990
5621	Waste Collection	562111, 562112, 562119
5622	Waste Treatment and Disposal	562211, 562212, 562213, 562219

TABLE 5 —SIZE STANDARDS SUPPORTED BY EACH FACTOR FOR EACH INDUSTRY GROUP

[millions of dollars]

(1) NAICS Code/industry title	(2) Simple average firm size ($ million)	(3) Weighted average firm size ($ million)	(4) Average assets size ($ million)	(5) Four-firm ratio (%)	(6) Four-firm average size ($ million)	(7) Gini co-efficient	(8) Federal contract factor (%)	(9) Calculated size standard ($ million)
5613 Employment Services	$6.5, 35.5	$198.8, 35.5	$1.2, 10.0	14.8	$7,751.2	0.891, $35.5	15.8%	$25.5
5614 Business Support Services	2.1, 10.0	40.8, 10.0	0.8, 7.0	12.2	1,896.1	0.824, $30.0	−11.7%, $10.0	14.0
5615 Travel Arrangement and Reservation Services	2.2, 10.0	123.3, 30.0	0.9, 7.0	33.6	3,115.5	0.850, $30.0	.....	19.0
5616 Investigation and Security Services	2.1, 10.0	94.4, 25.5	0.6, 5.0	22.9	2,343.2	0.834, $30.0	2.4%	19.0
5619 Other support Services	2.0, 10.0	23.7, 7.0	0.8, 7.0	8.6	795.1	0.781, $19.0	−15.9%, $10.0	10.0
5621 Waste Collection	5.0, 30.0	254.2, 35.5	2.9, 25.5	46.7	4,726.6, $35.5	0.872, $35.5	29.5%	35.5
5622 Waste Treatment and Disposal	9.5, 35.5	123.0, 30.0	5.9, 35.5	37.0	1,319.2	0.869, $35.5	−5.9%	33.5

Special Considerations

Environmental Remediation Services

The current size standard for Federal contracts for Environmental Remediation Services (the ''exception'' to NAICS code 562910) is 500 employees. This size standard only applies to certain Federal contracting opportunities that meet specific criteria. In short, the contract must be for the remediation of a contaminated environment and it must include at least three separate types of contract work. Each of those contract activities must be identifiable by a different NAICS code; however, no one of the activities may constitute 50 percent or more of the total anticipated cost of the contract. The criteria that constitute an Environmental Remediation Services contract or company are detailed in 59 FR 47236 (September 15, 1994) and in Footnote 14 to SBA's table of size standards (13 CFR 121.201).

In this proposed rule, SBA has not reviewed this employee based size standard for Environmental Remediation Services and the current standard will remain in effect until SBA reviews industries with employee based size standards.

Evaluation of SBA Loan Data

Before deciding on an industry's size standard, SBA also considers the impact of new or revised standards on SBA's loan programs. Accordingly, SBA examined its 7(a) and 504 Loan Program data for fiscal years 2008–2010 to assess whether the existing or proposed size standards need further adjustments to ensure credit opportunities for small businesses through those programs. For the industries reviewed in this rule, the data show that it is mostly businesses much smaller than the size standards that use the SBA's 7(a) and 504 loans. Therefore, no size standard in NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services, needs an adjustment based on this factor.

Proposed Changes to Size Standards

Table 6, below, summarizes the results of SBA analyses of industry specific size standards from Table 3 and the results for common size standards from Table 5. In terms of industry specific size standards, the results in Table 3 support increases in size standards for 29 industries, decreases for nine industries, and no changes for six industries. Similarly, based on common size standards for certain NAICS Industry Groups, the results in Table 5 appear to support increases for 37 industries, decreases for five industries, and no changes for two industries.

However, lowering small business size standards is not in the best interest of small businesses in the current economic environment. The U.S. economy was in recession from December 2007 to June 2009, the longest and deepest of any recessions since World War II. The economy lost more than eight million non-farm jobs during 2008–2009. In response, Congress passed and the President signed into law the American Recovery and Reinvestment Act of 2009 (Recovery Act) to promote economic recovery and to preserve and create jobs. Although the recession officially ended in June 2009, the unemployment rate was 9.4 percent or higher from May 2009 to December 2010. It moderated to 8.8 percent in March 2011, but it increased again to 9.2 percent in June 2011. The unemployment rate is forecast to remain around this elevated level at least through the end of 2011. More recently, Congress passed and the President signed the Jobs Act to promote small business job creation. The Jobs Act puts more capital into the hands of entrepreneurs and small business owners; strengthens small businesses' ability to compete for contracts; includes recommendations from the President's Task Force on Federal Contracting Opportunities for Small Business; creates a better playing field for small businesses; promotes small business exporting, building on the President's National Export Initiative; expands training and counseling; and provides $12 billion in tax relief to help small businesses invest in their firms and create jobs.

TABLE 6—SUMMARY OF SIZE STANDARDS ANALYSIS

NAICS Codes	NAICS Industry title	Calculated industry specific size standard ($ million)	Calculated common size standard ($ million)	Current size standard ($ million)
561110	Office Administrative Services	$7.0		$7.0
561210	Facilities Support Services	30.0		35.5
561311	Employment Placement Agencies	14.0	$25.5	7.0
561312	Executive Search Services	7.0	25.5	7.0
561320	Temporary Help Services	25.5	25.5	13.5
561330	Professional Employer Organizations	30.0	25.5	13.5
561410	Document Preparation Services	7.0	14.0	7.0
561421	Telephone Answering Services	10.0	14.0	7.0
561422	Telemarketing Bureaus and Other contact Centers	25.5	14.0	7.0
561431	Private Mail Centers	5.0	14.0	7.0
561439	Other Business Service Centers (including Copy Shops).	19.0	14.0	7.0
561440	Collection Agencies	14.0	14.0	7.0
561450	Credit Bureaus	35.5	14.0	7.0
561491	Repossession Services	5.0	14.0	7.0
561492	Court Reporting and Stenotype Services	7.0	14.0	7.0
561499	All Other Business Support Services	14.0	14.0	7.0
561510	Travel Agencies[10]	19.0	19.0	3.5
561520	Tour Operators[10]	10.0	19.0	7.0
561591	Convention and Visitors Bureaus	7.0	19.0	7.0
561599	All Other Travel Arrangement and Reservation Services.	35.5	19.0	7.0
561611	Investigation Services	14.0	19.0	12.5
561612	Security Guards and Patrol Services	19.0	19.0	18.5
561613	Armored Car Services	30.0	19.0	12.5
561621	Security Systems Services (except Locksmiths)	19.0	19.0	12.5
561622	Locksmiths	5.0	19.0	7.0
561710	Exterminating and Pest Control Services	10.0		7.0
561720	Janitorial Services	7.0		16.5
561730	Landscaping Services	5.0		7.0
561740	Carpet and Upholstery Cleaning Services	5.0		4.5
561790	Other Services to Buildings and Dwellings	7.0		7.0
561910	Packaging and Labeling Services	10.0	10.0	7.0
561920	Convention and Trade Show Organizers[10]	19.0	10.0	7.0
561990	All Other Support Services	10.0	10.0	7.0
562111	Solid Waste Collection	35.5	35.5	12.5
562112	Hazardous Waste Collection	14.0	35.5	12.5
562119	Other Waste Collection	14.0	35.5	12.5
562211	Hazardous Waste Treatment and Disposal	25.5	35.5	12.5
562212	Solid Waste Landfill	30.0	35.5	12.5
562213	Solid Waste Combustors and Incinerators	30.0	35.5	12.5
562219	Other Nonhazardous Waste Treatment and Disposal	10.0	35.5	12.5
562910	Remediation Services	19.0		14.0
562920	Materials Recovery Facilities	19.0		12.5
562991	Septic Tank and Related Services	5.0		7.0
562998	All Other Miscellaneous Waste Management Services	5.0		7.0

Lowering size standards would decrease the number of firms that can participate in Federal financial and procurement assistance for small businesses. Furthermore, size standards based solely on analytical results without any other considerations would cut off more than 800 currently eligible small firms from those programs. That would run counter to what SBA and the Federal government are doing to help small businesses. Reducing size eligibility for Federal procurement opportunities, especially under current economic conditions, would not preserve or create more jobs; rather, it would have the opposite effect. Therefore, in this proposed rule, SBA does not propose to reduce size standards for any industries. For industries where analyses might seem to support lowering size standards, SBA proposes to retain the current size standards. As stated previously, the Small Business Act requires the Administrator to ''* * * consider other factors deemed to be relevant * * *'' to establishing small business size standards. The current economic conditions and the impact on job creation are quite relevant to establishing small business size standards. SBA nevertheless invites comments and suggestions on whether it should lower size standards as suggested by analyses of industry and program data or retain the current standards for those industries in view of current economic conditions.

Based on comparisons between industry specific size standards and common size standards within each Industry Group, SBA finds that for some industries common size standards are more appropriate for several reasons. First, analyzing industries at a more aggregated Industry Group level simplifies size standards analysis and the results are likely to be more consistent among related industries. Second, in most cases, industries within each Industry Group currently have the same size standards and SBA believes it is better to keep the revised size

standards also the same. Third, within each Industry Group many of the same businesses tend to operate in the same multiple industries. SBA believes that common size standards reflect the Federal marketplace in those industries better than do different size standards for each industry. Fourth, for the majority of industries for which SBA has proposed common size standards, industry specific size standards and common size standards are within a reasonably close range.

For industries where both industry specific size standards and common size standards have been calculated, for the above reasons, SBA proposes to apply common size standards. For industries where common size standards have not been estimated, SBA proposes to apply industry specific size standards.

As discussed above, SBA has decided that lowering small business size standards would be inconsistent with what the Federal government is doing to stimulate the economy and encourage job growth through the Recovery Act and Jobs Act. Therefore, for those industries for which its analyses suggested decreasing their size standards, SBA proposes to retain the current size standards. Thus, of the 44 industries in NAICS Sector 56 that SBA reviewed for this proposed rule, the Agency proposes to increase size standards for 37 industries and retain the current standards for seven industries. Industries for which SBA has proposed to increase their size standards and proposed standards are in Table 7 (below).

In addition, not lowering size standards is consistent with SBA's prior actions for NAICS Sector 44–45 (Retail Trade), NAICS Sector 72 (Accommodation and Food Services), and NAICS Sector 81 (Other Services) that the Agency proposed and adopted in its final rules (75 FR 61597, 75 FR 61604, and 75 FR 61591, (October 6, 2009)). It is also consistent with the Agency's recently proposed rules for NAICS Sector 54, Professional, Technical, and Scientific Services (76 FR 14323 (March 16, 2011)), NAICS Sector 48–49, Transportation and Warehousing (76 FR 27935 (May 13, 2011)), and NAICS Sector 51, Information, that is being published elsewhere in this issue of the **Federal Register**. In each of those final and proposed rules, SBA opted not to reduce small business size standards for the same reasons it has provided above in this proposed rule.

TABLE 7—SUMMARY OF PROPOSED SIZE STANDARD REVISIONS

NAICS Codes	NAICS Industry title	Proposed size standard ($ million)	Current size standard ($ million)
561311	Employment Placement Agencies	$25.5	$7.0
561312	Executive Search Services	25.5	7.0
561320	Temporary Help Services	25.5	13.5
561330	Professional Employer Organizations	25.5	13.5
561410	Document Preparation Services	14.0	7.0
561421	Telephone Answering Services	14.0	7.0
561422	Telemarketing Bureaus and Other contact Centers	14.0	7.0
561431	Private Mail Centers	14.0	7.0
561439	Other Business Service Centers (including Copy Shops)	14.0	7.0
561440	Collection Agencies	14.0	7.0
561450	Credit Bureaus	14.0	7.0
561491	Repossession Services	14.0	7.0
561492	Court Reporting and Stenotype Services	14.0	7.0
561499	All Other Business Support Services	14.0	7.0
561510	Travel Agencies [10]	[10] 19.0	[10] 3.5
561520	Tour Operators [10]	[10] 19.0	[10] 7.0
561591	Convention and Visitors Bureaus	19.0	7.0
561599	All Other Travel Arrangement and Reservation Services	19.0	7.0
561611	Investigation Services	19.0	12.5
561612	Security Guards and Patrol Services	19.0	18.5
561613	Armored Car Services	19.0	12.5
561621	Security Systems Services (except Locksmiths)	19.0	12.5
561622	Locksmiths	19.0	7.0
561710	Exterminating and Pest Control Services	10.0	7.0
561740	Carpet and Upholstery Cleaning Services	5.0	4.5
561910	Packaging and Labeling Services	10.0	7.0
561920	Convention and Trade Show Organizers [10]	[10] 10.0	[10] 7.0
561990	All Other Support Services	10.0	7.0
562111	Solid Waste Collection	35.5	12.5
562112	Hazardous Waste Collection	35.5	12.5
562119	Other Waste Collection	35.5	12.5
562211	Hazardous Waste Treatment and Disposal	35.5	12.5
562212	Solid Waste Landfill	35.5	12.5
562213	Solid Waste Combustors and Incinerators	35.5	12.5
562219	Other Nonhazardous Waste Treatment and Disposal	35.5	12.5
562910	Remediation Services	19.0	14.0
562920	Materials Recovery Facilities	19.0	12.5

Footnote 10 to SBA's table of size standards states the following: ''As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.'' The SBA does not propose to modify the calculation of receipts for these industries.

Evaluation of Dominance in Field of Operation

SBA has determined that for the industries in NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services, for which it has proposed to increase size standards, no firm at or below the proposed size standard will be large enough to dominate its field of operation. At the proposed size standards, if adopted, small business shares of total industry receipts among those industries vary from less than 0.1 percent to 5.3 percent, with an average of 0.6 percent. These levels of market share effectively preclude a firm at or below the proposed size standards from exerting control on this industry.

Request for Comments

SBA invites public comments on the proposed rule, especially on the following issues.

1. To simplify size standards, SBA proposes eight fixed size levels for receipts based size standards: $5.0 million, $7.0 million, $10.0 million, $14.0 million, $19.0 million, $25.5 million, $30.0 million and $35.5 million. SBA invites comments on whether simplification of size standards in this way is necessary and if these proposed fixed size levels are appropriate. SBA welcomes suggestions on alternative approaches to simplifying small business size standards.

2. SBA seeks feedback on whether the proposed levels of size standards are appropriate given the economic characteristics of each industry. SBA also seeks feedback and suggestions on alternative standards, if they would be more appropriate, including whether an employee based standard for certain industries is a more suitable measure of size and if so, what that employee level should be.

3. SBA proposes that each of seven 4-digit NAICS Industry Groups (*see* Table 4, above) have common size standards for the Industries that make up their groups. SBA invites comments or suggestions along with supporting information with respect to the following:

a. Whether SBA should adopt common size standards for those industries or establish a separate size standard for each industry.

b. Whether the proposed common size standards for those industries are at the correct levels, and if not, what are more appropriate size standards.

4. SBA's proposed size standards are based on its evaluation of five primary factors: Average firm size, average assets size (as a proxy for startup costs and entry barriers), four-firm concentration ratio, distribution of firms by size, and the level and small business share of Federal contracting dollars. SBA welcomes comments on these factors and/or suggestions on other factors that it should consider for assessing industry characteristics when evaluating or revising size standards. SBA also seeks information on relevant data sources, if available.

5. SBA gives equal weight to each of the five primary factors in all industries. SBA seeks feedback on whether it should continue giving equal weight to each factor or whether it should give more weight to one or more factors for certain industries. Recommendations to weigh some factors more than others should include suggestions on specific weights for each factor for those industries, along with supporting information.

6. For some industries, based on analysis of industry and program data, SBA proposes to increase the existing size standards by a large amount (such as NAICS 561311, NAICS 561312, and NAICS Industry Groups 5615, 5621 and 5622), while for others the proposed increases are modest. SBA seeks feedback on whether it should, as a policy, limit the increase to a size standard and/or whether it should, as a policy, establish minimum or maximum values for its size standards. SBA seeks suggestions on appropriate levels of changes to size standards and on their minimum or maximum levels.

7. Based on the analysis of industry and program data and common size standards, SBA has proposed to increase the size standards for NAICS 561510 (Travel Agencies) from $3.5 million to $19 million and for NAICS 561520 (Tour Operators) from $7.0 million to $19.0 million. SBA requests comments on the proposed size standards for these two industries because to determine if a company meets the size standard for either of these industries, firms may exclude "* * * funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue" (*see* Footnote 10 to SBA's table of size standards). SBA seeks feedback on whether it should continue or terminate the exclusion of funds received in trust for an unaffiliated third party from receipts if it adopts its proposed standard or any other standard considerably higher than the existing standards for these industries. SBA also welcomes information and data on how businesses in these industries collect and report income for Federal Income Tax Returns, and what they recognize as business receipts (*see* 13 CFR 121.104 for SBA's definition of "receipts").

8. For analytical simplicity and efficiency, in this proposed rule, SBA has refined its size standard methodology to obtain a single value as a proposed size standard instead of a range of values, as seen in its past size regulations. SBA welcomes any comments on this procedure and suggestions on alternative methods.

Public comments on the above issues are very valuable to SBA for validating its size standard methodology and proposed revisions to size standards in this proposed rule. This will help SBA to move forward with its review of size standards for other NAICS Sectors. Commenters addressing size standards for a specific industry or a group of industries should include relevant data and/or other information supporting their comments. If comments relate to using size standards for Federal procurement programs, SBA suggests that commenters provide information on the size of contracts awarded, the size of businesses that can undertake the contracts, start-up costs, equipment and other asset requirements, the amount of subcontracting, other direct and indirect costs associated with the contracts, the use of mandatory sources of supply for products and services and the degree to which contractors can mark up those costs.

Compliance With Executive Orders 12866, 13563, 12988 and 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. 800.

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

SBA believes that proposed size standards revisions for a number of industries in NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services, will better reflect the economic characteristics of small businesses and the Federal government marketplace. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs.

To assist the intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences. The recently enacted Small Business Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions. The supplementary information section of this proposed rule explains SBA's methodology for analyzing a size standard for a particular industry.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status because of this rule is gaining eligibility for Federal small business assistance programs. These include SBA's financial assistance programs, economic injury disaster loans, and Federal procurement programs intended for small businesses. Federal procurement programs provide targeted opportunities for small businesses under SBA's business development programs, such as 8(a), Small Disadvantaged Businesses (SDB), small businesses located in Historically Underutilized Business Zones (HUBZone), women-owned small businesses (WOSB), and service-disabled veteran-owned small business concerns (SDVO SBC). Federal agencies may also use SBA size standards for a variety of other regulatory and program purposes. These programs assist small businesses to become more knowledgeable, stable, and competitive. In 37 industries for which SBA has proposed increasing size standards, SBA estimates that about 2,700 additional firms will obtain small business status and become eligible for these programs. That number is nearly 1.0 percent of the total number of firms that are classified as small under the current standards in all industries within NAICS Sector 56. If adopted as proposed, this would increase the small business share of total industry receipts in those industries from about 32 percent under the current size standards to nearly 37 percent.

Three groups will benefit from these proposed size standards, if they are adopted as proposed: (1) Some businesses that are above the current size standards may gain small business status under the higher size standards, thereby enabling them to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards will be able to retain their small business status under the higher size standards, thereby enabling them to continue their participation in the programs; and (3) Federal agencies will have larger pools of small businesses from which to draw for their small business procurement programs.

During fiscal years 2007 to 2009, 35 percent of Federal contracting dollars spent in industries reviewed in this proposed rule were accounted for by the 37 industries for which SBA has proposed to increase size standards. SBA estimates that additional firms gaining small business status in those industries under the proposed size standards could potentially obtain Federal contracts totaling up to $60 million to $75 million annually under SBA's small business, 8(a), SDB, HUBZone, WOSB, and SDVO SBC Programs, and other unrestricted procurements. The added competition for many of these procurements could also result in lower prices to the Government for procurements reserved for small businesses, although SBA cannot quantify this benefit.

Under SBA's 7(a) Business Loan and 504 Programs, based on the 2008–2010 data, SBA estimates that about 20 to 30 additional loans totaling about $3 million to $5 million in Federal loan guarantees could be made to these newly defined small businesses under the proposed standards. Increasing the size standards will likely result in more small business guaranteed loans to businesses in these industries, but it would be impractical to try to estimate exactly the extent of their number and the total amount loaned. Under the Jobs Act, SBA can now guarantee substantially larger loans than in the past. In addition, the Jobs Act established an alternative size standard ($15 million in tangible net worth and $5 million in net income after income taxes) for business concerns that do not meet the size standards for their industry. Therefore, SBA finds it similarly difficult to quantify the impact of these proposed standards on its 7(a) and 504 Loan Programs.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent on the occurrence and severity of a disaster, SBA cannot make a meaningful estimate of benefits for future disasters.

To the extent that 2,700 newly defined additional small firms could become active in Federal procurement programs, the proposed changes, if adopted, may entail some additional administrative costs to the Federal Government, including those associated with additional bidders for Federal small business procurement opportunities, additional firms seeking SBA guaranteed lending programs, additional firms eligible for enrollment in the Central Contractor Registration's (CCR) Dynamic Small Business Search database, and additional firms seeking certification as 8(a) or HUBZone firms or qualifying for small business, WOSB, SDVO SBC, and SDB status. Among those newly defined small businesses seeking SBA assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. These added costs will be minimal because mechanisms are already in place to handle these administrative requirements.

Additionally, the costs to the Federal Government may be higher on some Federal contracts. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to small business set-aside contracting might result in competition among fewer total bidders, although there will be more small businesses eligible to submit offers. In addition, higher costs may result when more full and open contracts are awarded to HUBZone and SDB businesses that receive price evaluation preferences. However, the additional costs associated with fewer bidders are expected to be minor since, as a matter of law, procurements may be set aside for small businesses or reserved for the 8(a), HUBZone, WOSB, or SDVO SBC Programs only if awards are expected to be made at fair and reasonable prices. In addition, higher costs may result when more full and open contracts are awarded to HUBZone and SDB businesses that receive price evaluation preferences.

The proposed size standards may have distributional effects among large and small businesses. Although SBA cannot estimate with certainty the actual outcome of the gains and losses among small and large businesses, it can identify several probable impacts. There may be a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal contracts for small businesses. In addition, some Federal contracts may be awarded to HUBZone or SDB concerns instead of large

businesses since those two categories of small businesses may be eligible for an evaluation adjustment for contracts when they compete on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contracts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts away from large and currently defined small businesses. SBA cannot estimate the potential distributional impacts of these transfers with any degree of precision because FPDS–NG data only identify the size of businesses receiving Federal contracts as ''small business'' or ''other than small business''; FPDS–NG does not provide the exact size of the businesses.

The proposed revisions to the existing size standards for Industries in NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services, are consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

Executive Order 13563

A description of the need for this regulatory action and the benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, are included above in the Regulatory Impact Analysis under Executive Order 12866.

In an effort to engage interested parties in this action, SBA has presented its methodology (discussed above under Supplementary Information) to various industry associations and trade groups. SBA also met with various industry groups to obtain their feedback on its methodology and other size standards issues. SBA also presented its size standards methodology to businesses in 13 cities in the U.S. and sought their input as part of the Jobs Act tours.

Additionally, SBA sent letters to the Directors of the Offices of Small and Disadvantaged Business Utilization (OSDBU) at several Federal agencies with considerable procurement responsibilities requesting their feedback on how the agencies use SBA size standards and whether current standards meet their programmatic needs (both procurement and non-procurement). SBA gave appropriate consideration to all input, suggestions, recommendations, and relevant information obtained from industry groups, individual businesses, and Federal agencies in preparing this proposed rule.

The review of size standards in NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services, is consistent with EO 13563, Sec. 6, calling for retrospective analyses of existing rules. As discussed previously, the last overall review of size standards occurred during the late 1970s and early 1980s. Since then, except for periodic adjustments for monetary based size standards, most reviews of size standards were limited to a few specific industries in response to requests from the public and Federal agencies. SBA recognizes that changes in industry structure and the Federal marketplace over time have rendered existing size standards for some industries no longer supportable by current data. Accordingly, SBA has begun a comprehensive review of its size standards to ensure that existing size standards have supportable bases and to revise them when necessary. In addition, on September 27, 2010 the President of the United States signed the Jobs Act. The Jobs Act directs SBA to conduct a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. Specifically, the Jobs Act requires SBA to conduct a detailed review of at least one-third of all size standards during every 18-month period from the date of its enactment and do a complete review of all size standards not less frequently than once every five years thereafter.

Executive Order 12988

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

Executive Order 13132

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

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule would not impose any new reporting or record keeping requirements.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule, if finalized, may have a significant impact on a substantial number of small businesses in NAICS Sector 56, Administrative and Support, Waste Management and Remediation Services. As described above, this rule may affect small businesses seeking Federal contracts, loans under SBA's (7a), 504 Guaranteed Loan and Economic Injury Disaster Loan Programs, and assistance under other Federal small business programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What are the need for and objective of the rule? (2) What are SBA's description and estimate of the number of small entities to which the rule will apply? (3) What are the projected reporting, record keeping, and other compliance requirements of the rule? (4) What are the relevant Federal rules that may duplicate, overlap, or conflict with the rule?, and (5) What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

1. What are the need for and objective of the rule?

Most of the size standards in NAICS Sector 56, Administrative and Support, Remediation and Support Services, have not been reviewed since the early 1980s. Technology, productivity growth, international competition, mergers and acquisitions, and updated industry definitions may have changed the structure of many industries in the Sector. Such changes can be sufficient to support revisions to current size standards for some industries. Based on its analysis of the latest data available, SBA believes that the revised standards in this proposed rule more appropriately reflect the size of

businesses in those industries that need Federal assistance. The recently enacted Small Business Jobs Act also requires SBA to review all size standards and make necessary adjustments to reflect market conditions.

2. What is SBA's description and estimate of the number of small entities to which the rule will apply?

If the proposed rule is adopted in its present form, SBA estimates that about 2,700 additional firms will become small because of increases in size standards in 37 industries and one sub-industry. That represents about 1.0 percent of total firms that are small under current size standards in all industries within NAICS Sector 56. This will result in an increase in the small business share of total industry receipts for this Sector from about 32 percent under the current size standard to nearly 37 percent under the proposed standards. SBA does not anticipate a significant competitive impact on smaller businesses in these industries because businesses in this Sector have been requesting SBA to increase these standards. The proposed standards, if adopted, will enable more small businesses to retain their small business status for a longer period. Many have lost their eligibility and find it difficult to compete at such low levels with companies that are significantly larger than they are. SBA believes the competitive impact will be positive for existing small businesses and for those that exceed the size standards but are on the very low end of those that are not small. They might otherwise be called or referred to as mid-sized businesses, although SBA only defines what is small; other entities are other than small.

3. What are the projected reporting, record keeping and other compliance requirements of the rule and an estimate of the classes of small entities, which will be subject to the requirements?

Proposed size standards changes do not impose any additional reporting or record keeping requirements on small entities. However, qualifying for Federal procurement and a number of other programs requires that entities register in the CCR database and certify at least annually that they are small in the Online Representations and Certifications Application (ORCA). Therefore, businesses opting to participate in those programs must comply with CCR and ORCA requirements. There are no costs associated with either CCR registration or ORCA certification. Changing size standards alters the access to SBA programs that assist small businesses but does not impose a regulatory burden as they neither regulate nor control business behavior.

4. What are the relevant Federal rules, which may duplicate, overlap, or conflict with the rule?

Under § 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute to do otherwise. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988 (November 24, 1995)). SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

However, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards if they believe that SBA's size standards are not appropriate for their programs, with the approval of SBA's Administrator (13 CFR 121.903). The Regulatory Flexibility Act authorizes an Agency to establish an alternative small business definition after consultation with the Office of Advocacy of the U.S. Small Business Administration (5 U.S.C. 601(3)).

5. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

By law, SBA is required to develop numerical size standards for establishing eligibility for Federal small business assistance programs. Other than varying size standards by industry and changing the size measures, no practical alternative exists to the systems of numerical size standards.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA proposes to amend part 13 CFR Part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for 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 Pub. L. 105–135, sec. 401 *et seq.,* 111 Stat. 2592.

2. In § 121.201, in the table, revise the entries for ''561311,'' ''561312,'' ''561320,'' ''561330,'' ''561410,'' ''561421,'' ''561422,'' ''561431,'' ''561439,'' ''561440,'' ''561450,'' ''561491,'' ''561492,'' ''561499,'' ''561510,'' ''561520,'' ''561591,'' ''561599,'' ''561611,'' ''561612,'' ''561613,'' ''561621,'' ''561622,'' ''561710,'' ''561740,'' ''561910,'' ''561920,'' ''561990,'' ''562111,'' ''562112,'' ''562119,'' ''562211,'' ''562212,'' ''562213,'' ''562219,'' ''562910,''and ''562920'' to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

NAICS Codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* *	* * *	*	*
561311	Employment Placement Agencies	$25.5	
561312	Executive Search Services	25.5	
561320	Temporary Help Services	25.5	
561330	Professional Employer Organizations	25.5	
561410	Document Preparation Services	14.0	
561421	Telephone Answering Services	14.0	
561422	Telemarketing Bureaus and Other Contact Centers	14.0	
561431	Private Mail Centers	14.0	
561439	Other Business Service Centers (including Copy Shops)	14.0	
561440	Collection Agencies	14.0	

NAICS Codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
561450	Credit Bureaus	14.0	
561491	Repossession Services	14.0	
561492	Court Reporting and Stenotype Services	14.0	
561499	All Other Business Support Services	14.0	
561510	Travel Agencies [10]	[10] 19.0	
561520	Tour Operators [10]	[10] 19.0	
561591	Convention and Visitors Bureaus	19.0	
561599	All Other Travel Arrangement and Reservation Services	19.0	
561611	Investigation Services	19.0	
561612	Security Guards and Patrol Services	19.0	
561613	Armored Car Services	19.0	
561621	Security Systems Services (except Locksmiths)	19.0	
561622	Locksmiths	19.0	
561710	Exterminating and Pest Control Services	10.0	
* *	* * *	*	*
561740	Carpet and Upholstery Cleaning Services	5.0	
* *	* * *	*	*
561910	Packaging and Labeling Services	10.0	
561920	Convention and Trade Show Organizers[10]	[10] 10.0	
561990	All Other Support Services	10.0	
* *	* * *	*	*
562111	Solid Waste Collection	35.5	
562112	Hazardous Waste Collection	35.5	
562119	Other Waste Collection	35.5	
562211	Hazardous Waste Treatment and Disposal	35.5	
562212	Solid Waste Landfill	35.5	
562213	Solid Waste Combustors and Incinerators	35.5	
562219	Other Nonhazardous Waste Treatment and Disposal	35.5	
562910	Remediation Services	19.0	
* *	* * *	*	*
562920	Materials Recovery Facilities	19.0	
* *	* * *	*	*

Dated: July 22, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–26207 Filed 10–11–11; 8:45 am]

BILLING CODE 8025–01–P

FEDERAL REGISTER

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No. 197 October 12, 2011

Part VII

The President

Proclamation 8730—National Energy Action Month, 2011
Proclamation 8731—German-American Day, 2011
Executive Order 13586—Establishing an Emergency Board to Investigate Disputes Between Certain Railroads Represented by the National Carriers' Conference Committee of the National Railway Labor Conference and Their Employees Represented by Certain Labor Organizations

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Wednesday, October 12, 2011

Presidential Documents

Title 3—

The President

Proclamation 8730 of October 6, 2011

National Energy Action Month, 2011

By the President of the United States of America

A Proclamation

Throughout our history, America's energy resources have laid the foundation for our Nation's economic security and prosperity, powering our factories, lighting our classrooms, and warming our homes. Today, we stand at a critical juncture. As global demand for energy grows, the United States must take bold action to create a more secure energy future and build a competitive 21st-century clean energy economy.

Over the past two and a half years, my Administration has taken unprecedented action to ensure America leads in the development and deployment of clean energy. To that end, we have made the largest investments in clean energy in our Nation's history, which are giving rise to cutting-edge technologies, creating new American jobs and industries, and putting us on track to doubling renewable energy capacity in the United States by the end of next year. At the same time, we have expanded safe and responsible development of our domestic energy resources.

To help save consumers money at the pump and on their energy bills, my Administration has set historic new fuel economy standards for cars and trucks and taken steps to increase the efficiency of our homes and buildings. We have established common-sense and cost-effective standards to reduce harmful pollution, protecting our environment and the public health. And we are leading by example, requiring the Federal Government to increase energy efficiency, reduce waste, and use its scale and resources to advance a clean energy economy.

Taken together, these steps are helping unlock American innovation, create hundreds of thousands of jobs, and increase our Nation's competitiveness in the global economy. But these steps must mark the beginning of our efforts, not the end. Today, the stakes are high and the global competition to lead in clean energy is more intense than ever before. The United States cannot afford to fall behind on what will be one of the keys to our success in the future.

Across our Nation, millions of Americans are already doing their part. Farmers are pushing the envelope to develop advanced and renewable fuels, young people are taking action to make their schools and communities more sustainable, and our best scientists, engineers, and entrepreneurs are working together to move new ideas and technologies from the lab to the marketplace. If America can do what it does best—tap into the talents, skills, and creativity of our people to meet the challenges of our time—we will not just lead the clean energy economy, we will lead the 21st-century global economy.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2011 as National Energy Action Month. I call upon the citizens of the United States to recognize this month by making cleaner energy choices that will help build a stronger Nation, a more robust economy, and a healthier environment for our children.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of October, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2011–26560
Filed 10–11–11; 11:15 am]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8731 of October 6, 2011

German-American Day, 2011

By the President of the United States of America

A Proclamation

As a Nation of immigrants, America has been shaped and strengthened by the millions who have come to our shores seeking a better future. German men and women were among the first to have made the perilous journey across the Atlantic to seize the promise of the American dream. The same spirit that guided intrepid settlers to help establish Jamestown, Virginia, and found Germantown, Pennsylvania, is reflected in the indelible contributions to our common culture that we celebrate today.

Today, nearly one quarter of all Americans trace their ancestry to Germany, and many familiar American traditions—from Christmas trees to kindergarten—have German origins. German descendants have fundamentally and positively shaped the course of American history. From the wheels of labor and the fields of sport, to the halls of power and throughout our society, generations of German Americans have helped make America what it is today.

The bonds of friendship and trust between the United States and Germany continue to enrich both our nations. Our partnership is more important than ever, and it remains indispensable to global security and prosperity. As we observe German-American Day, we celebrate how far we have come together and remember the lasting legacy that past pioneers have bestowed onto us.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 6, 2011, as German-American Day. I encourage all Americans to learn more about the history of German Americans and to commemorate the many contributions they have made to our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of October, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2011–26559
Filed 10–11–11; 11:15 am]
Billing code 3295–F2–P

Presidential Documents

Executive Order 13586 of October 6, 2011

Establishing an Emergency Board to Investigate Disputes Between Certain Railroads Represented by the National Carriers' Conference Committee of the National Railway Labor Conference and Their Employees Represented by Certain Labor Organizations

Disputes exist between certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference and their employees represented by certain labor organizations. The railroads and labor organizations involved in these disputes are designated on the attached list, which is made part of this order.

The disputes have not heretofore been adjusted under the provisions of the Railway Labor Act, as amended, 45 U.S.C. 151–188 (RLA).

I have been notified by the National Mediation Board that in its judgment these disputes threaten substantially to interrupt interstate commerce to a degree that would deprive a section of the country of essential transportation service.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States, including section 10 of the RLA (45 U.S.C. 160), it is hereby ordered as follows:

Section 1. *Establishment of Emergency Board (Board).* There is established, effective 12:01 a.m. eastern daylight time on October 7, 2011, a Board composed of a chair and four other members, all five of whom shall be appointed by the President to investigate and report on these disputes. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The Board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* The Board shall report to the President with respect to the disputes within 30 days of its creation.

Sec. 3. *Maintaining Conditions.* As provided by section 10 of the RLA, from the date of the creation of the Board and for 30 days after the Board has submitted its report to the President, no change in the conditions out of which the disputes arose shall be made by the parties to the controversy, except by agreement of the parties.

Sec. 4. *Records Maintenance.* The records and files of the Board are records of the Office of the President and upon the Board's termination shall be maintained in the physical custody of the National Mediation Board.

Sec. 5. *Expiration.* The Board shall terminate upon the submission of the report provided for in section 2 of this order.

THE WHITE HOUSE,

October 6, 2011.

Billing code 3295–F2–P

RAILROADS

Union Pacific Railroad Company
BNSF Railway Company
CSX Transportation, Inc.
Norfolk Southern Railway Company
The Kansas City Southern Railway Company

Alton & Southern Railway Company
The Belt Railway Company of Chicago
Brownsville and Matamoros Bridge Company
Central California Traction Company
Columbia & Cowlitz Railway Company
Consolidated Rail Corporation
Gary Railway Company
Indiana Harbor Belt Railroad Company
Kansas City Terminal Railway Company
Longview Switching Company
Los Angeles Junction Railway Company
Manufacturers Railway Company
New Orleans Public Belt Railroad
Norfolk & Portsmouth Belt Line Railroad Company
Northeast Illinois Regional Commuter Railroad Corporation
Oakland Terminal Railway
Port Terminal Railroad Association
Portland Terminal Railroad Company
Soo Line Railroad Company (Canadian Pacific)
South Carolina Public Railways
Terminal Railroad Association of St. Louis
Texas City Terminal Railway Company
Union Pacific Fruit Express
Western Fruit Express Company
Wichita Terminal Association
Winston-Salem Southbound Railway Company

LABOR ORGANIZATIONS

Rail Labor Bargaining Coalition consisting of:
- Brotherhood of Railroad Signalmen
- Brotherhood of Locomotive Engineers and Trainmen
- Brotherhood of Maintenance of Way Employes
- International Brotherhood of Boilermakers, Blacksmiths, Iron Ship Builders, Forgers and Helpers
- Sheet Metal Workers' International Association
- National Conference of Firemen & Oilers

Bargaining Together:
- Transportation-Communications International Union
- American Train Dispatchers Association
- International Association of Machinists and Aerospace Workers
- International Brotherhood of Electrical Workers
- Transport Workers Union of America

[FR Doc. 2011–26574
Filed 10–11–11; 11:15 am]
Billing code 7550–01–C

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